

JUDGMENT OF THE COURT (First Chamber)

11 July 1985 \*

In Joined Cases 255 and 256/83

**R.**, a former official of the Commission of the European Communities, residing in Wouwse Plantage (Netherlands), represented by Jacques Putzeys and Xavier Leurquin, of the Brussels Bar, with an address for service in Luxembourg at the office of Mr Nickts, Huissier de Justice, 17 boulevard Royal,

applicant,

v

**Commission of the European Communities**, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for annulment of the decision downgrading the applicant adopted by the Commission on 3 January 1983 and compensation for the non-material damage suffered by the applicant as a result of that decision; for an order requiring the Commission, even if the downgrading was lawful, to compensate the applicant for the material and non-material damage suffered by him as a result of the wrongful acts or omissions of the Commission during the disciplinary proceedings and which are the sole cause of his invalidity,

THE COURT (First Chamber),

composed of: G. Bosco, President of Chamber, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: C. O. Lenz

Registrar: P. Heim

after hearing the opinion of the Advocate General delivered at the sitting on 21 March 1985,

gives the following

\* Language of the Case: French.

## JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

### Decision

1 By applications lodged at the Court Registry on 18 November 1983, R., a former official of the Commission of the European Communities, brought two actions, the first of which seeks the annulment of the Commission's decision of 3 January 1983 to penalize the applicant by downgrading him and the second of which seeks a declaration, should the aforementioned penalty be found to be lawful, that the wrongful acts or omissions of the Commission during the disciplinary procedure are the sole cause of the applicant's serious and irremediable illness which resulted in his early retirement on 1 July 1983 for reasons of health, and for that reason an order requiring the Commission to compensate the applicant for the material and non-material damage suffered by him.

2 On 10 September 1981 the applicant was warned by Mr O'Kennedy, a Member of the Commission, that the Directorate General for Personnel and Administration had received information according to which he had committed serious breaches of his obligations as an official, in particular his obligations under Articles 12 and 17 of the Staff Regulations of Officials, and that the appointing authority had therefore decided that he would be heard on 7 October 1981 by Mr Padoa-Schioppa, Director-General for Economic and Financial Affairs, pursuant to Article 87 of the Staff Regulations.

3 A memorandum enclosed with Mr O'Kennedy's letter summarized the allegations against the applicant. He was accused of infringing the second paragraph of Article 12 of the Staff Regulations, which requires any official wishing to engage in an outside activity to obtain permission from the appointing authority, inasmuch as between his recruitment by the Commission in 1966 and 1 March 1969 and from 14 January 1972 to 1981 inclusive he engaged in an outside activity, partly without permission and partly under permission granted on the basis of incorrect information given by him, with the aggravating circumstance that that activity was wholly unlawful because it was engaged in on a full-time basis. He was also accused of infringing the first paragraph of Article 17 of the Staff Regulations inasmuch as over a period of nearly seven years (14 September 1972 to 18 April

1979) he disclosed to unauthorized persons Commission documents not already made public.

- 4 During the hearing on 7 October 1981 the applicant contended that his outside activity corresponded entirely to that indicated in his successive applications for permission covering the entire period from 25 September 1972 to 31 December 1976 and that the allegation that he had engaged in an outside activity on a full-time basis was completely without foundation. With regard to the second complaint, he declared that he had never disclosed any confidential documents and pointed out that the confidential nature ascribed to the information which he had passed on in the framework of his association — unpaid and never going beyond the role of a mere intermediary — with a news agency called Meconsult, for which his elder brother, a professional journalist, worked, was entirely based on journalistic criteria and practices different from the criteria used by the Commission. Finally, he pointed out that the allegations were based on an incomplete file and that, moreover, the appointing authority made only three documents from the file available to him. He stated that if further proof existed, the administration had a duty to bring it to his attention.
- 5 Draft minutes of the hearing were approved by the applicant on 23 November 1981 after he had made several changes to them. The final version of that text was never signed by him, and he and the Commission both complained that the other was guilty of negligence and omissions making signature impossible.
- 6 In a letter of 14 March 1982 addressed to the Deputy Head of Division IX/A/1 of the Directorate-General for Personnel and Administration, the applicant complained that the procedure had advanced too slowly and that this created prolonged uncertainty inimical to his interests and his health.
- 7 On 11 and 15 June 1982, Mr Burke, the Member of the Commission responsible for personnel matters, informed first the chairman of the Disciplinary Board and later the applicant of his decision to refer the matter to the Disciplinary Board in accordance with the provisions of Article 87 of the Staff Regulations and Article 1 of the Annex referred to therein. Enclosed with each letter was the report, with annexes, drawn up for that purpose by the appointing authority. The report in question alleged that the applicant had infringed the second paragraph of Article 12 and the first paragraph of Article 17 of the Staff Regulations, though it

