JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber) of 17 October 1991 *

Summary

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* Language of the case: French.

In Case T-26/89,

Henri de Compte, an official of the European Parliament, residing in Luxembourg, represented by E. Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Schiltz, 83 Boulevard Grande-Duchesse Charlotte,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, and P. Kyst, a member of its Legal Service, acting as Agents, assisted by D. Waelbroek, of the Brussels Bar, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of 18 January 1988 by which the President of the Parliament imposed on Mr de Compte the sanction of downgrading from Grade A 3, Step 8, to Grade A 7, Step 6,

THE COURT OF FIRST INSTANCE (Third Chamber),

composed of: C. Yeraris, President of Chamber, A. Saggio and B. Vesterdorf, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 19 March 1991,

gives the following

Judgment

Facts and procedure

1 Pursuant to Article 206a(4) of the EEC Treaty, the Court of Auditors began in July 1981 to examine the cash office of members of the European Parliament (hereinafter referred to as 'the Parliament'). Its initial conclusions, notified to the Parliament in October 1981 and April 1982, were highly critical.

2 On 30 April 1982, Mr de Compte, who at that time was an official in Grade A 3 and working as an accounting officer in the Parliament, was transferred.

3 On 6 July 1982, the Court of Auditors adopted a special report on the members' cash office of the Parliament (Official Journal 1982 C 202, p. 1) in which it found that there had been serious breaches of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (Official Journal 1977 L 356, p. 1, hereinafter referred to as 'the Financial Regulation') and in which it requested the Parliament to take the necessary measures to clear all irregular transactions, to recover all sums due and to establish whether the accounting officer, the administrator of advance funds or the financial controller were in any way responsible.

4 The irregularities found by the Court of Auditors were confirmed by a report drawn up, at the Parliament's request, by an independent firm of auditors.

5 By letter of 30 September 1982 addressed to the chairman of the Disciplinary Board, the President of the Parliament, in his capacity as the appointing authority, informed him that he had decided to initiate disciplinary proceedings under the second paragraph of Article 87 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and Article 71 of the Financial Regulation against Mr de Compte.

6 Following a claim by the applicant that he had not been given a prior opportunity to state his case, as required under the second paragraph of Article 87 of the Staff Regulations, the President of the Parliament informed him by letter of 14 January 1983 of his decision to annul that procedure. In that letter, the President also informed the applicant of certain matters concerning the operation of the members' cash office which might give rise to the initiation of disciplinary proceedings against him.

7 On 28 January 1983, the applicant was given a prior opportunity to state his case, in accordance with the second paragraph of Article 87 of the Staff Regulations, by the Director-General of Administration, Staff and Finances of the Parliament.

8 On 13 April 1983, the President of the Parliament, pursuant to Article 87 of the Staff Regulations and Article 1 of Annex IX thereto (hereinafter referred to as 'the annex'), submitted to the Disciplinary Board a report setting out the complaints made against the applicant. The Disciplinary Board met on several occasions during the period from 2 June 1983 to 10 February 1984.

9 On this latter date, the Disciplinary Board, in a reasoned opinion, proposed by three votes to two that Mr de Compte should be reprimanded; the two members opposed to that disciplinary measure argued that no action whatever should be taken against the accused official.

10 In the meantime, by decision of 18 May 1983, the Parliament had granted a discharge to its President for the 1981 financial year while postponing final discharge to the accounting officer to enable the Committee on Budgetary Control to effect certain work (Official Journal 1983 C 161, p. 98).

11 On 16 March 1984, the President of the Parliament decided to remove the applicant from his post, without reduction or withdrawal of entitlement to retirement pension. That decision upheld several complaints made against the applicant in respect of various irregularities which the latter was alleged to have committed in the course of his work as an accounting officer.

12 On 21 March 1984, the applicant submitted to the appointing authority a complaint, within the meaning of Article 90(2) of the Staff Regulations, against the decision of 16 March 1984 removing him from his post. That complaint was supplemented by an additional complaint of 11 April 1984 based essentially on the fact that the Parliament had in the meantime granted him final discharge for the 1981 financial year, that is to say, the financial year during which the facts of which he was accused were alleged to have occurred.

13 By decision of 10 April 1984, the Parliament had in fact granted final discharge to its accounting officer for the 1981 financial year. However, after referring in citations E, F and G to the special report of the Court of Auditors on the members' cash office, to the Parliament's decision of 18 May 1983 granting a discharge to its President and postponing the decision on final discharge of the accounting officer, as well as to the letter of 6 June 1983 from the President of the Parliament stating the reasons which led him to request postponement of the final discharge decision for 1981, that decision of 10 April 1984 stated, in the first recital in its preamble, that 'all relevant information, including the letter of 6 June 1983, will be taken into account for the purposes of the 1982 discharge' (Official Journal 1984 C 127, p. 43).

14 On 24 May 1984, the President of the Parliament, in reply to the complaint and additional complaint submitted to him, decided to amend the disciplinary sanction of removal from post to that of downgrading to Grade A 7, Step 6. The statement of reasons for that decision referred to the reasons given in support of the initial sanction of removal from post.

15 On 4 June 1984, Mr de Compte brought simultaneously:

— a complaint before the President of the Parliament against the new decision of 24 May 1984;

— an application before the Court of Justice for the annulment of the above decision of 24 May 1984 downgrading him;

— an application for interim measures seeking a stay on the implementation of that decision until the Court had ruled on the main application.

16 By order of 3 July 1984 (Case 141/84 R, [1984] ECR 2575), the President of the Third Chamber of the Court of Justice ordered the operation of the decision of 24 May 1984 to be suspended until the Court had given judgment in the main action.

17 By decision of 4 July 1984, the President of the Parliament rejected the complaint which the applicant had submitted on 4 June 1984.

18 In its judgment of 20 June 1985 (Case 141/84, [1985] ECR 1951), the Court found that the procedure followed by the Disciplinary Board had been vitiated by a fundamental defect (examination of witnesses in the absence of the applicant and his legal representative) and accordingly annulled the appointing authority's decision of 24 May 1984.

19 By letter of 24 July 1985, the President of the Parliament submitted to the Court of Auditors a request drawn up by the Budgetary Control Committee of the Parliament seeking a new opinion on the most appropriate way to clear the deficit established in the members' cash office for the 1981 financial year.

20 On 7 November 1985, the Court of Auditors delivered its opinion, in which it reached the conclusion that the accounting officer and the administrator of advance funds were liable under Article 70 of the Financial Regulation.

21 By decision of 11 July 1986, the Parliament granted a discharge to its President for the 1982 financial year and authorized him to grant a discharge to its accounting officers in respect of that financial year, 'excluding therefrom the sum of 91 263 ECU and the matters relating thereto described in the letter from the President of the Court of Auditors dated 7 November 1985 and the accompanying advice of the Court of Auditors'. It also instructed its President to take appropriate action to resolve the outstanding matters (Official Journal 1986 C 227, p. 154).

22 By letter of 9 December 1986, the President of the Parliament intimated to the applicant that he intended to re-open the disciplinary procedure against him and invited him to submit his observations on the report containing the facts alleged, which the then President had submitted on 13 April 1983 to the Disciplinary Board on the opinion of the Court of Auditors of 7 November 1985 and the decision of the Parliament of 11 July 1986.

23 Mr de Compte was heard on 12 January and 23 February 1987 and submitted written observations on 30 January and 11 February 1987, pursuant to the second paragraph of Article 87 of the Staff Regulations.

24 By a letter of 24 June 1987 addressed to the chairman of the Disciplinary Board designated by the institution, the President of the Parliament reopened the disciplinary proceedings previously initiated against Mr de Compte on the basis of the report which had been submitted on 13 April 1983 to the previous Disciplinary Board.

25 The Disciplinary Board met on several occasions between 9 July 1987 and 27 November 1987. On this latter date, it issued a reasoned opinion in which it unanimously recommended to the President of the Parliament that Mr de Compte should be downgraded, in view of the seriousness of the complaints upheld and having regard to the extenuating circumstances.

26 In accordance with the third paragraph of Article 7 of the annex, the applicant was heard on 16 December 1987 and submitted his final observations by letter of 7 December 1987.

27 By decision of 18 January 1988, notified by letter of the same date and intended to take effect on 1 February 1988, the President of the Parliament downgraded the applicant from Grade A 3, Step 8, to Grade A 7, Step 6.

28 It was under those circumstances that Mr de Compte, on 10 February 1988, contested the decision of the President of the Parliament by bringing simultaneously:

— a complaint before the appointing authority under Article 90(2) of the Staff Regulations;

— the present application for annulment;

— an application for an interim order suspending the operation of that decision until the delivery of the judgment in the main action.

29 By an order of 16 March 1988 (Case 44/88 R, [1988] ECR 1669), the President of the Fourth Chamber of the Court of Justice dismissed the application for interim measures on the ground that the applicant had failed to show the urgency required by Article 83(2) of the Rules of Procedure of the Court of Justice.

30 By a decision of 27 May 1988, the President of the Parliament dismissed the complaint submitted by the applicant on 10 February 1988.

31 The written procedure, which took place entirely before the Court of Justice, followed the normal course.

32 By order of 15 November 1989, the Court of Justice transferred the case to the Court of First Instance pursuant to Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.

33 Following the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure and at the same time to request the Parliament to provide certain details which it considered necessary for the purposes of the case.

34 On 15 February 1991, the Parliament lodged the documents requested, along with its replies to the Court's written questions.

35 The hearing was held on 19 March 1991. The parties' representatives made oral submissions and replied to the questions posed by the Court.

Forms of order sought by the parties

36 The applicant claims that the Court should:

(i) declare the action admissible and well founded;

(ii) in consequence, annul the decision of 18 January 1988 by which the President of the Parliament imposed on him the penalty of downgrading from Grade A 3, Step 8, to Grade A 7, Step 6; and

(iii) order the Parliament to pay the costs.

In his reply, the applicant submitted in the alternative that the Court should also:

(i) appoint a committee of three experts whose task would be to deliver a reasoned opinion on the complaints upheld against the applicant and to reply to all relevant questions posed by the parties;

(ii) in that case, reserve the costs.

The defendant contends that the Court should:

(i) dismiss the application brought by the applicant;

(ii) order the applicant to pay the costs, in accordance with Article 70 of the Rules of Procedure of the Court of Justice.

The complaints upheld by the appointing authority

37 The disciplinary decision taken by the appointing authority and the reasoned opinion delivered by the Disciplinary Board make it clear that all the complaints upheld against the applicant may be grouped in three categories:

(a) the opening of an interest-bearing account with the Midland Bank, London, on 21 July 1981 with the amount of UKL 400 000 bearing 16% annual interest without prior authorization, accounting entries relating to those operations or entries regarding interest in the Parliament's accounts for 1980 and 1981. Those facts constitute a breach of Article 20 and the third subparagraph of Article 70(1) of the Financial Regulation, so far as the opening of the account is concerned, and of Article 63 of the Financial Regulation and of Articles 50 and 51 of Commission Regulation No 75/375/Euratom, ECSC, EEC of 30 June 1975 on measures of implementation of certain provisions of the Financial Regulation of 25 April 1973 (Official Journal 1975 L 170, p. 1) (hereinafter referred to as 'the measures of implementation'), so far as concerns the absence of accounting measures (points 127 to 156 of the reasoned opinion and page 3 of the decision of the appointing authority);

(b) encashment on 4 September 1981 and 11 November 1981, without specific and valid justification, of two cheques drawn on the Midland Bank in the respective amounts of UKL 17 189.15 and UKL 35 176.98, which were paid in cash by the Sogenal Bank (Société Générale Alsacienne de Banque) in Luxembourg for the following amounts: BFR 2 700 000, DM 30 000 and FF 100 000. Failure to record those operations in the Parliament's accounts during the 1981 financial year. Registration after a six-month delay (28 February 1982) on the accounts form in the members' cash office in the overall amount of BFR 4 136 125, although the withdrawal had been made in a number of currencies. Those facts constituted a failure to comply with the duty of proper administration of payment appropriations under the second paragraph of Article 20, Article 63, the second paragraph of Article 64 and the third subparagraph of Article 70(1) of the Financial Regulation (points 157 to 186 of the reasoned opinion and pages 4 and 5 of the decision of the appointing authority);

(c) failure to comply with the obligation imposed on the accounting officer to effect expenditure only on production of proper supporting documentation and to ensure the safeguarding of the Parliament's assets. The absence of proper supporting documentation relates to a discrepancy between the physical assets of the members' cash office and the general accounts amounting to BFR 4 100 000 which appeared after the making of the entry of BFR 4 136 125 relating to the encashment of two cheques drawn on the Midland Bank. Those facts amounted to grave negligence on the part of the accounting officer of such a kind as to render him liable under the second subparagraph of Article 70(1) of the Financial Regulation (points 187 to 215 of the reasoned opinion and pages 5 and 6 of the decision of the appointing authority).

