Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (First Chamber)

11 May 2010 *

(Civil service — Officials — Jurisdiction of the Civil Service Tribunal — Admissibility — Act adversely affecting an official — Non-contractual liability — Leaks in the press — Principle of the presumption of innocence — Non-material damage — Decision instituting disciplinary proceedings — Manifest error of assessment — Duty to provide assistance — Article 24 of the Staff Regulations)

In Case F-30/08,

ACTION under Articles 236 EC and 152 EA,

Fotios Nanopoulos, a former official of the European Commission, residing in Itzig (Luxembourg), represented initially by V. Christianos, lawyer, and subsequently by V. Christianos, D. Gouloussis and V. Vlassi, lawyers,

applicant,

v

European Commission, represented initially by J. Currall and K. Herrmann, acting as Agents, and subsequently by J. Currall and K. Herrmann, acting as Agents, assisted by E. Bourtzalas and I. Antypas, lawyers,

defendant,

THE CIVIL SERVICE TRIBUNAL (First Chamber),

composed of S. Gervasoni (Rapporteur), President, H. Kreppel and I. Rofes i Pujol, Judges,

Registrar: R..Schiano, Administrator,

having regard to the written procedure and further to the hearing on 18 November 2009,

gives the following

Judgment

1 By application lodged at the Tribunal Registry on 28 February 2008, Mr Nanopoulos claims that the Commission of the European Communities should, on account of faults which it committed in the management of his situation and his career, be ordered to pay him the sum of EUR 850 000 to compensate for the non-material damage which he considers himself to have suffered.

* Language of the case: Greek.

Legal context

2 Under Article 24 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'):

'The Communities shall assist any official, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

They shall jointly and severally compensate the official for damage suffered in such cases, in so far as the official did not either intentionally or through grave negligence cause the damage and has been unable to obtain compensation from the person who did cause it.'

3 Article 87 of the Staff Regulations, in force at the time of the institution of the disciplinary proceedings against the applicant, provided:

'The appointing authority shall have the right to issue a written warning or a reprimand without consulting the Disciplinary Board, on a proposal from the official's immediate superior or on its own initiative. The official concerned shall be heard before such action is taken.

Other measures shall be ordered by the appointing authority after the disciplinary procedure provided for in Annex IX has been completed. This procedure shall be initiated by the appointing authority after hearing the official concerned.'

4 Article 1 of Annex IX to the Staff Regulations, the annex concerning disciplinary proceedings, provided, in the version applicable to the facts in these proceedings:

'A report shall be submitted to the Disciplinary Board by the appointing authority, stating clearly the facts complained of and, where appropriate, the circumstances in which they arose.

The report shall be communicated to the chairman of the Disciplinary Board, who shall bring it to the attention of the members of the Board and of the official charged.'

5 Under the first paragraph of Article 4 of Annex IX to the Staff Regulations, in the version applicable to the facts in these proceedings:

'The official charged shall have not less than 15 days from the date of receipt of the report initiating disciplinary proceedings to prepare his defence.'

6 On 19 February 2002, the Commission adopted a decision on the conduct of administrative inquiries and disciplinary proceedings (*Administrative Notices* No 33-2002 of 25 April 2002, 'the decision of 19 February 2002').

7 The recitals in the preamble to the decision of 19 February 2002 state:

'(1) The efficiency and speed of administrative inquiries and disciplinary proceedings shall be improved, taking account of the complexity and the evidential requirements of each case.

(2) An Investigation and Disciplinary Office shall be set up at the Commission to conduct impartial, coherent and professional administrative inquiries, and to prepare disciplinary proceedings for the appointing authority.

(3) Procedural rules shall be laid down on the opening and conduct of administrative inquiries.

…

(5) It is necessary to ensure a balance between administrative efficiency and the right of investigated officials to a fair hearing.

(6) The avoidance of the need for disciplinary measures shall be improved, as well as their transparency when they do take place.'

8 Article 1 of the decision of 19 February 2002 establishes an Investigation and Disciplinary Office (IDOC).

9 Article 2 of the same decision provides inter alia that IDOC is to carry out administrative inquiries at the request of the Director-General of Personnel and Administration, in agreement with the Secretary-General, and to prepare disciplinary proceedings for the appointing authority.

10 Article 5 of the Decision of 19 February 2002 relates to the opening and conduct of inquiries. It provides, in paragraph 1, that directors-general and heads of service may request the Director-General of Personnel and Administration, in agreement with the Secretary-General, to open an administrative inquiry. Under paragraph 5 of that Article, any official who may be implicated in an administrative inquiry is to be informed of its opening as soon as possible and has the right, at the end of the inquiry and before a report is finalised, to comment on the conclusions in so far as they mention facts that concern him.

11 Under Article 6 of the decision of 19 February 2002, in cases requiring absolute secrecy to be maintained for the purposes of the inquiry, compliance with the obligation to invite the official to give his or her views may be deferred by the Secretary-General with the agreement of the Director-General of Personnel and Administration.

12 Article 7 of that decision, headed 'Rights of investigated officials', provides:

'1. The appointing authority shall inform investigated officials of its preliminary allegations against them under Article 87 of the Staff Regulations by means of a report and shall hear the official concerned in relation to that report.

2. The purpose of the hearing provided for in Article 87 of the Staff Regulations shall be to enable the appointing authority to assess the seriousness of the matters of which the official concerned is accused in the light of the explanations provided by the official at the hearing and to decide whether disciplinary measures should be imposed on him or her and whether or not it is necessary to refer the case to the Disciplinary Board before adopting such a measure.

…'

13 On 18 December 2000, the European Parliament and the Council of the European Union adopted Regulation (EC) No 45/2001 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). According to recital 7 of the preamble to that regulation, the persons to be protected are those whose personal data are processed by Community institutions or bodies in any context whatsoever, for example because they are employed by those institutions or bodies.

14 Article 2 of Regulation No 45/2001, headed 'Definitions', provides:

'For the purposes of this Regulation:

(a) "personal data" shall mean any information relating to an identified or identifiable natural person hereinafter referred to as "data subject"; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;

(b) "processing of personal data" hereinafter referred to as "processing" shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

…'

15 Under Article 4, headed 'Data quality', of Regulation No 45/2001:

'1. Personal data must be:

(a) processed fairly and lawfully;

…

2. It shall be for the controller to ensure that paragraph 1 is complied with.'

16 Article 5 of Regulation No 45/2001, headed 'Lawfulness of processing', states:

'Personal data may be processed only if:

(a) processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed, or

…

(d) the data subject has unambiguously given his or her consent, or

(e) processing is necessary in order to protect the vital interests of the data subject.'

Facts

17 The applicant was appointed an official of the Commission on 1 January 1983. From November 1983 to January 2003 he was a director within Eurostat. From January 2003, he served as a principal adviser in the Personnel and Administration Directorate-General (DG) until his retirement on 1 March 2006.

18 On 25 October 2002, Mr Tillack, a journalist at the German magazine *Stern*, sent Mr B., a Eurostat official, an email written in German with the question 'Greek connection?' in the subject field. In that letter, Mr Tillack stated that Eurostat officials wishing to remain anonymous were accusing the applicant of favouring the interests of Greek undertakings in the performance of his duties as a director, in particular during procedures for the award of contracts. That letter invited Eurostat to

comment in reply to 18 questions concerning those accusations. In particular, Mr Tillack asked Eurostat to tell him specifically how it responded to those accusations and the reasons why there was an over-representation of Greek companies when the Supcom programme contracts were awarded for 1995, 1996, 1997 and 1998.

19 On the same day, Mr B. forwarded that email to the Director-General of Eurostat, to the applicant and to another director of Eurostat, together with an English translation of the 18 questions.

20 By a confidential memorandum of 30 October 2002 addressed to the Director-General of Eurostat, the applicant declared that he refuted all the allegations contained in that questionnaire, drawing attention to their libellous and defamatory character, and asked the Commission to fully investigate and explain the matters raised and reveal the names of the 'anonymous accusers'. The applicant's replies to the 18 questions raised were attached to that memorandum.

21 On 28 and 29 October, a number of internal meetings were held at Eurostat in order to prepare the Commission's reply to Mr Tillack's questions. According to the Commission, at one of those meetings, the Director-General of Eurostat asked for an internal audit to be carried out on the award of contracts within Directorate A, headed by the applicant, under the Supcom programme from 1995 to 1998. It is apparent from a document dated 31 October 2002, annexed to the defence, that the Eurostat internal audit team was, on that date, instructed to draw up a 'mini-report'.

22 On Thursday 7 November 2002, Mr Tillack sent another email to Mr B. In that email, he stated that, unless he received a reply from Eurostat to his questions by Monday 11 November, he would have no option but to cite in his article, which he had to finish on that date, only a letter of denial which had been sent to him by the applicant, and to write that Eurostat had not rejected any of the allegations referred to in his previous email. In that email of 7 November 2002, Mr Tillack submitted to Eurostat four additional questions, which emphasised suspicions of favouritism on the part of the applicant towards an undertaking founded by his godson, Mr Av.

23 On the same day, 7 November 2002, the Commission informed the applicant that, under its mobility policy, it proposed to reassign him to a post of principal adviser to the Director-General of Eurostat.

24 By a confidential memorandum of 11 November 2002, the applicant informed the Director-General of Eurostat that Mr Av. was indeed his godson but that the latter's undertaking, with which the applicant had no financial connection, had not had any contracts either with the applicant's directorate or with Eurostat in general. That memorandum explained that Mr Av. worked as an academic expert on a research project known as 'STAT-Object', but that the applicant had not exerted any influence in favour of Mr Av. in the procedures connected with that research project. At the end of the memorandum, the applicant asked the Commission to grant him its assistance under Article 24 of the Staff Regulations without delay.

25 By another confidential memorandum of 11 November 2002, to which Mr Tillack's 'questionnaires' of 25 October and 7 November 2002 were annexed, the applicant approached the Director-General of Personnel and Administration to request the Commission's assistance under Article 24 of the Staff Regulations. In that memorandum, he drew attention to the risks of damage to his professional and social life that publication of an article reproducing the allegations directed against him would entail.

26 On 11 November 2002, the Commission sent to Mr Tillack the replies to the questions which he had raised.

27 According to the Commission, the internal audit referred to in paragraph 21 of this judgment was carried out during the period from 31 October to 11 December 2002 under the responsibility of Ms D., head of Eurostat's internal audit unit. It is apparent from the documents in the file that the internal audit was continued after the date on which the Commission replied to Mr Tillack's questions.

28 On 13 November 2002, the *Stern* magazine website published an article in German by Mr Tillack, headed 'Greek looking for Greeks'. That article states, inter alia:

'The European statistics office, Eurostat, can find no peace. After a series of scandals — starting with defective statistics, then accusations of fraud and, finally, suspicions of corruption of an official — Eurostat is again having to fend off awkward questions. They concern possible multiple contracts for Greek firms — and this under the responsibility of [Fotios] Nanopoulos, a Greek director at Eurostat..

There is no let-up in the pressure on the Eurostat hierarchy under its Director-General, Yves Franchet. As Franz-Hermann Brüner, head of the European Anti-Fraud Office, OLAF, put it, OLAF is already investigating "a whole series of cases" at Eurostat. The European trade union "Action & Defence" is already asking, through a leaflet, an alarming question: is Eurostat governed by a "network of corruption"?

...

"Defamation"

Indeed, some countries do clearly fare particularly well in the award of contracts — Greek firms often do better than, for example, German bidders. ...'

29 On 14 November 2002, the Luxembourg daily *Le Quotidien* published an article headed 'New upheaval at Eurostat'. That article mentioned that the applicant had been 'relieved of his duties' and appointed a principal adviser to the Director-General of Eurostat. It added:

'According to our sources, officials at OLAF, the European body responsible for the fight against fraud, has discovered that Directorate A, which deals, among other things, with the information industries sector, was entering into many contracts with Greek companies and negotiating much less with companies of other nationalities.

Questioned by the German magazine *Stern*, [Fotios] Nanopoulos vigorously denied that Greeks were "consciously favoured".'

30 By letter of 15 November 2002, the Commission asked the Luxembourg newspaper *Le Quotidien* for a right of reply on account of the erroneous and defamatory information contained in the abovementioned press article. In that letter, the Commission pointed out, first, that the assertion that Mr Nanopoulos had been relieved of his duties was completely false and defamatory. According to the Commission, he had simply been the subject of a mobility decision applying to 14 directors who had been in the same post for more than five years, in accordance with the decisions which had been taken on these matters by the Commission in December 2000 and which had already had their first implementation in the context of the movement of directors-general. Mr Nanopoulos was thus assigned as a principal adviser to the Personnel and Administration DG under objective and transparent conditions. Secondly, the Commission contended that the newspaper's assertions that OLAF had made discoveries concerning the existence of favouritism to the advantage of Greek companies in the awarding of contracts were not supported by any evidence and undermined Mr Nanopoulos' integrity without justification. Finally, the Commission pointed out that, as regards

the allegations of national favouritism, it had given Mr Tillack, the *Stern* journalist, a number of answers. However, those answers did not lead to the conclusion that Greek firms were favoured in the award of contracts within Directorate A of Eurostat in connection with the Supcom projects.

31 On 20 November 2002, *L'Investigateur* published a press article headed 'The skulduggery and dishonesty continue worse than ever within the EU[,]. Nanopoulos' goose that lays golden eggs'.

32 That article stated:

'For three years, *L'Investigateur* has been drawing attention to the embezzlements, skulduggery and acts of nepotism evident at the European statistics directorate, [Eurostat], based in Kirchberg. Following [OLAF]'s investigation, one of the sensitive nepotism files has just, finally, been forwarded to the courts, in this instance those with territorial jurisdiction, the Luxembourg courts, which — a bad sign for transparency and truth — are still far from having resolved the huge misappropriations which were brought before them in 1999 in the Perry and PerryLux affair, which eventually led to the fall of the Santer Commission.