accepted with regard to the first complaint that the applicant had not engaged in an outside activity on a full-time basis. The file in the disciplinary proceedings was transmitted to the applicant on 8 July 1982.

- 8 On 12 October 1982, the Disciplinary Board heard the applicant, who was assisted by his legal representative. On 19 November 1982, it heard two witnesses, one of whom was called by the defence, and heard the arguments of Counsel for the applicant. On 3 December 1982, the Disciplinary Board delivered the reasoned opinion referred to in the first paragraph of Article 7 of Annex IX to the Staff Regulations. In that opinion, the Disciplinary Board found that the documents communicated by the applicant were not of a confidential nature, which excluded the possibility of an infringement of the first paragraph of Article 17 of the Staff Regulations. None the less, it considered that by participating for seven years in an activity which involved transmitting documents of the European Community and, it would appear from the documents before the Court, of the OECD to third parties in return for payment, the nature and presentation of which documents had sometimes deliberately been altered in order to increase their price, the applicant had committed a grave breach of the first paragraph of Article 12 of the Staff Regulations, which requires officials to abstain from any action which might reflect on their position. With regard to the other complaint, the Disciplinary Board considered that during the period from 1973 to 1976, the applicant had declared in respect of his outside activity a remuneration which did not correspond to the remuneration actually received and that for the period from 1977 to 1982 he had failed to obtain permission to engage in an outside activity. In the view of the Disciplinary Board, those two facts constituted a serious breach of the obligations laid down in the second paragraph of Article 12 of the Staff Regulations. Having regard to certain attenuating circumstances, the Board proposed that by way of punishment the applicant should be downgraded from Grade A 5 to Grade A 6.
- 9 By a decision of 3 January 1983 which took effect on 4 January 1983, the appointing authority downgraded the applicant from Grade A 5 to Grade A 6 and appointed him to Step 4 in the latter grade. That decision was based on the complaints which the Disciplinary Board had found to be justified.
- 10 By decision of 18 August 1983, the appointing authority rejected a complaint submitted by the applicant, who then brought the present action.

11 In the action registered under No 255/83, the applicant claims that the Court should:

- '(1) annul the defendant's decision of 3 January 1983 to downgrade the applicant as a disciplinary measure;
- (2) annul the express rejection of the applicant's complaint through official channels of 18 August 1983;
- (3) order the Commission to pay the applicant the difference in salary, from 4 January 1983, between what he would have received had he continued his normal career with the defendant, and what he has received since his downgrading and what he will receive on early retirement;
- (4) order the Commission to pay as compensation for non-material damage, subject to amendment, BFR 10 000 000;
- (5) order the defendant to pay the costs in their entirety.'

In support of those conclusions, he puts forward seven submissions based on various general principles of law and on various provisions of the Staff Regulations of Officials.

12 In his first submission, the applicant alleges that there has been a breach of the general principle of regard for the rights of the defence inasmuch as the Commission did not communicate to him the entire file in its possession until nine months after disciplinary proceedings had been commenced. Moreover, the Commission did not indicate to him before the hearing of 7 October 1981 whether or not the adoption of the disciplinary measure envisaged required that the case be referred to the Disciplinary Board.