38 After confirming that it had carefully examined all the documents on the file, the opinion of the Disciplinary Board and the views of the applicant, the appointing authority took the view that, even under the most favourable interpretation of the facts possible, the applicant had committed serious breaches of the obligations imposed on the accounting officer of the Parliament and, more generally, on officials of the European Communities. After taking account of the extenuating circumstances accepted by the Disciplinary Board — which included the poor organization of the Parliament's financial division at the time of the facts alleged — the appointing authority decided to impose the sanction of down-grading.

The background to the operation of bank accounts with the Midland Bank, London

39 The complaints upheld against the applicant relate to the operation of a bank account maintained by funds derived from the imprest account system designed for the payment of various allowances and for the reimbursement of travelling expenses of members of the Parliament. The facts relating to the operation of this bank account, as established in the opinion of the Court of Auditors of 7 November 1985 and the reasoned opinion of the Disciplinary Board (points 127 to 155), are set out below. The applicant does not dispute the accuracy of those facts.

40 On 16 May 1980, the Midland Bank, London, wrote to the Parliament to inform it that large balances then being held on its Current Account No 618094 might advantageously be placed on a deposit account and thereby earn interest.

41 By letter of 21 July 1980, signed by Mr Offermann, an administrator of advance funds and official in the Treasury and Accounts Division, and Ms Cesaratto, an official in the same division, an interest-bearing account (No 1777912) was opened with the bank and the sum of UKL 400 000 was transferred to that account at an annual rate of interest of 16%.

42 According to the statements made by the applicant to the Disciplinary Board, he had been informed from the outset of this exchange of correspondence and of the decision to open an interest-bearing account. The sum of UKL 400 000 remained immobilized for 13 months and no entry relating to those operations was made in the Parliament's accounts.

43 In August 1981, that capital sum was transferred back again at the request of the accounting officer, Mr de Compte, and the administrator of advance funds, Mr Offermann, to Current Account No 618094. However, the interest of UKL 50 347.59 which had accrued up to that period was retained in the interest-bearing account No 1777912. This interest also was not recorded in the Parliament's accounts in 1980 or in 1981.

44 Account No 1777912 was credited with a new amount of UKL 9 152.85 in respect of interest for the second half of 1981. This brought the total amount of interest, and consequently the balance of the account, to UKL 59 500.44. No reference to this was made at the time in the Parliament's accounts.

45 On 4 September 1981 and 11 November 1981, the Sogenal Bank, Luxembourg, paid in cash to Mr de Compte, on his instructions, the following amounts: BFR 2 700 000, DM 30 000 and FF 100 000. In return, Mr de Compte handed over two cheques drawn on the Midland Bank, London, in the amounts of UKL 17 189.15 and UKL 35 176.98 respectively.

46 The Midland Bank refused to cash those cheques against the interest-bearing account (No 1777912) on the ground that that account did not permit the issue of cheques and could therefore not be the subject of a direct withdrawal. The

Midland Bank re-entered the number of the original current account (618094) and the two cheques were debited from that account. Neither of the two cheques, however, was recorded in the corresponding entries in the Parliament's accounts during the 1981 financial year.

47 On Sunday 28 February 1982, the two cheques were recorded on the accounting form in the members' cash office as being in respect of the account with the Midland Bank for a total amount of BFR 4 136 125.

48 It would appear that on the same date, 28 February 1982, four 'Treasury transaction' forms were drawn up for these two cheques but were predated to 16 September 1981 and to 26 November 1981.

49 In the interim period, on 24 February 1982, following a telephone call to the Midland Bank in London, UKL 19 000 had been transferred from the interest-bearing account to the current account, thereby bringing the balance of the interest-bearing account to UKL 40 500.44.

50 On 18 March 1982, the Court of Auditors carried out a check during which the entry relating to the BFR 4 136 125 was not found; this allowed its representative to state, when being heard before the Disciplinary Board on 23 October 1987, that the entry for 28 February 1982 had in fact been made subsequent to that check.

51 On 30 March 1982, Mr de Compte, in a letter to the President of the Parliament, acknowledged that he had failed to enter details of expenses in the amount of BFR 4 121 573.

52 In April 1982, in reply to a request addressed to it that it check the balances held on behalf of the Parliament, the Midland Bank informed the Court of Auditors of the existence of Account No 1777912.

53 Following the applicant's transfer on 30 April 1982 and the issue of an instruction by the new accounting officer, the interest-bearing account was closed and the balance transferred on 20 May 1982 to the current account.

54 As a result of internal checks carried out by the financial division of the Parliament, a reverse entry was made on 31 August 1982 in the Parliament's general accounts in respect of BFR 4 136 125.

The substance

55 In support of his application for annulment, the applicant first of all relies on eight pleas relating to formal defects and concerning the propriety of the disciplinary proceedings; these may be summarized as follows:

— the contested decision was taken outside the period laid down in the third paragraph of Article 7 of Annex IX;

— the disciplinary proceedings were initiated after the expiry of the limitation period laid down in Article 72 of the Financial Regulation;

— the disciplinary proceedings were inadmissible in view of the final discharge granted to the applicant in respect of the 1981 financial year;

— the reopening of the disciplinary proceedings was in breach of the principle that such steps should be taken within a reasonable period;

— the disciplinary proceedings brought against the applicant were inadmissible by reason of the failure to comply with the *non bis in idem* rule set out in Article 86 of the Staff Regulations;

— the disciplinary proceedings were vitiated by formal defects affecting the initial report and the minutes of 26 November 1987;

— the applicant's rights of defence were infringed in several respects, in particular by reason of the failure to forward certain documents to him;

— the independence of the Disciplinary Board and the freedom of the defence were jeopardized by a number of statements made by the then Vice-President of the Parliament.

56 Secondly, the applicant relied in support of his claims on three pleas relating to substantive defects and concerning the soundness of the contested decision; these may be summarized as follows:

— breach of Article 86 of the Staff Regulations, breach of Articles 70 and 72 of the Financial Regulation, and failure to comply with the principle of law that every administrative measure must be based on legally admissible grounds which are not contradictory or vitiated for mistake of law or fact;

— in the alternative, breach of Article 86(1) of the Staff Regulations, breach of Articles 70(1) and 71 of the Financial Regulation, failure to comply with the principles of equality, fairness and distributive justice, and misuse of powers;

— breach of the principle of proportionality inasmuch as the sanction imposed was disproportionate to the seriousness of the complaints made against the applicant.

A — *The pleas relating to formal defects*

The plea relating to the failure to comply with the period prescribed by the third paragraph of Article 7 of Annex IX

57 The applicant abandoned this plea in his reply.

The plea relating to the expiry of the limitation period

58 The applicant argues that the disciplinary procedure which resulted in the contested decision was initiated after the expiry of the limitation period laid down in Article 72 of the Financial Regulation, which provides that 'each institution shall be allowed a period of two years from the date when the account for revenue and expenditure is submitted to take a decision on the final discharge to be given to accounting officers for the transactions relating thereto'.

59 According to the applicant, on the expiry of that two-year period and in the absence of a final discharge previously granted or refused in express terms, an implied final discharge must be deemed to have been granted in law since the accounting officer cannot be the victim of a failure to act on the part of the administrative authorities. Article 37(2) of the Financial Regulation, which provides for the keeping of supporting documents pertaining to the accounts for a period of five years following the date of the decision giving discharge in respect of the implementation of the budget, referred to in Article 85, is not incompatible with this contention in view of the fact that this article attaches merely a subsequent obligation to the decision of discharge.

60 The applicant argues that the only possible significance of the implied final discharge is to recognize the correctness and accuracy of the accounts, something which implies the definitive discharge of a specific responsibility resting on the accounting officer, namely that relating to the formal correctness of the accounts. It follows from this minimum scope of the final discharge that any disciplinary proceedings giving rise to merely formal complaints must also be brought within a two-year period on pain of being out of time. Pursuant to Articles 73 and 77 of the Financial Regulation, this period begins to run no later than 31 May of the year following that of the financial year in question.

61 The applicant submits that the disciplinary proceedings in this case were initiated on 24 June 1987, that is to say, after the expiry of the two-year period in respect of his performance with regard to the 1981 financial year (period expiring on 31 May 1984 at the latest) and, alternatively, in respect of his performance with regard to the 1982 financial year (period expiring on 31 May 1985 at the latest) by reason of the fact that he was no longer acting as accounting officer after 30 April 1982. The applicant also points out that the proceedings initiated on 24 June 1987 cannot in any way be regarded as a reopening of earlier disciplinary proceedings in view of the fact that the first proceedings, brought on 30 September 1982, were discontinued and that the second proceedings, which

were initiated on 13 April 1983, resulted in the decision of 24 May 1984, which in turn was set aside by the above judgment of the Court of Justice of 20 June 1985.

62 The applicant also refers to a possible connection between Articles 72 and 85 of the Financial Regulation and points out that the legislature did not provide for the possibility of extending the period laid down for the decision on final discharge, as was done for the decision on discharge under Article 85. Consequently, he argues, the period in Article 72 relating to final discharge must be treated as an absolute time-limit. In the opinion of the applicant, it should also be borne in mind that the period laid down in Article 85 expires more than one year before that provided for by Article 72.

63 In reply, the defendant argues that the provisions of the Staff Regulations do not in any case permit a connection to be established between the issue of final discharge and the disciplinary proceedings, a point which emerges clearly from the interim order of 3 July 1984 made in the same case. Limitation periods must be laid down by the legislature in express terms (judgment of the Court of Justice in Case 41/69 *ACF Chemiefarma NV* v *Commission* [1970] ECR 661, at paragraphs 18 to 20) and this is not the case with regard to Article 72 of the Financial Regulation.

64 Furthermore, by providing in Article 37(2) for the keeping of supporting documents for a period of five years, the Financial Regulation implicitly recognizes the possibility of initiating disciplinary proceedings over an extended period going beyond the two years provided for the final discharge. The legal effect of the final discharge is that, by granting it, the authority responsible for budgetary control declares that it does not have any objection with regard to the submission of the accounts. However, final discharge does not preclude the opening of disciplinary proceedings if ongoing investigations linked to other disciplinary proceedings bring to light new facts and, in particular, evidence of fraudulent activity.

65 The Parliament also argues that the decision on final discharge can only be explicit. The two-year period provided for in that regard by Article 72 of the Financial Regulation cannot be interpreted as a time limit at the conclusion of which the accounting officer benefits from an implied final discharge. The decision on final discharge can be made only after the decision on discharge in respect of

implementation of the budget. As the period provided under Article 85 of the Financial Regulation for a vote of discharge in respect of the implementation of the budget is not a time-limit, this should also be the case with regard to the period laid down in Article 72 of that regulation.

66 On this point, the defendant institution points out that the disciplinary proceedings of 30 September 1982 and 13 April 1983 were in any event commenced prior to 31 May 1984 and that consequently the periods were complied with. Admittedly, following the judgment of the Court of Justice of 20 June 1985 setting aside the decision of the appointing authority of 24 May 1984, the disciplinary proceedings had to be restarted. Nevertheless, according to the institution, the opening of earlier disciplinary proceedings has had the effect of interrupting any possible period of limitation (judgments of the Court of Justice in Joined Cases 5, 7 and 13 to 24/66 *Kampffmeyer and Others* v *Commission* [1967] ECR 245 and in Case 11/72 *Giordano* v *Commission* [1973] ECR 417). Furthermore, the appointing authority was entitled to take a second decision identical to that set aside on grounds of formal defects, provided that it complied with the substantive forms which had originally been infringed (judgment of the Court of Justice in Case 108/81 *Amylum* v *Council* [1982] ECR 3107).

67 Furthermore, according to the Parliament, the applicant was never granted any implied final discharge, contrary to his assertions. The defendant provides the following details in this regard. The decision of 14 January 1983, by which the Parliament granted a final discharge to the applicant, related to the 1980 financial year and took no account of the complaints made against him. Although the Parliament, by decision of 10 April 1984, granted a final discharge to the applicant in respect of the 1981 financial year, it none the less referred in its reasoning to the problems concerning the disciplinary proceedings brought against the applicant in connection with the discharge for 1982. With regard to that discharge, the Parliament, in its decision of 11 July 1986, authorized its President to discharge its accounting officers responsible for the 1982 financial year, with the exception of the discrepancy of BFR 4 136 125 between the funds and the general accounts.

