

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
27 June 2002

Joined Cases T-373/00, T-27/01, T-56/01 and T-69/01

Carmine Salvatore Tralli
v
European Central Bank

(Officials – Staff of the European Central Bank – Extension of probationary period – Dismissal during probationary period – Admissibility – Manifest error of assessment – Statement of grounds – Costs)

Full text in German II - 453

Application for: annulment of the decision of 18 September 2000 extending the probationary period in respect of the applicant's employment contract, the decision of 29 November 2000 dismissing the applicant, the decisions rejecting complaints relating to the abovementioned decisions to extend the probationary period and to dismiss the applicant, and for a finding that the President of the European Central Bank failed to act when he unlawfully refrained from replying to the complaint lodged by the applicant against the decision to extend the probationary period.

Held: Cases T-373/00, T-27/01, T-56/01 and T-69/01 are joined for the purposes of the judgment. The application in Case T-373/00 is dismissed. There is no further need to adjudicate in Cases T-27/01, T-56/01 and T-69/01. Each party in Case T-373/00 is ordered to bear its own costs. The applicant in Cases T-27/01, T-56/01 and T-69/01 is ordered to bear his own costs and to pay a third of those incurred by the defendant.

Summary

1. Officials – Staff of the European Central Bank – Actions – Conditions of admissibility – Decisions extending the probationary period and dismissing a member of staff during that period – Exhaustion of internal procedures not necessary

(Conditions of Employment of Staff of the European Central Bank, Arts 41 and 42)

2. Officials – Staff of the European Central Bank – Actions – Subject-matter – Direction to the administration – Inadmissible

(Conditions of Employment for Staff of the European Central Bank, Art. 42)

3. Officials – Staff of the European Central Bank – Recruitment – Probation – Opportunity to serve a period of probation under normal conditions – Not given – Decision of dismissal – Illegality

(Staff Rules of the European Central Bank, Art. 2.1.3)

4. Officials – Staff of the European Central Bank – Recruitment – Probation – Assessment of the outcome – Appraisal of suitability for a permanent appointment – Judicial review – Limits

(Staff Rules of the European Central Bank, Art. 2.1.3)

1. Under the first paragraph of Article 42 of the Conditions of Employment for Staff of the European Central Bank, an action may be brought before the Community judicature only after the internal procedures provided for in the first paragraph of Article 41 of those conditions of employment have been exhausted. It follows that, pursuant to those provisions, the admissibility of actions brought by staff of the European Central Bank is contingent upon compliance with those internal procedures.

However, under subparagraph (iii) of the second paragraph of Article 41 of those conditions of employment, those internal procedures 'may not be used to challenge any decision not to confirm the appointment of a member of staff serving a probationary period'. It follows unequivocally from that provision that decisions extending the probationary period and dismissing a member of staff during the probationary period may not form the subject of a request for a preliminary administrative review or of a complaint. Consequently, the addressee of such decisions is entitled, under Articles 41 and 42 of the Conditions of Employment, to bring an action before the Community judicature without exhausting the internal procedures provided for in Article 41.

(see paras 38, 93, 99)

See: 16/86 P v ESC [1987] ECR 2409, paras 6 to 9; T-144/00 *Tirelli v Parliament* [2001] ECR-SC I-A-45 and II-171, para. 25

2. Where, by his heads of claim, an applicant requests the Court to make declarations of principle which the Community judicature has no jurisdiction to make, as in so doing it would infringe the prerogatives of the European Central Bank, those heads of claim must be dismissed as inadmissible. Moreover, where he requests the Community judicature to issue certain directions to the European Central Bank, in particular to order it to employ the applicant, those requests are caught by the prohibition on the Community judicature's addressing directions to the administration and must likewise be dismissed as inadmissible.

(see paras 41-42)

See: T-583/93 *P v Commission* [1995] ECR-SC I-A-137 and II-433, paras 17 and 18; T-27/00 *Staff Committee of the ECB and Others v ECB* [2000] ECR-SC I-A 217 and II-987, para. 37; T-333/99 *X v ECB* [2001] ECR-SC I-A-199 and II-921, paras 47 and 48

3. A decision of dismissal at the expiry of a probationary period must be annulled if the applicant has not had the opportunity to serve the probationary period under normal conditions.

(see para. 69)

See: 3/84 *Patrinos v ESC* [1985] ECR 1421, paras 20 to 24; T-568/93 *Correia v Commission* [1994] ECR-SC I-A-271 and II-857, para. 34

4. It is not for the Community judicature to intervene in the assessment made by the institutions of the outcome of a probationary period and in their appraisal of the suitability of a candidate for a permanent appointment in the Community civil service, except where there are manifest errors of assessment or a misuse of powers.

(see para. 76)

See: *Patrinos v ESC*, cited above, paragraph 25; T-96/95 *Rozand-Lambiotte v Commission* [1997] ECR-SC I-A-35 and II-97, para. 112