13 The Commission contends that the applicant did not seek communication of the documents in question, with which he was in any event very familiar, as could be seen from the very detailed memorandum which he read at the hearing on 7 October 1981. It also emphasizes that although at the time of the abovementioned hearing the procedure was already being conducted in the context of Article 87 of the Staff Regulations, it was still very much at a preparatory stage and the hearing was designed to permit the appointing authority to decide on the basis of the explanations offered whether to regard the matter as closed or to commence disciplinary proceedings against the applicant.

- 14 With regard to the first part of that submission, it must first be pointed out that according to Article 2 of Annex IX of the Staff Regulations an official summoned before the Disciplinary Board has the right, on receipt of the report submitted to the Disciplinary Board by the appointing authority, to see his complete personal file and to take copies of all documents relevant to the proceedings. In this case, the entire file relating to the disciplinary proceedings was communicated to the applicant on 8 July 1982 and it is not disputed that he could have sought and obtained communication of it at any time after 15 June 1982, the date on which he was informed that his case had been referred to the Disciplinary Board. Since the applicant was heard by the Disciplinary Board on 12 October 1982, the period which he had to study the file is in accordance with Article 4 of the aforementioned Annex IX, which provides that the official charged is to have not less than 15 days from the date of receipt of the report, and the period appears adequate even for the study of a fairly complex file, so that it cannot be argued that the applicant did not have sufficient time to prepare his defence.
- 15 However, the applicant claims that he was entitled to see the file, and even that the appointing authority had a duty to present it to him of its own motion, from the very beginning of the disciplinary procedure. He relies in that connection on the judgment of 17 December 1981 (Case 115/80 *Demont v Commission* [1981] ECR 3147), in which the Court held that the second paragraph of Article 4 of Annex IX cannot be interpreted as meaning that the rights therein granted to officials in regard to proceedings before the Disciplinary Board, including the right to see the entire file, are not available to an official against whom disciplinary proceedings other than those referred to in that annex have been initiated.
- 16 In that regard, it must be borne in mind that in Case 115/80, the appointing authority had refused to communicate the file in the disciplinary proceedings to the official's legal representative, whereas in this case the applicant did not ask to see the entire file but merely indicated during the hearing on 7 October 1981 that he could not comment on documents which had not been communicated to him.
- 17 In the absence of a request to do so, no obligation on the part of the appointing authority to communicate the entire file to an official against whom disciplinary proceedings have been initiated can be inferred from the Staff Regulations, which contain no provision on that subject, even in the light of the interpretation laid down in the judgment of 17 December 1981.

18 Consequently, the appointing authority is not required to communicate the entire file to an official against whom disciplinary proceedings have been initiated unless requested to do so.

19 With regard to the second part of the submission, the applicant considers that the two hearings provided for in the first and second paragraphs respectively of Article 87 of the Staff Regulations cannot coincide. The Commission was therefore obliged to indicate on each occasion whether the hearing was part of a procedure which could lead to a warning or a reprimand, or a procedure which might result in the matter being referred to the Disciplinary Board.

20 The applicant's view presupposes that the appointing authority knew before arranging the hearing the type of sanction that it intended to seek. However, the very purpose of the hearing is to permit the official to reply to the complaints which have been made against him and to permit the appointing authority to assess the seriousness of those complaints in the light of the explanations offered by the official. It would be illogical to require the appointing authority to take a position on the seriousness of a complaint at the very start of the procedure when the hearing might well reveal that the offence did not exist or was less serious or, on the contrary, that an offence which had been regarded as minor was in fact very serious.