The new court case concerns the misconduct of a Greek director thrown out of Eurostat for outrageously favouring companies owned by his compatriots. He had already been excluded from recruitment competition committees for communicating the examination questions to the wife of a Greek official. All this openly and publicly and with the knowledge of [two former heads of Eurostat], both great friends of Robert Goebbels, a current MEP and former socialist Minister in the Government … Santer. [Fotios] Nanopoulos obviously denies all those allegations concerning him, and the cheats at Eurostat, faithful to the Cresson tactics in this respect, protest about journalistic scheming and anti-European dirty tricks. When one is faced with this kind of director there is a real risk of becoming anti-European, the more so since the Prodi Commission, true to its predecessor's principles, is dishing up this affair with such an indigestible European sauce.

Nanopoulos was hurriedly appointed "principal adviser" in another directorate … That is the usual procedure for removing a senior official from his department and enabling an inquiry to take place whilst preserving the rights of the defence. …

The Commission is masking the scandal by claiming that this rotation of directors had been planned for a long time, which is true in theory and in general, but not in this specific case. …

It is therefore possible that Nanopoulos will be compulsorily retired early and thus escape prosecution …'

33 At a meeting held on 11 December 2002, the draft audit report was presented to the Director-General of Eurostat, who took the view that he needed to consider further the possible measures (continuation of the audit with conduct of an *inter partes* procedure, possible referral to OLAF), without at that stage adopting a position on what action should be taken on the draft.

34 By letter of 20 December 2002, the Commission informed the applicant of the action to be taken in response to his request for assistance of 11 November 2002. It stated, firstly, that it had sent to the journalist Mr Tillack a detailed reply to the abovementioned questionnaires, which exonerated the applicant and, secondly, that it had, on its own initiative, requested and obtained, on 18 November 2002, a right of reply from the Luxembourg newspaper *Le Quotidien* following the publication of the article which called into question the applicant's reputation by reproducing allegations similar to those of Mr Tillack.

35 Also on 20 December 2002, the Commission reassigned the applicant to the Personnel and Administration DG as a principal adviser, that decision taking effect from 16 January 2003. The applicant was entrusted with specific tasks in the field of administrative reform, in particular as regards benchmarking and statistical analysis in relation to the reform monitoring process, taking account of the consequences of enlargement.

36 On 21 May 2003, the new Director-General of Eurostat took office. On the same day, Ms D. sent to the applicant a copy of the draft internal audit report.

37 By letter of 12 June 2003, Ms D. formally asked the applicant to submit any observations he might have on that draft report.

38 The applicant informed the administration of his observations by an email of 24 June 2003.

39 On the morning of 27 June 2003, Ms D. and the internal audit team which had worked on the draft report discussed, at a working meeting, the relevance of the applicant's observations and, on that occasion, a draft reply to those observations was envisaged. However, without waiting for the draft reply prepared by her team, Ms D. informed the Director-General by email, at 12.01 hrs, of the inappropriateness of the applicant's observations on the draft internal audit report. At 14.23 hrs, the internal audit team sent by email to Ms D. a draft reply to the applicant's observations. However, that draft was not finalised or forwarded to the Director-General of Eurostat. Neither was the applicant an addressee of that draft reply, of which he became aware only through the communication to him of the Commission's statement in defence in the present case.

40 By letter of 8 July 2003 from Ms D., the audit report, together with the applicant's observations, was sent to the new Director-General of Eurostat. In that letter, Ms D. explained that the draft audit report, which had been forwarded to the applicant on 21 May 2003, had been re-entitled 'Analysis of certain aspects relating to the Supcom programme (1995-1998) as a consequence of the questions put to Eurostat by a journalist in November 2002'; that that analysis was being sent in the state of the information which she had at her disposal at the time of the analysis of the facts; and that she was not in a position to go into it in more detail in view of her past and present workload. That report stated, as a general conclusion:

'The analysis carried out is to be placed very specifically into the context of the points highlighted by the journalist [Mr Tillack] and was based exclusively on the budget data and the files provided by the directorate concerned.

In general, it is clear that the conclusions which emerge from our work would not make it possible to support the defence of Mr Nanopoulos and Eurostat vis-à-vis those external attacks.'

41 By letter of 8 July 2003, received at the Personnel and Administration DG on 9 July 2003, as evidenced by the registration stamp on that document, the Director-General of Eurostat forwarded the audit report to Mr Reichenbach, the Director-General of Personnel and Administration, in order for him to be able to take whatever measures he saw fit with regard to the applicant.

42 On that same 9 July 2003, the Vice-President of the Commission decided to institute disciplinary proceedings against the applicant on the grounds, firstly, that, at the time of the award of contracts, he had tacitly allowed or agreed to evaluation processes which were not transparent, since the evaluation methods set out in the reports of the Advisory Committee on Procurements and Contracts did not correspond to those actually applied in practice; and, secondly, with regard to a contract concluded with Planistat, that he had tacitly allowed or agreed to the participation of an expert close to himself, and not originally proposed by the tenderer, in the project for the preparation of a study unconnected with the contract, which gave rise to a 'passed for payment' stamp even before the

interim report of the study was finalised. In adopting that decision, the Commission took as its basis, firstly, an interim report by the Commission Internal Audit Service of 7 July 2003 and, secondly, the report by the Eurostat Internal Audit Service of 8 July 2003.

43 On 10 July 2003, *The Financial Times* published an article in English, headed 'Prodi moves to tackle financial scandal at Eurostat', which reported the discovery of a very significant financial scandal at Eurostat and detailed the various measures adopted by the Commission in order to fully investigate and explain that scandal. The article mentioned the applicant's name and pointed out that, like the Director-General and Deputy Director-General of Eurostat, he was the subject of disciplinary proceedings.

44 On 11 July 2003, the *Le Monde* newspaper in turn published an article whose content of which was similar to that of the *Financial Times* mentioned above.

45 During the month of July 2003, the Greek press also echoed the applicant's involvement.

46 By letter of 15 July 2003, the applicant asked the Director-General of Personnel and Administration to grant him the Commission's assistance under Article 24 of the Staff Regulations, maintaining that the *Financial Times* article unjustly prejudiced his reputation. In particular, the applicant pointed out that the article wrongly established a link between the 'financial scandal at Eurostat' involving two other senior officials of that office and the proceedings concerning him. According to the applicant, the content of the article also demonstrated the existence of leaks in the Commission's departments, whereas the latter was required to ensure the confidentiality of pending disciplinary proceedings. He asked, in particular, that the Commission publish a press release stating that he was not at all implicated in the 'financial scandal at Eurostat'.

47 By letter of 21 July 2003, the applicant again submitted a request for assistance having, in essence, the same purport as that of 15 July 2003, this time referring not to the *Financial Times* article but also to the *Le Monde* article.

48 On 22 July 2003, the Commission forwarded the internal audit report to OLAF which decided, on 23 July 2003, to open an internal investigation against the applicant on suspicion of favouritism in the procedures for the award of contracts for which the directorate headed by him was responsible.

49 On 9 September 2003, the applicant sent to the President of the Commission a letter in which he complained, in particular, about the terms of reference for the internal audit report which served as the basis for the decision to initiate disciplinary proceedings taken against him.

50 In reply to a question put to him by the Court at the hearing, the applicant maintained, without being contradicted by the Commission, that the abovementioned letter of 9 September 2003 had remained unanswered.

51 On 22 September 2003, the Commission suspended the disciplinary proceedings pending the findings of OLAF's internal investigation.

52 By letter of 1 October addressed to the applicant, the Commission decided, firstly, not to grant the new requests for assistance submitted by the applicant on 15 and 21 July 2003 and, secondly, to await the outcome of the inquiries in progress at Eurostat before possibly intervening and taking a definitive position on the requests for assistance.

53 By letter of 5 October 2004, OLAF informed the applicant of the decision to close the internal investigation against him and of the forwarding of the final investigation report to the Secretary-General of the Commission. That final report explained that OLAF had decided to close the file without taking any action because it had not been possible to bring to light any irregularity attributable to the applicant.

54 By letter of 26 October 2004 addressed to the applicant, the Vice-President of the Commission, having acquainted himself with the results of OLAF's internal investigation, decided that the disciplinary proceedings should be closed and informed the applicant that that decision could, at his request, be put on his personal file.

55 On 27 October 2004, the Commission published a press release in English on the *Midday Express* Internet site of its Communication DG, which stated:

'The European Commission has decided to close the disciplinary proceedings opened against [the applicant], a former Director [of] Eurostat. A thorough investigation by OLAF, the EU's anti-fraud office, has revealed no information to justify continuing disciplinary procedures, which were originally opened on 9 July 2003. The Commission wants to stress that the closure of the case clears [the applicant], an experienced Commission official with a long-standing record of excellence, of the suspicions of alleged wrongdoing analysed in the [investigation].'

56 By letter of 12 October 2005, the President of the Commission informed the applicant that he proposed to take a decision to retire him in the interests of the service, as provided for in Article 50 of the Staff Regulations.

57 Due to the absence of any available suitable post for the applicant in the Commission's departments, the appointing authority, by decision of 17 January 2006, retired the applicant in the interests of the service with effect from 1 March 2006, with payment of the allowance provided for by Article 50 of the Staff Regulations.

58 On 1 February 2007, the applicant submitted a request under Article 90(1) of the Staff Regulations, by which he claimed compensation of EUR 1 million.

59 By letter of 7 June 2007, the Commission rejected that request.

60 In addition, the applicant requested a copy of OLAF's final investigation report. The Commission granted that request on 13 June 2007 and delivered a copy of that report to the applicant personally.

61 On 28 August 2007, the applicant submitted a complaint under Article 90(2) of the Staff Regulations.

62 By decision of 19 December 2007, the Commission rejected that complaint.

Procedure and forms of order sought

63 The applicant claims that the Tribunal should:

— order the Commission to pay him the sum of EUR 850 000 in respect of the non-material damage suffered, including the detriment to his health;

— order the Commission to pay the costs;

— hear Mr Koopman, Mr Portal and Ms D. as witnesses;

— ask the Commission to produce, on the one hand, the complete OLAF report and, on the other, any document to show that the Eurostat Internal Audit Service carried out checks between November 2002 and May 2003.

64 The Commission contends that the Tribunal should:

— dismiss the application;

— order the applicant to pay the costs.

65 In his reply, the applicant stated that he was withdrawing the claim for compensation for the detriment to his health.

66 By way of a measure of organisation of procedure, the Tribunal asked the Commission to produce the press release which it published on 9 July 2003 ('the press release of 9 July 2003'). That release states, inter alia, that the Commission takes the view, in the light of the reports already in its possession, that serious infringements of the financial regulations have been committed, that disciplinary proceedings have been initiated against three Eurostat officials and that the contracts concluded with Planistat have been suspended for the duration of the ongoing investigations.

67 At the hearing, in reply to a question put to it by the Tribunal, the Commission confirmed that the applicant was one of the three officials referred to in the press release of 9 July 2003 as being the subject of the initiation of disciplinary proceedings.

Nature of the dispute and jurisdiction of the Tribunal

1. *Arguments of the parties*

68 The applicant states that he is seeking an order against the Commission under the provisions of the second paragraph of Article 288 EC (now, after amendment, the second paragraph of Article 340 TFEU) on the ground that the Commission infringed a series of rules conferring rights on him as a citizen and as a Commission official at Eurostat.

69 The Commission contends that the action is based on an action for non-contractual liability which, since the dispute is between a member of staff and the institution which employs him, cannot be brought under the provisions of Article 288 EC (now, after amendment, the second paragraph of Article 340 TFEU), but only under the provisions of Article 236 EC (now, after amendment, Article 270 TFEU) and of Articles 90 and 91 of the Staff Regulations.

2. *Findings of the Tribunal*

70 It follows from the provisions of Article 225 EC (now, after amendment, Article 256 TFEU), Article 235 EC (now, after amendment, Article 268 TFEU) and the second paragraph of Article 288 EC (now, after amendment, the second paragraph of Article 340 TFEU) that the General Court of the European Union is the ordinary court, at first instance, for hearing and determining actions seeking to put in issue the Union's non-contractual liability for damage caused by its institutions or its servants in the performance of their duties.

71 By contrast, under Article 236 EC (now, after amendment, Article 270 TFEU) and Article 1 of Annex I to the Statute of the Court of Justice, it is the Tribunal which has jurisdiction at first instance in disputes between the Union and its servants. On that basis, the Tribunal hears disputes between an official and the institution by which he or she is or was employed concerning compensation for

damage where such damage originates in the employment relationship between the person concerned and the institution (see, inter alia, by analogy, Case 9/75 *Meyer-Burckhardt* v *Commission* [1975] ECR 1171, paragraph 7; Case T-187/01 *Mellone* v *Commission* [2002] ECR-SC I-A-81 and II-389, paragraphs 74 and 75; order in Case T-371/02 *Barbé* v *Parliament* [2003] ECR-SC I-A-183 and II-919, paragraphs 36 and 38; and judgment of 5 October 2004 in Case T-45/01 *Sanders and Others* v *Commission* [2004] ECR II-3315, paragraphs 54 and 57).

72 In the present case, the applicant relies both on his capacity as a private individual and his capacity as an official and seeks a finding that the Commission is liable under the provisions of Article 288 EC (now, after amendment, Article 340 TFEU) for the wrongful conduct which it is alleged to have committed against him during the period from October 2002 to January 2006.

