JUDGMENT OF THE COURT

6 March 2001 *

In Case C-274/99 P,

Bernard Connolly, a former official of the Commission of the European Communities, residing in London, United Kingdom, represented by J. Sambon and P.-P. van Gehuchten, avocats, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 19 May 1999 in Joined Cases T-34/96 and T-163/96 *Connolly* v *Commission* [1999] ECR-SC I-A-87 and II-463, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by G. Valsesia and J. Currall, acting as Agents, assisted by D. Waelbroeck, avocat, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet (Rapporteur), V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and N. Colneric, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 12 September 2000,

after hearing the Opinion of the Advocate General at the sitting on 19 October 2000,

gives the following

Judgment

1 By an application lodged at the Registry of the Court of Justice on 20 July 1999, Mr Connolly brought an appeal under Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and the EAEC Statutes

of the Court of Justice against the judgment of the Court of First Instance of 19 May 1999 in Joined Cases T-34/96 and T-163/96 *Connolly* v *Commission* [1999] ECR-SC I-A-87 and II-463 ('the contested judgment'), by which the Court of First Instance dismissed, first, his action for annulment of the opinion of the Disciplinary Board of 7 December 1995 and of the decision of the appointing authority of 16 January 1996 removing him from his post without withdrawal of his entitlement to a retirement pension ('the contested decision') and, second, his action for damages.

Legal background

2 Article 11 of the Regulations and Rules applicable to officials and other servants of the European Communities ('the Staff Regulations') provides:

'An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution.

An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service.'

3 Article 12 of the Staff Regulations provides:

'An official shall abstain from any action and, in particular, any public expression of opinion which may reflect on his position.

...

An official wishing to engage in an outside activity, whether gainful or not, or to carry out any assignment outside the Communities must obtain permission from the appointing authority. Permission shall be refused if the activity or assignment is such as to impair the official's independence or to be detrimental to the work of the Communities.'

4 The second paragraph of Article 17 of the Staff Regulations states:

'An official shall not, whether alone or together with others, publish or cause to be published without the permission of the appointing authority, any matter dealing with the work of the Communities. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the Communities.'

The facts giving rise to the dispute

5 The facts giving rise to the dispute are set out in the contested judgment as follows:

'1 At the material time, the applicant, Mr Connolly, an official of the Commission in Grade A4, Step 4, was Head of Unit 3, "EMS: National and Community Monetary Policies", in Directorate D, "Monetary Affairs" in the Directorate-General for Economic and Financial Affairs (DG II)....

2 On three occasions, dating from 1991, Mr Connolly submitted draft articles relating, respectively, to the application of monetary theories, the development of the European Monetary System and the monetary implications of the white paper on the future of Europe. Permission to publish the articles, which, under the second paragraph of Article 17 of the Staff Regulations, must be obtained prior to publication, was refused.

3 On 24 April 1995, Mr Connolly applied, under Article 40 of the Staff Regulations, for three months' unpaid leave on personal grounds commencing on 3 July 1995, stating as the reasons for his application (a) to assist his son during the school holidays in his preparation for United Kingdom university entrance; (b) to enable his father to spend some time with his family; (c) to spend some time reflecting on matters of economic theory and policy and to "reestablish acquaintance with the literature". The Commission granted him leave by decision of 2 June 1995.

4 By letter of 18 August 1995, Mr Connolly applied to be reinstated in the Commission service at the end of his leave on personal grounds. The Commission, by decision of 27 September 1995, granted that request and reinstated him in his post with effect from 4 October 1995.

5 Whilst on leave on personal grounds, Mr Connolly published a book entitled *The Rotten Heart of Europe — The Dirty War for Europe's Money* without requesting prior permission.

6 Early in September, more specifically between 4 and 10 September 1995, a series of articles concerning the book was published in the European and, in particular, the British press.

7 By letter of 6 September 1995, the Director-General for Personnel and Administration, in his capacity as appointing authority... informed the applicant of his decision to initiate disciplinary proceedings against him for infringement of Articles 11, 12 and 17 of the Staff Regulations and, in accordance with Article 87 of those regulations, invited him to a preliminary hearing.

8 The first hearing was held on 12 September 1995. The applicant then submitted a written statement indicating that he would not answer any questions unless he was informed in advance of the specific breaches he was alleged to have committed.

9 By letter of 13 September 1995, the appointing authority informed the applicant that the allegations of misconduct followed publication of his book, serialisation of extracts from it in *The Times* newspaper as well as the statements that he had made in an interview published in that newspaper, without having obtained prior permission. The appointing authority again

invited him to attend a hearing regarding those matters in the light of his obligations under Articles 11, 12 and 17 of the Staff Regulations.

10 On 26 September 1995, at a second hearing, the applicant refused to answer any of the questions put to him and filed a written statement in which he submitted that it was legitimate for him to have published a work without requesting prior permission because, when he did so, he was on unpaid leave on personal grounds. He added that the serialisation of extracts from his book in the press had been decided on by his publisher and that some of the statements contained in the interview had been wrongly attributed to him. Finally, Mr Connolly expressed doubts as to the objectivity of the disciplinary proceedings commenced against him in view, notably, of statements made about him to the press by the Commission's President and its spokesperson, and as to whether the confidential nature of the proceedings was being respected.

11 On 27 September 1995, the appointing authority decided, pursuant to Article 88 of the Staff Regulations, to suspend Mr Connolly from his duties with effect from 3 October 1995 and to withhold one-half of his basic salary during the period of his suspension.

12 On 4 October 1995, the appointing authority decided to refer the matter to the Disciplinary Board under Article 1 of Annex IX to the Staff Regulations ('Annex IX').

...

16 On 7 December 1995, the Disciplinary Board delivered an opinion, forwarded to the applicant on 15 December 1995, in which it recommended that the disciplinary measure of removal from post without withdrawal or reduction of his entitlement to a retirement pension should be imposed on him....

17 On 9 January 1996, the applicant was heard by the appointing authority pursuant to the third paragraph of Article 7 of Annex IX.

18 By decision of 16 January 1996, the appointing authority imposed on the applicant the disciplinary measure referred to in Article 86(2)(f) of the Staff Regulations, namely removal from post without withdrawal or reduction of his entitlement to a retirement pension....

19 The decision removing Mr Connolly from his post set out the following statement of reasons:

"Whereas on 16 May 1990 Mr Connolly was appointed Head of Unit [II.D.3];

Whereas by virtue of his duties Mr Connolly has been responsible for, *inter alia*, preparing and taking part in the work of the Monetary Committee, the Monetary Policy Sub-Committee and the Committee of [Governors], monitoring monetary policies in the Member States and analysing the monetary implications of the implementation of European economic and monetary union;

Whereas Mr Connolly has written a book, which was published at the beginning of September 1995 entitled *The Rotten Heart of Europe*;

Whereas that book deals with the development in recent years of the process of European integration in the economic and monetary field and has been written by Mr Connolly on the basis of the professional experience he has gained while carrying out his duties at the Commission;

Whereas Mr Connolly has not requested permission from the appointing authority to publish the book in question in accordance with Article 17 of the Staff Regulations, which is binding on all officials;

Whereas Mr Connolly could not have failed to be aware that he would be refused permission on the same grounds as those on which permission had previously been refused in respect of articles in which he had already outlined the ideas that form the core of the present book;

Whereas Mr Connolly mentions in the preface to *The Rotten Heart of Europe* that the idea for the book arose after he had requested permission to publish a chapter on the EMS in another book; he was refused permission and took the view that it would be worthwhile to work up that chapter and make it into a book in its own right;

Whereas Mr Connolly has approved, and has played an active part in, the promotion of his book, notably granting an interview to *The Times* newspaper on 4 September 1995, on which date *The Times* also published extracts from his book, and writing an article for *The Times*, which was published on 6 September 1995;

Whereas Mr Connolly could not have failed to be aware that the publication of his book reflected a personal opinion that conflicted with the policy adopted by the Commission in its capacity as an institution of the European Union responsible for pursuing a major objective and a fundamental policy choice laid down in the Treaty on European Union, namely economic and monetary union;

Whereas by his conduct Mr Connolly has seriously prejudiced the interests of the Communities and has damaged the image and reputation of the institution;

Whereas Mr Connolly has admitted receiving royalties paid to him by his publishers as consideration for the publication of his book;

Whereas Mr Connolly's overall conduct has reflected on his position as an official, given that an official is required to conduct himself solely with the interests of the Commission in mind;

Whereas, having frequently been refused permission to publish, a reasonably diligent official of his seniority and with his responsibilities could not have been unaware of the nature and gravity of such breaches of his obligations;

Whereas, in disregard of his duties of good faith and loyalty to the institution, Mr Connolly at no time advised his superiors of his intention to publish the book in question even though he was still bound, as an official on leave on personal grounds, by his duty of confidentiality;

Whereas Mr Connolly's conduct, on account of its gravity, involves an irremediable breach of the trust which the Commission is entitled to expect from its officials, and, as a consequence, makes it impossible for any employment relationship to be maintained with the institution;

..."

20 By letter of 7 March 1996, received at the Secretariat-General of the Commission on 14 March 1996, the applicant submitted a complaint under Article 90(2) of the Staff Regulations against the Disciplinary Board's opinion and against the decision to remove him from his post.

...

21 By an application lodged at the Registry of the Court of First Instance on 13 March 1996, the applicant brought an action for annulment of the Disciplinary Board's opinion (Case T-34/96).

...

23 On 18 July 1996 the applicant was informed of the decision expressly dismissing his complaint against the Disciplinary Board's opinion and the decision removing him from his post.