21 Moreover, the fact that the two paragraphs of Article 87 provide for a single hearing does not necessarily involve an infringement of the rights of the defence. When the offences of which an official against whom disciplinary proceedings have been initiated is regarded as guilty are of such a nature as to justify sanctions more severe than censure or a reprimand, the second paragraph of Article 87 provides that the matter is to be referred to the Disciplinary Board, and from then on the official has the benefit of all the guarantees laid down in Annex IX.

22 In his second submission, the applicant alleges that the appointing authority infringed the provisions governing disciplinary proceedings, in particular those contained in Articles 86 and 87 of the Staff Regulations, as well as the general principles of sound administration and the protection of legitimate expectations, inasmuch as the appointing authority adopted its decision on the basis of an incomplete file and failed to hear, or even to confront the applicant with, the person who supplied the information which gave rise to the disciplinary proceedings. The same complaint is made with regard to the Disciplinary Board, which also did not respect the provisions of Article 6 of Annex IX to the Staff Regulations.

- 23 The Commission contends that the applicant had an opportunity to produce all the elements necessary for his defence, that he asked neither that the person supplying the information be required to complete the file nor that that person be heard, that in any event neither the appointing authority nor the Disciplinary Board can require the appearance of persons outside the administration and, finally, that the facts mentioned by the applicant were regarded as an attenuating circumstance in his favour.
- 24 By virtue of the principles governing disciplinary proceedings and, with regard to the Disciplinary Board, by virtue of the provisions of Article 6 of Annex IX, the appointing authority and the Disciplinary Board have a discretion as to whether certain further inquiries need be made (request to supply documents, calling of witnesses) or whether the facts are already sufficiently established on the basis of the documents in their possession. For his part, the applicant is entitled to call witnesses before the Disciplinary Board.
- 25 During the disciplinary proceedings in this case, the applicant never sought production of a document in the possession of a third party which, in his opinion, would make the file more complete. Moreover, when he called witnesses, he did not call the person who complained about him to the appointing authority even though he was aware of that person's identity.
- 26 In those circumstances, it cannot be held that the appointing authority and the Disciplinary Board failed to fulfil their obligations.
- 27 In his third submission, the applicant alleges that the appointing authority failed to fulfil the duty of assistance laid down in Article 24 of the Staff Regulations inasmuch as it did not immediately verify whether the documents transmitted to it were in fact confidential and whether the applicant had fulfilled his obligations as an official towards the Commission, and thus did not protect him against the defamation of which he was the victim.
- 28 The Commission contends that the proceedings initiated against the applicant ultimately showed that he had committed breaches of discipline warranting a severe penalty; it is therefore difficult to see how the appointing authority can be criticized for failing to fulfil its duty of assistance merely because it initiated and correctly conducted disciplinary proceedings. Moreover, it is doubtful if the duty



of assistance provided for in respect of an official who is the victim of defamation or other unlawful attacks by reason of his position or duties may be relied upon in this case.

- 29 It is not necessary to verify whether the conditions for the application of Article 24, which provides for a duty to assist an official who is subjected to threats, insulting or defamatory acts or utterances, or any attack to person or property 'by reason of his position or duties' were satisfied in this case. It is sufficient to note that that article cannot be interpreted as meaning that where a complaint gives rise to the initiation of disciplinary proceedings against an official, the appointing authority is required to do more than correctly conduct those proceedings.
- 30 With regard to the allegation that the applicant engaged in an outside activity on a full-time basis, it is not reasonable to maintain that the Commission would have fulfilled its duty of assistance better by verifying its information with a third party rather than by rapidly placing the applicant in a position to challenge the allegation.
- 31 With regard to the allegation that he disclosed confidential documents, although it is true that it was only before the Disciplinary Board that the non-confidential character of those documents was established, that fact does not constitute a breach of the duty of assistance. In fact at the hearing on 7 October 1981 the applicant contested the aforementioned allegation but did not explain why the documents he had transmitted were described as confidential in Meconsult's correspondence. By restricting himself to the general affirmation that whether a document was given such a description depended on 'journalistic practices' which were different from the criteria applied by the Commission, the applicant has failed to provide evidence of such a nature as to cast any real doubt on the credibility of that correspondence and which for that very reason would obviously have cast doubt on the validity of the complaint.
- 32 In his fourth submission, the applicant alleges that there has been a breach of the general principle that the accused must be given the benefit of the doubt, inasmuch as the contested decision states that the applicant's role in the transmission of the documents went beyond that of a mere intermediary despite the fact that it has not been proved that he benefited personally from the sale of those documents. He claims, moreover, that the statement of the reasons on which the decision is based

