Reports of Cases

JUDGMENT OF THE GENERAL COURT (Appeal Chamber)

23 September 2015 *

(Appeals — ECB Staff — Complaint of discrimination and psychological harassment — Decision of the ECB to close the administrative inquiry initiated following the complaint — Refusal of access to evidence during the administrative procedure — Rejection of a request for an order to produce evidence during the judicial proceedings — Right to effective judicial protection — Error of law)

In Case T-114/13 P,

APPEAL brought against the judgment of the European Union Civil Service Tribunal (Third Chamber) of 12 December 2012, in *Cerafogli* v *ECB* (F-43/10, ECR, EU:F:2012:184), seeking the annulment of that judgment,

Maria Concetta Cerafogli, residing in Rome (Italy), represented by L. Levi, lawyer,

appellant,

the other party to the proceedings being

European Central Bank (ECB), represented by F. Feyerbacher, B. Ehlers, acting as Agents, assisted by B. Wägenbaur, lawyer,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, A. Dittrich and S. Frimodt Nielsen (Rapporteur), Judges,

Registrar: E. Coulon,

having regard to the written procedure,

gives the following

Judgment

1 By her appeal lodged pursuant to Article 9 of Annex I to the Statute of the Court of Justice of the European Union, the appellant, Ms Maria Concetta Cerafogli, asks the Court to set aside the judgment of the European Union Civil Service Tribunal (Third Chamber) of 12 December 2012 in *Cerafogli* v *ECB* (F-43/10, ECR, EU:F:2012:184) ('the judgment under appeal'), dismissing her application seeking, in essence, first, annulment of the decision of the European Central Bank (ECB) of 17 November 2009 ('the contested decision') closing the internal administrative inquiry opened following her complaint of discrimination and an attack on her dignity constituting psychological harassment and, secondly, an order requiring the ECB to pay her compensation.

* Language of the case: English.

Background to the dispute

2 The background to the dispute is set out in paragraphs 16 to 26 of the judgment under appeal, as follows:

‘16 The applicant, who was a member of the staff of the European Monetary Institute (EMI) from 1 September 1995 and then of the ECB from 1998, was assigned as a senior expert to the Market Infrastructure Division (“MIS Division”) of the “Payments” Directorate-General (“DG Payments”) of the ECB.

17 In 1998, following her election, the applicant became a member of the Staff Committee of the ECB and, apart from a short period in 2006, remained a member until June 2008. Throughout that period she also assumed the function of vice-spokesperson of the Staff Committee from September 2000 to December 2001 and from October 2007 to February 2008, and of spokesperson of that committee from May 2001 to July 2002. For the purposes of her staff representation activities the applicant was granted a dispensation from service of between 20 and 50% of her working time. The dispensation from service granted to her for the period from January to July 2006, in particular, represented 50% of working time.

18 From March to May 2007, the applicant, who, at the time, had a dispensation from service of 20% of her working time for her staff representation activities, had her working hours reduced by 35% on medical grounds. At that point the Director-General of DG Payments (“the Director-General”) relieved her of the file on standards for payment instruments (“the standards file”) and gave her, as her sole task, responsibility for preparing a policy note on standards for payment instruments (“the policy note on standards”).

19 The applicant was assigned to another division from 1 January 2008 and was given sick leave from 17 January 2008.

20 The applicant believes that for years she has been the victim of discrimination and infringements of the ECB’s Dignity at Work policy. Her first complaint against the ECB is that she had to bear a heavy workload because she had to combine her work in the MIS Division with her work for the Staff Committee, and her second that, from April 2007, she was given only the task of preparing the policy note on standards and, further, that, in January 2008, she received neither a salary increase nor a bonus because of her supposed underperformance, whereas it was her Director-General who was responsible for the situation. Finally, she maintained that he had offended her by stating without further explanation that her professional reputation was “very bad”.

21 Against that background, on 8 April 2008 the applicant applied for a pre-contentious administrative review on the basis of Article 41 of the Conditions of Employment [for Staff of the ECB] (“the application for pre-contentious review”). That application challenged, first, the allegedly discriminatory conduct of her line managers by reason, inter alia, of her membership of the Staff Committee and, second, the infringement by the ECB of international and European rules of employment law.