24 By an application lodged at the Registry of the Court of First Instance on 18 October 1996, the applicant brought an action for annulment of the Disciplinary Board's opinion and of the decision removing him from his post and for damages (Case T-163/96).

...

30 At the hearing, it was formally recorded that the claims and the pleas in law relied on in Case T-34/96 were repeated in their entirety in Case T-163/96 and that, consequently, the applicant was discontinuing the proceedings in Case T-34/96.'

The contested judgment

6 Before the Court of First Instance, the appellant put forward seven pleas in law in support of his claim for annulment of the Disciplinary Board's opinion and the contested decision. First, he alleged that there had been irregularities in the disciplinary proceedings. Second, he alleged that the reasons given were insufficient and that the Disciplinary Board had infringed Article 7 of Annex IX, the rights of the defence and the principle of sound administration. By his third, fourth and fifth pleas, the applicant submitted that there had been infringements of, respectively, Articles 11, 12 and 17 of the Staff Regulations. The basis of the sixth plea was manifest error of assessment and breach of the principle of proportionality. Finally, the seventh plea alleged misuse of powers.

The first plea in law: irregularities in the disciplinary proceedings

7 The applicant complained, *inter alia*, that the Disciplinary Board and the appointing authority took account of matters which were not dealt with in the disciplinary proceedings, namely, first, the complaint that Mr Connolly's book expressed an opinion which was inconsistent with the Commission's policy of

bringing about economic and monetary union and, second, the fact that he had written an article, published on 6 September 1995 in *The Times* newspaper, and taken part in a television programme on 26 September 1995. He also complained that the Disciplinary Board had not prepared a report on the case as a whole and that the Chairman of the Board had taken an active and biased part in its proceedings.

The claim that matters not dealt with in the disciplinary proceedings were taken into account

8 In particular, the Court of First Instance held as follows:

'44 The Court must also reject the applicant's argument that the appointing authority's report to the Disciplinary Board did not include the contents of the book among the facts complained of but was limited to referring to formal infringements of Articles 11, 12 and 17 of the Staff Regulations. In that regard, it must be observed that the report indicated, without any ambiguity, that the contents of the book at issue, in particular its polemical nature, were among the facts alleged against the applicant. In particular, in paragraph 23 et seq. of the report, the appointing authority considered that there had been an infringement of Article 12 of the Staff Regulations on the grounds that "publication of the book in itself reflects on Mr Connolly's position as he has been head of the unit at the Commission... responsible for the matters recounted in the book" and, "furthermore, in the book, Mr Connolly makes certain derogatory and unsubstantiated attacks on Commissioners and other members of the Commission's staff in such a way as to reflect on his position and to bring the Commission into disrepute contrary to his obligations under Article 12." The report went on to cite specifically certain statements made by the applicant in his book and the annex to the report included numerous extracts from it.

45 It follows that, in accordance with Article 1 of Annex IX, the appointing authority's report apprised the applicant of the facts alleged against him with sufficient precision for him to be in a position to exercise his rights of defence.

46 That interpretation is also borne out by the fact that, as is clear from the minutes of the applicant's hearing before it, the Disciplinary Board, on several occasions during the hearing, made its position clear regarding the purpose and content of his book.

47 Furthermore, the applicant, at his final hearing before the appointing authority on 9 January 1996, neither contended that the Disciplinary Board's opinion was founded on complaints which ought to be regarded as new facts nor applied, as he was entitled to do under Article 11 of Annex IX, for the disciplinary proceedings to be reopened (see, to that effect, the judgment of the Court of First Instance in Case T-549/93 *D* v *Commission* [1995] ECR-SC I-A-13, II-43, paragraph 55).

48 As to the applicant's argument that the report submitted to the Disciplinary Board did not refer to the fact that he had published an article on 6 September 1995 for the purpose of promoting his book or that he had taken part in a television broadcast on 26 September 1995, it need merely be noted that, contrary to the applicant's contention, the appointing authority had specifically referred to those facts in paragraph 19 of the report.

49 Accordingly, the first part of the plea must be rejected.'

The Disciplinary Board's failure to draw up a report

9 In particular, the Court of First Instance held as follows:

'73 In the present case, the minutes of the first meeting of the Disciplinary Board show that, in accordance with Article 3 of Annex IX, the Chairman appointed one of the members of the Board as rapporteur to prepare a report on the matter as a whole. Although it appears from the minutes in the file that the rapporteur was not the only member of the Disciplinary Board to question the applicant and the witness at the hearings, it cannot be inferred from that fact that the rapporteur's duties were not performed.

74 Furthermore, as regards the complaint that no report was prepared on the matter as a whole, Article 3 of Annex IX is confined to laying down the rapporteur's duties and does not prescribe any specific formalities concerning the way in which they should be performed, such as whether a written report should be produced or whether such a report should be disclosed to the parties. Consequently, there is no reason why the rapporteur should not present his report orally to the other members of the Disciplinary Board. In the present case, the applicant has failed to establish that no report was presented. Furthermore, the applicant has not produced the slightest evidence to show either that the Disciplinary Board failed to undertake an inquiry which was sufficiently complete and which afforded him all the guarantees intended by the Staff Regulations (see Case 228/83 *F* v *Commission* [1985] ECR 275, paragraph 30, and Case T-500/93 *Y* v *Court of Justice* [1996] ECR-SC I-A-335, II-977, paragraph 52), or, therefore, that it was unable to adjudicate on the matter with full knowledge of the facts. In those circumstances, the applicant's argument must be rejected.

...

76 Consequently, the third part of the plea must be rejected.'

The inappropriate participation of the Chairman of the Disciplinary Board in the proceedings

10 In particular, the Court of First Instance held as follows:

'82 In the present case, it is clear from the actual wording of the Disciplinary Board's opinion that it was not necessary for its Chairman to take part in the vote on the reasoned opinion and that the opinion was adopted by a majority of the four other members. It is also clear from the minutes on the file that, when the proceedings were opened, the Chairman of the Disciplinary Board confined himself to inviting the members of the Board to consider whether the facts complained of had been proved and to decide on the severity of the disciplinary measure to be imposed, that being within the normal scope of his authority. Therefore, the applicant cannot reasonably plead an infringement of Article 8 of Annex IX on the ground that the Chairman of the Disciplinary Board played an active part in the deliberations.

83 In any event, it must be emphasised that the Chairman of the Disciplinary Board must be present during its proceedings so that, *inter alia*, he can, if necessary, vote with full knowledge of the facts to resolve tied votes or procedural questions.

84 The bias that the Chairman of the Disciplinary Board is alleged to have demonstrated *vis-à-vis* the applicant during the hearing is not corroborated by any evidence. Consequently, since it has, moreover, been neither alleged nor established that the Disciplinary Board failed in its duty, as an investigative body, to act in an independent and impartial manner (see, in that regard, *F* v *Commission*, paragraph 16, and Case T-74/96 *Tzoanos* v *Commission* [1998] ECR-SC I-A-129, II-343, paragraph 340), the applicant's argument must be rejected.

85 Therefore, the fourth part of the plea cannot be accepted.'

11 The Court of First Instance therefore rejected the first plea in law.

The second plea in law: the reasons given were insufficient and the Disciplinary Board infringed Article 7 of Annex IX, the rights of the defence and the principle of sound administration

12 The appellant submitted that, while purporting to set out a formal statement of reasons, the Disciplinary Board's opinion and the contested decision were actually vitiated by insufficient reasoning, inasmuch as the arguments raised by him in his defence remained unanswered. In particular, no answer was given to his claims that the second paragraph of Article 17 of the Staff Regulations does not apply to officials taking leave on personal grounds, that the appointing authority incorrectly interpreted Article 12 of the Staff Regulations and that certain statements made by Commission officials were improper and prejudiced the outcome of the proceedings.

13 The Court of First Instance held, in particular, as follows:

'92 Under Article 7 of Annex IX, the Disciplinary Board must, after consideration of the documents submitted and having regard to any statements made orally or in writing by the official concerned and by witnesses, and also to the results of any inquiry undertaken, deliver a reasoned opinion of the disciplinary measure appropriate to the facts complained of.

93 Furthermore, it is settled case-law that the statement of the reasons on which a decision adversely affecting a person is based must allow the Community Courts to exercise their power of review as to its legality and must provide the person concerned with the information necessary to enable him to decide whether or not the decision is well founded (Case C-166/95 P *Commission* v *Daffix* [1997] ECR I-983, paragraph 23; Case C-188/96 P *Commission* v *V* [1997] ECR I-6561, paragraph 26; and Case T-144/96 *Y* v *Parliament* [1998] ECR-SC I-A-405, II-1153, paragraph 21). The question whether the statement of reasons on which the measure at issue is based satisfies the requirements of the Staff Regulations must be assessed in the light not only of its wording but also of its context and all the legal rules regulating the matter concerned (*Y* v *Parliament*, cited above, paragraph 22). It should be emphasised that, although the Disciplinary Board and the appointing authority are required to state the factual and legal matters forming the legal basis for their decisions and the considerations which have led to their adoption, it is not, however, necessary that they discuss all the factual and legal points which have been raised by the person concerned during the proceedings (see, by analogy, Joined Cases 43/82 and 63/82 *VBVB and VBBB* v *Commission* [1984] ECR 19, paragraph 22).