is contradictory inasmuch as it is inconsistent to say that his role went beyond that of a mere intermediary whilst conceding that he did not benefit personally from the transmission of the documents and did not personally alter them in order to increase their price.

33 The Commission states that over a number of years, as the applicant's own statements confirm, he knowingly helped to pass on documents the content and description of which were sometimes altered in order to increase the price paid by the final purchaser. That role went far beyond that of a mere intermediary. Moreover, the fact that the applicant did not personally benefit from the transmission of the documents was taken into consideration when the charge of infringement of Article 17 of the Staff Regulations was withdrawn and replaced by the charge of infringement of the first paragraph of Article 12.

34 It must be pointed out in that connection that the fact that the applicant did not benefit personally from the transmission of documents may constitute an attenuating circumstance, but it does not reduce the applicant's role to that of a mere intermediary once it is proved that he took an active part in that transmission over several years, not merely by acting as a letterbox but also by looking after the accounting involved in the operation and, in certain cases, by paying the people who supplied the documents. Since the seriousness of the infringement derives from those other factors, the part of the submission alleging failure to respect the principle that the accused must be given the benefit of the doubt appears to be irrelevant.

35 Similarly, the abovementioned factors justify the conclusion that the applicant's role was more important than that of a mere intermediary. There is thus no inconsistency in the fact that the decision so found even though it was also accepted that the applicant did not benefit from that activity nor did he personally describe the documents being transmitted as confidential in order to obtain a higher price.

36 The fifth submission alleges that a series of errors was committed by the appointing authority in regard to the principal reasons on which the decision is based and to the legal consequences to be attached to the facts actually proved. According to the applicant, the appointing authority incorrectly stated in its decision that he had increased the price to be paid by Meconsult's clients for the documents transmitted, that he had himself altered the content and description of

those documents and that the alterations in question were proved by letters written by him. The applicant also complains that the appointing authority incorrectly assessed the legal status of both his outside activity and the sums which he received in payment for that activity.

37 The Commission contends that a careful scrutiny of the decision suffices to show that there are no errors or inconsistencies in the statement of the reasons on which it is based. With regard to the allegedly incorrect legal assessments, it observes that the amounts paid monthly to the applicant prove the existence of an outside activity far more extensive than that declared by the applicant and authorized by the administration, and that the very large sums paid as 'representation expenses' imply, regardless of the legal status attributed to them, a level of responsibility and a role going beyond the type of activity referred to by him in his applications for permission to pursue an outside activity.

38 It is not stated in the decision that the applicant personally altered the documents which he transmitted; therefore it cannot be alleged that there is an error in that regard in the statement of the reasons on which the decision is based.

39 With regard to the outside activity, the applicant claims that the appointing authority was wrong to regard as remuneration for that activity a sum paid to him as reimbursement of representation expenses, to regard as incorrect the applicant's declaration to the effect that he was engaging in legal or administrative activities consisting in particular in the translation or revision of texts and to regard the fact that the applicant had engaged in that activity as a serious breach of duty.

40 It appears from the documents before the Court that the forms on which applications for permission to exercise an outside activity are submitted include a section entitled 'Financial Arrangements' under which must be declared the remuneration or other payment to be received for the activity itself, travel expenses and subsistence allowances. If the person concerned is required to make such a declaration even if he receives merely reimbursement for a specific assignment, there is all the more reason to require him to make it when that reimbursement is given in addition to remuneration, because only a full statement of the contractual advantages paid by an employer in the context of an employment relationship, the nature and scope of which may be extremely varied, enables a precise assessment of the extent of the remuneration to be made. That is particularly true in this case

because the representation expenses received by the applicant were far in excess of the declared remuneration.