73 However, it is evident from the documents in the case-file and from the convergent opinions of the parties expressed at the hearing that the present dispute falls under Article 236 EC (now, after amendment, Article 270 TFEU) and Articles 90 and 91 of the Staff Regulations, since the damage alleged originates exclusively in the employment relationship between the applicant and the Commission. Indeed, the applicant explained at the hearing that the reference in his application to Article 288 EC (now, after amendment, Article 340 TFEU) was intended only to draw attention to the essential conditions to which, according to him, the administration's non-contractual liability was subject.

74 The action must accordingly be considered by the Tribunal, acting of its own motion, to have been brought, in actual fact, under Article 236 EC (now, after amendment Article 270 TFEU) and Articles 90 and 91 of the Staff Regulations (*Mellone* v *Commission*, paragraphs 74 and 75, and *Sanders* v *Commission*, paragraph 42).

Admissibility

1. *Arguments of the parties*

75 The Commission contends, in the first place, that the action is inadmissible since the applicant did not contest within the periods prescribed by the provisions of Article 90(2) of the Staff Regulations the decisions rejecting his requests for assistance submitted under Article 24 of the Staff Regulations.

76 The Commission submits, in the second place, that the action for damages is also inadmissible in so far as it was not brought within a reasonable time. It points out that the Community courts have held that, even though the Staff Regulations do not lay down any limitation period in regard to the non-contractual liability of the institutions vis-à-vis their servants, an action for damages should nevertheless be brought within a reasonable time. For the determination of that reasonable time, Article 46 of the Statute of the Court of Justice, laying down a period of limitation of five years, is applicable by analogy. In this case, since the events relied on by the applicant in order to establish his damages claim took place more than five years ago, the action is inadmissible.

77 The Commission maintains, in the third place, that the applicant is not entitled to contest the legality of the decision of 9 July 2003 by which it decided to institute disciplinary proceedings, since it is a preparatory act which is not actionable. In addition, the applicant does not have a legal interest in contesting the legality of that act since the proceedings were closed without any action being taken, by decision of 26 October 2004.

78 The Commission submits, in the fourth place, that the applicant is not entitled to rely, in support of claims for damages, on the wrongful character of the reassignment decision of 20 December 2002 and of the retirement decision of 17 January 2006, since he failed to bring an action for annulment against those decisions within the time-limits for appeals.

79 The applicant, for his part, claims that his action is perfectly admissible. It is not directed against decisions refusing assistance but is a claim seeking compensation for the damage suffered as a result of conduct on the part of the Commission.

80 The applicant stated at the hearing that, even assuming that his application puts in issue decision-making acts of the Commission, those acts and the non-decision-making conduct which he alleges against the administration constitute an indivisible whole and a continuum. In such a case, the admissibility of an action for damages cannot be conditional on the submission of a complaint and the filing of an appeal against each of the acts considered in isolation.

81 The applicant further submits that the limitation period applicable to an action for damages brought by an official against his institution should be that of five years laid down by Article 46 of the Statute of the Court of Justice. In this case, that period has not expired since it started to run only as from 27 October 2004, the date of publication of the Commission's press release on *Midday Express*. In any event, the period has not expired, even if account is taken of the first illegalities committed by the Commission in October 2002, since the damages claim was submitted on 1 February 2007.

82 The applicant takes the view that the concept of a reasonable time and the fixing of a limitation period by the courts and not by the legislature are contrary to the principle of legal certainty. In any event, in this case, the applicant observed the reasonable time laid down by the case-law, since the damages claim was submitted within a period of 27 months from the last event giving rise to the damage suffered by him.

2. *Findings of the Tribunal*

The plea of inadmissibility alleging failure to observe the pre-contentious procedure laid down by the provisions of Articles 90 and 91 of the Staff Regulations

83 According to settled case-law, under the system of remedies established by Articles 90 and 91 of the Staff Regulations, an action for damages, which constitutes an autonomous remedy, separate from the action for annulment, is admissible only if it has been preceded by a pre-contentious procedure in accordance with the provisions of the Staff Regulations. That procedure differs according to whether the damage for which reparation is sought results from an act having adverse effects within the meaning of Article 90(2) of the Staff Regulations or from conduct on the part of the administration which contains nothing in the nature of a decision. In the first case, it is for the person concerned to submit to the appointing authority, within the prescribed time-limits, a complaint directed against the act in question. In the second case, on the other hand, the administrative procedure must commence with the submission of a request, within the meaning of Article 90(1) of the Staff Regulations, for compensation. It is only the express or implied rejection of such a request that constitutes a decision adversely affecting the person concerned and against which he may submit a complaint, and it is only after the express or implied rejection of that complaint that an action seeking compensation may be brought before the Tribunal (Case T-5/90 *Marcato* v *Commission* [1991] ECR II-731, paragraphs 49 and 50, and Case T-500/93 *Y* v *Court of Justice* [1996] ECR-SC I-A-335 and II-977, paragraph 64).

84 The applicant has called on the Tribunal, in determining the admissibility of the action, to reverse the distinction drawn by the case-law between a decision-making act and non-decision-making conduct, due to the irrelevance of that distinction in the present proceedings. According to him, the various acts and lines of conduct for which he seeks compensation constitute an indivisible whole and he is

entitled to contest all the acts and lines of conduct forming that indivisible whole in support of his damages claims within a reasonable time from the date of occurrence of the last of those acts or lines of conduct, without the period of three months from the date of notification of the decision-making acts relied on by him, laid down by Article 90 of the Staff Regulations, being enforceable against him.

85 However, such an argument cannot be upheld.

86 Admittedly, the case-law has acknowledged, in a number of cases, that an applicant is not required, in a complex procedure consisting of a number of interdependent acts, to submit as many complaints as there are acts in the procedure which may have affected him adversely. On the contrary, in the light of the cohesion of the various acts making up that complex procedure, it has been accepted that the applicant may contest the legality of earlier acts in support of an action directed against the last of them (see, to that effect, Joined Cases 12/64 and 29/64 *Ley* v *Commission* [1965] ECR 107; Case C-448/93 P *Commission* v *Noonan* [1995] ECR I-2321, paragraph 17; and Case T-182/94 [1996] *Marx Esser and Del Almo Martinez* v *Parliament* [1996] ECR-SC I-A-411 and II-1197, paragraph 37).

87 However, that case-law is concerned only with acts adversely affecting an official which are closely interlinked. Furthermore, it is an exception to the principle that an act may be contested only within the time-limit for appeal, and that exception must, like any other, be strictly interpreted.

88 In the present case, the conduct and acts relied on by the applicant cannot, in the light of their great diversity and of their scope (acts relating to the obligation to provide assistance, to the initiation of disciplinary proceedings, leaks of personal data, failure to assign tasks corresponding to the grade, etc.), be regarded as forming part of a complex procedure. It would also be contrary to the requirement of legal certainty to accept that those acts may be contested beyond the standard time-limit for appeal. Moreover, since each act relied on must be the subject of a separate appeal, it follows that the principles recalled in paragraph 83 of this judgment must be applied to each of them for the purpose of determining the admissibility of the action for damages brought by the applicant.

89 In the present case, before bringing his action before the Tribunal, the applicant submitted, on 1 February 2007, a request for compensation under Article 90(1) of the Staff Regulations then, on 28 August 2007, a complaint under the first subparagraph of Article 90(2) of the Staff Regulations against the decision of 7 June 2007 rejecting his request for compensation. The applicant therefore preceded his action before the Tribunal by the pre-contentious procedure applicable to a claim for compensation for damage resulting from non-decision-making conduct on the part of the administration.

90 In order to determine whether the pre-contentious procedure followed by the applicant was in order, it is therefore necessary to examine whether or not the damage for which compensation is sought results from conduct on the part of the administration containing nothing in the nature of a decision. To that end, the applicant relies on four categories of irregularities: various breaches by the Commission of its duty to provide assistance, the illegality with which the reassignment decision is tainted, the illegality which vitiates the decision instituting disciplinary proceedings and various other lines of conduct on the part of the Commission.

91 On the other hand, the applicant has not submitted any damages claims based on the illegality of the retirement decision of 17 January 2006. The plea of inadmissibility raised by the Commission against such claims and alleging failure to observe the pre-contentious procedure laid down by the provisions of Articles 90 and 91 of the Staff Regulations is therefore devoid of pertinence.

The damages claim based on the Commission's breaches of its duty to provide assistance

92 The applicant seeks compensation for the damage resulting from the Commission's breaches of its obligation to provide assistance, as it results from Article 24 of the Staff Regulations. In support of his claims, the applicant pleads, first of all, the illegality of the express decisions taken by the Commission in response to his requests for assistance, secondly, the Commission's wrongful delays before adopting a position on the matter, and, finally, the illegality of the Commission's failures to provide assistance spontaneously following the publication of the press articles implicating him.

93 With regard to decisions relating to the obligation to provide assistance, the courts of the European Union have consistently held that such decisions constitute acts adversely affecting officials (see inter alia, as regards express decisions refusing assistance, Case T-249/04 *Combescot* v *Commission* [2007] ECR-SC I-A-2-181 and II-A-2-1219, paragraph 32; as regards implied decisions refusing assistance, Case T-223/95 *Ronchi* v *Commission* [1997] ECR-SC I-A-321 and II-879, paragraphs 25 to 31; and, as regards decisions to provide assistance considered insufficient, Case T-59/92 *Caronna* v *Commission* [1993] ECR II-1129, paragraph 100).

94 In the present case, the Commission adopted, during the period in issue, various express decisions relating to its duty to assist the applicant.

95 By letter of 20 December 2002, the Commission informed the applicant of the action taken in response to the request for assistance which he had submitted on 11 November 2002 after Mr Tillack, a journalist for a German weekly, had sent the Commission two questionnaires which called in question his integrity and professional reputation. The Commission stated, on the one hand, that it had sent that journalist a detailed reply to the abovementioned questionnaires, clearing the applicant and, on the other hand, that it had, on its own initiative, requested and obtained, on 18 November 2002, a right of reply from the Luxembourg newspaper *Le Quotidien* following the publication of an article which called in question the applicant's reputation by reproducing allegations similar to those of Mr Tillack.

96 By letter of 1 October 2003, the Commission decided, on the one hand, not to grant the further requests for assistance submitted by the applicant on 15 and 21 July 2003, following the publication, in various European newspapers, of press articles mentioning his name and implicating him in a financial scandal at Eurostat and, on the other hand, to await the outcome of the ongoing investigations at Eurostat before taking any action.

97 By press release issued on 27 October 2004 on *Midday Express*, the Commission decided, as part of its duty to provide assistance, to make public its decision to close the disciplinary proceedings initiated against the applicant, this after having obtained the results of the OLAF investigation into the irregularities alleged against him (see, by analogy, Case 108/86 *d.M.* v *Council and ESC* [1987] ECR 3933, paragraph 6, and *Caronna* v *Commission*, paragraphs 93 to 96).

98 It is common ground that the applicant did not bring, within the time-limits laid down in Articles 90 and 91 of the Staff Regulations, an action for annulment against those various decisions, whether they be implied or express decisions refusing assistance or decisions to provide assistance which he considered insufficient. Since they were acts adversely affecting an official, as was recalled above, the applicant is therefore not entitled to put forward claims for compensation for the damage caused by such acts (Case 346/87 *Bossi* v *Commission* [1989] ECR 303, paragraph 32, and Case T-20/92 *Moat* v *Commission* [1993] ECR II-799, paragraph 46).

99 With regard, on the other hand, to the Commission's alleged delays in ruling on its obligation to provide assistance and to notify its decision, it must be recalled that the Community courts have held that a delay does not, in principle, constitute an act adversely affecting an official (see inter alia, concerning delay in the drawing up of a staff report, Case T-79/92 *Ditterich* v *Commission* [1994]

ECR-SC I-A-289 and II-907, paragraph 66, and Case T-285/04 *Andrieu* v *Commission* [2006] ECR-SC I-A-2-161 and II-A-2-775, paragraph 135). It follows that the applicant is entitled to rely on those delays in support of his claims for damages, since, as in the present case, the two-stage pre-contentious procedure laid down by Article 90(1) and (2) of the Staff Regulations was observed in regard to them.

100 Moreover, since the claims for damages based on an alleged breach of an obligation of the Commission to act within a very short time have no direct connection with the content of the express decisions adopted by the Commission under Article 24 of the Staff Regulations, the fact that the applicant did not contest those decisions within the time-limits is not such as to render those claims for damages inadmissible (Case 79/71 *Heinemann* v *Commission* [1972] ECR 579, paragraphs 6 and 7; Case T-27/90 *Latham* v *Commission* [1991] ECR II-35, paragraphs 36 to 38; and Joined Cases T-246/04 and T-71/05 *Wunenburger* v *Commission* [2007] ECR-SC I-A-2-21 and II-A-2-131, paragraphs 46 to 50).

101 Finally, with regard to the Commission's failures to provide assistance spontaneously, it must be recalled that the Community courts have held that, in principle, it is for the official concerned, who considers himself entitled to rely on Article 24 of the Staff Regulations, to request assistance from the relevant institution. Only exceptional circumstances may oblige the institution to provide specific assistance not in response to a request from the individual concerned but on its own initiative. In the absence of such circumstances, the failure of the institution to assist its officials and other staff spontaneously does not constitute an act adversely affecting them (Case 229/84 *Sommerlatte* v *Commission* [1986] ECR 1805, paragraph 20; Joined Cases T-90/07 P and T-99/07 P *Belgium and Commission* v *Genette* [2008] ECR II-3859, paragraphs 100 to 102; and order in Case F-91/05 *Frankin and Others* v *Commission* [2006] ECR-SC I-A-1-25 and II-A-1-83, paragraph 24).

102 In the present case, no exceptional circumstances are relied on by the applicant or the defendant which would have given the Commission grounds for intervening spontaneously following the implication of the applicant in various press articles. Consequently, the Commission's failure to provide assistance spontaneously following the publication of press articles constitutes non-decision-making conduct, which the applicant is entitled to contest in the present action for damages.