68 So far as this plea in law is concerned, the Court first of all notes that, in regulating the disciplinary system applicable to Community officials in Articles 86 to 89 and in Annex IX, the Staff Regulations do not provide for any limitation period with regard to the initiation of disciplinary proceedings against an official accused of having failed to fulfil one of his obligations under the Regulations. In order to fulfil its function of ensuring legal certainty, a limitation period must be fixed in

advance by the Community legislature (see the judgment of the Court of Justice in Case 41/69 *ACF Chemiefarma NV* v *Commission*, cited above). In the absence of an explicit limitation period in the title of the Staff Regulations dealing with disciplinary measures against officials, it cannot be accepted that the expiry of the period laid down by Article 72 of the Financial Regulation for delivery of a final discharge to an accounting officer can result in the barring of all disciplinary proceedings against the latter.

69 Secondly, it is necessary in this connection to bear in mind the principle that disciplinary proceedings are independent of other administrative proceedings. Disciplinary proceedings are designed to safeguard the internal order of the public service. On the other hand, the delivery of a final discharge, as provided for under Article 72 of the Financial Regulation, is designed to verify officially the accuracy and propriety of the accounts and, more generally, their presentation and auditing, in order that an end may be put to the uncertainty regarding the liability of the accounting officer concerned for a given financial year. It was from that perspective that the President of the Third Chamber of the Court of Justice drew a distinction between the two types of proceedings in his interim order of 3 July 1984 in this case. Consequently, the putative granting of an implied final discharge on the expiry of a two-year period cannot preclude the bringing of disciplinary proceedings against the applicant.

70 Furthermore, it should be noted that, even if the applicant's views were to be accepted on this point, this plea would still have to be dismissed on the ground that it is unfounded. The Parliament is correct in its submission that the disciplinary proceedings at issue were brought before 31 May 1984, the date on which the applicant fixes the delivery of the implied final discharge for the 1981 financial year. The disciplinary proceedings against the applicant must be treated as having been initiated, at the very latest, on 13 April 1983, the date on which the President of the Parliament submitted to the Disciplinary Board the report setting out the complaints which had been made against the applicant. Those disciplinary proceedings resulted in the appointing authority's decision of 24 May 1984 downgrading the applicant. Following the annulment of that disciplinary decision by the judgment of the Court of 20 June 1985 for reasons of procedural defects, the President of the Parliament once again brought the matter before the Disciplinary Board on 24 June 1987, on the basis of the same report. Under those circumstances, the reopening of the disciplinary proceedings cannot be regarded as a fresh reference of the matter to the competent authorities, but must be seen as a resumption of the proceedings from the point at which the formal defect confirmed by the Court of Justice had arisen. For that purpose, the administration may, as a rule, resume administrative proceedings previously annulled by reason of

a formal defect, provided that it complies this second time with the formal requirements previously overlooked.

71 It follows from all the above considerations that the plea in law based on the expiry of the limitation period supposedly laid down by Article 72 of the Financial Regulation must be dismissed as unfounded.

The plea in law relating to the delivery of the final discharge for the 1981 financial year

72 The applicant points out that, by its decision of 10 April 1984, the Parliament granted him a final discharge in respect of the 1981 financial year on the basis of the report drawn up on 21 March 1984 by the Committee on Budgetary Control. He argues that that decision *per se* renders the present disciplinary proceedings inadmissible and consequently null and void in view of the fact that the only complaints upheld against him relate exclusively to the formal propriety of the accounts.

73 In his application, the applicant also contends that the fact that the final discharge in respect of the 1982 financial year was granted subject to a reserve relating to what is the essential element of this case, namely the question of the BFR 4 000 000, is without relevance. He argues, primarily, that the question was settled by the 'final discharge in respect of 1981'; in the alternative, he claims that he received final discharge for the 1982 financial year and, in the further alternative, that at the time of his transfer on 30 April 1982 and his replacement by a new accounting officer, no management accounts were presented, with the result that it was impossible for the appointing authority to establish, in respect of the 1982 financial year, the portion for which he was responsible and the portion which was the responsibility of the accounting officer who succeeded him.

74 In his reply, the applicant relies on two facts which he regards as essential, namely the decision of 18 May 1983 by which the Parliament discharged its President in respect of the 1981 financial year and the Parliament's decision of 10 April 1984 referred to above. On the basis of those facts he argues first of all that the discharge granted by the Parliament to its President on 18 May 1983 implicitly includes the grant of a final discharge to the accounting officer; secondly, that such discharge cannot be partial; and thirdly, that the scope of a decision granting a final discharge cannot be restricted by virtue of a recital in the preamble to that

decision. In the alternative, the applicant adds that in the event that the issue of the final discharge for 1982 should be relevant, he must be regarded as having secured that discharge. In that connection, he resumes his argument that the discharge which the Parliament granted its President (in this case, the Parliament's decision of 11 July 1986 in respect of the 1982 financial year) also contains the grant of final discharge to the accounting officer.

75 The defendant rejects the applicant's arguments, referring to the observations which it made with regard to the plea based on expiry of the limitation period, namely, that the applicant was consistently refused a final discharge on account of the acts which form the subject-matter of the disciplinary proceedings. It also notes that, even if the final discharge had been granted, that would in no way prevent disciplinary proceedings from being brought.

76 In its statement of rejoinder, it also expressed reservations concerning the admissibility of the pleas in law on which the applicant relied in his reply, namely, the correlation between the discharge granted by the Parliament to its President and the final discharge to be granted to the institution's accounting officer, the indivisibility of the final discharge and the effect of a recital on the scope of a decision granting final discharge. The Parliament takes the view that these constitute three new pleas in law.

77 The Parliament is also of the opinion that these pleas are unfounded. It stresses that discharge and final discharge are subject to two separate procedures and that this fact, in its view, demonstrates by itself that the one is not to be regarded as covering the other. Discharge, it argues, is 'necessary' but not 'sufficient' for granting the final discharge and it is along this line that the practice of the institutions has developed. For the same reasons, Article 13 of the internal rules on the implementation of the Parliament's budget provides only that discharge implies 'authorization' to grant final discharge to the accounting officer, and not that it automatically signifies final discharge. Consequently the Parliament, by discharging its President while refusing to grant final discharge to the applicant, certainly did not intend to cover the latter's responsibility. On this point, the Parliament, in reply to the written questions put by the Court, gave details of its rules of procedure and its administrative practices with regard to discharge in respect of the implementation of the institution's budget (Article 85 of the Financial Regulation) and the final discharge to be given to accounting officers (Article 72).

78 It seems to the Court that, in his third plea in law, the applicant is essentially arguing that he obtained an explicit final discharge for the financial year 1981 and (in the alternative) for the financial year 1982 and that this renders the disciplinary proceedings brought against him inadmissible.

79 As has already been demonstrated in reply to the previous plea in law, the disciplinary proceedings provided for under the Staff Regulations are independent of the final discharge procedure laid down in the Financial Regulation. Consequently, even if the applicant had been granted a final discharge in respect of the 1981 financial year, that fact cannot preclude the institution of disciplinary proceedings against him, particularly since those proceedings were instituted on 13 April 1983, that is to say, prior to the adoption of the Parliament's decisions of 18 May 1983 and 10 April 1984, which, in the applicant's opinion, should be regarded as having granted him, expressly or implicitly, the final discharge for the 1981 financial year.

80 It should also be noted that, even if one were to accept the applicant's views to the effect that delivery of final discharge prevents the bringing of disciplinary proceedings, this plea still cannot be accepted. In so far as the applicant relies (for the first time in his statement of reply) on the decision of 18 May 1983, by which the Parliament discharged its President, in support of his claim that that discharge automatically implies the grant of final discharge to the institution's accounting officer, it must be pointed out (independently of the doubts concerning its admissibility) that this part of the plea is unfounded. In its decision of 18 May 1983, the Parliament expressly postponed 'final discharge to the accounting officer to enable the Committee on Budgetary Control to effect certain work'. Inasmuch as the applicant, in connection with the same plea in law, relies on the Parliament's decision of 10 April 1984, this part of the plea is equally unfounded. In order to appreciate the scope of that decision, it is necessary to take account of its preamble; in particular, it follows from points G and I in the preamble to the decision that the Parliament reserved to itself the right to comment, in the context of the discharge for 1982, on the factors relating to the applicant's responsibility, in connection with which the President of the Parliament had requested, by letter of 6 June 1983, postponement of the decision on final discharge in respect of the 1981 financial year.

81 In addition, it must be pointed out that the 1981 financial year cannot be regarded as the financial year relevant to an examination of the matters at issue. As is clear

from the documents on the case file, the fact that no accounting entries, whether relating to payment or recovery, had been made throughout the 1981 financial year in respect of the sum of BFR 4 136 125 made it impossible, when checking operations at the end of the financial year, to determine whether there had been a surplus or a deficit. Consequently, it is the 1982 financial year which must be treated as relevant for the purposes of examining the applicant's liability as accounting officer of the Parliament. While the Parliament, by its decision of 11 July 1986, authorized its President to discharge its accounting officers in respect of the 1982 financial year, it made that authorization subject to the express exclusion of 'the sum of 91 263 ECU and the matters relating thereto' by reason precisely of the discrepancies confirmed in the intervening period between the balance on the members' cash office and the general accounts.

82 It follows that in any event this plea in law must also be dismissed.

The plea relating to the infringement of the principle requiring proceedings to be brought within a reasonable period

83 The applicant, who puts forward this plea as an alternative, in particular, to that based on the expiry of the limitation period, argues that, according to a generally recognized principle, he is entitled to take the view that disciplinary proceedings must be instituted within a reasonable period of time, after the facts relied on have become known, and that they must also be carried out within a reasonable period for reasons of legal certainty and proper administration.

84 In this connection, the applicant points out that disciplinary proceedings, as governed by the Staff Regulations, must normally be carried out within relatively short periods. In this case, they were initiated or carried out with an unreasonable delay. In support of this contention, he points out that the disciplinary proceedings were instituted (or, at least) reinstituted on 24 June 1987, whereas the relevant date was 31 December 1981 (conclusion of the 1981 budgetary year) or, in the alternative, 30 April 1982 (date of his transfer) or, in the further alternative, 20 June 1985 (date of the judgment of the Court of Justice annulling the disciplinary sanction of 24 May 1984).

85 In his statement of reply, the applicant sets out the facts which occurred since the accusations made against him in 1982 with a view to demonstrating that the five years which elapsed between the acts of which he stands accused and the institution of the final disciplinary proceedings exceed what can be described as a reasonable period. In this connection, he first relies on a breach of Article 6(1) of the European Convention for the Protection of Human Rights, which he considers to be applicable to the present case by way of analogy. Secondly, he examines the arguments submitted by the defendant and infers from them that the defendant does not contest the principle that disciplinary proceedings must be brought and conducted within a reasonable period. He notes in this connection that the Parliament has disputed only the existence of a limitation period for the bringing of disciplinary proceedings and not the existence of a reasonable period, something which is a quite separate matter. He adds that the opinion of the Disciplinary Board refers to mitigating circumstances concerning the excessive length of time between the submission of the complaints by the appointing authority and the completion of the disciplinary proceedings. By accepting that opinion, the appointing authority thus acknowledged the existence of an unreasonable delay which could not be attributable to the applicant. Thirdly, with regard to the actual arguments of the defendant institution, the applicant takes the view that the only relevant discussion relates to the 18-month period between 20 June 1985, the date on which the Court delivered its judgment, and 9 December 1986, the date of the letter by which the appointing authority intimated to him that it intended to reopen the disciplinary proceedings and asked him to comment on the report setting out the complaints made against him which had originally been submitted to the Disciplinary Board on 13 April 1983.

86 For its part, the defendant repeats that the Staff Regulations do not lay down any limitation period within which disciplinary proceedings must be brought. In any event, it does not believe that it can be blamed for having failed to demonstrate sufficient diligence in conducting the disciplinary proceedings brought against the applicant, particularly if account is taken of the extremely complex nature of the facts requiring to be established and the seriousness of the charges brought against the applicant. According to the Parliament, the long chronological list of facts, which it sets out in detail, shows that this argument is correct. It also argues that the length of time required for the preparatory inquiries can be explained by the numerous points raised by the applicant and his legal advisers throughout the disciplinary proceedings, as well as by the range of judicial proceedings to which this case has given rise, that is to say, five interim orders and one judgment. Finally, the defendant points out that the applicant himself considerably reduces the scope of his complaint by declaring that the only issue relevant to this case concerns the two-year period following the delivery of the Court's judgment on 20 June 1985 and by admitting that, during this period, he was personally responsible for a delay of six months. The question was therefore whether or not the remaining 18-month period could be justified.