22 On 30 May 2008 the ECB informed the applicant of its decision to open an internal administrative inquiry (“the inquiry”), instructing a panel “to clarify the facts and circumstances of and the existence or absence of sufficient evidence” of allegations relating to the “discrimination [allegedly suffered by her] on the grounds of gender, age, nationality and health conditions and … her Staff Committee membership and” [her] allegations related to “a breach of the Dignity at Work policy, in particular by the management of [DG Payments]” including “defamation, isolation, mobbing and intimidation”.

23 On 5 September 2009 a draft inquiry report was sent to the applicant for her comments. The applicant sent her comments on 5 October 2009.

24 The final inquiry report, dated 11 November 2009, concluded that the applicant's allegations were not substantiated. That report was forwarded to the Executive Board of the ECB on 17 November 2009. The same day, the Executive Board adopted the contested decision on the basis of that report. The contested decision, with the report annexed, was served on the applicant on 1 December 2009.

25 On 29 January 2010 the applicant brought a special appeal pursuant to Article 41 of the Conditions of Employment [for Staff of the ECB] together with Article 8.1.6 of the [ECB] Staff Rules before the President of the ECB against the contested decision. The annexes to that special appeal were received by the ECB on 5 February 2010.

26 That special appeal was rejected by decision of the President of the ECB of 24 March 2010 …'

Proceedings at first instance and judgment under appeal

3 By application received at the Tribunal Registry on 4 June 2010, registered as Case F-43/10, the appellant sought, in essence, first, annulment of the contested decision, by which the Executive Board of the ECB closed the internal administrative inquiry opened following her complaint of discrimination and, secondly, an order requiring the ECB to pay her compensation.

4 In support of her action at first instance, the appellant put forward five pleas in law:

— a first plea alleging infringement of the rights of the defence, breach of Article 6(5) and Article 7(1) and (3) of Circular 1/2006 of the ECB Executive Board of 21 March 2006 on internal administrative inquiries ('Circular 1/2006'), infringement of the duty to state reasons, infringement of Article 3 of the Rules of Procedure of the ECB, adopted by ECB Decision 2004/257/EC of 19 February 2004 (OJ 2004 L 80, p. 33) and infringement of Articles 51 and 52 of the Conditions of Employment for Staff of the ECB;

— a second plea alleging breach by the panel of its mandate;

— a third plea alleging a manifest error of assessment;

— a fourth plea alleging infringement of the concept of psychological harassment;

— a fifth plea alleging breach of the duty of assistance.

5 By the judgment under appeal, the Civil Service Tribunal dismissed the appeal and ordered the appellant to pay the costs in their entirety.

6 As regards the first plea at first instance, in paragraphs 83 to 118 of the judgment under appeal, in the first place, the Civil Service Tribunal held, first, on the basis of its judgment of 16 May 2012 in *Skareby* v *Commission* (F-42/10, ECR, EU:F:2012:64, paragraph 46), that, since an inquiry procedure initiated following a request for assistance from an official with a complaint of psychological harassment cannot be compared to an inquiry procedure opened against that official, the appellant could not rely on the ECB's obligation to observe the rights of the defence. On the other hand, according to the Civil Service Tribunal, the appellant could rely on a right to be heard which the ECB did not breach in the present case. Such a right, the Tribunal held, merely requires that the appellant has been granted an opportunity to present her view on the facts concerning her before the adoption of the decision on

the merits of her complaint. That right does not, however, include a right on the part of the appellant to request access to the minutes of the testimony that served as the basis for drawing up the draft inquiry report sent to her.

7 Furthermore, in the context of a factual inquiry into psychological harassment, provided that the inquiry report is full and there is nothing in the file to indicate that it does not substantially reproduce the testimony given, it is not unreasonable, unless there are special circumstances, to seek to protect witnesses by guaranteeing their anonymity and the confidentiality of any information likely to identify them, in order, in the interests of the complainants, to enable neutral and objective inquiries to be held with the unreserved cooperation of members of staff. It does not appear unreasonable, either, to seek to prevent in this way any risk of influence of the witnesses after the event by those incriminated, or even by the complainants. Nor, moreover, is it unreasonable to take the view that the confidentiality of witness statements is necessary in order to protect working relationships which ensure the smooth running of services. It is not proven that, where an inquiry does not bear out their opinion, total transparency on the subject is capable of putting an end to the sense of frustration and mistrust of those convinced that they have been subject to psychological harassment (paragraph 97 of the judgment under appeal).