41 With regard to the nature of the applicant's outside activity, it appears from the applications for permission in respect of the periods from 25 September 1972 to 31 December 1973, 1 January 1974 to 31 December 1975 and 1 January 1975 to 31 December 1976 that the applicant declared that the activity was of a legal or administrative nature consisting in particular of the 'translation (or revision) into French of legislative texts, reports of the Council and the Assembly, etc.'

42 It is clear that the applicant failed to mention in that statement his activity as a link between the Italian and Belgian members of the board of directors of the company for which he worked and the public relations work which justified the representation expenses he expressly admitted receiving during the disciplinary proceedings but which, in his opinion, were complementary to his translation work.

43 Since that activity involved representation expenses of approximately BFR 25 000 per month, it was for the applicant to prove that it was in fact complementary to his translation work. Since he did not do so, it was logical to consider that his outside activity was more extensive than he had declared.

44 With regard to the fact that the applicant's activities were tolerated by his superiors during the period in respect of which permission had not been sought, that circumstance does not diminish the gravity of the breaches of duty committed by the applicant, although it certainly constitutes an attenuating circumstance.

45 In his sixth submission, the applicant alleges that there was a breach of the principle of proportionality inasmuch as the penalty is not proportionate to the facts finally proved against him.

46 The Commission emphasizes that the penalty imposed on the applicant is based on two distinct breaches of his duty as an official and that having regard to the seriousness of the offences and to the attenuating circumstances of the case, that penalty was within the limits of the wide discretion enjoyed by the appointing authority in such matters.

- 47 It must be noted that the penalty was imposed by reason of an infringement of two different provisions of the Staff Regulations, namely the first and second paragraphs of Article 12. With regard to the infringement of the second paragraph, it must also be observed that it can be broken down into two distinct breaches of duty, the one being the presentation on 8 September 1972, 12 September 1973 and 22 December 1975 of three separate applications for permission to exercise an outside activity containing inaccurate statements, and the other being the failure to seek permission for the outside activity exercised after 31 December 1976. Finally, the breaches of duty complained of are all the more serious because they are the result either of repeated acts or of an omission which went on for a fairly long period.
- 48 In the light of those circumstances, as well as the fact that the penalty imposed had been recommended by the Disciplinary Board, it cannot be said that the appointing authority exceeded the discretion it enjoys in the exercise of its disciplinary powers by downgrading the applicant.
- 49 Since the applicant was downgraded from Grade A 5, Step 6, to Grade A 6, Step 4, he also complains that he has been relegated in step, a measure which the Staff Regulations provides for as a disciplinary measure distinct from downgrading, whereas according to Article 86 of the Staff Regulations a single offence may not give rise to more than one disciplinary measure.
- 50 However, there are no provisions in the Staff Regulations providing that a change in grade may not also involve a change in step. Article 46 lays down special rules for determining an official's new step in the case of promotion. Since no provision of that type exists in regard to downgrading, determination of the step is at the discretion of the appointing authority and is not to be regarded as a separate disciplinary measure. Moreover, if it is possible for downgrading to entail the loss of several grades, it may also alter the step held by the official concerned in the grade which he occupied before the disciplinary measure was imposed.

51 In his seventh submission, the applicant alleges that the appointing authority infringed the rights of the defence inasmuch as it did not initiate new disciplinary proceedings on the basis of the less serious breaches of duty of which the Disciplinary Board found him guilty; hence the appointing authority failed to respect its obligation to make known all the complaints being made against an official at the beginning of the disciplinary proceedings.