94 In the present case, the Disciplinary Board's opinion specifically drew attention to the applicant's contention that the second paragraph of Article 17 of the Staff Regulations did not apply in his case since he had been on leave on personal grounds. The reason given by the Disciplinary Board and the appointing authority for the fact that Article 17 did apply was that "every official remains bound [by it]". The reasons for the application of Article 12 of the Staff Regulations are also stated to the requisite legal standard. The Disciplinary Board's opinion and the decision removing the applicant from his post outline the applicant's duties, draw attention to the nature of the statements made in his book and the manner in which he ensured that it would be published, and conclude that, as a whole, the applicant's conduct adversely reflected on his position. The opinion and the decision removing him from his post thus clearly establish a link between the applicant's conduct and the prohibition in Article 12 of the Staff Regulations and set out the essential reasons why the Disciplinary Board and the appointing authority considered that that article had been infringed. The question whether such an assessment is sufficient entails consideration of the merits of the case rather than consideration of the adequacy or otherwise of the statement of reasons.

95 As regards the applicant's complaint regarding the lack of response to his argument that certain statements made by members of the Commission jeopardised the impartial nature of the proceedings against him, the documents before the Court show that he confined that argument to a submission to the Disciplinary Board that "this situation call[ed] for an exceptional degree of vigilance and independence [on its part]" (Annex A.1 to the application, page 17). The applicant does not allege that, in the present case, the Disciplinary Board failed in its duty as an investigative body to act in an independent and impartial way. Consequently, that complaint is not relevant.

...

97 The Court must also reject the applicant's argument that the Disciplinary Board's opinion and the decision removing him from his post contain an insufficient statement of reasons in that they state that the applicant "could not have failed to be aware that the publication of his book reflected a personal opinion that conflicted with the policy adopted by the Commission in its capacity as an institution of the European Union responsible for pursuing a major objective and a fundamental policy choice laid down in the Treaty on European Union, namely economic and monetary union". The dispute concerned an obvious and well-known difference of opinion between the applicant and the Commission regarding the Union's monetary policy (order in *Connolly* v *Commission*, cited above, paragraph 36) and the book in question, as is clear from the documents before the Court, is the patent expression of that difference of opinion, the applicant writing in particular that "[his] central thesis is that ERM [the Exchange Rate Mechanism] and EMU are not only inefficient but also undemocratic: a danger not only to our wealth but to our four freedoms and, ultimately, our peace" (page 12 of the book).

98 It should be added that the opinion and the decision removing the applicant from his post constituted the culmination of the disciplinary proceedings, the

details of which were sufficiently familiar to the applicant (*Daffix* v *Commission*, paragraph 34). As is clear from the Disciplinary Board's opinion, the applicant had himself explained at the hearing on 5 December 1995 that for several years he had been describing in documents prepared in the course of his duties as Head of Unit II.D.3 "contradictions which he had identified in the Commission's policies on economic and monetary matters" and that "since his critiques and proposals were blocked by his superiors, he had decided, given the vital importance of the matter at issue and the danger that the Commission's policy entailed for the future of the Union, to make them public". Although in his reply the applicant took exception to those statements in the Disciplinary Board's opinion, it is none the less the case that they are clearly confirmed by the minutes of the hearing, the contents of which he does not dispute (see, specifically, pages 4 to 7 of the minutes of the hearing).

99 In view of those factors, the statement of reasons in the Disciplinary Board's opinion and in the decision removing the applicant from his post cannot, consequently, be regarded as insufficient in that regard.

...

101 Finally, taking account of the factors set out above, there can be no grounds for alleging breach of the principle of sound administration or of the rights of the defence on the basis that the Disciplinary Board conducted its proceedings on the same day as the applicant was heard, since that fact rather tends to show that, on the contrary, the Board acted diligently. It must also be observed that the Disciplinary Board's opinion was finally adopted two days after that hearing.

102 It follows that the plea must be rejected.'

The third plea in law: infringement of Article 11 of the Staff Regulations

14 The appellant submitted that the purpose of Article 11 of the Staff Regulations is not to prohibit officials from receiving royalties from the publication of their work but to ensure their independence by prohibiting them from taking instructions from persons outside their institution. Moreover, in receiving royalties, the appellant did not take instructions from any person outside the Commission.

15 The Court of First Instance held as follows:

'108 In that regard, it is clear both from the applicant's statements to the Disciplinary Board and from the deposition of his publisher submitted by the applicant at that time that royalties on the sales of his book were actually paid to him by his publisher. Therefore, the applicant's argument that there was no infringement of Article 11 of the Staff Regulations on the basis that receipt of those royalties did not result in any person outside his institution exercising influence over him cannot be accepted. Such an argument takes no account of the objective conditions in which the prohibition laid down by the second paragraph of Article 11 of the Staff Regulations operates, namely acceptance of payment of any kind from any person outside the institution, without the permission of the appointing authority. The Court finds that those conditions were met in the present case.

109 The applicant cannot reasonably maintain that that interpretation of the second paragraph of Article 11 of the Staff Regulations entails a breach of the right to property as laid down in Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter "the ECHR").

110 First, it should be observed that in the present case there has been no infringement of the right to property, since the Commission has not confiscated any sums received by the applicant by way of remuneration for his book.

111 Furthermore, according to the case-law, the exercise of fundamental rights, such as the right to property, may be subject to restrictions, provided that the restrictions correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (see Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 15 and the case-law cited therein). The rules laid down by Article 11 of the Staff Regulations, under which officials must conduct themselves solely with the interests of the Communities in mind, are a response to the legitimate concern to ensure that officials are not only independent but also loyal *vis-à-vis* their institution (see, in that regard, Case T-273/94 *N* v *Commission* [1997] ECR-SC I-A-97, II-289, paragraphs 128 and 129), an objective whose pursuit justifies the slight inconvenience of obtaining the appointing authority's permission to receive sums from sources outside the institution to which the official belongs.

...

113 There is no evidence at all of the practice which allegedly existed within the Commission of allowing royalties to be received for services provided by officials on leave on personal grounds. Furthermore, that argument is of no relevance in the absence of any contention that the practice concerned applied to works published without the prior permission provided for in Article 17 of the Staff Regulations. The applicant is not maintaining therefore that he had received any clear assurances which might have given him real grounds for expecting that he would not be required to apply for permission under Article 11 of the Staff Regulations.

114 Accordingly, the plea must be rejected.'

The fourth plea in law: infringement of Article 12 of the Staff Regulations

16 The appellant submitted that the complaint that he had infringed Article 12 of the Staff Regulations was unlawful since it was in breach of the principle of freedom of expression laid down in Article 10 of the ECHR, that the book at issue was a work of economic analysis and was not contrary to the interests of the Community, that the Commission misrepresents the scope of the duty of loyalty and that the alleged personal attacks in the book are merely instances of 'lightness of style' in the context of an economic analysis.

17 So far as this plea in law is concerned, the Court of First Instance held as follows:

'124 According to settled case-law, [the first paragraph of Article 12 of the Staff Regulations] is designed, primarily, to ensure that Community officials, in their conduct, present a dignified image which is in keeping with the particularly correct and respectable behaviour one is entitled to expect from members of an international civil service (Case T-146/94 *Williams* v *Court of Auditors* [1996] ECR-SC I-A-103, II-329, paragraph 65; hereinafter "*Williams II*"; *N* v *Commission*, paragraph 127, and Case T-183/96 *E* v *ESC* [1998] ECR-SC I-A-67, II-159, paragraph 39). It follows, in particular, that where insulting remarks are made publicly by an official, which are detrimental to the honour of the persons to whom they refer, that in itself constitutes a reflection on the official's position for the purposes of the first paragraph of Article 12 of the Staff Regulations (order of 21 January 1997 in Case C-156/96 P *Williams* v *Court of Auditors* [1997] ECR I-239, paragraph 21; Case T-146/89 *Williams* v *Court of Auditors* [1991] ECR II-1293, paragraphs 76 and 80 (hereinafter "*Williams I*"), and *Williams II*, paragraph 66).

125 In the present case, the documents before the Court and the extracts which the Commission has cited show that the book at issue contains numerous aggressive, derogatory and frequently insulting statements, which are detrimental to the honour of the persons and institutions to which they refer and which have been extremely well publicised, particularly in the press. Contrary to the appellant's contention, the statements cited by the Commission, and referred to in the appointing authority's report to the Disciplinary Board, cannot be categorised as mere instances of "lightness of style" but must be regarded as, in themselves, reflecting on the official's position.

126 The argument that ultimately neither the Disciplinary Board nor the appointing authority relied on the abovementioned complaint when giving reasons for the dismissal is unfounded. Both of them specifically stated in the opinion and in the decision removing Mr Connolly from his post, that "Mr Connolly's behaviour, taken as a whole, has reflected on his position". The fact that extracts from the book are not expressly cited in the decision removing the applicant from his post (as they were in the appointing authority's report to the Disciplinary Board) cannot therefore be interpreted as meaning that the complaint concerning an infringement of the first paragraph of Article 12 of the Staff Regulations had been dropped. That is particularly so since the decision removing the applicant from his post constitutes the culmination of disciplinary proceedings, with whose details the applicant was sufficiently familiar and during which, as is clear from the minutes in the file, the applicant had had an opportunity to give his views on the content of the statements found in his book.

127 Further, the first paragraph of Article 12 of the Staff Regulations specifically sets out, as do Articles 11 and 21, the duty of loyalty incumbent upon every official (see *N* v *Commission*, paragraph 129, approved on appeal by the Court of Justice's order in Case C-252/97 P *N* v *Commission* [1998] ECR I-4871). Contrary to the applicant's contention, it cannot be concluded from the judgment in *Williams I* that that duty arises only under Article 21 of the Staff Regulations, since the Court of First Instance drew attention in that judgment to the fact that the duty of loyalty constitutes a fundamental duty owed by every official to the institution to which he belongs and to his superiors, a duty "of which Article 21 of the Staff Regulations is a particular manifestation".

Consequently, the Court must reject the argument that the appointing authority could not legitimately invoke, *vis-à-vis* the applicant, a breach of his duty of loyalty, on the ground that the report to the Disciplinary Board did not cite an infringement of Article 21 of the Staff Regulations.