8 Secondly, the Civil Service Tribunal also held that the appellant was not justified in complaining of breach of Article 6(5) and Article 7(1) and (3) of Circular 1/2006 either. Consequently, the Civil Service Tribunal rejected the first part of the first plea in law as unfounded.

9 In the second place, the Civil Service Tribunal rejected the second part of the first plea, alleging an insufficient statement of reasons in the inquiry report and, in the third place, the third part of the first plea, alleging infringement of Article 6(5) of Circular No 1/2006. In the fourth place, finally, the Civil Service Tribunal rejected the fourth part of the first plea, alleging an infringement of Article 3(1) of the Rules of Procedure of the ECB and, therefore, the first plea in law in its entirety.

10 As regards the requests for measures of inquiry and measures of organisation of the procedure made by the appellant in the application, in paragraphs 220 to 222 of the judgment under appeal the Civil Service Tribunal rejected the appellant's request for production of the minutes of the testimony used in the inquiry report.

Proceedings before the General Court and forms of order sought

11 By document lodged at the Court Registry on 22 February 2013, the appellant brought the present appeal.

12 The ECB submitted a response within the time-limit.

13 The appellant was granted leave, upon application, to submit a reply, which she lodged within the time-limit.

14 The ECB was granted leave to submit a rejoinder, which it lodged within the time-limit.

15 On a proposal from the Judge-Rapporteur, the Court (Appeal Chamber), in the absence of an application submitted by the parties within the time-limit provided for in Article 146 of the Rules of Procedure of the General Court of 2 May 1991, decided to rule on the present appeal without an oral procedure.

16 The appellant claims that the Court should:

— set aside the judgment under appeal;

— consequently:

— annul the contested decision and, where necessary, annul the decision of 24 March 2010 rejecting her special appeal;

— uphold her claims made in her application for administrative review and, specifically:

— put an end to any form of psychological harassment against her, be it in verbal acts or in working assignments and arrangements;

— order Mr G. to withdraw, in writing, his offensive and threatening statements;

— in any case, order that compensation be paid for the material and non-material damage suffered, evaluated *ex aequo et bono* at EUR 50 000 (non-material damage) and at EUR 15 000 (material damage);

— order the ECB to produce the full internal administrative inquiry report with all its annexes, including the minutes of hearings and all the communications between the inquiry panel and the Executive Board or the ECB President;

— order the summoning of Ms. L., formerly the appellant's social counsellor, as a witness;

— order the ECB to pay all the costs incurred by both at first instance and on appeal.

17 The ECB contends that the Court should:

— dismiss the appeal;

— in the alternative, declare the claims it made at first instance well founded;

— order the appellant to pay all the costs.

The appeal

18 The appellant puts forward five grounds of appeal in support of her appeal.

19 The first ground alleges infringement of the rights of defence, distortion of the file, and infringement of the principle of proportionality, of Article 20 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1) and of the right to an effective remedy, resulting from the refusal to grant the appellant access to the minutes of the testimony given during the inquiry.

20 The second ground of appeal alleges infringement of the right to an effective judicial remedy and of the obligation to state reasons resulting from the refusal to grant the appellant's request for an order that the ECB produce the minutes of hearings and the annexes to the inquiry report.

21 The third ground of appeal alleges that the Civil Service Tribunal erred in its assessment of the plea alleging infringement by the panel of its mandate and infringement by the ECB of its duty of assistance.

22 The fourth ground alleges infringement of Article 6(5) of Circular No 1/2006, in so far as, according to the appellant, the minutes of hearings drawn up during the inquiry should have been sent to the Executive Board but were not, an argument which the Civil Service Tribunal wrongly rejected.

23 Finally, the fifth ground of appeal alleges that the Civil Service Tribunal misconstrued the concepts of manifest error of assessment and of failure to state reasons.

24 The Court considers it appropriate to examine together, at the outset, the first ground of appeal, alleging infringement of the rights of the defence, distortion of the file, infringement of the principle of proportionality, of Article 20 of Regulation No 45/2001 and of the right to an effective remedy, and the second ground, alleging infringement of the right to an effective judicial remedy and of the obligation to state reasons.