The claim for damages based on the illegality of the reassignment decision

103 The applicant puts forward claims for damages seeking compensation for the loss of occupational status of which he was a victim following the reassignment decision of which he was the subject.

104 It is settled case-law that, even if a reassignment decision does not affect the material interests or the rank of an official, it may, having regard to the nature of the duty in question and the circumstances, adversely affect the non-material interests and future prospects of the applicant since some functions, whilst being equally classified with others, lead more readily to promotion by reason of the nature of the responsibilities exercised. Such a decision necessarily affects the administrative status of the official concerned, since it alters the place and the conditions for the performance of his duties and also their nature. In those circumstances, it is not possible to assume in advance that such a measure is not capable of adversely affecting the person to whom it is addressed (see, to that effect, inter alia, Case 35/72 *Kley* v *Commission* [1973] ECR 679, paragraph 4; Joined Cases 33/79 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677, paragraph 13; Case 60/80 *Kindermann* v *Commission* [1981] ECR 1329, paragraph 8; Case C-294/95 P *Ojha* v *Commission* [1996] ECR I-5863, paragraph 58; Case T-36/93 *Ojha* v *Commission* [1995] ECR-SC I-A-161 and II-497, paragraph 42; and Case T-73/96 *Forcat Icardo* v *Commission* [1997] ECR-SC I-A-159 and II-485, paragraph 16).

105 By decision of 20 December 2002, the President of the Commission reassigned the applicant. Having until then been a director in Directorate A of Eurostat, he was assigned to the Personnel and Administration DG as a principal adviser, with responsibility for specific tasks in the field of administrative reform, in particular concerning statistical analysis in relation to the monitoring of the reform process, taking account of the consequences of enlargement.

106 Having regard to the alteration in the conditions for the performance and in the nature of the duties which it involves, that reassignment decision affected the applicant's legal situation and therefore constitutes an act adversely affecting him.

107 Since the applicant did not contest that decision within the time-limits for bringing proceedings laid down by Articles 90 and 91 of the Staff Regulations, he is not subsequently entitled to bring an action seeking compensation for the damage caused by that act, as has consistently been held by the Community courts (see inter alia *Moat* v *Commission*, paragraph 46, and Joined Cases T-78/96 and T-170/96 *W* v *Commission* [1998] ECR-SC I-A-239 and II-745, paragraph 158).

The compensation claim based on the unlawfulness of the decision initiating disciplinary proceedings

108 It is settled case-law that the appointing authority's decision to institute disciplinary proceedings is merely a preparatory procedural step. It does not prejudge the final position to be adopted by the administration and thus cannot be regarded as an act adversely affecting an official within the meaning of Article 91 of the Staff Regulations. It may therefore be challenged only incidentally in an action brought against a final disciplinary decision adversely affecting an official (Case T-166/02 *Pessoa e Costa* v *Commission* [2003] ECR-SC I-A-89 and II-471, paragraph 37, and Case T-48/05 *Franchet and Byk* v *Commission* [2008] ECR II-1585, paragraph 340).

109 An official who has failed to bring, within the time-limits laid down in Articles 90 and 91 of the Staff Regulations, an action for annulment against an act adversely affecting him cannot, by means of a claim for compensation for the damage caused by that act, repair that omission and thus procure himself further time for bringing proceedings. The same applies where the omission concerns, not the act adversely affecting him as such, but an act preparatory to it, which could properly have been challenged incidentally in an action against the act in question (Case T-547/93 *Lopes* v *Court of Justice* [1996] ECR I-A-63 and II-185, paragraphs 174 and 175).

110 It has moreover been held that a decision by which the appointing authority closes without further action disciplinary proceedings does not constitute an act adversely affecting the official against whom the proceedings were instituted within the meaning of Articles 90 and 91 of the Staff Regulations, since the operative part of such a decision is not capable of altering the legal situation of that official (order in Case T-8/92 *Di Rocco* v *ESC* [1992] ECR II-2653, paragraph 27).

111 It follows from the case-law cited in the previous three paragraphs that the applicable pre-litigation procedure for obtaining compensation for damage resulting from a decision instituting disciplinary proceedings depends on the nature of the final decision taken by the administration.

112 Where the disciplinary proceedings instituted are closed by a decision adversely affecting the official, he may plead the illegality of the decision instituting those proceedings only in support of a challenge brought directly, within the time-limits for complaints and appeals laid down in Articles 90 and 91 of the Staff Regulations, against the decision adversely affecting him which was adopted at the end of the proceedings.

113 On the other hand, where the administration takes a decision closing without further action the disciplinary proceedings, since that decision does not adversely affect him, the applicant, in order to obtain compensation for the damage resulting from a decision instituting disciplinary proceedings, must first observe the two-stage pre-litigation procedure laid down by the provisions of Articles 90 and 91 of the Staff Regulations.

114 In this case, it is apparent from the documents in the case-file that the Commission, by decision of 26 October 2004, closed without further action the disciplinary proceedings brought against the applicant. However, it is common ground that that decision does not constitute an act adversely affecting him which may be challenged directly. In addition, the applicant complied with the two-stage pre-contentious procedure, as was noted in paragraph 89. Consequently, the applicant is entitled, in the present action, to seek compensation for the damage which he claims to have suffered as a result of the illegality of the decision instituting disciplinary proceedings.

The other irregularities alleged in support of the damages claim

115 The applicant seeks compensation for the damage suffered, resulting, first of all, from the irregularities committed by the Commission at the time of the internal audit carried out within Eurostat following the sending of the abovementioned questionnaires by Mr Tillack, secondly, from the occurrence of leaks of confidential information concerning him by the Commission's services and, finally, from the failure to assign specific tasks in keeping with his abilities following his reassignment. Since those lines of conduct contain nothing in the nature of a decision, the applicant is entitled to rely on them in an action for damages, since the pre-contentious procedure followed in regard to them was in order.

The plea of admissibility alleging failure to submit the damages claim within a reasonable time

116 It should be recalled that, according to settled case-law, officials or other staff seeking to obtain compensation from the Union for damage alleged to be attributable to the Union must submit a claim to that effect within a reasonable time after the point in time when they became aware of the situation they complain of, even though Article 90(1) of the Staff Regulations of Officials does not lay down any time-limit for the submission of a claim (judgment of 5 October 2004 in Case T-144/02 *Eagle and Others* v *Commission* [2004] ECR II-3381, paragraphs 65 and 66; order in Case F-87/07 *Marcuccio* v *Commission* [2008] ECR-SC I-A-1-351 and II-A-1-1915, paragraph 27, the subject of an appeal before the General Court of the European Union, Case T-16/09 P).

117 There is an obligation to act within a reasonable time in all cases where, in the absence of any statutory rule, the principles of legal certainty or protection of legitimate expectation preclude institutions of the Union and natural persons from acting without any time-limits, thereby threatening, inter alia, to undermine the stability of legal positions already acquired. In actions for damages liable to result in a financial burden on the Union, the obligation to submit a claim for compensation within a reasonable time derives also from a need to safeguard the public coffers which is specifically given expression, as regards actions for non-contractual liability, in the five-year limitation period laid down by Article 46 of the Statute of the Court (*Sanders and Others* v *Commission*, paragraph 59). The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties (*Eagle and Others* v *Commission*, paragraph 66).

118 For the calculation of that period, the Community courts have held that it is for the official to submit a financial claim to the institution within a reasonable time after the point in time when he became aware of the situation he complains of (*Eagle and Others* v *Commission*, paragraphs 65 and 66, and Case F-125/05 *Tsarnavas* v *Commission* [2007] ECR-SC I-A-1-43 and II-A-1-231, paragraph 69).

119 As was stated in paragraph 89, the applicant submitted a request under the provisions of Article 90(1) of the Staff Regulations on 1 February 2007 and a complaint under the provisions of Article 90(2) of the Staff Regulations on 28 August 2007. The Commission's earliest non-decision-making conduct relied on by the applicant in his action took place in November 2002 and was communicated to the official concerned in December 2002. The other non-decision-making conduct complained of by the applicant was, for its part, communicated during 2003 and 2004. Consequently, in the circumstances of this case, in view of the importance and complexity of the case, which has been proceeding for several years, the damages claim made within a period of less than five years must, as a whole, be regarded has having been submitted within a reasonable time.

120 It follows that the plea of inadmissibility raised by the Commission cannot be upheld.

The other pleas of inadmissibility raised with regard to the decision initiating disciplinary proceedings

121 The Commission contends that the applicant is not entitled to contest the legality of the decision of 9 July 2003 instituting disciplinary proceedings, since it is a preparatory act which is not actionable. In addition, he does not have a legal interest in contesting the legality of that act since those proceedings were closed without any further action, by decision of 26 October 2004.

122 The first plea of inadmissibility raised is irrelevant since the applicant has brought, not an action for annulment against the decision of 9 July 2003, but an action seeking inter alia compensation for the damage resulting from that act. Nevertheless, in this case, as was stated in paragraphs 107 to 113, the applicant is entitled to rely on the illegality of such a preparatory act in an action for damages.

123 The second plea of inadmissibility raised against the decision instituting disciplinary proceedings cannot succeed either. The closure of the disciplinary proceedings in October 2004 did not have the effect of eliminating retroactively the damage to reputation which the applicant may have suffered inter alia throughout the period during which those proceedings remained open. Accordingly, the applicant has a legal interest in relying in the present action on the illegality of the decision of 9 July 2003 instituting disciplinary proceedings.

The incurring of the non-contractual liability of the Commission

1. *The conditions on which the Commission incurs non-contractual liability*

Arguments of the parties

124 The applicant submits that, in order for the Commission to be rendered non-contractually liable, the illegality of the institution's conduct, the genuineness of the damage suffered and the existence of a causal link between the conduct complained of and the damage alleged must be demonstrated.

125 As regards the first condition, the applicant recalls that the case-law requires there to have been a sufficiently serious breach of a rule of law intended to confer rights on individuals. As regards the requirement that the breach be sufficiently serious, the decisive test is whether the institution concerned manifestly and gravely disregarded the limits on its discretion. Where that institution has only considerably reduced, or even no, discretion, the mere infringement of the law in force may be sufficient to establish the existence of a sufficiently serious breach.

126 The Commission itself also submits that, in order for it to be rendered non-contractually liable, the applicant must prove the illegality of the conduct alleged against the institution, the genuineness of the damage and the existence of a causal link between that conduct and the damage alleged.

127 It points out, as regards the first of the three conditions serving to determine whether an action for damages is well founded, that the case-law requires there to have been a sufficiently serious breach of a rule of law intended to confer rights on individuals. As to the requirement that the breach be sufficiently serious, the decisive test, in particular where the institution concerned has wide discretion, is whether that institution manifestly and gravely disregarded the limits on its discretion. It is only where that institution has only considerably reduced, or even no, discretion, that the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach (Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 43 and 44; Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 54; and Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2001] ECR II-1975, paragraphs 134 to 136).

Findings of the Tribunal

128 According to settled case-law, an action for damages brought under Article 236 EC (now, after amendment, Article 270 TFEU) may be declared well founded only if a number of conditions are satisfied: the illegality of the allegedly wrongful act committed by the institutions, actual harm suffered, and the existence of a causal link between the act alleged and the damage alleged to have been suffered (Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 42, and Case C-348/06 P *Commission* v *Girardot* [2008] ECR I-833, paragraph 52). Those three conditions are cumulative. The absence of any one of them is sufficient for an action for damages to be dismissed.

129 The Commission points out that, as regards the first of those three conditions, the case-law requires there to have been a sufficiently serious breach of a rule of law intended to confer rights on individuals.

130 It should however be noted that the Court has followed that line of reasoning only in cases in which a finding that the institutions were non-contractually liable was sought under the provisions of Article 288 EC (now, after amendment, Article 340 TFEU), and not under those of Article 236 EC (now, after amendment, Article 270 TFEU).

131 It is settled case-law that, where it is put in issue under the provisions of Article 236 EC (now, after amendment, Article 270 TFEU), the non-contractual liability of the institutions may be incurred on the ground solely of the illegality of an act adversely affecting an official (or of non-decision-making conduct), without there being any need to consider whether it is a sufficiently serious breach of a rule of law intended to confer rights on individuals (see, inter alia, *Commission* v *Girardot*, paragraphs 52 and 53).

132 That case-law does not preclude the Tribunal from determining the extent of the administration's discretion in the field concerned; on the contrary, that criterion is an essential parameter in the examination of the legality of the decision or conduct at issue, since the judicial review carried out and its intensity depend on the degree of latitude available to the administration on the basis of the relevant law and of the requirements of proper functioning to which that administration is subject.

133 Consequently, the case-law recalled in paragraph 127, to which the Commission refers in its written pleadings, does not apply to cases brought under the provisions of Article 236 EC (now, after amendment, Article 270 TFEU). It follows that, in this case, it is for the Tribunal, in examining whether the first condition for the administration to be held non-contractually liable is satisfied, to determine only whether, on the basis of the degree of latitude available to the administration in the case brought before the Tribunal, the conduct alleged against the Commission constitutes wrongful

maladministration (see inter alia, to that effect, Case T-339/03 *Clotuche* v *Commission* [2007] ECR-SC I-A-2-29 and II-A-2-179, paragraphs 219 and 220, and Case T-250/04 *Combescot* v *Commission* [2007] ECR-SC I-A-2-191 and II-A-2-1251, paragraph 86).