87 So far as this 18-month period in particular is concerned, the defendant argues that, in view of the observations of the President of the Third Chamber in his interim order of 3 July 1984, the appointing authority did not consider it opportune to reopen immediately the disciplinary proceedings and preferred to await the adoption by the Parliament of the decision on final discharge for the 1982 financial year. The defendant institution points out in this connection that at the date on which the Court of Justice delivered its judgment (20 June 1985), the Committee on Budgetary Control had already begun the process on 18 June 1985 with regard to this final discharge. The President of the Parliament, following a request submitted to this end by the Committee on Budgetary Control, also requested, by letter of 24 July 1985, a fresh opinion from the Court of Auditors on the most appropriate way to clear the deficit recorded in the Members' cash office for the 1982 financial year. The appointing authority claims that it waited for the opinion of the Court of Auditors (delivered on 7 November 1985) and thereafter the decision of the Parliament of 11 July 1986 on final discharge for the 1982 financial year before reopening the disciplinary proceedings. While the defendant denies that a final discharge can constitute a barrier to disciplinary proceedings, it believes that the detailed examination by the Parliament's Committee on Budgetary Control of the applicant's handling of the accounts could cast new light on the case. From this the defendant concludes that this ground, concerning the interest of the applicant alone, constitutes valid justification for the period of 18 months which elapsed between the judgment annulling the disciplinary proceedings and their reopening.

88 With regard to this plea in law, it should be noted that while the Staff Regulations do not lay down a limitation period within which disciplinary proceedings must be initiated, Annex IX, and in particular Article 7 thereof, gives the Disciplinary Board a period of one month (extended to three months where there is an inquiry) within which to deliver its reasoned opinion, and confers on the appointing authority a similar period within which to take its decision. Although those time-limits are not mandatory, they do constitute rules of sound administration the purpose of which is to avoid, in the interests both of the administration and of officials, unjustified delay in adopting the decision terminating the disciplinary proceedings (see the judgments of the Court of Justice in Case 13/69 *Van Eick* v *Commission* [1970] ECR 3; Case 228/83 *F.* v *Commission* [1985] ECR 275; and Joined Cases 175 and 209/86 *M.* v *Council* [1988] ECR 1891). It follows from the importance attached by the Community legislature to sound administration that disciplinary authorities are under an obligation to conduct disciplinary proceedings with due diligence and to ensure that each procedural step is taken within a reasonable period following the previous step. Failure to comply with that period (which can be assessed only in the light of the specific circumstances of the case) may not only render the institution liable, but may also result in the measure adopted after the expiry of the period being declared void.

89 In this case, an examination of the successive steps taken in the proceedings against the applicant from 13 April 1983 (the chronological sequence of which is set out above in the section on 'Facts and procedure') shows that the disciplinary proceedings followed in principle the normal course. However, after subtracting the time spent by the applicant in preparing his defence before the Court of Justice, it must be stated that the question whether a reasonable period was complied with may arise twice. The first concerns the eight-month period during which the matter was before the first Disciplinary Board (from 2 June 1983 to 10 February 1984); the second relates to the period of 18 months between delivery of the judgment of the Court of Justice annulling the proceedings and dispatch of the letter from the President of the Parliament requesting the applicant to submit his observations pursuant to the second paragraph of Article 87 of the Staff Regulations (period from 20 June 1985 to 9 December 1986).

90 As the Parliament submitted in its statement of defence (pages 26 to 30), and as is also apparent from the reasoned opinion of the first Disciplinary Board of 10 February 1984 (points 6 to 20), the duration of the latter's proceedings was attributable to the applicant's cumulative absences of four months on medical grounds and to the fact that an inquiry had to be organized at which representatives of all parties could be heard. Under those circumstances, the eight-month period taken by the first Disciplinary Board to deliver its reasoned opinion did not go beyond the limits of what was reasonable.

91 With regard to the 18-month period between the judgment of the Court of Justice annulling the proceedings and the reopening of the disciplinary proceedings, the defendant claimed that the appointing authority had to await the outcome of the Parliamentary proceedings, already started, on the final discharge for the 1982 financial year. Before examining this ground, it is appropriate to set out some of the special circumstances surrounding the origin of this case.

92 As already mentioned, the Court of Auditors drew up a special report in July 1982 on the operation of the members' cash office and reached the conclusion that there had been serious breaches of the Financial Regulation. These irregularities were confirmed in a report compiled by an independent audit office which established that a 'hole' of approximately BFR 4 000 000 had been 'dug' over the previous number of years. It should be added that the opening of disciplinary proceedings against the applicant gave rise to animated reactions and heated discussions within the Parliament, which were reported in the international press and created the

impression that a major scandal had been uncovered. For his part, the applicant claimed that he had been a victim of circumstances in respect of administration, equipment and personnel, and he accused his hierarchical superiors of being solely responsible for the irregularities uncovered. Under those circumstances, the relevant departments of the Parliament were initially non-committal with regard to the applicant's liability. Following the report of the Committee on Budgetary Control, the Assembly, in its decision granting final discharge to the accounting officer of the institution for the 1981 financial year, reserved the right to examine the issue of the deficit in the context of the discharge for 1982. The Disciplinary Board took the view that the applicant had been justifiably accused by the appointing authority of a series of gravely negligent acts in the exercise of his functions, but that extenuating circumstances, relating in particular to the poor overall organization of the division in which he worked, meant that he could not be held solely liable. A majority on the Disciplinary Board proposed that he be reprimanded, while the minority was in favour of an absolute discharge. The appointing authority finally decided to remove him from his post. In his interim order of 3 July 1984 by which the operation of the first disciplinary sanction was suspended, the President of the Third Chamber of the Court of Justice accepted that the final discharge procedure was different from the disciplinary procedure but pointed out that the appraisal by the Committee on Budgetary Control of the applicant's responsibility differed considerably from that of the appointing authority. In the parallel application for annulment which he had brought against the disciplinary decision, the applicant also submitted as a plea in law the fact that the Disciplinary Board had refused to stay its proceedings until the Committee on Budgetary Control had reached a decision. The President of the Parliament, in his capacity as the appointing authority, thus found himself faced with not only a file of exceptional technical complexity, but also with a highly controversial and sensitive case on which the Assembly had not yet commented in the context of the final discharge procedure. In addition, account must be taken of the special position of the appointing authority in this case (which is without parallel in any of the other Community institutions), that is to say, the fact that the President of the Parliament, assuming the simultaneous responsibilities of the appointing authority and presidency of the assembly, had to give a ruling on a question, the substance of which also required to be examined by the assembly, albeit in a different context.

93 In the light of the matters of fact and law just outlined, it must be accepted that the complexity of the case and its sensitivity with regard to the prestige of the Parliament, the particular position of the appointing authority within that institution, the comments in the order of the Court of Justice of 3 July 1984 on the conclusions arrived at by the Parliamentary Committee on Budgetary Control, along with the ambiguity as to the scope and apportionment of responsibilities

among the officials and staff incriminated, together constitute special circumstances which in this case justify the appointing authority's decision to await the outcome of the Parliamentary procedure concerning the final discharge for the 1982 financial year before reopening the disciplinary proceedings against the applicant. Contrary to the latter's contentions, this assessment is not incompatible with the principle that disciplinary proceedings are independent of and separate from the final discharge procedure. Although, in view of their separation, the issue of final discharge does not formally preclude the introduction of disciplinary proceedings against the official in question, that principle cannot mean that no substantive account can be taken, in the context of the disciplinary proceedings, of findings made and conclusions reached in the decision on final discharge. Consequently, it must be held that the period of 18 months which elapsed prior to the reopening of the disciplinary proceedings did not exceed the limits of a reasonable period.

94 So far as concerns the application by analogy of Article 6(1) of the European Convention on the Protection of Human Rights relied on by the applicant in his statement of reply, it should be pointed out that, in so far as that provision was referred to as a new argument intended to support the present plea concerning breach of the principle of reasonable delay, it is not necessary to provide a specific reply to it in view of the above considerations. On the other hand, if the applicant intended to base on a breach of this provision a plea independent of that based on breach of the principle requiring procceedings to be brought within a reasonable period that plea would have to be rejected on several grounds. In the first place, it would be inadmissible by virtue of the fact that it would be submitted during the proceedings, or, more precisely, for the first time at the stage of the statement of reply. Secondly, it is unfounded in law. In this connection, it suffices to note that Article 6 of the Convention does not apply to what are strictly disciplinary matters within the public service. The European Commission provided for by the Convention has dismissed as inadmissible several applications requesting that Article 6 be applied in the case of disciplinary proceedings on the ground that such proceedings do not come within the scope of 'penal proceedings' referred to in that article (decisions of 8 March 1976 in Application No 7374/76 *X* v *Denmark*, D. R. 5, p. 157, and of 8 October 1980 in Application No 8496/79 *X* v *United Kingdom*, D. R. 21, p. 168).

95 It follows from the above considerations that it is necessary to dismiss the plea in law based on breach of the principle that proceedings must be instituted within a reasonable period.

The plea relating to the failure to comply with the 'non bis in idem' *rule*

96 The applicant argues that the decision to transfer him on 30 April 1982 amounts to a disciplinary sanction and was adopted in breach of Article 86(3) of the Staff Regulations, which provides for the application of the *non bis in idem* rule to disciplinary matters. The applicant claims that that article was also breached through the previous refusal of the administration to promote him to Grade A 2 on an *ad personam* basis.

97 In the applicant's opinion, the fact that that transfer does not feature in the list of disciplinary sanctions and that it is not, in principle, a disciplinary sanction is not decisive, given that it may conceal a sanction where it is of a disciplinary nature. Moreover, the appointing authority acknowledged as much in a circular distributed to members of the Assembly during the Parliament's plenary session in July 1982. Likewise, the applicant's agreement to his transfer is irrelevant in view of the fact that acceptance of a disciplinary sanction cannot affect the nature of the measure.

98 Furthermore, in so far as promotion *ad personam* to Grade A 2 was refused him, the applicant argues that the relevant decision did not lie within the discretionary power of the appointing authority, but came rather within a limited competence in view of the general rules with which that authority must comply, that is to say, objective conditions relating to age and seniority in grade and service which the applicant has satisfied since 1986. Moreover, promotion *ad personam* does not require that a post be available.

99 The defendant rejects the applicant's contentions, arguing that transfer of an official in the interests of the service cannot be the subject of a complaint and that, in any event, it comes within the discretionary power of the administration. In addition, the decision in question was in response to a request by the applicant and amounted to a precautionary measure which the applicant did not contest at the time. The Parliament also notes that transfer is not included in the exhaustive list of disciplinary measures set out in Article 86 of the Staff Regulations. In any event, the Parliament points out that, according to the decision of the Court of Justice in Case 14/68 *Wilhelm and Others* v *Bundeskartellamt* [1969] ECR 1, the *non bis in idem* rule does not exclude the admissibility of two sets of parallel proceedings involving sanctions but pursuing different ends.

100 With regard to the failure to promote the applicant *ad personam*, the Parliament argues that this right lies *a fortiori* within the exclusive discretion of the appointing authority and presupposes that a post is available. Apart from the fact that the applicant did not make any formal application for promotion, the defendant relies on the Court's decision in Case 27/63 *Raponi* v *Commission* [1964] ECR 129 in stressing the wide discretionary powers which the appointing authority enjoys in this area.

101 The Court first of all notes that neither transfer nor refusal of promotion features in the disciplinary measures listed in Article 86(2) of the Staff Regulations, while Article 86(3) sets out the rule that 'a single offence shall not give rise to more than one disciplinary measure'.

102 In addition, Article 7 of the Staff Regulations makes it clear that a transfer represents an ordinary movement in the career of an official which may occur *ex officio* solely in the interest of the service, or on application by the official concerned. According to well-established case-law, transfer in the interests of the service falls in principle within the discretionary powers of the administration to arrange its departments (judgment of the Court in Joined Cases 18 and 35/65 *Gutmann* v *Commission of the EAEC* [1966] ECR 103).