25 The first ground of appeal is divided into five parts.

26 By the first part of this ground of appeal, the appellant alleges, in essence, that the Civil Service Tribunal was wrong to hold that the ECB was not bound to guarantee that her rights of defence were respected and to grant her access to the entire inquiry file, in particular the minutes of the testimony given.

27 By the second part of the first ground of appeal, the appellant claims, in essence, that access to the draft inquiry report only, considered by the Civil Service Tribunal to ensure compliance with the adversarial principle in the administrative procedure, did not enable her to exercise the rights of the defence that she was entitled to, or to state her point of view effectively, in so far as that draft report does not refer to all the witness statements and does not include all the facts concerning her.

28 By the third part of the first ground of appeal, the appellant claims, in essence, that the Civil Service Tribunal was wrong, first, to hold that the protection of witnesses was an additional reason to refuse her access to the file without, however, weighing that protection against the rights of the defence that she was entitled to and, secondly, to hold that the need to protect witnesses from any influence had to be guaranteed by the anonymity and confidentiality of any information likely to identify them, whereas Circular No 1/2006 of the Executive Board of the ECB does not provide for any such protection nor for the anonymity and confidentiality of any information likely to identify the witnesses.

29 By the fourth part of the first ground, the appellant claims, in essence, that the Civil Service Tribunal misconstrued Article 20 of Regulation No 45/2001.

30 Finally, by the fifth part of that ground of appeal, the appellant claims that the Civil Service Tribunal disregarded the right to an effective judicial remedy by failing to allow the appellant to take cognisance of the file and thereby preventing her from defending her rights in a satisfactory manner during the legal proceedings, with regard, in particular, to the impact of the witness statements.

31 By its second ground of appeal, the appellant claims that the Civil Service Tribunal wrongly rejected her request for a measure requiring the ECB to produce the inquiry file with its annexes and the minutes of hearings.

32 It is settled case-law that the rights of the defence, which include the right to be heard and the right to have access to the file, are among the fundamental rights forming an integral part of the European Union legal order and enshrined in the Charter of Fundamental Rights of the European Union. Furthermore, the observance of those rights is required even where the applicable legislation does not expressly provide for such a procedural requirement (judgment of 10 September 2013 in *G. and R.*, C-383/13 PPU, ECR, EU:C:2013:533, paragraph 32).

33 Moreover, according to settled case-law, the observance of the rights of the defence is a general principle of EU law which applies where the authorities are minded to adopt a measure which will adversely affect an individual (judgment of 18 December 2008 in *Sopropé*, C-349/07, ECR, EU:C:2008:746, paragraph 36).

34 In accordance with that principle, the addressees of decisions which significantly affect their interests must therefore be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision (judgment of 22 October 2013 in *Sabou*, C-276/12, ECR, EU:C:2013:678, paragraph 38).

35 The adversarial principle applies to all proceedings that may lead to a decision of a EU institution which has an appreciable effect on the interests of a person (see, to that effect, judgment of 2 December 2009 in *Commission* v *Ireland and Others*, C-89/08 P, ECR, EU:C:2009:742, paragraph 50).

36 In the present case, the Civil Service Tribunal found, in paragraph 64 of the judgment under appeal, that although the ECB argued, in support of its plea of inadmissibility, that there was no act with adverse effect the contested decision did indeed constitute an act adversely affecting the appellant. It held, however, in paragraphs 85 and 86 of the judgment under appeal, that the appellant could not rely on the rights of the defence. It considered, in paragraphs 92 and 93 of that judgment, that she could rely only on a procedural right that is less extensive than the rights of the defence and which does not entail access to the witness statements set out in the inquiry file.

37 The Civil Service Tribunal justified that limitation of the appellant's procedural rights in paragraphs 95 to 97 of the judgment under appeal on the basis of three considerations. First, it held that while it is true that the appellant did not have access to the statements of witnesses as such, it was enough for her to be given a sufficient opportunity to explain her point of view and to explain why the conclusion envisaged in the draft inquiry report could not be justified (paragraph 95 of the judgment under appeal). Secondly, it held that 'importance must be attached to the fact that the draft inquiry report, sent to the appellant for comments, contained, inter alia, an account of the facts concerning her which had been compiled during the inquiry and to the fact that the draft inquiry report was itself particularly full and informative' (paragraph 96 of the judgment under appeal). Finally, thirdly, it held that the procedural right which the appellant has was not absolute.