134 In any event, even if the Commission's reasoning set out in paragraph 127 were to be upheld, it must be pointed out that each of the illegalities alleged by the applicant, if well founded, would constitute a sufficiently serious breach of one of the following rules of law intended to confer rights on an official:

— Article 24 of the Staff Regulations;

— the decision of 19 February 2002;

— Regulation No 45/2001;

— the principle of the presumption of innocence;

— the principle of sound administration, in particular the right to be treated impartially.

2. *The illegality of the Commission's conduct*

The Commission's failures to intervene spontaneously and wrongful delays as regards its obligation to provide assistance

Arguments of the parties

135 The applicant submits that, under the provisions of Article 24 of the Staff Regulations, the Commission is obliged to assist officials who are the subject of attacks by the press. That obligation requires the administration to intervene within a short time in order to prevent the damage suffered by the official from becoming irreparable. However, in this case, the Commission acted belatedly and thereby committed a fault such as to render it liable. In the first place, the Commission should have acted on its own initiative, from the publication of press articles questioning the integrity and professional reputation of its official, without waiting for the matter to be officially brought before it by him. In the second place, the Commission should have intervened with particular rapidity, since the requests for assistance submitted to it were prompted by the publication of defamatory press articles. However, the Commission intervened insufficiently and belatedly when the first request for assistance was made. Moreover, the reply to that request for assistance was not received by the applicant until several years after it had been made. As regards the other two requests for assistance submitted, the Commission rejected them more than three months after it had received them. In the third place, the press release published on 27 October 2004, stating laconically that the disciplinary proceedings initiated against the applicant had been closed, was issued belatedly and was not sufficient to repair the damage to the integrity and professional reputation of the official concerned.

136 The Commission contends that it replied in good time and appropriately to the requests for assistance submitted by the applicant under Article 24 of the Staff Regulations. In the first place, it replied spontaneously and promptly to Mr Tillack's questionnaires accusing the applicant of favouritism in the awarding of contracts at Eurostat. In the second place, it reacted immediately, following the publication on the Internet site of *Stern* magazine and in the *Le Quotidien* newspaper of press articles reproducing the allegations of favouritism on the part of the applicant and of his 'disciplinary transfer'. Moreover, it obtained a right of reply in the latter newspaper and was thus able to deny publicly the allegations in question. It further points out that it is not obliged, under the case-law, to act in response to the publication of any press article containing defamatory allegations against one of its officials or other staff, but merely to provide him with appropriate assistance. In this case, the

authorisation given to the applicant, in the event of similar attacks, to use the position which the Commission had set out in the right of reply published in the *Le Quotidien* newspaper, constitutes sufficient assistance. In the third place, the Commission submits that it replied appropriately to the requests for assistance submitted by the applicant in July 2003 by rejecting them. A press release distinguishing the outcome in the applicant's case from that in the cases of the other two Eurostat directors who were the subject of investigations by OLAF would have risked stigmatising even more the two officials in question and harming the image of the Commission. In the fourth place, the Commission published on its own initiative a press release on *Midday Express* on 27 October 2004, in which it made public the closure of the disciplinary proceedings instituted against the applicant.

137 At the hearing, the Commission further pointed out that it could not be regarded as having intervened belatedly since it replied to the requests for assistance within the period of four months laid down by the provisions of Article 90(1) of the Staff Regulations.

Findings of the Tribunal

138 As was stated above in paragraph 98 of this judgment, the applicant is not entitled to criticise the content of the decisions taken by the Commission in response to his requests for assistance. Consequently, only the applicant's allegations relating to the administration's non-decision-making conduct, in particular the delay with which it is alleged to have ruled on those requests, is examined here.

139 It is settled case-law that the administration enjoys a wide discretion regarding the choice of the ways and means of implementing Article 24 of the Staff Regulations. However, when faced with serious and unfounded accusations concerning the professional integrity of an official in carrying out his duties, it must refute those accusations and do everything possible to restore the good name of the official concerned (see inter alia *Caronna* v *Commission*, paragraphs 64, 65 and 92 and the case-law cited). In particular, the administration must intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case (Case T-5/92 *Tallarico* v *Parliament* [1993] ECR II-477, paragraph 31; Case T-294/94 *Dimitriadis* v *Court of Auditors* [1996] ECR-SC I-A-51 and II-151, paragraphs 39 and 45; and Case T-183/95 *Carraro* v *Commission* [1998] ECR-SC I-A-123 and II-329, paragraph 33).

140 The requests for assistance made by an official on account of a defamatory statement or an attack on his integrity and professional reputation, made through the press, necessitate, in principle, a particularly rapid response on the part of the administration, in order to produce a practical effect and to enable the official concerned to avoid, where appropriate, the risks of being time-barred associated with the existence of short time-limits for bringing proceedings in relation to violations of the press laws before some national courts.

141 In addition, the Community courts have held that a delay in acting on the part of the administration, in the absence of special circumstances, constitutes wrongful maladministration such as to render it liable (with regard to delay in drawing up a staff report, see inter alia Joined Cases 173/82, 157/83 and 186/84 *Castille* v *Commission* [1986] ECR 497 and *Latham* v *Commission*, paragraphs 49 and 50; with regard to delay in rectifying wrong information, see *Heinemann* v *Commission*, paragraph 12).

142 It is in the light of those considerations that the Commission's conduct must be assessed.

143 In general, the Commission maintained at the hearing that it had not acted belatedly, since it had ruled on the applicant's various requests for assistance and notified its decisions within the period of four months laid down by Article 90(1) of the Staff Regulations.

144 In that regard, the Tribunal holds that the provisions of Article 90(1) of the Staff Regulations are exclusively intended, in the absence of a reply from the administration to a request, to create, on the expiry of a period of four months, an implied decision rejecting it, which is capable of being contested before the courts after observing the pre-contentious procedure prescribed by the provisions of Article 90(2) of the Staff Regulations (see inter alia *Ronchi* v *Commission*, paragraph 31). On the other hand, with regard to the putting in issue of the administration's non-contractual liability for delay, those provisions cannot be interpreted as meaning that the administration has, in general, a period of four months in which to act, regardless of the circumstances of the case. Such an interpretation would be contrary to the case-law that the administration must, in the absence of a mandatory time-limit prescribed by legislation, rule within a reasonable time which must be assessed on a case-by-case basis in the light of the particular circumstances of the case (see inter alia, by analogy, Case T-307/01 *François* v *Commission* [2004] ECR II-1669, paragraphs 48 and 49, and Case F-1/06 *Fernández Ortiz* v *Commission* [2007] ECR-SC I-A-1-53 and II-A-1-293, paragraphs 41, 42 and 44).

145 Consequently, the fact that the Commission replied to the requests for assistance within four months does not in itself prove that it acted with the required promptness and diligence. It is therefore necessary to ascertain, in each specific instance alleged, whether the administration intervened within a reasonable time.

– The Commission's failure to intervene spontaneously

146 As was recalled in paragraph 101 of this judgment, the administration is not, in principle, required to provide specific assistance to one of its officials on its own initiative, save in the case of exceptional circumstances (*Sommerlatte* v *Commission*, paragraphs 21 and 22; *Belgium and Commission* v *Genette*, paragraphs 101 and 102; order in *Frankin and Others* v *Commission*, paragraph 24). In this case, in the absence of any such circumstances, be they established or even alleged, the Commission did not commit a fault by not acting spontaneously following the implication of the applicant by various European newspapers.

147 Nevertheless, it should be noted that, contrary to what is maintained by the applicant, the Commission did, in response to the sending of Mr Tillack's questions calling in question his professional reputation, intervene spontaneously and rapidly, even before the applicant's first request for assistance, submitted on 11 November 2002, to deny the allegations of favouritism made. On 28 and 29 October 2002, Eurostat organised meetings for the purpose of preparing the Commission's replies to Mr Tillack's questions, replies which were communicated on 11 November 2002.

– The Commission's reaction following the request for assistance of 11 November 2002

148 The applicant submitted a request for assistance after Mr Tillack sent to the Commission, on 25 October and 7 November 2002, some questionnaires suggesting inter alia that the applicant had favoured Greek companies in the awarding of contracts by Eurostat. On 13 November 2002, Mr Tillack published a press article on the internet site of *Stern* magazine, in which he reproduced the majority of the abovementioned allegations of favouritism and directly called in question the applicant's integrity and professional reputation. On 14 and 20 November 2002, press articles containing allegations of the same nature and adding that the applicant had been 'relieved of his duties' were published in *Le Quotidien* and *L'Investigateur* respectively.

149 The Commission replied to Mr Tillack's questions on 11 November 2002. In addition, by letter of 15 November 2002, it requested a right of reply from the *Le Quotidien* newspaper, which granted that request on 18 November 2002. In the light of the period of a few days within which the Commission intervened, the Tribunal finds that the Commission acted with due promptness in this case.

150 Although it appears regrettable that the Commission did not take all the steps required by the situation, in particular by not reacting to the articles published on the Internet site of *Stern* magazine and in the *L'Investigateur* newspaper, that failure to react, which must be regarded as an implied decision refusing assistance (see, to that effect, *Ronchi* v *Commission*, paragraphs 25 to 31), can no longer, as was recalled in paragraph [83], be contested in the present action for damages, since it has not been the subject of an action for annulment within the time-limits laid down by Articles 90 and 91 of the Staff Regulations.

151 On the other hand, by informing the applicant only by letter of 20 December 2002 of the action which it had seen fit to take in response to his request for assistance, the administration did not act with the necessary diligence. In the circumstances of this case, by taking more than a month to reply to the request for assistance made, the Commission informed the applicant belatedly that it did not intend to go beyond the measures which it had already adopted, whereas that position was an important element in enabling the applicant to take action with full knowledge of the facts, where appropriate, against the abovementioned press organs.

152 That wrongful delay is such as to render the administration liable.

– The Commission's reaction following the requests for assistance of 15 and 21 July 2003

153 The applicant submitted requests for assistance on 15 and 21 July 2003 following, on the one hand, the publication in the *Financial Times* and *Le Monde* on 10 and 11 July 2003 of press articles revealing the existence of a serious financial scandal at Eurostat and, on the other, the initiation, in that context, of disciplinary proceedings against himself as well as against another director and the Director-General of Eurostat.

154 The Commission did not adopt a position on those requests for assistance until 1 October 2003. Having regard to the nature of the requests for assistance submitted, relating to a risk of defamation and damage to the honour and professional reputation of an official, the Tribunal holds that, by taking more than two months to rule on those requests, the administration did not act with the promptness required in the matter (see paragraph 140 of this judgment) and committed a fault such as to render it liable.

– The press release of 27 October 2004

155 It is common ground that the Commission published a press release announcing the closure of the disciplinary proceedings initiated against the applicant, on the day following the adoption of that decision. Thus, in the circumstances of this case, that publicity measure aimed at restoring the applicant's honour was taken without delay. While it is regrettable that the Commission decided not to take more substantial publicity measures, that insufficient decision providing assistance cannot be contested in the present action, as was explained in paragraphs 93 and 98 of this judgment.

156 It follows from the foregoing that, by belatedly informing the applicant of the action which it had taken on his first request for assistance and by not replying in good time to his requests for assistance made in July 2003, the Commission committed faults such as to render it liable (see, by analogy, *Caronna* v *Commission*, paragraph 99, and *Ronchi* v *Commission*, paragraph 52).

The leaks of confidential information

Arguments of the parties

157 The applicant claims that leaks of confidential information concerning him occurred on two occasions. A first leak, concerning the draft decision reassigning him to the Director-General of Eurostat which was envisaged against him, took place in November 2002. Press articles thus referred to his assignment as a principal adviser to the Director-General of Eurostat, whereas he was in actual fact appointed a principal adviser in the Personnel and Administration DG. A second leak concerning the decision to initiate disciplinary proceedings took place in July 2003. International press articles wrongly suggested that the applicant was involved in the financial scandal surrounding Planistat. Those leaks of information could come only from Commission departments. Moreover, in the light of the nature of the personal data disclosed, those leaks infringe Article 2(b) of Regulation No 45/2001.

158 The Commission contends, in the first place, that the applicant has not shown that the information contained in the press articles which he produced originated in leaks from Commission departments. Those articles do not at any time mention their sources. In the second place, it submits that, in any event, the alleged leaks do not constitute a serious breach of Community law such as to render the administration liable. In the third place, with regard to the alleged first leak of information, the Commission submits that the information disclosed did not damage the applicant's reputation.

Findings of the Tribunal

159 The applicant confines himself to relying, in his written pleadings and at the hearing, on the unlawful leaks of personal data by Commission departments which are alleged to have taken place on two occasions, in November 2002 and July 2003. On the other hand, the applicant does not rely, in support of his damages claims, on the disclosure of personal information concerning him which may have taken place at the time of the publication of press releases issued by the Commission.

160 As a preliminary point, it should be recalled that it has been held that the unlawful leaking of personal information constitutes processing of personal data contrary to the provisions of Regulation No 45/2001 (see, to that effect, judgment of 12 September 2007 in Case T-259/03 *Nikolaou* v *Commission*, not published in the ECR, paragraph 208).

161 In addition, the Tribunal recalls that it is for the applicant, in an action for damages, to establish that the conditions on which the defendant institution may incur non-contractual liability are satisfied. Thus, in the present case, the applicant must, in principle, establish that the information concerning him published in the press resulted from leaks of information attributable to the administration (see, to that effect, *Nikolaou* v *Commission*, paragraph 141, and *Franchet and Byk* v *Commission*, paragraph 182). The strict application of that rule may be mitigated, however, where a harmful event may have been the result of a number of different causes and where the Community institution has adduced no evidence enabling it to be established to which of those causes the event was imputable, although it was best placed to provide evidence in that respect, so that the uncertainty which remains must be construed against it (*Franchet and Byk* v *Commission*, paragraph 183).