128 Similarly, the Court must reject the argument that the duty of loyalty does not involve preserving the relationship of trust between the official and his institution but involves only loyalty as regards the Treaties. The duty of loyalty requires not only that the official concerned refrains from conduct which reflects on his position and is detrimental to the respect due to the institution and its authorities (see, for example, the judgment in *Williams I*, paragraph 72, and Case T-293/94 *Vela Palacios* v *ESC* [1996] ECR-SC I-A-297, II-893, paragraph 43), but also that he must conduct himself, particularly if he is of senior grade, in a manner that is beyond suspicion in order that the relationship of trust between that institution and himself may at all times be maintained (*N* v *Commission*, paragraph 129). In the present case, it should be observed that the book at issue, in addition to including statements which in themselves reflected on his position, publicly expressed, as the appointing authority has pointed out, the applicant's fundamental opposition to the Commission's policy, which it was his responsibility to implement, namely bringing about economic and monetary union, an objective which is, moreover, laid down in the Treaty.

129 In that context, it is not reasonable for the applicant to contend that there has been a breach of the principle of freedom of expression. It is clear from the case-law on the subject that, although freedom of expression constitutes a fundamental right which Community officials also enjoy (Case C-100/88 *Oyowe and Traore* v *Commission* [1989] ECR 4285, paragraph 16), it is nevertheless the case that Article 12 of the Staff Regulations, as construed above, does not constitute a bar to the freedom of expression of those officials but imposes reasonable limits on the exercise of that right in the interest of the service (*E* v *ESC*, paragraph 41).

130 Finally, it must be emphasised that that interpretation of the first paragraph of Article 12 of the Staff Regulations cannot be challenged on the ground that, in the present case, publication of the book at issue

occurred during a period of leave on personal grounds. In that regard, it is clear from Article 35 of the Staff Regulations that leave on personal grounds constitutes one of the administrative statuses which an official may be assigned, with the result that, during such a period, the person concerned remains bound by the obligations borne by every official, in the absence of express provision to the contrary. Since Article 12 of the Staff Regulations applies to all officials, without any distinction based on their status, the fact that the applicant was on such leave cannot release him from his obligations under that article. That is particularly so since an official's concern for the respect due to his position is not confined to the particular time at which he carries out a specific task but is expected from him under all circumstances (*Williams II*, paragraph 68). The same is true of the duty of loyalty which, according to the case-law, applies not only in the performance of specific tasks but extends to the whole relationship between the official and the institution (*Williams I*, paragraph 72 and *E* v *ESC*, paragraph 47).

131 Accordingly, the appointing authority was fully entitled to take the view that the applicant's behaviour had reflected on his position and involved an irremediable breach of the trust which the Commission is entitled to expect from its officials.

132 It follows that the plea must be rejected.'

The fifth plea in law: infringement of Article 17 of the Staff Regulations

18 The appellant submitted, *inter alia*, that the interpretation of the second paragraph of Article 17 of the Staff Regulations on which the Disciplinary Board's opinion and the contested decision are based is contrary to the principle of freedom of expression laid down in Article 10 of the ECHR, in that it leads, inherently, to the prohibition of any publication. Constraints on freedom of expression are permissible only in the exceptional cases listed in Article 10(2) of the ECHR. Furthermore, Article 17 of the Staff Regulations does not apply to

officials who are on leave on personal grounds and the appellant was, in any event, justified in believing that to be the case, having regard to the practice followed by the Commission, at least in DG II.

19 The Court of First Instance rejected this plea for the following reasons:

'147 In the present case, it is not disputed that the applicant went ahead with publication of his book without applying for the prior permission required by the provision cited above. However, the applicant, without expressly raising an objection of illegality to the effect that the second paragraph of Article 17 of the Staff Regulations as a whole is unlawful, submits that the Commission's interpretation of the provision is contrary to the principle of freedom of expression.

148 In that regard, it must be recalled that the right to freedom of expression laid down in Article 10 of the ECHR constitutes, as has already been made clear, a fundamental right, the observance of which is guaranteed by the Community Courts and which Community officials also enjoy (*Oyowe and Traore* v *Commission*, paragraph 16, and *E* v *ESC*, paragraph 41). None the less, it is also clear from settled case-law that fundamental rights do not constitute an unfettered prerogative but may be subject to restrictions, provided that the restrictions in fact correspond to objectives of general public interest pursued by the Community and do not constitute, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights protected (see *Schräder* v *Hauptzollamt Gronau*, paragraph 15; Case C-404/92 P *X* v *Commission* [1994] ECR I-4737, paragraph 18; Case T-176/94 *K* v *Commission* [1995] ECR-SC I-A-203, II-621, paragraph 33; and *N* v *Commission*, paragraph 73).

149 In the light of those principles and the case-law on Article 12 of the Staff Regulations (see paragraph 129 above and *E* v *ESC*, paragraph 41), the second paragraph of Article 17 of the Staff Regulations, as interpreted by the decision removing the applicant from his post, cannot be regarded as imposing an unwarranted restriction on the freedom of expression of officials.

150 First, it must be emphasised that the requirement that permission be obtained prior to publication corresponds to the legitimate aim that material dealing with the work of the Communities should not undermine their interests and, in particular, as in the present case, the reputation and image of one of the institutions.

151 Second, the second paragraph of Article 17 of the Staff Regulations does not constitute a disproportionate measure in relation to the public-interest objective which the article concerned seeks to protect.

152 In that connection, it should be observed at the outset that, contrary to the applicant's contention, it cannot be inferred from the second paragraph of Article 17 of the Staff Regulations that the rules it lays down in respect of prior permission thereby enable the institution concerned to exercise unlimited censorship. First, under that provision, prior permission is required only when the material that the official wishes to publish, or to have published, "[deals] with the work of the Communities". Second, it is clear from that provision that there is no absolute prohibition on publication, a measure which, in itself, would be detrimental to the very substance of the right to freedom of expression. On the contrary, the last sentence of the second paragraph of Article 17 of the Staff Regulations sets out clearly the principles governing the grant of permission, specifically providing that permission may be refused only where the publication in point is liable to prejudice the interests of the Communities. Moreover, such a decision may be contested under Articles 90 and 91 of the Staff Regulations, so that an official who takes the view that he was refused permission in breach of the Staff Regulations is able to have

recourse to the legal remedies available to him with a view to securing review by the Community Courts of the assessment made by the institution concerned.

153 It must also be emphasised that the second paragraph of Article 17 of the Staff Regulations is a preventive measure designed on the one hand, to ensure that the Communities' interests are not jeopardised, and, on the other, as the Commission has rightly pointed out, to make it unnecessary for the institution concerned, after publication of material prejudicing the Communities' interests, to take disciplinary measures against an official who has exercised his right of expression in a way that is incompatible with his duties.

154 In the present case, the appointing authority maintained, in its decision removing the applicant from his post, that he had failed to comply with that provision on the grounds that, first, he had not requested permission to publish his book, second, he could not have failed to be aware that he would be refused permission on the same grounds as those on which permission had previously been refused in respect of articles of similar content, and, finally, his conduct had seriously prejudiced the Communities' interests and had damaged the institution's image and reputation.

155 In the light of all those considerations, therefore, it cannot be inferred from the decision removing the applicant from his post that the finding that he had infringed the second paragraph of Article 17 of the Staff Regulations would have been made even if the Communities' interests had not been prejudiced. Accordingly there is nothing to indicate that the scope attributed by the appointing authority to that provision goes further than the aim pursued and is therefore contrary to the principle of freedom of expression.

156 In those circumstances, the plea alleging breach of the right to freedom of expression must be rejected.

157 The argument that the second paragraph of Article 17 of the Staff Regulations does not apply to officials who are on leave on personal grounds is also unfounded. As pointed out above (paragraph 130), it follows from Article 35 of the Staff Regulations that an official on such leave retains his status as an official throughout the period of leave and therefore remains bound by his obligations under the regulations in the absence of express provision to the contrary. The second paragraph of Article 17 of the Staff Regulations applies to all officials and does not draw any distinction based on the status of the person concerned. Consequently, the fact that the applicant was on leave on personal grounds when his book was published does not release him from his obligation under the second paragraph of Article 17 of the Staff Regulations to request permission from the appointing authority prior to publication.

158 That interpretation is not undermined by the fact that, unlike the second paragraph of Article 17 of the Staff Regulations, the first paragraph thereof expressly provides that an official continues to be bound by his duty of confidentiality after leaving the service. An official on leave on personal grounds is not comparable to an official whose service has terminated, as provided in Article 47 of the Staff Regulations, and who, therefore, does not fall within any of the administrative statuses listed in Article 35 of the Staff Regulations.

...

160 Accordingly, the Disciplinary Board and the appointing authority were right to find that the applicant had infringed the second paragraph of Article 17 of the Staff Regulations.

161 Finally, the applicant's allegation that a general practice existed in the Commission, by virtue of which officials on leave on personal grounds were not required to request prior permission for publication, is in no way

substantiated by the statement cited by him. In that statement, the former Director-General of DG II confines himself to saying that Mr Connolly had taken unpaid leave of one year in 1985 in order to work for a private financial institution and, during that period, he had not considered it necessary to approve the texts prepared by Mr Connolly for that institution or even to comment on them. It follows that there is no basis for the argument.

162 Consequently, the plea must be rejected.'

The sixth plea in law: manifest error of assessment and breach of the principle of proportionality

20 The appellant claimed that the contested decision was vitiated by a manifest error of assessment as to the facts and that it was in breach of the principle of proportionality, in that it failed to take account of various mitigating circumstances.