103 In the present case, the decision to transfer the applicant on 30 April 1982 from the Treasury and Accounts Division, of which he was in charge, to a different department was taken in order to facilitate the conduct of ongoing investigations designed to examine the irregularities which the Court of Auditors had identified in the accounting of the members' cash office. That step was therefore taken for reasons connected with the interests of the service and, contrary to the applicant's assertion, did not constitute a disguised disciplinary measure. It should be added that an examination of the circular addressed by the President of the Parliament to the members of the Assembly in July 1982 does not in any respect alter the assessment of the nature of that measure to which, moreover, the applicant had given his consent.

104 With regard to the promotion *ad personam* which the applicant believes was unjustly withheld from him, it suffices to note that the applicant at no point stated

whether he had submitted an application to the appointing authority requesting it to adopt a decision in that regard or whether he had ever received an express or implied decision rejecting such an application. Under those circumstances, that complaint cannot be upheld as it is unsupported by any factual details.

105 The plea in law based on a failure to comply with the *non bis in idem* rule must therefore be dismissed as unfounded.

The plea relating to formal defects vitiating the disciplinary proceedings

— The absence of a signature and date on the report addressed by the appointing authority to the Disciplinary Board

106 The applicant claims that the fact that the report initiating the disciplinary proceedings was neither dated nor signed constitutes a formal defect with regard to the first paragraph of Article 1 of Annex IX of the Staff Regulations and that the report must for that reason be treated as a nullity, with the result that the entire proceedings and the decision taken at their conclusion must be regarded as null and void. Moreover, the existing defect cannot be corrected by the fact that the letter transferring the report was dated and signed by the appointing authority.

107 In reply, the defendant argues that the signature on the letter of transfer demonstrates clearly that the appointing authority had adopted the contents of the report, the conclusion of which in any case featured the date of 12 April 1983 and the name of the President.

108 Article 1 of Annex IX provides that 'a report shall be submitted to the Disciplinary Board by the appointing authority, stating clearly the facts complained of and, where appropriate, the circumstances in which they arose. The report shall be communicated to the chairman of the Disciplinary Board, who shall bring it to the attention of the members of the Board and of the official charged'.

109 An examination of the documents on the case file make it clear that the President of the Parliament, in his capacity as the appointing authority, submitted to the

Disciplinary Board on 13 April 1983 a letter to which was annexed the report setting out the complaints made against the applicant dated 12 April 1983. Following the annulment by the Court of Justice of the disciplinary measure adopted on 16 March 1984, the President of the Parliament brought the matter before the Disciplinary Board by a properly signed letter of 24 June 1987. In that letter, which was addressed to the chairman of the Disciplinary Board, the appointing authority briefly set out the background to the case and stated that it had requested the applicant, in accordance with the second paragraph of Article 87 of the Staff Regulations, to comment on the 'report which President Dankert had submitted to the Disciplinary Board on 13 April 1983', on the opinion of the Court of Auditors of 7 November 1985 and on the Parliament's decision on discharge in respect of the 1982 financial year, all those being the documents which constituted the disciplinary file. The appointing authority also stated in that letter that, after hearing the applicant, it had decided to reopen the disciplinary proceedings against him and 'to submit once again to the Disciplinary Board the report drawn up on 12 April 1983 concerning the complaints made against Mr de Compte'. Finally, the appointing authority requested the chairman of the Disciplinary Board to convene the Board and to communicate to its members and to the official charged the disciplinary file annexed to that letter. Point A on the list of annexes refers to the 'report of 12 April 1983 on the complaints made against Mr de Compte'.

110 In those circumstances, the letter of 24 June 1987, signed by the appointing authority, and the annexed report must be regarded as forming a single document which leaves no doubt as to its contents, its date and the originating authority. That document was a proper vehicle for the submission of the matter to the Disciplinary Board, in accordance with Article 1 of Annex IX. The applicant's arguments to the contrary must for that reason be dismissed as unfounded.

— The approval of the minutes of the meeting of 26 November 1987 following which the reasoned opinion was issued

111 The applicant also claims that the reasoned opinion delivered by the Disciplinary Board on 27 November 1987 was formally defective in so far as the minutes of the meeting of 26 November 1987 bear the date of 30 November 1987 and were thus drawn up after the delivery of the reasoned opinion and consequently at a date on which the Board no longer had jurisdiction in the matter. In the applicant's view, this defect renders void the entire disciplinary proceedings as well as the decision taken by the appointing authority on the basis of the reasoned opinion.

112 The defendant points out that there is no rule which obliges the Disciplinary Board to base the reasoning of its opinions on the minutes of the meetings; rather, it must base its opinions on the documents submitted to it, bearing in mind the statements made by the person concerned and by witnesses, as well as the results of the investigation. So far as the minutes in question are concerned, they are purely internal in nature and for that reason did not require to be submitted to the applicant for his signature. The Parliament relies in this connection on the distinction, clearly established in case-law, between minutes of this kind and minutes recording the depositions of witnesses, which the latter must approve and sign and which thus are clearly of interest to the parties (judgment in Case 228/83 *F.* v *Commission*, cited above).

113 It is apparent from the documents on the case file that the Disciplinary Board met on the morning of 26 November in the presence of the applicant and his defence counsel. During that meeting, the Board approved the minutes of the previous meeting, took note of a declaration by its chairman concerning the production of certain documents by the appointing authority, and made inquiries as to the applicant's examination of the original of a document. The members of the Board then discussed with the applicant's defence counsel his statement of defence, and a decision was taken that the Board should reconvene *in camera* in the afternoon of the same day and all day Friday 27 November 1987. The minutes of that meeting were approved on Monday 30 November and communicated to the applicant on the same day.

114 In those circumstances, it must be held that the objection that the reasoned opinion is procedurally defective on the ground that the minutes were approved after the conclusion of the proceedings before the Disciplinary Board is unfounded. The legality of the reasoned opinion cannot be placed in question simply because the minutes of the meeting of 26 November 1987 were approved at a later date. Although the first paragraph of Article 9 of Annex IX provides that 'the secretary shall keep minutes of meetings of the Disciplinary Board', it in no way requires that minutes must be signed immediately after the meeting of the Board in order for them to be valid.

115 It follows from the foregoing that this plea in law must be dismissed in its entirety.

The plea relating to infringement of the rights of the defence

— The failure to forward certain documents

116 According to the applicant, the administration was unable to provide him in good time with a large number of documents which he had requested and which he judged to be necessary for his defence, as his counsel had already complained in the letter sent on 20 November 1987 to the chairman of the Disciplinary Board.

117 In his reply, however, the applicant states that this is a specific complaint ancillary to the serious infringements of the rights of the defence resulting in general from facts such as his transfer on 30 April 1982 and the refusal to allow him free access to the accounts. In those circumstances, according to the applicant, the onus is on the institution to establish the failures alleged as he, the applicant, is physically unable to identify the documents necessary for his defence. He adds that this problem would never have arisen if he had been given free access to the accounts in order to prepare his defence.

118 To this the defendant replies that the Disciplinary Board responded favourably and systematically to all of the applicant's requests for documents. It refers in this connection to a letter of 17 August 1987 from the Secretary-General of the Parliament, in which the latter agreed in principle that the applicant should have access to all documents on the file, and also to a letter of 10 September 1987 in which the chairman of the Disciplinary Board suggested to the applicant's defence counsel that the various documents, perusal of which might be useful, should be produced on request by the defence according to the stage reached by the Disciplinary Board in its examination of the file. The terms of that letter were not contested by the applicant's counsel when he read it in the course of the meeting of 9 October 1987, and subsequently reference was made each time to the requests submitted and the replies made, with full agreement on the part of the defence. Thus, the applicant's counsel was asked to explain a number of requests for documents which the appointing authority appeared to have difficulty in identifying. The appointing authority then reserved the right to accept or reject requests for documents not yet submitted to it. Nevertheless, the letter of 20 November 1987 from the applicant's counsel did not provide any additional details. In this connection, formal notice was served on the applicant. This measure was not contested by the defence, which had in any event confirmed, during the meeting of 26 November 1987, that it did not require any additional documents.

119 In its statement of rejoinder, the defendant also raises an objection of inadmissibility under Article 42(2) of the Rules of Procedure of the Court of Justice, arguing that the 'general complaints' made by the applicant in his reply concerning his transfer of 30 April 1982 and the alleged refusal to grant him free access to the accounts represent two new pleas in law. In any case, the Parliament considers these pleas to be unfounded. With regard to the applicant's transfer, it points out that the applicant had himself requested such a transfer. Turning to the applicant's allegation that he was refused free access to the accounts, the Parliament notes that the sole purpose of the letter to which the applicant referred in this connection (a letter of 7 December 1984 from the appointing authority) was to ask the applicant to explain why he wished to obtain specific documents relating to a period when he was not working. In addition, according to the Parliament, the applicant had never submitted such a request in such general terms. The applicant's counsel merely requested, in a letter of 16 June 1987, that all documents useful to the defence should be communicated to him on request. The Parliament adds that, if the appointing authority is not required to communicate the entire file to an official against whom disciplinary proceedings have been initiated unless requested to do so (judgment of the Court of Justice in Joined Cases 255 and 256/83 *R.* v *Commission* [1985] ECR 2473, at paragraph 18), it is *a fortiori* under no obligation to communicate documents which do not form part of the file. Finally, the Court's judgment in Case 35/67 *Van Eick* v *Commission*, cited above, makes it clear that a request for communication of documents must indicate accurately the documents required and must show that they are relevant to the subject-matter of the proceedings.

120 Article 2 of Annex IX provides that 'on receipt of the report, the official charged shall have the right to see his complete personal file and to take copies of all documents relevant to the proceedings'.

121 Furthermore, the first paragraph of Article 7 of the annex states that '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, the Disciplinary Board shall, by majority vote, deliver a reasoned opinion . . .'.

122 In the light of those provisions, the official charged and his advisers are entitled to be informed of all the facts on which a decision has been based in sufficient time to submit their observations (judgment in Case 228/83 *F.* v *Commission*, cited above, at paragraph 23). However, in the absence of a request to that effect, no obligation on the part of the appointing authority to communicate the complete file to an official against whom disciplinary proceedings have been initiated can be inferred from the Staff Regulations (judgment in Joined Cases 255 and 256/83 *R.* v *Commission*, cited above, at paragraphs 17 and 18).

123 The defendant in this case argues (and the truth of its allegation is confirmed by the documents on the file) that the appointing authority and the chairman of the Disciplinary Board both allowed the applicant and his defence counsel access to the entire file and to request the production of documents corresponding to the stage of examination of the file by the Disciplinary Board (see paragraphs 16 and 17 of the reasoned opinion, the letter of 26 June 1987 from the President of the Parliament to the applicant, and the letter of 17 August 1987 from the Secretary-General of the Parliament to the applicant's defence counsel).

124 The applicant does not appear to question the implementation of that principle. None the less, he takes the view that the appointing authority was unable to provide him with a number of supporting documents, which he fails to specify in his application or in his reply and which apparently relate to the management of the accounts. On this point, the minutes of the meeting of the Disciplinary Board on 26 November 1987 record that the appointing authority was unable to identify a number of documents and that the applicant's defence counsel reserved the right to re-examine, up to 23 November 1987, the advisability of requesting communication of the unidentified documents. Those same minutes also record that the applicant's defence counsel expressly declared that 'he did not need to have additional documents at his disposal', even though he added at the same time that he did not accept the appointing authority's argument that it had been impossible to identify the documents. Under those circumstances, the Court takes the view that the applicant has failed to prove that his allegation, to the effect that the administration unjustifiably refused to communicate certain documents to him, is properly founded.

125 The applicant added in his reply that the problem of identifying the documents requested would never have arisen if he had not been refused free access to the accounts from the date of his transfer on 30 April 1982. In so far as this argument

must be interpreted as a new plea in law, it must be declared inadmissible, as the defendant has quite correctly argued, under Article 42(2) of the Rules of Procedure of the Court of Justice. To the extent to which it ought to be regarded as a development of an plea explicitly or implicitly set out earlier in the application, it suffices to hold, without its being necessary to consider whether the administration is obliged to grant free access to its archives to officials who are the subject of disciplinary proceedings, that the documents on the file show that the administration in this case did indeed initially grant the applicant access to its archives (see point 66 of the Disciplinary Board's first reasoned opinion of 10 February 1984).