52 According to the Commission, however, the penalty eventually imposed on the applicant was not based on facts other than those which had been complained of from the beginning of the proceedings.

53 It must be pointed out that the facts which emerged during the proceedings did not show that the applicant's conduct had been different from that complained of at the beginning; rather, they showed that his conduct could be viewed in a different, more favourable light.

54 The allegation of a breach of duty necessarily embraces any less serious consequences which the Staff Regulations allow to be drawn from the same circumstances, so that there can be no question of bringing a fresh complaint. Moreover, one of the purposes of any defence, if it is not possible to prove that the breach of duty does not exist, is to have the gravity of the offence of which the person concerned is found guilty reduced.

55 In the light of the foregoing considerations, none of the applicant's submissions can be accepted and the application in Case 255/83 must therefore be dismissed.

56 In Case 256/83, which was initiated to cover the possibility of the disciplinary sanction being held to be lawful, the applicant seeks compensation for the material and non-material damage which he claims to have suffered by reason of the wrongful acts and omissions of the appointing authority during the disciplinary proceedings. He claims that the Court should:

'(1) find that the Commission has been guilty of wrongful acts or omissions;

(2) declare that they are the sole cause of the applicant's serious and irremediable illness;

(3) order the Commission to pay the applicant:

BFR 12 000 000 as compensation for material damage

BFR 5 000 000 as compensation for non-material damage;

(4) order the Commission to pay the costs.’

57 To the extent that the applicant regards as wrongful acts or omissions on the part of the administration the facts on which he relied in the context of the preceding application directed against the validity of the decision, it is sufficient to refer to the considerations which have already been set out in that connection.

58 In addition, it cannot be held that the Commission, by its own fault, permitted too much time to elapse before establishing whether the applicant had in fact committed the breaches of duty of which it complained and to impose the penalty justified by the breaches of duty which were ultimately regarded as proved, so that the applicant was left, for no good reason and for a very long period, in a state of uncertainty which was harmful to his interests, his reputation and his health. The initiation of the procedure provided for in Annex IX to the Staff Regulations, which lasted from 11 June 1982 to 3 January 1983, appears to be justified, even with hindsight, by the seriousness of the infringements of which the Disciplinary Board found him guilty. With regard to the period preceding the referral of the case to the Disciplinary Board, it may be said that the procedure advanced particularly slowly only during the period between the approval by the applicant of the draft minutes of the hearing (23 November 1981) and the drafting of the report to be presented to the Disciplinary Board (report dated 27 May 1982). Having regard to the time required for the preparation of a report dealing with a fairly complex case and to the fact that the applicant, who did not inform the administration of his change of address (thereby preventing it from contacting him when he was on sick leave) and who in fact never went to sign the definitive version of the minutes of the hearing, is not entirely free of responsibility for the delay caused by the repeated attempts of the administration to get him to sign that document, the appointing authority is guilty of no serious fault in respect of the period prior to the matter being referred to the Disciplinary Board.

59 With regard to Mr O’Kennedy’s letter of 10 September 1981 and the memorandum annexed to it, it is quite impossible to deduce from the rather unfortunate terms in which they are couched that the appointing authority presumed

that the applicant was guilty of the alleged conduct. In any event, if any possible doubt could have subsisted on that point when the disciplinary proceedings were initiated, it would have been removed subsequently not only by the express statements of the appointing authority (see the letter of the President of the Commission to the applicant dated 21 April 1982) but also by the latter's conduct during the proceedings, in which the applicant was given the fullest opportunity to defend himself.

60 Therefore, the application in Case 256/83 must also be dismissed.

### Costs

61 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs.

62 However, Article 70 of those rules provides that institutions are to bear their own costs in proceedings commenced by servants of the Communities.

On those grounds,

### THE COURT (First Chamber)

hereby:

1. Dismisses the applications;
2. Orders the parties to bear their own costs.

Bosco

Joliet

O'Higgins

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim

Registrar

G. Bosco

President of the First Chamber