21 The Court of First Instance held as follows:

'165 It is settled case-law that once the truth of the allegations against the official has been established, the choice of appropriate disciplinary measure is a matter for the appointing authority and the Community Courts may not substitute their own assessment for that of the authority, save in cases of manifest error or a misuse of powers (Case 46/72 *De Greef* v *Commission* [1973] ECR 543, paragraph 45; *F* v *Commission*, paragraph 34; *Williams I*, paragraph 83; and *D* v *Commission*, paragraph 96). It must also be borne in mind that the determination of the penalty to be imposed is based on a comprehensive appraisal by the appointing authority of all the particular facts and circumstances peculiar to each

individual case, since Articles 86 to 89 of the Staff Regulations do not specify any fixed relationship between the measures provided for and the various sorts of infringements and do not state the extent to which the existence of aggravating or mitigating circumstances should affect the choice of penalty (Case 403/85 *F* v *Commission* [1987] ECR 645, paragraph 26; *Williams I*, paragraph 83; and *Y* v *Parliament*, paragraph 34).

166 In the present case, it must be first be pointed out that the truth of the allegations against the applicant has been established.

167 Second, the penalty imposed cannot be regarded as either disproportionate or as resulting from a manifest error of assessment. Even though it is not disputed that the applicant had a good service record, the appointing authority was nevertheless fully entitled to find that, having regard to the gravity of the facts established and the applicant's grade and responsibilities, such a factor was not capable of mitigating the penalty to be imposed.

168 Furthermore, the applicant's argument that account should have been taken of his good faith regarding what he believed to be the scope of the duties of an official on leave on personal grounds cannot be accepted. It is clear from the case-law that officials are deemed to know the Staff Regulations (Case T-12/94 *Daffix* v *Commission* [1997] ECR-SC I-A-453, II-1197, paragraph 116; Joined Cases T-116/96, T-212/96 and T-215/96 *Telchini and Others* v *Commission* [1998] ECR-SC I-A-327, II-947, paragraph 59), with the result that their alleged ignorance of their obligations cannot constitute good faith. That argument has even less force in the present case since the applicant has admitted that his colleagues knew of his intention to work on the book at issue during his leave on personal grounds, whereas, in his request to the appointing authority under Article 40 of the Staff Regulations, he had given reasons unconnected with his book. Given that such statements are contrary to the honesty and trust which should govern relations between the administration and officials and are incompatible with the integrity which each

official is required to show (see, to that effect, Joined Cases 175/86 and 209/86 *M* v *Council* [1988] ECR 1891, paragraph 21), the appointing authority was entitled to treat the applicant's argument concerning his alleged good faith as unfounded.

169 Consequently, the plea must be rejected.'

The seventh plea in law: misuse of powers

22 Finally, the appellant asserted that there was a body of evidence establishing misuse of powers.

23 In rejecting this plea, the Court of First Instance gave the following grounds:

'171 According to the case-law, a misuse of powers consists in an administrative authority using its powers for a purpose other than that for which they were conferred on it. Thus, a decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent indicia, to have been taken for purposes other than those stated (*Williams I*, paragraphs 87 and 88).

172 As regards the statements made by certain members of the Commission before commencement of the disciplinary proceedings, it need merely be observed that... those statements constituted no more than a provisional

assessment by the relevant members of the Commission and could not, in the circumstances of the case, adversely affect the proper conduct of the disciplinary proceedings.

173 Nor can the applicant's argument that the Commission should have warned him of the risks that he was running by publishing his book be accepted. The Commission rightly points out that it cannot be held liable for initiatives which the applicant had taken care to conceal from it when he requested leave on personal grounds. Furthermore, the arguments alleging that there were irregularities in the disciplinary proceedings and that the applicant acted in good faith must also be rejected for the reasons set out in connection with the first and sixth pleas.

174 As to the argument alleging that the Commission changed the general rules for calculating salary reductions in cases of suspension, it need merely be pointed out that the change was not specifically linked to the applicant's removal from his post and cannot therefore constitute proof of the alleged misuse of powers.

175 Accordingly, it has not been established that, when imposing the disciplinary measure, the appointing authority pursued any aim other than that of safeguarding the internal order of the Community civil service. The seventh plea must therefore be rejected.'

24 The Court of First Instance therefore rejected the pleas for annulment and, consequently, the claim for damages.

25 Accordingly, the Court of First Instance dismissed the application and ordered each of the parties to bear its own costs.

The appeal

26 Mr Connolly claims that the Court of Justice should:

— set aside the contested judgment;

— annul so far as necessary the opinion of the Disciplinary Board;

— annul the contested decision;

— annul the decision of 12 July 1996 rejecting his administrative complaint;

— order the Commission to pay him BEF 7 500 000 in respect of material damage and BEF 1 500 000 in respect of non-material damage;

— order the Commission to pay the costs both of the proceedings before the Court of First Instance and of the present proceedings.

27 The Commission contends that the Court of Justice should:

— dismiss the appeal as partially inadmissible and, in any event, as entirely unfounded;

— dismiss the claim for damages as inadmissible and unfounded;

— order Mr Connolly to pay the costs in their entirety.

28 In his appeal the appellant puts forward 13 grounds of appeal.

The first ground of appeal

29 By his first ground of appeal, Mr Connolly complains that the Court of First Instance failed to take account of the fact that Articles 12 and 17 of the Staff Regulations establish a system of prior censorship which is, in principle, contrary to Article 10 of the ECHR as interpreted by the European Court of Human Rights (hereinafter 'the Court of Human Rights').

30 Furthermore, that system does not incorporate the substantive and procedural conditions required by Article 10 of the ECHR whenever a restriction is imposed on freedom of expression as safeguarded by that provision. In particular, it fails to comply with the requirement that any restriction must pursue a legitimate aim, must be prescribed by a legislative provision which makes the restriction foreseeable, must be necessary and appropriate to the aim pursued and must be amenable to effective judicial review.

31 The appellant also complains that the Court of First Instance neither balanced the interests involved nor ascertained whether the contested decision was actually justified by a pressing social need. In that regard, the appellant submits that if that decision was taken in order to safeguard the interests of the institution and the people affected by the book at issue, then, to be effective, it should have been accompanied by measures designed to prevent distribution of the book. Such measures were not, however, adopted by the Commission.

32 The Commission contends, as a preliminary point, that the first ground of appeal should be rejected as inadmissible on the ground that it is concerned with the substantive legality of the rules concerning permission laid down by Article 17 of the Staff Regulations rather than with the Court of First Instance's interpretation thereof. At no time during the proceedings at first instance did the appellant specifically raise an objection of illegality under Article 241 EC.

33 As to the substance, the Commission contends that Article 17 contains all the safeguards needed to meet the requirements of Article 10 of the ECHR and that, as the Court of First Instance held in paragraphs 148 to 154 of the contested judgment, it is confined to imposing reasonable limits on freedom of publication in cases where the interests of the Community might be adversely affected.

The admissibility of the ground of appeal

34 It is true that, in his first ground of appeal, the appellant appears to be challenging, by reference to Article 10 of the ECHR, the substantive legality of the rules concerning permission laid down by Article 17 of the Staff Regulations, even though before the Court of First Instance, as indicated in paragraph 147 of the contested judgment, he only contested the Commission's 'interpretation' of the second paragraph of Article 17 of the Staff Regulations as being contrary to freedom of expression.

35 Nevertheless, before the Court of First Instance, the appellant, by reference to the requirements of Article 10 of the ECHR, challenged the way in which the second paragraph of Article 17 of the Staff Regulations was applied in his case. Before this Court, he is criticising the reasoning of the contested judgment to justify rejection of his plea alleging failure to observe the principle of freedom of expression.

36 The first ground of appeal must therefore be held to be admissible.

Substance

37 First, according to settled case-law, fundamental rights form an integral part of the general principles of law, whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories. The ECHR has special significance in that respect (see, in particular, Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 41).

38 Those principles have, moreover, been restated in Article 6(2) of the Treaty on European Union, which provides: 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.'

39 As the Court of Human Rights has held, 'Freedom of expression constitutes one of the essential foundations of [a democratic society], one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of

Article 10 [of the ECHR], it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society"' (Eur. Court H. R. Handyside v United Kingdom judgment of 7 December 1976, Series A no. 24, § 49; Müller and Others judgment of 24 May 1988, Series A no. 133, § 33; and Vogt v Germany judgment of 26 September 1995, Series A no. 323, § 52).

40 Freedom of expression may be subject to the limitations set out in Article 10(2) of the ECHR, in terms of which the exercise of that freedom, 'since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.

41 Those limitations must, however, be interpreted restrictively. According to the Court of Human Rights, the adjective 'necessary' involves, for the purposes of Article 10(2), a 'pressing social need' and, although '[t]he contracting States have a certain margin of appreciation in assessing whether such a need exists', the interference must be 'proportionate to the legitimate aim pursued' and 'the reasons adduced by the national authorities to justify it' must be 'relevant and sufficient' (see, in particular, Vogt v Germany, § 52; and Wille v Liechtenstein judgment of 28 October 1999, no 28396/95, § 61 to § 63). Furthermore, any prior restriction requires particular consideration (see Wingrove v United Kingdom judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1957, § 58 and § 60).

42 Furthermore, the restrictions must be prescribed by legislative provisions which are worded with sufficient precision to enable interested parties to regulate their

conduct, taking, if need be, appropriate advice (Eur. Court H. R. Sunday Times v United Kingdom judgment of 26 April 1979, Series A no. 30, § 49).