126 It follows that the first complaint relied on in support of this plea must be dismissed as unfounded.

— The failure to forward the minutes of 26 November 1987 within a reasonable period

127 The applicant argues that the minutes of the Disciplinary Board's final meeting of 26 November 1987 were not sent to him until 30 November 1987 and that he received them only on 2 December 1987 together with the Board's reasoned opinion dated 27 November 1987. Consequently, he claims, there was no opportunity to submit observations on those minutes, even though they could not have been regarded as a purely internal document in view of the fact that they contained matters relevant to the applicant's defence. Moreover, the statement in those minutes to the effect that the applicant's counsel would not insist on securing other documents would, by its very nature, have been capable of being the subject of observations or development.

128 While it acknowledges that a meeting was indeed held on 26 November 1987, the defendant points out that this meeting was followed by two others held *in camera*, the second of which lasted throughout Friday 27 November 1987. In those circumstances, it would not have been possible to send the minutes out earlier than Monday 30 November 1987 and the applicant did not comment on this matter following receipt of those minutes. In any event, the minutes were purely formal in nature and were not relevant for the purposes of the final decision of the Disciplinary Board; the delay in forwarding them, according to the case-law, could therefore not have infringed the *audi alteram partem* principle (judgment in Case

228/83 *F.* v *Commission*, cited above). The Parliament also points out that, although the applicant argues that there was a delay in forwarding the minutes, the fact remains that he does not deny that his counsel admitted explicitly during that meeting that he did not wish to receive additional documents.

129 As the Court of Justice has held (paragraphs 25 to 28 of the judgment in *F.* v *Commission*), the minutes of the meetings of the Board, which give only a brief summary of the Board's deliberations, are of a purely internal nature, and consequently the delay in forwarding them does not infringe the *audi alteram partem* principle applicable in proceedings before the Disciplinary Board or the rights of defence of the official accused.

130 In view of the fact that this case concerns simply the minutes of the meeting, without any record of the depositions of witnesses, it must be held that the delay in communication to the applicant did not infringe the rights of the defence.

131 The complaint based on delay in that communication must for that reason be dismissed.

— The applicant's non-approval of the technical questionnaire addressed to the Treasury and Accounts Division of the Parliament

132 The applicant contends that the chairman of the Disciplinary Board failed to submit to the applicant's defence counsel, for his approval and prior to dispatch, the final text of the questions to be put to the administration, as had been agreed at the meeting of 10 November 1987.

133 The defendant states in reply that the final text of the questions was submitted to the applicant's counsel on the afternoon of 10 November 1987, as evidenced by the letter sent to him on 11 November 1987 by the chairman of the Disciplinary Board. Those questions were also sent to the administration, at the request of the defence, during the meeting of 10 November 1987. The texts of the various questions were derived, almost *verbatim*, from the questions which appeared in the

preliminary statement of defence of 29 October 1987. In addition, the present argument was at no time put forward during the subsequent proceedings of the Disciplinary Board.

134 The Court finds that this objection is based on an inaccurate assertion by the applicant. It is clear from an examination of the documents on the file, in particular the letter of 11 November 1987 from the chairman of the Disciplinary Board, which was produced by the defendant and the content of which has not been contested by the applicant, as well as paragraph 11 of the Disciplinary Board's reasoned opinion of 27 November 1987, the content of which has also not been contested by the applicant, that the latter's defence counsel expressed his agreement with the wording, prior to their dispatch, of the technical questions which the Disciplinary Board, following a proposal from the defence, had decided to send to the Treasury and Accounts Division.

135 It follows that this objection must also be dismissed.

— The note sent by the applicant on 5 June 1981 to the Director of Finance and Data-processing

136 The applicant argues that the Disciplinary Board, in its reasoned opinion, attached major importance, for the purpose of 'establishing liability' with regard to the complaint entitled 'opening of an account with the Midland Bank on 21 July 1980', to a note which the applicant had addressed on 5 June 1981 to the director of finance and data-processing services. This document, he claims, was not attached to the 'document making the accusation', was not referred to during the discussions before the Disciplinary Board and was not communicated to the applicant.

137 The defendant accepts that the note of 5 June 1981 was not attached to the 'document making the accusation', but argues that this omission was attributable to the need for conciseness in that document. On the other hand, according to the Parliament, it was referred to at several stages in the proceedings of the Disciplinary Board and in the presence of the applicant, who did not deny that he wrote it. This document was also included in the annexes attached to the Disciplinary Board's opinion in the disciplinary proceedings instituted against Mr

Offermann, an opinion which the applicant had expressly requested should be placed on the file. The applicant could therefore have had access to this document at all times.

138 This plea in law must be dismissed, without its being necessary to examine whether and to what extent the note in question was communicated to the applicant. The applicant cannot claim that there was a failure to respect the rights of the defence on the ground that a note which he admits he wrote and the content and interpretation of which he does not dispute was not included in the file for the disciplinary proceedings.

— The reverse entry of 25 August 1982 relating to the amount of BFR 4 136 125

139 The applicant claims that up to the day before the expiry of the first disciplinary proceedings the only document forwarded to him concerning the reverse entry of BFR 4 136 125 made on 25 August 1982 was a document which had not been signed by the accounting officer. It was not until a number of days after the termination of those disciplinary proceedings that a document signed by Mr de Compte's successor, Mr Brown, appeared as an annex to the replies to questions put to Messrs Young and de Poortere by the Disciplinary Board. The applicant notes in this connection that there are several discrepancies between the two documents, quite apart from the fact that the first was not signed by the accounting officer, whereas the second was. According to the applicant, there are a number of mistakes and inconsistencies between the two texts, as well as discrepancies between the printed characters, all of which would suggest that the two documents were not contemporaneous, even though they bear the same date (25 August 1982).

140 The applicant also claims that the delay in forwarding the minutes of the Disciplinary Board's meeting of 26 November 1987 prevented him from submitting observations on the reference in those minutes to the examination on 19 November 1987 of the original of the reverse entry made on 25 August 1982. Considering finally the Parliament's suggestion that the copy in his possession was an unsigned draft of an accounting form, the applicant argues that, while such a possibility may explain some of the discrepancies identified, it cannot explain the difference in the printed characters of two documents bearing the same date. He justifies the importance he attaches to this question by stating that the reverse

entry constitutes a 'vital document' in so far as once such an entry has been made 'the loss is beyond doubt'.

141 The defendant takes the view that the communication of the accounting document a few days after the termination of the disciplinary proceedings cannot result in the proceedings being annulled, even if the alleged delay might have infringed the rights of the defence. In its opinion, the applicant referred before the Disciplinary Board to a separate version of this document and ought at that time to have produced the original document. The copy in the applicant's possession was in all likelihood that of the unsigned draft, a copy of which he had obtained at that time through unofficial channels. This point was examined in detail during the depositions of Messrs Young and de Poortere.

142 In any case, the originals of the documents in question had been verified in the presence of the applicant on Thursday 19 November 1987 and this had been confirmed at the Disciplinary Board's meeting of 26 November 1987. The Parliament also cannot understand why the applicant attaches so much importance to the reverse entry of 25 August 1982 since he himself had requested on 30 March 1982 that a correction be made in respect of the loss of an approximately equivalent amount. Such a document, which merely notes and registers in the accounts the existence of a loss, is quite irrelevant when it comes to establishing proof of that loss. According to the Parliament, it is also not possible to envisage how the difference between the printed characters of that document and those of the document in the applicant's possession can demonstrate that the latter was not a mere draft and did not indicate the potential relevance of this latter question for a resolution of the present case.

143 In the light of the explanations provided by the parties, the Court takes the view that the applicant has failed to demonstrate how the communication on 25 August 1982 of the original document recording the reverse entry, shortly before the termination of the disciplinary proceedings, could have constituted an infringement of the rights of the defence of such seriousness as to vitiate those proceedings. It should also be noted that that document was made available to the applicant on 19 November 1987 and that he consequently had the opportunity to submit any comments in the definitive statement of defence which he addressed to the Disciplinary Board on 24 November 1987. The Court is in those circumstances unable

to identify any infringement of the applicant's rights of defence attributable to a delay in communicating the original of the document in question.

144 The complaint relating to the delay in communicating the document confirming the reverse entry of 25 August 1982 must for that reason be dismissed.

145 It follows from all the above considerations that the plea in law based on alleged infringements of the rights of the defence must be dismissed in its entirety.

The plea relating to the infringement of the independence of the Disciplinary Board and the freedom of the defence

146 The applicant, who defers to the wisdom of the Court in respect of this plea, argues that paragraph 3 of the minutes of the meeting of the Disciplinary Board of 22 and 23 October 1987 refers to a declaration by Mr Dankert, at that time Vice-President of the Parliament, who, in the course of an office meeting in Strasbourg, cast serious doubt not only on the independence of that Board (and more particularly on that of one of its members) but also on the freedom of the defence in the case, that is to say, the applicant's freedom to choose as his counsel Mr Feidt, Director General of Administration. The applicant believes that a comparison of the recommendations adopted by the two Disciplinary Boards, dealing with the same complaints, within the space of a few years, makes it possible to establish indirectly that Mr Dankert's declaration did indeed influence the members of the second Disciplinary Board. The applicant thereby calls in question the freedom of a Parliamentary figure directly involved in the case in his capacity as President of the Parliament at the time of the disputed events to express opinions of that kind.

147 The defendant takes the view that there is nothing untoward in a Parliamentary figure, in the exercise of his functions, freely expressing his views even if, as in the present case, he cast doubt on the independence of one of the members of the Disciplinary Board and reproached the applicant for having chosen as his counsel the Parliament's Director-General of Administration. The defendant relies in this

regard on Articles 9 and 10 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (Journal Officiel 1967 L 152, p. 13) and also refers to the judgment of the Court of Justice in Case 149/85 *Wybot* v *Faure and Others* [1986] ECR 2391.

148 The Court finds that the minutes of 22 October 1987 mention that the chairman of the Disciplinary Board referred to a declaration made by Mr Dankert on 13 October 1987 in Strasbourg concerning the disciplinary proceedings brought against the applicant and the replies in this connection by the Secretary-General and President of the Parliament. According to the information contained in those minutes, the member of the Disciplinary Board indirectly called in question, Mr Prete, confirmed his full independence. Following an exchange of views among the members of the Disciplinary Board, it was decided that no account would be taken of this declaration in the Disciplinary Board's deliberations.

149 In those circumstances, the Court takes the view that the facts alleged by the applicant are not sufficiently convincing to permit it to reach the conclusion that there has been an infringement of the independence of the Disciplinary Board or the rights of the defence. The propriety of the disciplinary proceedings cannot therefore have been affected by the declaration made in that connection by a member of the Parliament in the exercise of his functions.

150 It follows that this plea in law must also be dismissed.

B — *Pleas in law relating to substantive defects*

The plea relating to the infringement of Article 86 of the Staff Regulations and Articles 70 and 72 of the Financial Regulation, and to the failure to comply with the principle of law that every administrative measure must be accompanied by legally admissible reasons which are not contradictory and are not vitiated by errors of law or fact

151 The applicant argues that the disciplinary decision is contradictory and is vitiated by errors of law and fact with regard to the irregularities of which he is accused, that is to say, the opening of an interest-bearing account with the Midland Bank,

the failure to comply with the obligation to manage payment credits in a proper manner, and the failure to comply with the obligation to effect expenditure only upon presentation of proper supporting documents and to keep those documents in a safe place.

— The opening of an interest-bearing account with the Midland Bank

152 The applicant makes the preliminary point that this allegation relates to the recital in the decision stating that 'Mr de Compte's decision to alter the banking arrangements fixed by common consent between the Parliament and the Midland Bank, in the case where he had not been asked to do so and in excess of his powers, amounts to . . . a failure to comply with the obligations incumbent on an accounting officer'.

153 The applicant claims in this connection that the appointing authority has confused the duties of the administrator of advance funds (in this case, Mr Offermann) and those of the accounting officer (in this case, the applicant), since the matter involved an imprest account for which the accounting officer as such was not responsible. In this case, the responsibility devolved primarily on Mr Offermann. While he accepts that accounting officers do have a special status, the applicant points out that this is also true of the administrator of advance funds, as Article 70 of the Financial Regulation makes clear. He also takes the view that the accounting officer's liability in respect of advance funds cannot also incorporate the liability which attaches to the administrator of advance funds, given that the latter had the task of managing the members' cash office. He adds that his duty, as accounting officer, to issue instructions to the administrator of advance funds with regard to the keeping of accounts by itself rules out any management by him of the members' cash office and consequently precludes any liability on his part.

154 The applicant also contends that the alteration in the banking conditions existing between the Parliament and the Midland Bank following the opening of the interest-bearing account in question resulted from a decision taken, not by the applicant, but by the administrator of advance funds and his assistant, Miss Cesaratto. In support of this contention, he refers to the reasoned opinions delivered by the Disciplinary Board in the disciplinary proceedings instituted against him and Mr Offermann.