162 It is in the light of those principles that the existence of the leaks alleged by the applicant must be examined.

163 In the first place, the applicant maintains that a leak of personal data, namely, the unauthorised disclosure of the draft decision, in the meantime abandoned, to reassign him as special adviser to the Director-General of Eurostat, occurred, since a press article in the Luxembourg newspaper *Le Quotidien* published that information on 14 November 2002.

164 However, it should be noted that, on 13 November 2002, the Commission published a press release which mentioned the reassignment of a number of directors of Eurostat. That press release officially stated, albeit incorrectly, that the applicant had been reassigned within Eurostat. In those circumstances, having regard to the content of that official press release, it does not appear that the information published on 14 November 2002 in the Luxembourg newspaper *Le Quotidien* originated in a leak of confidential data within the Commission departments.

165 In any event, even if such a leak occurred, the applicant has not established the causal link between that leak and the damage he claims to have suffered. The alleged damage to reputation is claimed to result, not from the leak in itself, but from the concomitance of the reassignment decision which was taken, the official publicity given to it and the publication of a press article by Mr Tillack implicating the applicant specifically by name.

166 In the second place, the applicant claims that the Commission departments were at the origin of further unlawful leaks of personal data in July 2003, since various press articles, in particular an article published on 10 July 2003 in *The Financial Times*, stated that the Commission had instituted disciplinary proceedings against the applicant and that he was involved in the financial scandal in connection with Planistat.

167 The Commission published a press release on 9 July 2003 in which it stated inter alia that it had instituted disciplinary proceedings against three officials, that it had suspended for the duration of the ongoing investigations the contracts concluded between Eurostat and Planistat, an economics and statistics consultancy firm, and that two reports produced by its services had already found serious breaches of the financial regulations within Eurostat.

168 It is nevertheless apparent, on a reading of that press release, that it mentions neither the applicant's name nor any other information enabling him to be identified as being one of the officials who were the subject of disciplinary proceedings. In those circumstances, the fact that the applicant's name is mentioned in the *Financial Times* article can have resulted only from an unauthorised leak of information. Furthermore, that leak can have come only from the Commission departments, since no other administration had dealt with that case and the applicant had no interest in disclosing that kind of information to the press.

169 Admittedly, the Commission contends that the applicant has not formally established that its departments were behind the unlawful disclosure of the applicant's name. However, in accordance with the principles recalled in the case-law cited in paragraph 161 of this judgment, in that type of situation where there is uncertainty, the burden of proof is not on the applicant, but on the defendant institution.

170 Finally, although the Commission maintains that, after reading the release of 9 July 2003, journalists could, unaided, have deduced the applicant's name by doing simple internet searches, those imprecise contentions do not make it possible to regard the Commission as not having been at the origin of the unlawful disclosure of the applicant's name. It should be noted that the *Financial Times* article was published immediately after the press release of 9 July 2003 and is very affirmative regarding the institution of disciplinary proceedings against the applicant. Moreover, it is not apparent from the documents in the case-file that the *Financial Times* was one of the press organs which, almost a year earlier, had relayed the suspicions of favouritism towards Greek undertakings hanging over the applicant.

171 Thus, by unlawfully disclosing the applicant's name as being one of the officials who were the subject of disciplinary proceedings, the Commission infringed the provisions of Regulation No 45/2001. That fault is such as to render it liable.

The Eurostat Internal Audit Service report

Arguments of the parties

172 The applicant claims that the Eurostat Internal Audit Service committed a number of faults when producing its report. In the first place, that audit was carried out in disregard of the auditing rules. The Director-General of Eurostat did not, in particular, instruct the Internal Audit Service to produce a report in response to the questions raised by Mr Tillack.

173 In the second place, the report is vitiated by partiality and failed to have regard to the principle of the presumption of innocence. Thus, Ms D., the author of that report, was prejudiced against the applicant and intended, from the start of the internal audit, to draw up a report unfavourable to him. That lack of impartiality is also typified by Ms D.'s reaction to the applicant's observations on the draft audit report.

174 In the third place, the Commission disregarded the principle of the protection of legitimate expectations and sound administration by not granting the applicant an interview before drawing up the final version of the report and by not taking account of the written observations which he had made in an email of 24 June 2003.

175 The Commission notes, as a preliminary point, that the Eurostat Internal Audit Service report in issue is an audit report and not a report following upon an administrative inquiry. Consequently, the administration was not bound to observe the rules governing administrative inquiries, such as the Commission decision of 19 February 2002 on the conduct of administrative inquiries and disciplinary proceedings.

176 Next, the Commission contends that the Eurostat Internal Audit Service report was produced in accordance with the rules in force.

177 In the first place, the internal audit was expressly commissioned by the Director-General of Eurostat, as is moreover demonstrated by the document 'Chronologie des actions/événements de l'audit sur l'attribution des marches dans le cadre du programme Supcom 1995-1998' (Chronology of actions/events concerning the audit on the awarding of contracts under the Supcom programme 1995-1998), which states that 'Mr Franchet asked the internal audit to look into certain matters'.

178 In the second place, the rights of the defence were observed, since the applicant obtained a copy of the draft internal audit report in accordance with the provisions of the Audit Charter for Eurostat's Internal Audit Unit of 17 June 2002 ('the Audit Charter') and was given the opportunity to make observations against it. Finally, the Internal Audit Service analysed the comments submitted by the applicant. The fact that the applicant was not heard before the internal audit report was finalised does not prove that the Commission disregarded the rights of the defence, since no provision of any law or regulation and no fundamental principle of Community law imposes such an obligation.

179 In the third place, the internal audit report is not partial and does not disregard the principle of the presumption of innocence. A reading of that report shows that it was drawn up completely impartially and that its purpose was not to establish whether the applicant had committed unlawful acts but simply to assess in general terms the risks represented by the accusations levelled against Eurostat and one of its officials.

Findings of the Tribunal

180 First, the Tribunal takes the view that, having regard, on the one hand, to the express wording used in the draft report and in the report of Eurostat's Internal Audit Service and, on the other, to the procedure followed, the administration did, as it maintains, undertake an internal audit and not an administrative inquiry. IDOC did not in fact participate at all in the carrying out of that audit. It follows that the applicant cannot properly rely on infringement of the provisions of the decision of 19 February 2002 in order to render the Commission liable.

181 Secondly, the applicant claims that the Eurostat Internal Audit Service report is unlawful since the Director-General of Eurostat did not instruct the Internal Audit Service in writing to carry out such an audit.

182 However, no provision of European Union law, not even the Audit Charter, requires the Director-General of Eurostat to request in writing the carrying out of an audit by the Internal Audit Service. Moreover, it is apparent from the documents in the case-file, in particular the document 'Chronologie des actions/événements de l'audit sur l'attribution des marches dans le cadre du programme Supcom 1995-1998', that the Director-General of Eurostat was indeed at the origin of the launch of the audit at issue. In his written evidence annexed to the reply, Mr Franchet, the former Director-General of Eurostat, moreover asserts remembering 'having asked Ms D. to look at whether the questions raised by Mr Tillack had a serious basis'. Admittedly, the Commission was unable to explain at the hearing under which decision the audit, put aside for several months, had been re-launched on 21 May 2003 by the communication to the applicant of the draft audit report. Nevertheless, the priority task of the new Director-General, appointed precisely on 21 May 2003, was to fully investigate and explain the dysfunctions existing within Eurostat. Thus, in the circumstances of this case, it does not appear that the re-launch of the audit took place unlawfully on the exclusive initiative of Ms D. The complaint must accordingly be rejected.

183 Thirdly, the applicant claims that the principle of the presumption of innocence was disregarded during the process of drawing up the Eurostat Internal Audit Service report.

184 It should be recalled that the presumption of innocence resulting in particular from Article 6(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 ('the ECHR') is one of the fundamental rights which, according to the case-law of the Court of Justice and Article 6(2) EU, are recognised in the legal order of the Union (see, inter alia, Case C-199/92 P *Hüls* v *Commission* [1999] ECR I-4287, paragraphs 149 and 150; Case T-193/04 *Tillack* v *Commission* [2006] ECR II-3995, paragraph 121; and *Franchet and Byk* v *Commission*, paragraph 209).

185 According to the case-law of the European Court of Human Rights, Article 6(2) of the ECHR governs criminal proceedings in their entirety, irrespective of the outcome of the prosecution, and not solely the examination of the merits of the charge. That provision guarantees that no one will be described or treated as guilty of an offence before his guilt has been established by a court. Accordingly, it requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged. The presumption of innocence is breached by statements or decisions which reflect the sentiment that the person is guilty, which encourage the public to believe in his guilt or which prejudge the assessment of the facts by the competent court (see, inter alia, Eur Court HR, *Allenet de Ribemont* v *France* judgment of 10 February 1995, Series A no. 308, §§ 38 to 41; *Daktaras* v *Lithuania* judgment of 10 October 2000, *Reports of Judgments and Decisions* 2000-X, § 44; and *Pandy* v *Belgium*, no. 13583/02, judgment of 21 September 2006, §§ 41 and 42).

186 In the present case, however, it is established that no criminal proceedings were brought against the applicant.

187 Moreover, the courts of the European Union have consistently held that disregard of Article 6 of the ECHR cannot properly be relied on in administrative or disciplinary proceedings, since the institution conducting such proceedings cannot be considered a 'tribunal' or 'court' within the meaning of Article 6 of the ECHR (see, inter alia, order in Case C-252/97 P *N* v *Commission* [1998] ECR I-4871, paragraph 52; Case T-26/89 *de Compte* v *Parliament* [1991] ECR II-781, paragraph 94; Case T-273/94 *N* v *Commission* [1997] ECR-SC I-A-97 and II-289, paragraph 95; Case F-40/05 *Andreasen* v *Commission* [2007] ECR-SC I-A-1-337 and II-A-1-1859, paragraphs 125 to 127, the subject of an appeal before the General Court of the European Union , Case T-17/08 P).

188 In those circumstances, the plea alleging disregard, during the internal audit procedure, of the principle of the presumption of innocence, as it results inter alia from the provisions of Article 6(2) of the ECHR, is inoperative, since the Internal Audit Service of Eurostat is not a 'tribunal' or 'court' within the meaning of Article 6 of the ECHR.

189 None the less, the principle of impartiality requires an administrative authority, when carrying out an audit, not to be prejudiced in relation to the matter being audited. The authority concerned may depart from that attitude only after the dysfunctions observed have been established (see, by analogy, with regard to the institution of disciplinary proceedings, *Pessoa e Costa* v *Commission*, paragraph 56).

190 In the present case, the applicant claims that Ms D. was, from the start of the audit, prejudiced regarding the content of the findings of the Eurostat Internal Audit Service report.

191 In the first place, the Tribunal considers that the fact that only the questions of the German journalist Mr Tillack were used to define the scope of the internal audit or that the internal audit report partially called in question the replies given by the Commission to Mr Tillack's questions is not sufficient to prove a lack of impartiality on the part of Eurostat's Internal Audit Service vis-à-vis the applicant. On the one hand, as was pointed out in paragraph 182 of this judgment, it was at the request of the Director-General, and not on the initiative of Ms D., that the audit was limited to the questions raised by Mr Tillack. On the other hand, since the replies given by the Commission to Mr Tillack's questions were drawn up on a given date, the information contained in those replies could be subject to subsequent variation or qualification following further investigations carried out by the Internal Audit Service.

192 In the second place, it is true that Ms D. did, on the one hand, inform the new Director-General that she was of the opinion that the applicant's comments on the draft audit report were inappropriate and, on the other, block the draft reply to the applicant's comments, prepared by the audit team. However, those lines of conduct, while they reveal a subjective value judgement, are not proof of partiality on the part of Ms D., who remained within the limits of her discretion as head of the Internal Audit Service. Consequently, this complaint also must be rejected.

193 As regards the complaint alleging breach of the principle of the protection of legitimate expectations, it must be recalled that that principle is one of the fundamental principles of the Union (Case 112/80 *Dürbeck* [1981] ECR 1095, paragraph 48). Three conditions must be satisfied in order to claim entitlement to the protection of legitimate expectations. Firstly, precise, unconditional and consistent assurances originating from authorised and reliable sources must have been given to the person concerned by the Union authorities (Joined Cases T-66/96 and T-221/97 *Mellett* v *Court of Justice* [1998] ECR I-A-449 and II-1305, paragraphs 106 and 107). Secondly, those assurances must be such as to give rise to a legitimate expectation on the part of the person to whom they are addressed (Case T-3/92 *Latham* v *Commission* [1994] ECR-SC I-A-23 and II-83, paragraph 58; Case T-235/94 *Galtieri* v *Parliament* [1996] ECR-SC I-A-43 and II-129, paragraphs 63 and 64; and Case T-56/96 *Maccaferri* v *Commission* [1998] ECR-SC I-A-57 and II-133, paragraph 54). Thirdly, the assurances given must comply with the applicable rules (Case 162/84 *Vlachou* v *Court of Auditors* [1986] ECR 481, paragraph 6, and Case T-123/89 *Chomel* v *Commission* [1990] ECR II-131, paragraph 28).

194 The principle of sound administration, for its part, requires the appointing authority, when taking a decision concerning the situation of an official, to take into consideration all the factors which may affect its decision, and when so doing it should take account not only of the interests of the service but also of those of the official concerned (see, to that effect, Case T-11/03 *Afari* v *ECB* [2004] ECR-SC I-A-65 and II-267, paragraph 42, and Case F-28/06 *Sequeira Wandschneider* v *Commission* [2007] ECR-SC I-A-1-431 and II-A-1-2443, paragraph 150).