43 As the Court has ruled, officials and other employees of the European Communities enjoy the right of freedom of expression (see *Oyowe and Traore* v *Commission*, paragraph 16), even in areas falling within the scope of the activities of the Community institutions. That freedom extends to the expression, orally or in writing, of opinions that dissent from or conflict with those held by the employing institution.

44 However, it is also legitimate in a democratic society to subject public servants, on account of their status, to obligations such as those contained in Articles 11 and 12 of the Staff Regulations. Such obligations are intended primarily to preserve the relationship of trust which must exist between the institution and its officials or other employees.

45 It is settled that the scope of those obligations must vary according to the nature of the duties performed by the person concerned or his place in the hierarchy (see, to that effect, Wille v Liechtenstein, § 63, and the opinion of the Commission of Human Rights in its report of 11 May 1984 in Glasenapp v Germany, Series A no. 104, § 124).

46 In terms of Article 10(2) of the ECHR, specific restrictions on the exercise of the right of freedom of expression can, in principle, be justified by the legitimate aim of protecting the rights of others. The rights at issue here are those of the institutions that are charged with the responsibility of carrying out tasks in the public interest. Citizens must be able to rely on their doing so effectively.

47 That is the aim of the regulations setting out the duties and responsibilities of the European public service. So an official may not, by oral or written expression, act

in breach of his obligations under the regulations, particularly Articles 11, 12 and 17, towards the institution that he is supposed to serve. That would destroy the relationship of trust between himself and that institution and make it thereafter more difficult, if not impossible, for the work of the institution to be carried out in cooperation with that official.

48 In exercising their power of review, the Community Courts must decide, having regard to all the circumstances of the case, whether a fair balance has been struck between the individual's fundamental right to freedom of expression and the legitimate concern of the institution to ensure that its officials and agents observe the duties and responsibilities implicit in the performance of their tasks.

49 As the Court of Human Rights has held in that regard, it must '[be borne in mind] that whenever civil servants' right to freedom of expression is in issue the "duties and responsibilities" referred to in Article 10(2) assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim' (see Eur. Court H. R. Vogt v Germany, cited above; Ahmed and Others v United Kingdom judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2378, § 56; and Wille v Liechtenstein, cited above, § 62).

50 The second paragraph of Article 17 of the Staff Regulations must be interpreted in the light of those general considerations, as was done by the Court of First Instance in paragraphs 148 to 155 of the contested judgment.

51 The second paragraph of Article 17 requires permission for publication of any matter dealing with the work of the Communities. Permission may be refused only where the proposed publication is liable 'to prejudice the interests of the Communities'. That eventuality, referred to in a Council regulation in restrictive terms, is a matter that falls within the scope of 'the protection of the rights of others', which, according to Article 10(2) of the ECHR as interpreted by the Court of Human Rights, is such as to justify restricting freedom of expression.

Consequently, the appellant's allegations that the second paragraph of Article 17 of the Staff Regulations does not pursue a legitimate aim and that the restriction of freedom of expression is not prescribed by a legislative provision must be rejected.

52 The fact that the restriction at issue takes the form of prior permission cannot render it contrary, as such, to the fundamental right of freedom of expression, as the Court of First Instance held in paragraph 152 of the contested judgment.

53 The second paragraph of Article 17 of the Staff Regulations clearly provides that, in principle, permission is to be granted, refusal being possible only in exceptional cases. Indeed, in so far as that provision enables institutions to refuse permission to publish, and thus potentially interfere to a serious extent with freedom of expression, one of the fundamental pillars of a democratic society, it must be interpreted restrictively and applied in strict compliance with the requirements mentioned in paragraph 41 above. Thus, permission to publish may be refused only where publication is liable to cause serious harm to the Communities' interests.

54 Furthermore, as their scope is restricted to publications dealing with the work of the Communities, the rules are designed solely to allow the institution to keep itself informed of the views expressed in writing by its officials or other employees about its work so as to satisfy itself that they are carrying out their duties and conducting themselves with the interests of the Communities in mind and not in a way that would adversely reflect on their position.

55 Remedies against a decision refusing permission are available under Articles 90 and 91 of the Staff Regulations. There is thus no basis for the appellant to claim, as he does, that the rules in Article 17 of the Staff Regulations are not amenable to effective judicial review. Review of that kind enables the Community Courts to ascertain whether the appointing authority has exercised its power under the

second paragraph of Article 17 of the Staff Regulations in strict compliance with the limitations to which any interference with the right to freedom of expression is subject.

56 Such rules reflect the relationship of trust which must exist between employers and employees, particularly when they discharge high-level responsibilities in the public service. The way in which the rules are applied can be assessed solely in the light of all the relevant circumstances and the implications thereof for the performance of public duties. In that respect, the rules meet the criteria set out in paragraph 41 above for the acceptability of interference with the right to freedom of expression.

57 It is also clear from the foregoing that, when applying the second paragraph of Article 17 of the Staff Regulations, the appointing authority must balance the various interests at stake and is in a position to do so by taking account, in particular, of the gravity of the potential prejudice to the interests of the Communities.

58 In the present case, the Court of First Instance found, in paragraph 154 of the contested judgment, that 'the appointing authority maintained, in its decision removing the applicant from his post, that he had failed to comply with [the second paragraph of Article 17 of the Staff Regulations] on the grounds that, first, he had not requested permission to publish his book, second, he could not have failed to be aware that he would be refused permission on the same grounds as those on which permission had previously been refused in respect of articles of similar content, and, finally, his conduct had seriously prejudiced the Communities' interests and damaged the institution's image and reputation.'

59 In relation to the latter infringement, the Court of First Instance observed first, in paragraph 125 of the contested judgment, that 'the book at issue contains numerous aggressive, derogatory and frequently insulting statements, which are detrimental to the honour of the persons and institutions to which they refer and which have been extremely well publicised, particularly in the press.' The Court

of First Instance was thus entitled to reach the conclusion, on the basis of an assessment which cannot be challenged on appeal, that those statements constituted an infringement of Article 12 of the Staff Regulations.

60 The Court of First Instance then referred, in paragraph 128 of the contested judgment, not only to Mr Connolly's high-ranking grade but also to the fact that the book at issue 'publicly expressed... the applicant's fundamental opposition to the Commission's policy, which it was his responsibility to implement, namely bringing about economic and monetary union, an objective which is, moreover, laid down in the Treaty'.

61 Finally, the Court of First Instance made it clear, in paragraph 155 of the contested judgment, that it had not been established 'that the finding that he had infringed the second paragraph of Article 17 of the Staff Regulations would have been made even if the Communities' interests had not been prejudiced'.

62 The foregoing observations of the Court of First Instance, based on the statement of reasons in the preamble to the contested decision (see, in particular, the fifth, sixth, ninth, tenth, twelfth and fifteenth recitals to that decision), make it clear that Mr Connolly was dismissed not merely because he had failed to apply for prior permission, contrary to the requirements of the second paragraph of Article 17 of the Staff Regulations, or because he had expressed a dissentient opinion, but because he had published, without permission, material in which he had severely criticised, and even insulted, members of the Commission and other superiors and had challenged fundamental aspects of Community policies which had been written into the Treaty by the Member States and to whose implementation the Commission had specifically assigned him the responsibility of contributing in good faith. In those circumstances, he committed 'an irremediable breach of the trust which the Commission is entitled to expect from its officials' and, as a result, made 'it impossible for any employment relationship to be maintained with the institution' (see the 15th recital to the decision removing Mr Connolly from his post).

63 As to the measures intended to prevent distribution of the book, which, the appellant claims, the Commission should have adopted in order to protect its

interests effectively, suffice it to say that the adoption of such measures would not have restored the relationship of trust between the appellant and the institution and would have made no difference to the fact that it had become impossible for him to continue to have any sort of employment relationship with the institution.

64 It follows that the Court of First Instance was entitled to conclude, as it did in paragraph 156 of the contested judgment, that the allegation of breach of the right to freedom of expression, resulting from the application thereto of the second paragraph of Article 17 of the Staff Regulations, was unfounded.

65 The first ground of appeal must therefore be rejected.

The second ground of appeal

66 By his second ground of appeal, the appellant claims that the Court of First Instance (in paragraph 157 of the contested judgment) failed to apply the second paragraph of Article 17 and Article 35 of the Staff Regulations correctly by holding that officials on leave on personal grounds were also required to obtain permission prior to publishing material. It is the appellant's contention that, on the contrary, the fact of being on leave on personal grounds releases the official from the requirement of complying with the second paragraph of Article 17 of the Staff Regulations.

67 The appellant also complains that the Court of First Instance did not give reasons for rejecting his offer of evidence as to the practice followed in DG II at the Commission and thus infringed the principle of legitimate expectations.

68 In that regard, paragraph 161 of the contested judgment indicates that, to establish the existence of a general practice within the Commission, by virtue of which officials on leave on personal grounds were not required to request prior permission, the appellant relied merely on the fact that in 1985 he had been granted one year's leave in order to work for a private financial institution and that the former Director-General of DG II had not deemed it necessary to approve or comment on the texts prepared by him for that institution. It cannot be concluded from that fact alone that the Court of First Instance has in any way distorted the evidence adduced by the appellant.

69 Moreover, it is patently clear from the wording of Article 35 of the Staff Regulations that an official on leave on personal grounds does not lose his status as an official during the period of leave. He therefore remains subject to the obligations incumbent upon every official, unless express provision is made to the contrary.

70 Consequently, the second ground of appeal must be rejected as manifestly unfounded.

The third ground of appeal

71 By his third ground of appeal, the appellant complains that the Court of First Instance failed to apply the second paragraph of Article 11 of the Staff Regulations correctly in that it equated royalties with remuneration for the purposes of that provision.

72 In the first part of this ground of appeal, the appellant maintains that that interpretation is wrong since royalties do not constitute consideration for services rendered and do not undermine an official's independence.