155 The applicant attaches significance to the fact that this disputed alteration in the banking conditions did not form the subject of a complaint against Mr Offermann in the disciplinary proceedings brought against the latter. With regard to the reasons which led to Mr Offermann's acquittal, the applicant quotes from the reasoned opinion of the Disciplinary Board, which states that Mr Offermann believed that he had the full endorsement of his hierarchical superior, that the transaction had always been above board, that Mr Offermann ought to have the benefit of the doubt in the light of banking practices, and that in any case there had been neither intentional fault not serious negligence. In those circumstances, the applicant asks how those reasons could be valid for the person responsible for the measure charged but not valid for the person who had assumed responsibility for it. From this the applicant accordingly infers that the appointing authority was wrong to cite in his regard the failure to comply with the legal provisions mentioned in the contested decision.

156 In his reply, the applicant rejects the Parliament's claim that he had kept the existence of the disputed account hidden from his superiors. He argues that this claim is inconsistent with the findings set out in the Disciplinary Board's reasoned opinion in the Offermann case to the effect that the bank file was accessible to all his hierarchical superiors. Moreover, he asks whether there is a contradiction between the findings in the reasoned opinion delivered in his case by the second Disciplinary Board and the findings of the opinion delivered by the Disciplinary Board in the case of Mr Offermann with regard to an order given in February 1982 by Mr Paludan-Müller, at that time Director of Finances and Authorizing Officer, concerning the recovery of interest which had accrued on the disputed account. The applicant claims that Mr Paludan-Müller had been fully aware of the existence of that account since the time of a discussion which he had had with him shortly after taking up his post in December 1980. Finally, Article 17 of the implementing arrangements do not require that an open interest-bearing account be notified to the authorities of the Parliament as such an obligation concerns only collection.

157 In connection with the Parliament's argument that the applicant was the highest-ranking official among those who were aware that the account had been opened, the applicant examines the relationships between 'accounting officer — authorizing officer — financial controller' and refers to an article published in November 1982 by the then President of the Court of Auditors which stated that Community accounting officers were in fact not truly independent. Confirmation of the ambiguity surrounding this question, he claims, may be found in the proposal for a decision submitted by the reporter, Saby, to the Committee on Budgetary Control in connection with the final discharge procedure for the 1981 financial year ('the

Saby report') in so far as that proposal noted 'the inseparable joint liability of the authorizing officer and the accounting officer' and concluded that 'the liability of the accounting officer can be effectively involved only after that of the authorizing officer and the financial controller'. Following the same line of argument, the applicant points out that in its decision of 10 April 1984 granting final discharge for the 1981 financial year, the Parliament expressly stated that it was 'necessary for the respective independence of the authorizing officer, the financial controller and the accounting officer to be specified in the Financial Regulation and the internal rules'.

158 The applicant also notes that the defendant refrained from any reference to the relevant provisions (Articles 53 and 54) of the implementing arrangements which set out the duties of the financial controller and thus his responsibilities, parallel to those of accounting officers vis-à-vis administrators of advance funds. The same silence also surrounded the observation in the special report of 6 July 1982 drawn up by the Court of Auditors that 'the financial controller should have opposed this procedure [the procedure followed by the members' cash office]' as well as the Parliament's reply to that observation, in which it noted that 'the Competent Authority regrets that this matter was not drawn to its attention by the financial controller'. In conclusion, the applicant wonders how the facts alleged could have breached the 'authorizing officer-financial controller-accounting officer' relationship and not the 'accounting officer-administrator of advance funds' relationship.

159 The defendant readily accepts that the administrator of advance funds is initially responsible for transactions, but it here insists that it is the applicant himself who must be held primarily responsible for the instruction issued to the Midland Bank to place UKL 400 000 'on deposit' at an interest rate of 16%. According to the Parliament, even if the relevant measures were taken in part by the applicant's colleagues, the applicant himself was fully aware of the ongoing transactions right from the outset, and this is sufficient to render him liable. Moreover, the applicant, who was the most senior official among those aware that the account had been opened, has never been able to explain why that account was opened or why that sum was immobilized in the United Kingdom for such a long period. Similarly, he has failed to explain why that account was never mentioned in the Parliament's accounts and why the interest generated was at no time reflected in the accounts. Furthermore, it was only by chance that the existence of this account was discovered by the authorities in the Parliament and its existence was kept hidden from them on at least two occasions.

160 The defendant takes the view that the applicant was responsible for the transactions concerning accounts of the advance funds office in so far as he was empowered to sign those accounts in his capacity as head of the Treasury and Accounts Division and in so far as it was his duty to supervise the work of Mr Offermann, the administrator of advance funds, who was an accounting officer of lower rank.

161 The Parliament also takes the view that applicant's liability is established not only in respect of the facts but also in law. It relies in this connection on several articles of the Financial Regulation. Specifically, it argues that under Article 63 accounts are required to show 'all revenue and expenditure for the financial year'. The applicant was therefore under an obligation to include the new account and resulting interest in the general accounts independently of the accounts of the advance funds office. What is more, the accounting officer has a specific responsibility in law in relation to the accounts of the advance funds office in so far as, pursuant to the measures of implementation, he must issue instructions to the administrator of advance funds for the proper keeping of the accounts (Article 51) and check the accounts of the administrator of advance funds (Article 53) and in so far as the administrator is responsible to the accounting officer for the making of all payments (Article 50). The accounting officer is also required, under Article 49(f), to intervene when a decision setting up an advance fund office has been taken, in order to fix the deadline for final adjustment and settlement in respect of operations effected by the advance funds office. From this the defendant institution concludes that the contested decision was right to hold that the applicant was liable in the light of Article 70(1) of the Financial Regulation.

162 So far as concerns the fact that no disciplinary measure was taken against Mr Offermann, the Parliament stresses in this regard his subordinate position and points out that if Mr Offermann was not found to be liable in this instance, it was because he believed that he had 'the full endorsement of his superior [the applicant]', as was held by the Disciplinary Board responsible for examining his case.

163 With regard to the liability of the authorizing officer and the financial controller, the defendant replies that the applicant's arguments on this point appear to lack any relevance as he is not alleging that these two were at any time involved in the opening of the account with the Midland Bank. In order to set out clearly the respective areas of responsibility, the defendant refers in the first place to the legal

status of the accounting officer as apparent from Article 209 of the EEC Treaty, which expressly refers to this function, Articles 17, 49 and 70 of the Financial Regulation and Title IX of the measures of implementation. It deduces from this legal framework that the post of accounting officer is the subject of a special organization and that the position and liability of that officer are autonomous and independent of any hierarchical affiliation. Secondly, the Parliament refers to Article 209 of the EEC Treaty and Articles 17, 19, 20, 68, 69 and 70(1) of the Financial Regulation in order to draw a distinction between the responsibilities of the authorizing officer and those of the financial controller. In the light of those provisions, the Parliament takes the view that the latter officials cannot be held legally liable in this case since the misconduct of which the applicant is accused relates to the transfer of funds, that is to say, accounts which do not require the prior approval of an authorizing officer or the financial controller.

164 Turning to the comments on the 'debasement of the accounting officer' in daily practice expressed by the former President of the Court of Auditors in his article of November 1982, the Parliament remarks that these do not in any way affect the legal position. It also adds that the paragraphs referred to by the applicant in the draft decision submitted by the reporter Saby were rejected by an overwhelming majority of the Committee on Budgetary Control.

165 The defendant institution finally examines more closely the obligations of the financial controller and in particular the fact that under Article 53 of the measures of implementation it is only 'without prejudice to the control carried out by the financial controller' that the accounting officer must check the funds of the administrator of advance funds. In the Parliament's opinion, that article relates only to the general supervisory power exercised by the financial controller, as defined in Article 11 of the measures of implementation, and it is not possible to infer from it that the financial controller must be held liable in this regard for all the malpractices committed in the institution.

166 The Court notes that the applicant does not contest the relevance of the facts concerning the opening with the Midland Bank of the interest-bearing account No 1777912, as set out in the section of this judgment entitled 'The background to the operation of bank accounts with the Midland Bank, London'. As there stated, the bank account in question was opened by way of a letter signed by the administrator of advance funds, Mr Offermann, and an official from the Treasury and

Accounts Division, Miss Cesaratto. On the other hand, the applicant disputes the appointing authority's legal appraisal of those facts and argues that, according to the relevant provisions of the Financial Regulation and the measures of implementation, the responsibility for managing the accounts of the members' advance funds office rested with Mr Offermann. Thus, according to the applicant, the disciplinary decision is itself vitiated by an error of law inasmuch as it fails to recognize that Mr Offermann, as the administrator of advance funds, was solely responsible for the opening and operation of the disputed account.

167 It must be pointed out that the respective powers and responsibilities of the accounting officer and the administrator of advance funds are defined in particular, so far as the administration of advance funds is concerned, by the third paragraph of Article 17 and by Articles 20, 49, 63 and 70 of the Financial Regulation, in addition to Articles 46 to 54 of the measures of implementation in force at the time of the matters in dispute. Those articles provide that the setting up and consequently the modification of an advance funds office shall be the subject of a decision by the budgetary authorities. The administrator of advance funds is required to keep account of the funds at his disposal and of the expenditure effected, in accordance with the instructions of the accounting officer, to whom he is responsible for the making of payments. The role of the accounting officer, which is to ensure collection or payment of sums by the institution, is not limited to issuing instructions, so far as the administration of the advance funds office is concerned. The accounting officer must himself carry out checks, normally on the spot and without warning, on the funds allocated to the administrator of advance funds and on his accounts.

168 It follows from this division of responsibilities between the accounting officer and the administrator of advance funds that it is the latter who is primarily responsible for the administration of the advance funds office and that he may be discharged from that responsibility only if he has received contrary instructions from the accounting officer. On the other hand, the accounting officer is jointly responsible if, once informed of possible irregularities, he fails to take appropriate measures or refrains from carrying out ordinary or extraordinary checks on the accounts of the advance funds office.

169 The documents on file in this case make it clear that the applicant had been informed by Mr Offermann at the outset that the disputed account had been opened. That fact has not been challenged by the applicant. Thus, while it is true to say that responsibility for that decision devolves initially on the administrator of advance funds, the applicant must be regarded as jointly responsible for all the

irregularities surrounding the opening of that account, that is to say, the absence of authorization from the budgetary authorities for the alteration of the banking conditions existing between the Parliament and the Midland Bank, the failure to inform the relevant departments of the Parliament that the account had been opened, and the failure to keep a record of the relevant transactions and interest payments in the Parliament's accounts.

170 The fact that no sanction was imposed on the administrator of advance funds at the conclusion of the disciplinary proceedings brought against him cannot in any way affect the legality of the disciplinary measure imposed on the applicant in view of the fact that each set of disciplinary proceedings is distinct and separate. It should in this regard be pointed out that the opinions delivered by the Disciplinary Board in the two sets of proceedings agree in respect of the determination of the facts. The opinions differ only with regard to the assessment of those recorded facts. In the case of the proceedings brought against Mr Offermann, the disciplinary authorities took the view that the responsibility for his actions devolved on his hierarchical superior, that is to say, the applicant, whereas the Disciplinary Board in the proceedings instituted against the applicant reached the conclusion that the applicant and Mr Offermann were both responsible (point 222 of the reasoned opinion). In any event, even if the decision taken by the appointing authority against the administrator of advance funds was unlawful, the applicant may not rely, in support of his claim, on an unlawful act committed in favour of another (see the judgment of the Court of Justice in Case 134/84 *Williams* v *Court of Auditors* [1985] ECR 2225).

171 With regard to the allegation that the applicant decided not to disclose the existence of the new account to his hierarchical superiors and the issue of possible liability on the part of the financial controller, the arguments engaged in by the parties in their reply and rejoinder cannot be regarded as relevant. Whatever the replies to those questions might be, they cannot in any event have the result of releasing the applicant from his liability, which lies essentially in the fact that he failed within a reasonable time to record the transactions in question in his capacity as accounting officer of the institution.