195 In this case, no provision or principle of European Union law requires the administration to hear an official before finalising an internal audit report concerning him. Point 4.2.4 of the audit charter merely obliges the Internal Audit Service to allow the person whose activity is the subject of the audit to put forward his comments on the draft report. It is clear from Ms D.'s letter of 12 June 2003 and from the applicant's observations of 24 June 2003 that that obligation was satisfied. Moreover, the applicant does not show that the administration gave him precise, unconditional and consistent assurances concerning the hearing of his views prior to the finalisation of the internal audit report. Thus, since one of the conditions laid down for a person to be able to rely on the principle of the protection of legitimate expectations is not satisfied, the plea alleging disregard of that principle cannot, in any event, be upheld.

196 Finally, the fact that the applicant did not receive a formal interview before the Internal Audit Service report was finalised is not such as to show disregard of the principle of sound administration. The administration was in a position to take account of the interests of the applicant, since it is common ground that the applicant was given the opportunity to put forward his comments on the draft report.

The decision instituting disciplinary proceedings

Arguments of the applicant

197 The applicant submits, in the first place, that the procedure followed by the Commission for the purpose of instituting disciplinary proceedings against him is unlawful. In order to institute those proceedings, the Commission took as its basis, not an administrative inquiry carried out by IDOC in accordance with the provisions of the decision of 19 February 2002, but only a report by Eurostat's Internal Audit Service and an interim report by the Commission's Internal Audit Service. In addition, the procedural safeguards laid down by the decision of 19 February 2002, such as the right to be heard before the final report is drawn up, were not observed. Moreover, the administration infringed the principle of respect for the rights of the defence by not hearing the applicant before instituting disciplinary proceedings against him.

198 He claims, in the second place, that the Commission made a manifest error of assessment and disregarded the principle of sound administration by deciding to institute disciplinary proceedings against him. Firstly, the report by Eurostat's Internal Audit Service and the interim report by the Commission's Internal Audit Service, which the Commission took as its bases, could not lawfully have enabled it to institute such proceedings, since those reports were not produced carefully, do not substantiate what they assert, did not respect the rights of the defence and contain a large number of incorrect and imprecise points of information. Secondly, the manifest error of assessment also results from the precipitate nature of the decision instituting disciplinary proceedings, which was adopted within two days.

199 The Commission contends that the decision of 9 July 2003 instituting disciplinary proceedings was taken in strict compliance with the relevant Community rules.

200 It submits, in the first place, that no provision of any law or regulation requires it to have an administrative inquiry carried out before bringing disciplinary proceedings against one of its officials. It is free to institute disciplinary proceedings if it has sufficient evidence to establish a disciplinary

offence. It points out in this regard that it has a wide discretion in such matters, depending on the evidence available to it. In the present case, in the light of the content of the abovementioned reports, it was able, without making any manifest error of assessment, to decide to institute the disciplinary proceedings at issue.

201 The Commission maintains, in the second place, that it is not required by any provision of Community law to hear an official before a decision instituting disciplinary proceedings is taken against him. First of all, Article 87 of the Staff Regulations simply provides that the official is to be heard, whether before the appointing authority issues a written warning or a reprimand against him, or before the appointing authority decides to refer the case to the disciplinary board. Secondly, the fundamental principle of the right to be heard requires the Commission to hear an official only where a decision adversely affecting him may be taken against him. However, since the decision initiating disciplinary proceedings is not a decision adversely affecting an official, that fundamental principle does not apply in this case. Finally, since disciplinary proceedings are non-judicial proceedings, the stipulations of Article 6 of the ECHR cannot properly be invoked in order to maintain that the applicant had to be heard before the disciplinary proceedings were instituted.

202 The Commission contends, in the third place, that it did not make a manifest error of assessment by instituting the disciplinary proceedings in issue, since the Eurostat internal audit report and the interim report by the Commission's Internal Audit Service, neither of which disregarded the principle of the presumption of innocence, were properly entitled to suggest that the applicant had committed disciplinary offences.

Findings of the Tribunal

203 In the first place, the applicant submits that the decision instituting disciplinary proceedings is vitiated by a procedural defect, since the Commission did not first carry out an administrative inquiry and did not comply with the provisions of the decision of 19 February 2002 on administrative inquiries.

204 However, neither Article 87 of the Staff Regulations nor Annex IX to the Staff Regulations require an administrative inquiry to be carried out before the administration decides to bring disciplinary proceedings.

205 Admittedly, the decision of 19 February 2002, which establishes IDOC, lays down a number of rules to be observed where an administrative inquiry is carried out in order to prepare disciplinary proceedings. However, no provision of that decision expressly requires the administration to carry out an administrative inquiry before instituting disciplinary proceedings. On the contrary, it is clear from Article 5 of that decision that the opening of an administrative inquiry is merely an option available to the Director-General of Personnel and Administration in order that he can be better informed as to the conduct with which an official may be charged.

206 Moreover, since a decision initiating disciplinary proceedings does not constitute an act adversely affecting an official, the principle of respect for the rights of the defence cannot be effectively relied on by the applicant to challenge the fact that he was not heard before the appointing authority decided to institute disciplinary proceedings against him (*Pessoa e Costa* v *Commission*, paragraph 59, and *Franchet and Byk* v *Commission*, paragraph 367).

207 Consequently, the fact that no administrative inquiry was carried out before disciplinary proceedings were commenced does not constitute a procedural defect or disregard of the principle of respect for the rights of the defence capable of rendering the administration liable.

208 In the second place, with regard to the plea alleging manifest error of assessment, it should be recalled that the purpose of a decision instituting disciplinary proceedings against an official is to enable the appointing authority to examine the truth and gravity of the facts alleged against the official concerned and to hear him in that regard, in accordance with Article 87 of the Staff Regulations, in order to form an opinion, on the one hand, as to whether it is appropriate either to close the disciplinary proceedings without further action or to adopt a disciplinary measure against the official and, on the other hand, where appropriate, as to whether or not it is necessary, before adopting such a measure, to send him before the disciplinary board in accordance with the procedure laid down in Annex IX to the Staff Regulations (*Pessoa e Costa* v *Commission*, paragraph 36, and Case T-203/03 *Rasmussen* v *Commission* [2005] ECR-SC I-A-279 and II-1287, paragraph 41).

209 Such a decision necessarily entails a careful consideration on the part of the institution which must have regard to the serious and irrevocable consequences likely to arise from it. The institution has wide discretion in that respect and the judicial review is limited to ascertaining whether the facts taken into account by the administration in order to institute the proceedings are materially accurate and whether there has been any manifest error in the assessment of the facts held against the official concerned and any misuse of powers (see, by analogy in regard to disciplinary measures, inter alia Case T-203/98 *Tzikis* v *Commission* [2000] ECR-SC I-A-91 and II-393, paragraph 50, and *N* v *Commission*, paragraph 125; in regard to referral to OLAF, Case F-23/05 *Giraudy* v *Commission* [2007] ECR-SC I-A-1-121 and II-A-1-657, paragraphs 98 and 99).

210 However, in order to safeguard the rights of the official concerned, the appointing authority must have sufficiently precise and relevant evidence before instituting disciplinary proceedings (see, to that effect, *Franchet and Byk* v *Commission*, paragraph 352, and judgment of 13 January 2010 in Joined Cases F-124/05 and F-96/06 *A and G* v *Commission*, paragraph 366).

211 In the present case, it is apparent from a reading of the decision of 9 July 2003 that the Commission decided to commence disciplinary proceedings against the applicant on the grounds, firstly, that, at the time of the award of contracts, he had tacitly allowed or agreed to evaluation processes which were not transparent, since the evaluation methods set out in the reports of the Advisory Committee on Procurements and Contracts did not correspond to those actually applied in practice, and, secondly, with regard to a contract concluded with Planistat, that he had tacitly allowed or agreed to the participation of an expert close to himself, and not originally proposed by the tenderer, in the project for the preparation of a study unconnected with the contract, which gave rise to a 'passed for payment' stamp even before the interim report of the study had been finalised. In adopting that decision, the Commission took as its basis, firstly, an interim report by the Commission Internal Audit Service of 7 July 2003 and, secondly, the report by the Eurostat Internal Audit Service of 8 July 2003.

212 The question which arises in the first place is whether internal audit reports can constitute, as such, sufficiently precise and relevant evidence capable of being taken into account by the administration in order to institute disciplinary proceedings against an official.

213 Point 1.3 of the Audit Charter states inter alia:

'… the purpose of an Internal Audit is not to detect fraud.

Even if an audit of procedures is carried out conscientiously, it cannot ensure that fraud is detected.

An auditor may, however, identify certain risks that may point to fraud. If the controls implemented do not reduce the risks and dangers identified, it is the auditor's duty to pursue the investigation into whether there has been fraud and, if necessary, to inform OLAF, which is the only body authorised to carry out such investigations.'

214 The Commission , for its part, noted in its defence:

'The purpose of an internal audit [report] is to help directors-general and senior management to control risks in order to ensure the security of assets and to check compliance with the rules and the accuracy of information … Consequently, a Eurostat internal audit does not support a finding that certain fraudulent practices exist or prove that certain allegations of fraud are well founded. That can be the result only of administrative inquiries and disciplinary proceedings. The objective of the internal audit is therefore clearly different from that of an administrative inquiry or disciplinary proceedings, since such proceedings concern or may concern possible obligations of specific individuals …'

215 In this case, it is common ground that the Commission relied exclusively on internal audit reports in order to initiate the disciplinary proceedings against the applicant. However, in the light of their nature and of the abovementioned characteristics, such internal audit reports cannot, in principle, constitute sufficiently precise and relevant evidence to justify the institution of disciplinary proceedings.

216 Nevertheless, even though that is not its purpose, the possibility remains that an internal audit report may, in some circumstances, serve as a basis for the institution of disciplinary proceedings. It must therefore be ascertained, on a case-by-case basis, where the administration refers to such a report, whether the information contained in that type of document is sufficiently precise and relevant to justify the initiation of disciplinary proceedings.

217 In this instance, the interim report of the Commission's Internal Audit Service does not contain any findings concerning the first complaint against the applicant. With regard to the second complaint, that report merely states that Eurostat's Internal Audit Service has highlighted a potential nepotism situation. Thus, that report does not contain any analysis or specific research concerning the facts alleged against the applicant but merely, on the one hand, adopts as its own, in an indirect and cautious manner, the findings which Eurostat's Internal Audit Service was able to make in its draft report and, on the other, reiterates the speculation aroused in the media by the existence of alleged favouritism towards Greek undertakings in one the directorates of Eurostat.

218 Consequently, in the light of its content, that report was not capable of constituting precise and relevant information enabling the Commission to justify a decision instituting disciplinary proceedings.

219 With regard to the Eurostat Internal Audit Service report of 8 July 2003, it must first be observed that it was drawn up in reaction to the questions raised by a journalist concerning the conditions under which contracts were awarded by the directorate headed by the applicant and on the basis of an analysis limited to the facts connected with that journalist's allegations. Thus, the introduction to that report makes it clear that the analysis carried out 'did not entail a detailed and individualised audit of the contracts awarded under the Supcom programme but was limited to the aspects criticised by [the journalist], that is, the breakdown of the budget by nationality, the methods of evaluation of tenders or the transparency in the award process'. The critical analysis of the internal audit report produced by the applicant, the content of which is not disputed by the Commission ('the critical analysis'), states, in that regard, that 'the internal audit did not apply the International Standards on Auditing or the standards of the Audit Charter', that 'the findings of the internal audit are not at all consistent on numerous points developed in the report', and that the 'letter setting out [the applicant's] comments in response to the draft warranted consideration in the internal audit report of the specific factual points relating to the substance …'.

220 In the second place, the Eurostat Internal Audit Service report concludes, inter alia, with the following findings:

— the process for evaluating tenders submitted by undertakings for contracts connected with the Supcom programme was not always transparent and compliant with the internal rules;

— as regards contract No 665100003 with Planistat, irregularities were committed as regards, inter alia, the employment of an expert, the applicant's nephew.

221 Although the Eurostat Internal Audit Service report thus highlights a number of dysfunctions concerning the tender evaluation process at the time of the procedure for the award of Supcom contracts by the directorate headed by the applicant, it is not at all apparent from that report that the applicant was at the origin of the irregularities found or was associated with those irregularities or that the dysfunctions observed existed only in the applicant's directorate, as indeed was pointed out by the audit team in its draft reply to the applicant's observations.

222 Moreover, as regards the fact that the applicant's godson was employed under a contract between Eurostat and Planistat, the Internal Audit Service's report contains no indication at all that the applicant played any role whatsoever in that situation.

223 It must, furthermore, be pointed out that the applicant submitted specific observations in order to deny the facts which were alleged against him in the draft Eurostat Internal Audit Service report.

224 However, the material in the case-file shows that the Eurostat Internal Audit Service ultimately took no account of the applicant's observations. Although the service had initially envisaged replying in writing to the applicant's observations, that plan was eventually abandoned without any explanation being given by the administration for that change of position. Furthermore, it is apparent from a letter of 8 July 2003 from Ms D. to the new Director-General of Eurostat that the Eurostat Internal Audit Service report of 8 July 2003 is a word-for-word copy of the draft Internal Audit Service report and that, in the end, no in-depth work of analysis of the observations made by the applicant was carried out by the Eurostat Internal Audit Service. The abovementioned letter states:

'… on 27 May 2003 I forwarded to you the draft audit report on the award of contracts under the Supcom Programme 1995-1999 …

I am forwarding to you the final analysis referred to above in the subject field, based on the latest information which was available to me at the time of the analysis of the facts and which I have been unable to study in depth in view of my past and present workload.'

225 The critical analysis also observes that the comments made by the applicant on the draft audit report should, in the light of their content and precise nature, have been taken into account by the auditors and entailed amendment of the internal audit report. In addition, the OLAF report discloses that those auditors themselves acknowledged during the OLAF investigation that the audit report was '*ex parte*'.