73 He asserts in the second part of this ground of appeal that the Court of First Instance's interpretation entails a breach of the right to property laid down by Article 1 of the First Protocol to the ECHR.

74 Finally, by the third part of this ground of appeal, the appellant complains that in paragraph 113 of the contested judgment the Court of First Instance misapplied Article 11 in making its application subordinate to the rules on prior permission laid down in Article 17 of the Staff Regulations. He submits that Article 11 applies independently of Article 17.

75 So far as the first two parts of this ground of appeal are concerned, the appellant confines himself to reproducing the arguments and submissions made before the Court of First Instance without developing any specific argument that identifies the error of law that is said to vitiate the contested judgment.

76 Since the first two parts of the third ground of appeal in reality seek no more than a re-examination of the submissions made before the Court of First Instance, which under Article 51 of the EC Statute of the Court of Justice the Court does not have jurisdiction to undertake, they must be rejected as inadmissible (see Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 35).

77 The third part of this ground of appeal, as the Advocate General observed in point 32 of his Opinion, concerns reasoning which the Court of First Instance included only for the sake of completeness in the second sentence of paragraph 113 of the contested judgment. The Court of First Instance ruled principally that the appellant had not proved the existence of the alleged practice of the

Commission to permit officials on leave on personal grounds to receive royalties. That reasoning was a sufficient answer in law to the appellant's argument. The complaint concerning the second sentence of paragraph 113 of the contested judgment must, therefore, be held on any view to be ineffectual.

78 Consequently, the third ground of appeal must be rejected in its entirety as manifestly inadmissible.

The fourth ground of appeal

79 The fourth ground of appeal comprises three parts.

80 In the first part, the appellant complains that in paragraphs 125 and 126 of the contested judgment the Court of First Instance itself continued the investigative phase of the disciplinary proceedings and substituted its assessment of the facts for that of the disciplinary authority by accepting outright a number of the complaints concerning the contents of the book which had been made by the Commission during the disciplinary procedure, although neither the Disciplinary Board's opinion nor the contested decision included an express statement of reasons regarding the allegedly insulting nature of the book. Furthermore, the contested judgment merely reproduced those complaints without verifying whether they were well founded.

81 In paragraph 126 of the contested judgment, the Court of First Instance rejected the appellant's argument that ultimately neither the Disciplinary Board nor the appointing authority relied on the allegations that the book at issue was aggressive, derogatory and insulting. According to the Court of First Instance both bodies 'specifically stated in the opinion and in the decision removing Mr

Connolly from his post, that "Mr Connolly's behaviour, taken as a whole, has reflected on his position"'. That statement must be read in the light of the appointing authority's report to the Disciplinary Board which, as the Advocate General observed in point 35 of his Opinion, includes an appraisal, in essence identical to that made by the Court of First Instance in paragraph 125 of the contested judgment, of the aggressive, derogatory, even insulting, nature of certain passages of the book (see, in particular, paragraphs 25 and 26 of the appointing authority's report).

82 The appellant is therefore mistaken when he claims that the Court of First Instance substituted its own assessment for that of the appointing authority by formulating fresh allegations against him.

83 Furthermore, provided the evidence has not been misconstrued and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, findings of fact are not, in principle, subject to review by the Court of Justice in an appeal (see Case C-7/95 P *Deere* v *Commission* [1998] ECR I-3111, paragraph 22).

84 The first part of the fourth ground of appeal must therefore be rejected.

85 By the second part of this ground of appeal, Mr Connolly complains that the Court of First Instance found in paragraph 128 of the contested judgment that the book in question publicly expressed 'his fundamental opposition to the Commission's policy, which it was his responsibility to implement' with the result that the relationship of trust between the appellant and his institution was destroyed.

86 According to the appellant, that charge was not made against him in the disciplinary proceedings. Furthermore, if any expression of dissent from the

policy of a Community institution on the part of one of its officials were regarded as a breach of the duty of loyalty, freedom of expression as laid down in Article 10 of the ECHR would become meaningless. Besides, Mr Connolly's responsibility was not to implement Commission policy but, as stated in the Disciplinary Board's opinion, was 'monitoring monetary policy in the Member States and analysing progress towards economic and monetary union'.

87 As to that, it is sufficient to note that the finding of the Court of First Instance of which the appellant complains is also, as the Commission rightly points out, to be found, in essence, in the eighth recital to the opinion of the Disciplinary Board and in the tenth recital to the contested decision. Assessment of the nature of Mr Connolly's duties is a question of fact on which the Court of Justice cannot rule in an appeal.

88 The alleged breach of the principle of freedom of expression and the restrictions which may exceptionally be imposed on it are dealt with at paragraphs 37 to 64 of the present judgment, relating to the first ground of appeal.

89 The second part of the fourth ground of appeal must therefore also be rejected.

90 By the third part of this ground of appeal, the appellant asserts that in paragraph 126 of the contested judgment the Court of First Instance was wrong to hold that the Disciplinary Board and the appointing authority had not abandoned their complaint relating to an infringement of Article 12 of the Staff Regulations, since the Commission has acknowledged, in its defence, that it had decided not to proceed with the allegation of breach of confidentiality.

91 Irrespective of the arguments relied on by the Commission in this appeal — and it disputes the appellant's interpretation thereof — it is clear from the grounds

set out by the Court of First Instance in paragraph 126 of the contested judgment and approved in paragraph 81 of the present judgment, that neither the Disciplinary Board nor the appointing authority abandoned the allegation of infringement of Article 12 of the Staff Regulations.

92 Therefore, the third part of this ground of appeal cannot be upheld.

93 Consequently, the fourth ground of appeal must be dismissed as being partly inadmissible and partly unfounded.

The fifth ground of appeal

94 By his fifth ground of appeal, the appellant complains that in paragraph 44 of the contested judgment the Court of First Instance held that the appointing authority's report included 'the contents of the book among the facts complained of' in that they expounded economic theories which were at odds with the policy adopted by the Commission and that the Court thus failed to give the requisite credence to the appointing authority's report, paragraph 25 of which referred solely to 'derogatory and unsubstantiated attacks'.

95 The appellant's claim that the Court of First Instance was confused cannot be upheld since in paragraph 44, having cited certain passages from the appointing authority's report for the Disciplinary Board, it confined itself to stating that the very contents of the book at issue, in particular its polemical nature, were among the facts alleged against the appellant.

96 The fifth ground of appeal is therefore completely unfounded.

The sixth ground of appeal

97 The sixth ground of appeal comprises two parts.

98 By the first part, the appellant accuses the Court of First Instance of having, in paragraphs 97 and 98 of the contested judgment, failed to give due credence to the documents in the case by dealing with a complaint which had not been established in the course of the disciplinary proceedings, namely that a difference of opinion had been expressed between Mr Connolly and the Commission regarding the introduction of economic and monetary union, and by relying for that purpose on a quotation from the book at issue — in this instance, page 12 — which does not appear in the documents in the case.

99 It must be pointed out, as the Court of First Instance did in paragraphs 97 and 98 of the contested judgment, that the appellant's disagreement with the Commission's policy was obvious, as evidenced by the passage cited from the book, which was manifestly part of the case-file, and that the appellant himself gave an explanation of it before the Disciplinary Board (see the minutes of the hearing on 5 December 1995, pages 4 to 7).

100 In any event purely factual appraisals of that kind are not subject to review by the Court of Justice in an appeal.

101 In the second part of the fifth ground of appeal, the appellant maintains that in paragraph 98 of the contested judgment the Court of First Instance wrongly attributed to him certain statements which he had not made, to the effect that: 'since his critiques and proposals were blocked by his superiors, he had decided, given the vital importance of the matter at issue and the danger that the Commission's policy entailed for the future of the Union, to make them public'.

102 The material accuracy of that statement, which is taken verbatim from the Disciplinary Board's opinion on which the Court of First Instance's assessment is based, cannot be challenged solely on the basis of a mere affirmation unsupported by precise and coherent evidence to the contrary. As the Court of First Instance observed in paragraph 98 of the contested judgment, that statement is, furthermore, confirmed by the minutes of the hearing on 5 December 1995 (pages 4 to 7), the contents of which were not disputed by the appellant.

103 Consequently, the sixth ground of appeal must be rejected as partially inadmissible and partially unfounded.

The seventh ground of appeal

104 By his seventh ground of appeal, Mr Connolly disputes the Court of First Instance's finding in paragraph 47 of the contested judgment that, at his final hearing before the appointing authority on 9 January 1996, he neither claimed that the Disciplinary Board's opinion was founded on complaints which ought to be regarded as new facts nor applied, as he was entitled to do under Article 11 of Annex IX, for the disciplinary proceedings to be reopened. According to the appellant, it is clear from the minutes of the hearing that in the course of it his adviser provided the appointing authority with the submissions lodged with the Disciplinary Board, in which he applied for the proceedings to be stayed and for the case to be referred back to the appointing authority for a rehearing in the event of the Board seeking to rely on a material breach of Article 12 of the Staff Regulations.

105 Irrespective of whether this ground of appeal is admissible, the appellant's argument does not, in any event, prove that paragraph 47 of the contested judgment is vitiated by an error of assessment. That paragraph merely states that at the hearing on 9 January 1996 the appellant neither contended that the opinion of the Disciplinary Board was founded on new complaints nor applied for the disciplinary proceedings to be reopened. The Court of First Instance's

finding cannot be challenged on the basis that the appellant produced at that hearing the submissions lodged with the Disciplinary Board, in which he generally reserved his position in the event of new complaints being put forward in the future.