38 Thus, the Civil Service Tribunal held that, in the context of a factual inquiry into psychological harassment, provided that the inquiry report is full and there is nothing in the file to indicate that it does not substantially reproduce the testimony given, it was not unreasonable, unless there were special circumstances, to seek to protect witnesses by guaranteeing their anonymity and the confidentiality of any information likely to identify them, in order, in the interests of the complainants, to enable neutral and objective inquiries to be held with the unreserved cooperation of members of staff. The Civil Service Tribunal endorsed the ECB's argument that it does not appear unreasonable to seek to prevent in this way any risk of influence of the witnesses after the event by those incriminated, or even by the complainants. Nor, according to the Civil Service Tribunal, is it unreasonable to take the view that the confidentiality of witness statements is necessary in order to protect working relationships which ensure the smooth running of services. Where an inquiry does not bear out their opinion, total transparency on the subject could fail to put an end to the sense of frustration and mistrust of those convinced that they have been subject to psychological harassment (paragraph 97 of the judgment under appeal).

39 Subsequently, in paragraphs 221 and 222 of the judgment under appeal, the Civil Service Tribunal stated the reasons why it had decided to refuse the requests for measures of inquiry and of organisation of procedure made in the application at first instance and, consequently, not to order the

production of the annexes to the inquiry report and, in particular, the lodging of the minutes of the hearings of witnesses, regarding which it had found that the ECB was entitled not to communicate them to the appellant during the administrative procedure.

40 It should be noted, at the outset, that the Civil Service Tribunal correctly held, in paragraphs 85 to 93 of the judgment under appeal, that the situation of a complainant, in the context of a complaint of psychological harassment, could not be equated with that of the person against whom the complaint has been made and that the procedural rights of the person accused of harassment are distinct from the more limited rights, in the context of the administrative procedure, of a complainant who considers himself to be a victim of harassment.

41 Moreover, the Civil Service Tribunal also correctly held, in paragraphs 94 to 99 of the judgment under appeal, that the adversarial principle, which also applied in the administrative procedure, was observed in the present case, since the appellant had the opportunity to make her views known on the draft inquiry report that led to the rejection of her complaint and which adversely affects her.

42 It must be held, however, that the considerations taken into account by the Civil Service Tribunal in paragraphs 221 and 222 of the judgment under appeal in order to refuse access to the appellant, during the first instance judicial proceedings, to the minutes of the testimony annexed to the inquiry report are vitiated by an error of law. To justify that decision, the Civil Service Tribunal relied (i) on the assertion that the appellant was not entitled to take cognisance of those documents during the administrative procedure, (ii) on the 'particularly full and informative' nature of the inquiry report and (iii) on the need to guarantee the neutrality and objectivity of the inquiries in order to obtain the unreserved cooperation of members of staff, which the removal of the confidentiality of testimony during the proceedings could undermine.

43 The right to an effective judicial remedy entails that the complainant whose complaint of psychological harassment is rejected may challenge before the Courts of the European Union the act adversely affecting him in its entirety, including, if applicable, by arguing that the inquiry report does not correctly reflect the testimony on which that rejection is based. That right may imply that the complainant, in order to effectively make known his arguments, should be put in a position to examine the extent to which the inquiry report matches the minutes of the testimony on which that report is based or, at least, request the Civil Service Tribunal to examine that evidence under the conditions of confidentiality set out in Article 47 of the Rules of Procedure of that Tribunal (see, to that effect, judgment of 21 June 2012 in *IFAW Internationaler Tierschutz-Fonds* v *Commission*, C-135/11 P, ECR, EU:C:2012:376, paragraph 73). It is for the Civil Service Tribunal, in accordance with Article 47(2) of its Rules of Procedure, to weigh the appellant's interest in obtaining the evidence necessary to allow him to properly exercise his right to an effective judicial remedy, on the one hand, against the disadvantages that the disclosure of such evidence is likely to give rise to, on the other.