226 In those circumstances, the Eurostat Internal Audit Service report, produced on partial and incomplete bases, did not constitute a sufficiently relevant and precise source of information to allow the administration to institute disciplinary proceedings.

227 What is more, it is to be noted that the audit team itself acknowledged in its draft reply to the applicant's observations that, in the light of its content, its audit report did not constitute a basis for proceeding against the applicant personally. In reply to one observation by the applicant, which stated

that 'even if certain statistics [were] true, … they [could] not constitute proof of any offence on my part', the auditors proposed to reply: 'You are right and that is why there is absolutely no mention of the "breach of a rule"'.

228 Moreover, the Commission conceded at the hearing that there was no reason warranting the urgent institution of disciplinary proceedings against the applicant, urgency which could, if necessary, have explained the absence of in-depth analysis from the audit report. It is thus perfectly possible that the commencement of disciplinary proceedings against the applicant as early as 9 July 2003 was in part prompted by the parallel initiation of disciplinary proceedings on that same date against other Eurostat officials, including its Director-General.

229 In the light of the material available to it, deriving from insufficiently precise and relevant audit reports, the administration could at best, before bringing disciplinary proceedings, have launched an administrative inquiry entrusted to IDOC or referred the case to OLAF, which it omitted to do, since the case was referred to OLAF only after the institution of disciplinary proceedings.

230 It follows that the Commission committed a manifest error of assessment and disregarded the principle of sound administration by instituting, on 9 July 2003, disciplinary proceedings against the applicant solely in view of the abovementioned audit reports. That act constitutes a fault such as to give rise to liability on its part.

The failure to assign specific tasks in keeping with the applicant's grade and abilities

Arguments of the parties

231 The applicant claims that, following the decision reassigning him as a principal adviser to the Personnel and Administration DG, the Commission did not entrust him with specific tasks in keeping with his abilities. He complained in vain about this to the President of the Commission. In his submission, the tasks to which the Commission refers in the reply to his complaint did not have any real content and he never in fact met the Commission Vice-President to whom he was normally assigned. He was allocated a small office without either resources or a secretary. As to the fact that the Commission granted him authorisations to engage in outside activities, this, so the applicant argues, does not demonstrate that he was entrusted with responsibility for carrying out specific tasks.

232 The Commission contends, in the first place, that the reassignment decision of which the applicant was the subject listed specific duties in keeping with his grade. In the second place, the Commission assigned to him, as soon as he took up his post in the Personnel and Administration DG, specific tasks to carry out. In the third place, the applicant participated in the preparations for the informal Council in Rhodes (Greece), obtained authorisations to engage in outside activities and participated, as from November 2003, in a working group on the reform of the pension schemes for civil servants of the Member States. The fact that the applicant did not meet the Vice-President of the Commission is not such as to demonstrate that the applicant had no tasks, given that he was a principal adviser to the Personnel and Administration DG and not a special adviser to a member of the Commission.

Findings of the Tribunal

233 A distinction must be made between, on the one hand, the reassignment decision in itself and, on the other, the Commission's non-decision-making conduct which had the effect or purpose of rendering meaningless the duties assigned to the applicant by the reassignment decision. Indeed, only the abovementioned non-decision-making conduct of the Commission is capable of giving rise to liability on the part of the defendant institution, having regard to what was pointed out concerning the reassignment decision in paragraphs 106 and 107 of this judgment.

234 In the present case, the reassignment decision listed a number of tasks assigned to the applicant. However, it is not apparent from the material in the case-file that the applicant was given the opportunity by the Commission actually to perform those tasks or that those tasks had a substantial content corresponding to the applicant's abilities and level of experience.

235 In particular, a letter of 9 September 2003 addressed to the President of the Commission makes clear that the applicant complained of not having any actual duties in keeping with his grade and abilities since his reassignment in November 2002. A memorandum of 22 September 2003 from the Director-General of Personnel and Administration asked the chef de cabinet of the Vice-President of the Commission to assign tasks to the applicant in accordance with what had been agreed. In reply to that memorandum, the chef de cabinet, by a memorandum of 29 September 2003, merely in turn asked the Director-General of Personnel and Administration to make him some proposals as to the tasks that might be assigned to the applicant. Such an exchange of correspondence confirms the applicant's argument as regards, at the very least, the period from January to October 2003. However, the Commission, which should be in a position to adduce evidence in rebuttal in that regard, has not produced any conclusive evidential elements to show that tasks were actually entrusted to the applicant, in particular after that exchange of correspondence. While the administration maintains that the applicant participated in the Rhodes informal Council, it does not specify at all in what that task actually consisted or the nature of the work carried out. In the same way, while the Commission asserts that the applicant was appointed to participate in a working group on the reform of public-sector pension schemes as from 24 November 2003, it has not shown that the applicant was given the opportunity actually to participate in that group, even though that is firmly disputed by him. In addition, it should be noted that that working group was composed predominantly of officials who were the subject of disciplinary proceedings, a fact which gives grounds for doubting the expectations which the Commission was entitled to have concerning the work of that working group.

236 Moreover, the fact that the applicant obtained, during the period in issue, authorisations to engage in outside activities is not such as to demonstrate that he was given the opportunity to perform in practice duties corresponding to his grade within the Commission.

237 Thus, in the light of those various considerations, it is clear that the Commission, either deliberately or through its inertia, did not give the applicant the opportunity to perform in practice duties corresponding to his grade, from January 2003 to February 2006, except during the six-month period in which he performed duties within the Greek Government while on leave on personal grounds. Such an attitude on the part of the Commission also constitutes wrongful conduct such as to engage its liability.

238 It follows from the foregoing that the Commission committed a number of faults in relation to the applicant, namely, in the first place, by informing him belatedly of the action taken in response to his request for assistance of 11 November 2002; in the second place, by replying belatedly to the requests for assistance submitted on 15 and 21 July 2003; in the third place, by deciding to institute disciplinary proceedings in the absence of sufficiently relevant and precise evidence; in the fourth place, by allowing the disclosure in July 2003 of personal data concerning him; and, in the fifth place, by failing over a number of years to entrust to him actual tasks corresponding to his grade.

The damage and the causal link

Arguments of the parties

239 The applicant claims that the Commission committed a number of illegalities which are directly connected with the damage which he alleges.

240 He argues, in his written pleadings in their final form, that those illegalities are the cause of a particularly high degree of non-material damage, which he assesses at EUR 850 000. In respect of that damage, the applicant points out that the Commission, by its wrongful conduct, undermined his integrity and professional reputation. In his reply, the applicant declares that he withdraws his claim for compensation for non-material damage linked to the deterioration of his state of health.

241 The Commission contends that it is for the applicant to demonstrate that the illegal conduct alleged is directly connected with the non-material damage on which he relies and that it had an actual and definite impact on his professional and personal situation. However, that has not been done in the present case. In particular, the Commission submits that the applicant has not demonstrated that he missed a chance of being appointed to the post of Director-General of Eurostat, since he has not established that any vacancy notice was published or that he submitted his candidature. Similarly, there is no link between the conduct alleged against the Commission and the fact that the applicant was the subject of accusations and insinuations in the press.

Findings of the Tribunal

242 As a preliminary point, it must be noted that, in his written pleadings in their final form, the applicant limits his claims solely to compensation for the non-material damage suffered by him as a result, on the one hand, of the attack on his reputation and professional integrity and, on the other, of the state of uncertainty and anxiety in which he found himself, to the exclusion of the deterioration of his physical condition.

243 It must then be examined whether the wrongful acts in the performance of public duties committed by the Commission are directly connected with the non-material damage which the applicant alleges.

244 In the first place, since the Commission's delay in informing its official of the action it was taking in response to his request for assistance of 11 November 2002 was not justified by the existence of any special circumstances, it constitutes wrongful maladministration giving rise to specific non-material damage, having regard to the state of uncertainty and anxiety in which the official again found himself as a result of that situation (see, by analogy, Case 18/78 *V.* v *Commission* [1979] ECR 2093, paragraphs 16 and 19, and *Caronna* v *Commission*, paragraph 106). The same applies with regard to the delay with which the Commission ruled on the requests for assistance submitted by the applicant on 15 and 21 July 2003. The Tribunal will make an equitable assessment of that non-material damage by fixing it *ex aequo et bono* at the sum of EUR 10 000 (see, by analogy, with regard to compensation for non-material damage resulting from a delay in the drawing up of a staff report, Case T-274/04 *Rounis* v *Commission* [2005] ECR-SC I-A-407 and II-1849, paragraph 54).

245 In the second place, the decision to institute disciplinary proceedings even though the Commission did not have sufficiently precise and relevant information available to it constitutes a fault which caused very serious damage to the applicant's integrity and professional reputation. That decision may have given the general public and the applicant's friends, family and colleagues the impression that he had committed reprehensible acts. However, the material in the case-file, in particular the OLAF report, makes it clear that the complaints made against him were without any foundation.

246 In the third place, the leak of personal data, attributable to the Commission, which took place in July 2003 directly caused a significant aggravation of the damage to the applicant's reputation and professional integrity. It was the disclosure of the applicant's name by that leak which, together with the information contained in the Commission's press release of 9 July 2003, enabled the general public and the international and Greek press to identify the applicant as being one of the officials who was the subject of disciplinary proceedings and to create the impression that he was involved in a financial scandal.

247 The damage referred to in the two previous paragraphs was only very partially made good by the press release of 27 October 2004, the issue of which had a much lesser impact than the articles published in the international and Greek press (see, as regards measures insufficiently making good unfounded damage to an official's reputation, *Giraudy* v *Commission*, paragraph 206). The issue of that press release was the only measure adopted by the Commission to restore the applicant's integrity. The institution did not at any time offer the applicant the apology or regrets which a public condemnation without foundation dictated.

248 Consequently, taking account of the abovementioned particular circumstances of the present case, including the press release of 27 October 2004, the amount of the non-material damage caused by the Commission as a result of the damage to the applicant's integrity and professional reputation must be assessed on an equitable basis at EUR 60 000 (see, for cases of serious damage to reputation, *Franchet and Byk* v *Commission*, paragraph 411, and *Giraudy* v *Commission*, paragraph 207).

249 In the fourth place, by not entrusting to the applicant for several years any actual tasks corresponding to his grade, the Commission was guilty of wrongful maladministration which was the direct cause of non-material damage. In the circumstances of this case, the Commission must be ordered on that basis to pay the sum of EUR 20 000 to the applicant.

250 It follows from the foregoing that the Commission must be ordered to pay to the applicant, in respect of the various forms of non-material damage suffered by him, the sum of EUR 90 000.

The requests for measures of organisation of procedure and inquiry

1. *Arguments of the parties*

251 In the first place, the applicant asks the Tribunal to hear as witnesses at the hearing, first, Mr Portal, a journalist at the daily newspaper *La Voix*, then Ms D. in order for her to clarify the terms of reference for the drawing up of the Eurostat Internal Audit Service report of 8 July 2003 and, finally, Mr Koopman, in order for him to give details regarding the adoption of the reassignment decision.

252 In the second place, the applicant asks the Tribunal to request the Commission to produce any document to demonstrate that the Eurostat Internal Audit Service actually carried out checks between November 2002 and May 2003 concerning the facts which were alleged against him.

253 In the third place, the applicant asks the Tribunal to request the Commission to produce the complete OLAF report without removing the passages claimed to be confidential and the annexes.

2. *Findings of the Tribunal*

254 The applicant seeks, in his reply, an order by the Tribunal that the Commission produce a number of documents and that three witnesses be heard.

255 Under the terms of Article 54(1) of the Rules of Procedure, the purpose of measures of organisation of procedure and measures of inquiry is to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions. For their part, the purpose of measures of inquiry pursuant to Articles 57 to 58 of the same Rules is to enable a party to prove factual claims made by it in support of its pleas in law (see, by analogy, Case T-175/97 *Bareyt and Others* v *Commission* [2000] ECR-SC I-A-229 and II-1053, paragraph 89).

256 Pursuant to Article 55(2)(d) of the Rules of Procedure, the request addressed to the parties to produce documents or any papers relating to the case constitutes a measure of organisation of procedure, whereas, in accordance with Article 57 of those Rules, the hearing of witnesses is a measure of inquiry.

257 As regards the assessment of requests made by a party for measures of organisation of procedure or measures of inquiry, the Tribunal is the sole judge of any need to supplement the information available to it concerning the case before it (see by analogy, as regards the request for hearing of witnesses, Case C-260/05 P *Sniace* v *Commission* [2007] ECR I-10005, paragraphs 77 and 78; see, by analogy, as regards the request for production of documents, Case C-182/99 P *Salzgitter* v *Commission* [2003] ECR I-10761, paragraphs 41 and 44).

258 In the instant case, the Tribunal, being satisfied that it has been sufficiently informed by the documents in the case-file and by the oral pleadings at the hearing, finds that there is no need to undertake the measures of organisation of procedure and of inquiry requested.

Costs

259 Under Article 87(1) of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title II of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 87(2), if equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any.

260 It follows from the grounds set out above that the Commission is, in all essential respects, the unsuccessful party. In addition, in his pleadings, the applicant has expressly applied for the defendant to be ordered to pay the costs. Since the circumstances of the case do not justify the application of the provisions of Article 87(2) of the Rules of Procedure, the Commission must therefore be ordered to pay the costs.

On those grounds,

THE CIVIL SERVICE TRIBUNAL (First Chamber)

hereby:

1. Orders the European Commission to pay to Mr Nanopoulos the sum of EUR 90 000;

2. Dismisses the remainder of the action;

3. Orders the European Commission to bear all the costs.

Gervasoni Kreppel Rofes i Pujol

Delivered in open court in Luxembourg on 11 May 2010.

W. Hakenberg
Registrar

S. Gervasoni
President