106 The seventh ground of appeal must therefore be rejected.

The eighth ground of appeal

107 By his eighth ground of appeal, the appellant claims that in paragraph 48 of the contested judgment the Court of First Instance failed to respond adequately to his plea alleging that the second paragraph of Article 87 of the Staff Regulations had not been complied with in that he had not previously been heard in relation to two matters, namely the article published by *The Times* newspaper on 6 September 1995 and the interview given to a television journalist on 26 September 1995.

108 In that regard, it is clear from paragraph 48 of the contested judgment that the Court of First Instance addressed the 'argument that the report submitted to the Disciplinary Board did not refer to the fact that he had published an article on 6 September 1995 for the purpose of promoting his book or that he had taken part in a television broadcast on 26 September 1995'. Furthermore, as regards the arguments put forward in support of the eighth ground of appeal, it need merely be pointed out that paragraph 19 of the report to the Board specifically refers to the facts on which the appellant relies.

109 Even if the appellant's plea at first instance, whose terms were indeed not particularly clear, be taken as meaning that, contrary to the requirements of the second paragraph of Article 87 of the Staff Regulations, he had not been heard on the two matters in question before the report for the Disciplinary Board was

drawn up, suffice it to note that in paragraph 9 of the contested judgment the Court of First Instance stated that, by letter of 13 September 1995, the appointing authority invited the appellant to attend a hearing on the facts at issue in the light of his obligations under Articles 11, 12 and 17 of the Staff Regulations and that at the hearing on 26 September 1995 he refused to answer any of the questions put to him and filed a written statement, the contents of which are summarised in paragraph 10 of the contested judgment. It was only after that second hearing, that is to say on 4 October 1995, that the appointing authority decided to refer the matter to the Disciplinary Board under Article 1 of Annex IX.

110 The eighth ground of appeal must therefore be rejected as manifestly unfounded.

The ninth ground of appeal

111 By his ninth ground of appeal, the appellant criticises the Court of First Instance for stating in paragraph 74 of the contested judgment that it was permissible for the rapporteur to present his report orally to other members of the Disciplinary Board and that at several points (in paragraphs 74, 84, 95 and 101 of the contested judgment) the Court objected that the appellant had not provided any proof to support his allegation that the Disciplinary Board and its Chairman had performed their task in a superficial and biased manner, despite the offers of proof in both his application and reply.

112 As regards the fact that the Disciplinary Board did not produce a report, the Court must reiterate the finding made by the Court of First Instance in paragraph 74 of the contested judgment that 'Article 3 of Annex IX is confined to laying down the rapporteur's duties and does not prescribe any specific formalities concerning the way in which they should be performed, such as whether a written report should be produced or whether such a report should be disclosed to the parties.' The Court of First Instance was therefore correct to infer that 'there is no reason why the rapporteur should not present his report orally to the other members of the Disciplinary Board'.

113 As to the allegation that the Court of First Instance failed to comply with the rules relating to the burden of proof and the taking of evidence, an allegation intended in the present case to establish a lack of independence and impartiality on the part of the Disciplinary Board, it must be pointed out that, as a general rule, in order to satisfy the Court as to a party's claims or, at the very least, as to the need for the Court itself to take evidence, it is not sufficient merely to refer to certain facts in support of the claim. There must also be adduced sufficiently precise, objective and consistent indicia of their truth or probability.

114 The Court of First Instance's appraisal of the evidence produced to it does not constitute, save where the sense of the evidence has been distorted — and no such distortion has been proved by Mr Connolly in this case — a point of law which is subject, as such, to review by the Court of Justice (Case C-362/95 P *Blackspur DIY and Others* v *Council and Commission* [1997] ECR I-4775, paragraph 29).

115 Consequently, the ninth ground of appeal must be rejected.

The tenth ground of appeal

116 By his tenth ground of appeal the appellant claims that the Court of First Instance, first, refused in paragraph 174 of the contested judgment to grant his application for production of a memorandum dated 28 July 1995 on the calculation of salary reductions in cases of suspension although that memorandum would have helped him to establish that the Commission had misused its powers and, second, held that the memorandum did not 'specifically' concern Mr Connolly's dismissal, even though neither of the parties had produced the memorandum in the proceedings. The Court of First Instance infringed the rights of the defence and unlawfully made use of a fact of which it had 'special knowledge'.

117 In the absence of objective, relevant and consistent indicia, which it is for the Court of First Instance alone to assess, that Court was entitled to refuse the application for production of the Commission's memorandum altering the general rules for calculating salary reductions in cases in which officials are suspended, which, by reason of its very subject-matter, did not concern either dismissals in general or the appellant's particular situation following the measure removing him from his post.

118 The tenth ground of appeal must therefore be rejected as manifestly unfounded.

The eleventh ground of appeal

119 By his eleventh ground of appeal, the appellant disputes paragraphs 172 to 175 of the contested judgment on the ground that the Court of First Instance failed to answer various arguments capable of establishing that the disciplinary proceedings were vitiated by a misuse of powers. The arguments relied on concerned 'parallel proceedings', 'the failure to reply to the question concerning the exact scope of the disciplinary proceedings in relation to Articles 11, 12 and 17 of the Staff Regulations', 'the absence of a logical connection between the premisses and the conclusions drawn in relation to the disciplinary proceedings', the fact that 'the Commission maintained in its pleadings that the Disciplinary Board was not even obliged to read the contested book' and 'the deliberate and provocative appointment of the Secretary-General as Chairman of the Disciplinary Board'.

120 In that regard, it is clear from paragraphs 171 to 175 of the contested judgment that the Court of First Instance did not regard the appellant's arguments as 'objective, relevant and consistent indicia' capable of supporting his argument that the disciplinary measure imposed on him pursued an aim other than that of

safeguarding the internal order of the Community public service. The grounds set out in the contested judgment must, in light of the circumstances of the case, be regarded as a proper response to the appellant's arguments and, therefore, as being sufficient to enable the Court of Justice to exercise its power of review.

121 As the Advocate General observed in point 61 of his Opinion, although the Court of First Instance is required to give reasons for its decisions, it is not obliged to respond in detail to every single argument advanced by the appellant, particularly if the argument was not sufficiently clear and precise and was not adequately supported by evidence. In that regard, the appellant has not proved, or even asserted, that the arguments referred to in paragraph 119 of this judgment meet those requirements or that they were supported by evidence which was distorted by the Court of First Instance, or that in its assessment of that evidence the Court of First Instance contravened the rules of procedure or general legal principles concerning the burden of proof or the taking of evidence.

122 In those circumstances, the eleventh ground of appeal must be rejected.

The twelfth ground of appeal

123 By his twelfth ground of appeal, the appellant asserts that the reasoning in paragraph 155 of the contested judgment is logically flawed in that the Court of First Instance inferred a previously unknown fact from one that was uncertain, whereas a properly drawn presumption involves an unknown fact being inferred from one that is certain. Furthermore, a negative inference, ('it cannot be inferred from...'), cannot serve as a basis for sound reasoning.

124 This ground of appeal cannot be upheld since it is based on an inaccurate reading, taken out of context, of the abovementioned paragraph of the contested judgment.

125 As the Advocate General has correctly pointed out in point 64 of his Opinion, paragraph 155 of the contested judgment answers the appellant's objection that the system of prior permission in the second paragraph of Article 17 of the Staff Regulations entailed unlimited censorship contrary to Article 10 of the ECHR. The Court of First Instance began by stating in paragraph 152 that permission is refused only exceptionally and that refusal may be justified only where the publication concerned is likely to prejudice the interests of the Communities, and went on to say (paragraph 154) that the contested decision was based, amongst other things, on the fact that the appellant's behaviour caused serious prejudice to the interests of the Communities, and damaged the reputation and image of the Commission. It concluded (paragraph 155) that there was nothing to suggest that the appellant would have been found to have infringed the second paragraph of Article 17 if the Communities' interests had not been prejudiced, for which reason there can be no basis for speaking of 'unlimited censorship'.

126 The twelfth ground of appeal must therefore be rejected as manifestly unfounded.

The thirteenth ground of appeal

127 By his thirteenth ground of appeal, the appellant submits that it is apparent from a review of his other grounds of appeal that the charges against him have not been proved, with the result that the Court of First Instance's assessment of the proportionality of the disciplinary measure is invalid, since it is based on the premiss in paragraph 166 of the contested judgment that 'the truth of the allegations against the applicant has been established'.

128 Since none of the other grounds of appeal put forward by the appellant can be upheld, the thirteenth ground of appeal must also be rejected as unfounded.

129 As the pleas for annulment of the disputed decision were held to be either inadmissible or unfounded, the Court of First Instance, in paragraphs 178 and 179 of the contested judgment, properly rejected the appellant's claim for compensation for the material and non-material damage allegedly suffered by him, since that claim was closely linked with the earlier pleas. The appellant has not put forward any argument capable of undermining that reasoning and accordingly his claim for damages before the Court of Justice is manifestly inadmissible.

130 The appeal must therefore be dismissed in its entirety.

Costs

131 Under Article 69(2) of the Rules of Procedure, which is applicable to appeal proceedings pursuant to Article 118 thereof, 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 70 of those Rules, in proceedings between the Communities and their servants, institutions are to bear their own costs. However, by virtue of the second paragraph of Article 122 of the Rules of Procedure, Article 70 does not apply to appeals brought by officials or other servants of an institution against the latter. Since the appellant has been unsuccessful in his appeal, he must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the appeal;**

2. **Orders Mr Connolly to pay the costs.**

Rodríguez Iglesias	Gulmann	La Pergola
Wathelet	Skouris	Edward
Puissochet	Jann	Sevón
Schintgen		Colneric

Delivered in open court in Luxembourg on 6 March 2001.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President