44 In that regard it is true that, in principle, the Civil Service Tribunal has discretionary power to appraise the usefulness of ordering the production of the evidence required to resolve the disputes before it. Whether or not the evidence before it is sufficient is a matter to be appraised by it alone and is not subject to review by the General Court on appeal, except where that evidence has been distorted or the inaccuracy of the findings of the court of first instance is apparent from the documents in the case-file (see, to that effect, judgment of 16 July 2009 in *Der Grüne Punkt — Duales System Deutschland* v *Commission*, C-385/07 P, ECR, EU:C:2009:456, paragraph 163 and the case-law cited).

45 However, where, during the administrative procedure, an applicant has, correctly, not been put in a position to access evidence that is decisive in the outcome of that procedure, that applicant cannot be required to establish, to the requisite standard, factual errors which can only be determined upon examination of evidence to which he has been denied access. On the contrary, if the applicant demonstrates even a prima facie case in support of his claims, it is for the Civil Service Tribunal to require production of the evidence necessary to assess the merits of that argument.

46 In the present case, it is apparent from the judgment under appeal that the appellant specifically called into question the inquiry report and alleged, in particular, that certain witness statements had not been taken into account (paragraph 220, last sentence, of the judgment under appeal) and that negative assessments had been made against her on the basis of the testimony given (paragraph 127, last sentence, of the judgment under appeal).

47 However, in order to dismiss those allegations, the Civil Service Tribunal could not state, as it did in paragraph 97 of the judgment under appeal, that the inquiry report was full and that there is nothing to indicate that it did not substantially reproduce the testimony given, nor that the inquiry report sent to the appellant contained, inter alia, an account of the facts compiled during the inquiry and that the report was particularly full and informative in itself, as it found in paragraph 222 of the judgment under appeal, without first checking the consistency between the report in question and the testimony given during the inquiry.

48 That obligation, furthermore, was all the more necessary in the present case since the Civil Service Tribunal observed, in paragraphs 162 to 193 of the judgment under appeal, that the appellant was justified in claiming that the inquiry report was vitiated by numerous factual errors.

49 Accordingly, the Civil Service Tribunal could not hold, as it did in the present case in order to reject the appellant's argument, that, in essence, there was no contradiction between the inquiry report and the minutes of the testimony, without checking this, which required the Civil Service Tribunal itself to examine those minutes, which the parties had not placed on the case-file. In the circumstances of the present case, the Civil Service Tribunal thus erred in law by refusing to require the ECB to provide it with the evidence of the inquiry file and, in particular, the testimony given during the inquiry.

50 It follows from the foregoing that the first part of the first ground of appeal must be rejected, in so far as the Civil Service Tribunal correctly made a distinction between the rights of the complainant and the rights of the person accused of psychological harassment and, on that basis, held that the extent of the rights of the defence for those two categories of person during the administrative procedure had to be distinguished, and correctly inferred from that that the adversarial principle had been observed by providing the appellant with the opportunity to make her views known on the draft inquiry report.

51 The same considerations also lead the Court to reject in part the second part of the first ground of appeal.

52 However, and without it being necessary for the Court to give a ruling on the third and fourth parts of the first ground of appeal, the second ground of appeal and, in part, the second and fifth parts of the first ground of appeal must be upheld.

53 It follows, without its being necessary to rule on the other grounds of appeal, that the judgment under appeal must be set aside.

The consequences of setting aside the judgment under appeal

54 In accordance with Article 13(1) of Annex I to the Statute of the Court of Justice, if the appeal is well founded, the General Court is to quash the decision of the Civil Service Tribunal and itself give judgment in the matter. However, where the state of the proceedings does not permit a decision by the Court, it is to refer the case back to the Civil Service Tribunal for judgment.

55 Since the state of the proceedings does not permit the General Court to give final judgment in the matter, the case must be referred back to the Civil Service Tribunal for it to rule on the application brought before it by the appellant, in light of the inquiry file and, in particular, the minutes of the testimony annexed to the inquiry report.

Costs

56 Since the case has been referred back to the Civil Service Tribunal, the costs relating to the present appeal proceedings must be reserved.

On those grounds,

THE GENERAL COURT (Appeal Chamber)

hereby:

1. **Sets aside the judgment of the European Union Civil Service Tribunal (Third Chamber) of 12 December 2012 in *Cerafogli* v *ECB* (F-43/10);**

2. **Refers the case back to the Civil Service Tribunal;**

3. **Reserves the costs.**

Jaeger Dittrich Frimodt Nielsen

Delivered in open court in Luxembourg on 23 September 2015.

[Signatures]