172 In addition, the documents on the file do not in any way suggest that either the authorizing officer or the financial controller was aware that the disputed bank account had been opened. On the contrary (as pointed out by the Disciplinary

Board at points 146 to 154 of its reasoned opinion of 27 November 1987), two documents on the file raise the presumption that those two hierarchical superiors of the applicant knew nothing of the interest-bearing account with the Midland Bank. The two documents in question are a note of 5 June 1981 from the applicant to Mr Paludin-Müller, then Director of Finances and authorizing officer, and a note of 22 January 1982 to the applicant from Mr Etien, who at that time was the financial controller. In the first note, the applicant draws his director's attention to the fact that the Parliament has only current accounts and attaches as an annex a list of the bank accounts held by the Parliament. So far as the Midland Bank is concerned, reference is made to Current Account No 618094 with an average balance of UKL 100 000, but there is nowhere any mention of the interest-bearing account No 1777912, which at that time contained UKL 400 000. In the second note, the financial controller expresses surprise that the members' office account with the Midland Bank should involve expense without generating any interest. On this same note, Mr Paludin-Müller added in his own handwriting a request that the applicant discuss with the Midland Bank the possibility for the Parliament to avoid paying costs and to earn interest.

173 It follows from the foregoing that the first part of this plea in law must be dismissed as unfounded.

— The complaint relating to the failure to comply with the obligation to administer payment credits in a proper manner

174 Before setting out his arguments on the complaint concerning the encashment of the two cheques drawn on the Midland Bank, the applicant quotes the relevant passage from the contested decision, which states that '... by cashing those two cheques without specific and valid justification, ... by failing to ensure that a record was kept of the payment made into the Luxembourg cash office in the "accounting forms for cash extracts", ... by failing to record immediately in the accounts the encashment of those cheques, Mr de Compte has failed in his duty to administer payment credits in a proper manner ... '.

175 The applicant interprets this complaint as meaning that he is being blamed only for having failed immediately to make the entries necessitated by the encashment of the two cheques referred to above. In his application he rejects this complaint,

which he describes as 'non-immediate entry in the accounts', by citing the Saby report, which refers to the staff and material shortages during the period from 1978 to 1982, the additional work due to the rejection of the 1980 budget and the detrimental effects on the workload of the accounting division occasioned by the elections to the European Parliament by universal suffrage in June 1979 in so far as those elections resulted in a doubling of the number of members and an appreciable increase in the number of officials. The applicant also argues that, in its reasoned opinion, the Disciplinary Board accepted as an extenuating circumstance the 'poor general organization of the Parliament's financial services during the period in question and the inadequacy of material and staff resources'; from this the applicant concludes that it is inconsistent to make such a finding and at the same time to hold him responsible for a delay in entering details of the two cheques in the accounts.

176 In his reply, the applicant points out that he is being accused of having failed to fulfil his managerial duty at a time when, with regard to the members' cash office, he was not under such a duty, as is clear from Article 51 of the measures of implementation. On the contrary, it was the administrator of advance funds who ought to have made the entries in question since the cheques in question were drawn on an account of the members' advance fund and the exchange value was paid into the 'Belgian franc cash fund' of the advance fund office in Luxembourg. According to the applicant, therefore, it is the administrator of advance funds who should be held responsible for this failure. Moreover, the fact that the applicant actually gave instructions concerning the issue and encashment of the cheques is irrelevant.

177 The defendant argues that the absence of written records was in no way attributable to the inadequacy of staff and material resources, but was due rather to serious fault on the part of the applicant. In support of this contention, it begins by setting out the undisputed course of events. On 4 September and 11 November 1981 the Sogenal Bank in Luxembourg, on request by the applicant, paid to him in cash in three currencies (BFR, DM and FF) a sum of BFR 4 136 125 upon presentation of two cheques drawn on the Midland Bank. The applicant initially attempted to draw those cheques on the interest-bearing account which he had opened with the Midland Bank, but the latter refused to cash them as that account did not permit the issue of cheques. The two cheques were therefore debited from the original current account. The Parliament disputes the applicant's declaration that the exchange cash value of those cheques was immediately placed in the safe in Luxembourg on the day they were cashed. The Parliament points out that if this had been done, a receipt should have been issued in accordance with Article 25 of

the Financial Regulation. In addition, a number of written entries should have been made immediately, none of which was in fact actually made.

178 In the opinion of the defendant, the applicant personally cashed the two cheques at the Sogenal Bank and personally placed the money in the safe without making the appropriate entries in the cash office extracts, the cash office records or the bank records. It was not until more than six months after the first encashment that two entries were made in the accounts on 28 February 1982 (a Sunday) for an amount in Belgian francs representing the combined total of the two cheques but without this sum ever having been recorded in the cash office book accompanying liquid assets in the safe. According to the defendant, the delay remains significant, regardless of whether the entry was made on 28 February 1982 or at a date later than 18 March 1982, as the Court of Auditors claims. Furthermore, the Parliament points out that the cash replacement of BFR 4 136 125 in its cash funds in Luxembourg without any accounting entries of any kind should have given rise to a discrepancy at the very latest when the cash fund book and the sum total of liquid assets were compared at the end of the year. This discrepancy did not appear until after the two cheques had been recorded in the accounts and it was the inverse of that which should have been found if the exchange value of the two cheques had been placed immediately in the cash fund without any accounting entry. Finally, the defendant states that under the applicable accounting procedures the general accounts ought to be double those of the advance fund. Similarly, the interest accrued on the Midland Bank account should have been entered in the general accounts, even if it related to the advance fund. Nothing of the kind was done, and this constitutes a breach of Article 63 of the Financial Regulation. The applicant is thus guilty of an extremely serious fault.

179 With regard to the exculpatory argument relied on by the applicant and relating to the poor general organization of the Parliament's financial departments and the references to this in the Saby report, the defendant first of all points out that this report was never adopted by the Parliament. Furthermore, it considers that the poor general organization of its departments can constitute at most an extenuating circumstance for the applicant, but not a justification.

180 The Court takes the view that the applicant develops his argument around two essential points: in the first place, that the delay of six months found to have

occurred in the recording in the accounts of the encashment of the two cheques was attributable to the poor organization of the Parliament's financial departments; secondly, that the responsibility for carrying out the accounting in question devolved on the administrator of advance funds by virtue of the fact that the cheques in question were drawn on the bank account of an advance funds office.

181 As far as the first point is concerned, it should be noted at the outset that the applicant is wrong in restricting the scope of the complaint upheld against him to the 'non-immediate entry in the accounts' of the two cheques. The disciplinary decision also accuses him of having cashed those two cheques without specific and valid justification and with having failed to record the withdrawal on the 'accounting forms for cash extracts' of the Parliament's cash office in Luxembourg in the three currencies in which that withdrawal had been made.

182 With regard to the soundness of the applicant's argument, it must be pointed out that the fact that the disciplinary decision took into account, as constituting extenuating circumstances, the poor organization of the Parliament's financial departments at the time of the disputed events and the inadequacy of the staff and material resources at that time cannot be regarded as inconsistent with the affirmation of the obligation on the applicant to administer the credit payments in a proper manner. The circumstances relied on by the applicant and taken into consideration by the disciplinary authorities also cannot amount to justification for the purposes of the present complaint against the applicant in so far as the delay established in the recording of the two cheques in question was accompanied by a catalogue of other failings at the time of their encashment. The Court also takes the view that the applicant's senior position in the financial division precludes him from relying on material difficulties which may have existed at a particular time in order to secure release from all liability.

183 With regard to the second point, that is to say, the allegation that the administrator of advance funds alone is liable, an allegation relied on by the defendant in his reply, it is sufficient to refer to the views expressed above in respect of the preceding complaint. In addition, it should be added that the applicant was much more extensively implicated in the failures surrounding the encashment of the two cheques than in those which related to the opening of the account.

184 It follows from the above that the second part of this plea in law must also be dismissed.

— The complaint relating to the failure to comply with the obligation to effect expenditure only on presentation of proper supporting documents and to keep such documents in a safe place

185 Referring to the arguments which he set out, during the disciplinary proceedings, in his provisional written statement of 29 October 1987 and his technical annex, the applicant contends that he has shown that the complaint in question is the result of a combination by the appointing authority of the exchange value of the two cheques in Belgian francs, for which supporting documents did indeed exist, and a discrepancy recorded in August 1982 between the cash office for advance funds and the auxiliary accounts. According to the applicant, that discrepancy may be explained by a whole range of consistent technical reasons not necessarily connected with an absence of supporting documents. Moreover, that provisional written statement contained legal proof that the obligation to effect expenditure only upon presentation of proper supporting documents and to keep such documents falls, in the context of an advance funds office, on the administrator and not on the accounting officer. He adds in this connection that he is being accused of failing to comply with a number of obligations in respect of which the administrator of advance funds was required to report to the authorizing officer, rather than to the accounting officer.

186 In the alternative, the applicant submits that the origins of this case are based on a false assumption and that subsequent developments have been an attempt to make the facts fit that assumption. In his view, the opinion delivered on 7 November 1985 by the Court of Auditors in this case casts light on the meaning of this assumption and provides proof of its existence when it states that: 'the collection of those amounts (the two cheques) by the cashier without corresponding entries in the accounts ought to have given rise to an accounts surplus in the same amount. The checks carried out by the Court of Auditors into the cash office in March 1982 did not reveal any major discrepancy, which permits the conclusion to be drawn that there was a deficit of some BFR 4 100 000 before the cheques were cashed . . .'. According to the applicant, this assumption is mistaken by reason of the fact that the conclusion (alleged deficit of BFR 4 000 000) does not follow from the premisses (unrecorded encashment of two cheques for a total of BFR 4 000 000 and 'correct balance' of the cash office on 31 December 1981). This reasoning supposes, in his opinion, that the delay in making the accounting entries related only to the two cheques in question. As for the principle, the applicant cannot see why the delay in making entries could not be global. So far as the facts are concerned, he adds that independently of the general context there was and

necessarily had to be a delay between the payments and their entry in the accounts. It follows that a delay in the registration of expenses could suffice to destroy the reasoning on which this case is based. In support of this argument, the applicant refers to a note of 8 February 1985 from Mr Overstall, at that time Financial Controller acting under the instructions of the Director of Finance, according to which the discrepancy between the surplus of the members' cash office and the auxiliary accounts of that cash office had as one of its origins the accumulation of receipts and expenditure regularized on an *a posteriori* basis.

187 The applicant also takes the view that it is the appointing authority which has the onus of justifying in technical terms the accusation that the loss of the documents can be imputed to the applicant alone. That has not been done. The applicant argues that if he had been given unimpeded access to the accounts, he would have been able to prove conclusively that at the date of his transfer (30 April 1982) all orders for expenditure, receipts and corrective payments, numbered in continuous sequence, were in existence. According to him, the origin and nature of the accounting discrepancy of which he is accused were connected to the accounting system in force at the period and was a permanent structural feature.

188 The applicant then goes on to examine the issue of the note which he sent on 30 March 1982 to the President of the Parliament and concedes that this referred to a sum of BFR 4 121 573 which had not been entered in the accounts as expenditure. He stresses none the less that this sum does not correspond to the aggregate amount of the two disputed cheques and that the debate does not relate to the same subject-matter. In this connection, the applicant explains that when the Court of Auditors established that there was a deficit of BFR 4 000 000, this related, according to the assumption which it had accepted, to a discrepancy (which had existed before the encashment of the cheques) between the actual assets in the 'Belgian franc cash funds' and withdrawals from those cash funds. On the other hand, the above note from the applicant referred to a discrepancy between the 'Belgian franc cash funds' and the auxiliary accounts, that is to say, to a structural discrepancy inherent in the system. According to the applicant, the difference to which he had drawn attention ought to have been examined but in actual fact never was.

189 With regard to the report summarizing the state of the accounts on 30 April 1982, as drawn up by the administration, the applicant claims that it is biased and that it was drawn up without his knowledge and after his transfer. For that reason it cannot be held against him and cannot take the place of the necessary statement of accounts which ought to have been made the very day of his transfer on 30 April 1982.

190 In the alternative, the applicant argues that there is at least doubt as to the complaint examined and that the contested decision failed to comply with the principle that the accused should have the benefit of any doubt.

191 The defendant first of all rejects as inaccurate the applicant's claim that the discrepancy of BFR 4 100 000 was discovered in the accounts several months after his transfer. In support of its contention, the Parliament relies in turn on the following documents: the note of 30 March 1982 to the President of the Parliament, in which the applicant referred to the absence of supporting documents in respect of a figure of approximately BFR 4 100 000; the report summarizing the state of the accounts, drawn up by the administration after the applicant's transfer, which made it possible to establish a deficit corresponding to the exchange value of the two cheques cashed; the opinion of the Court of Auditors of 7 November 1985, in which it stated that a deficit in the order of BFR 4 100 000 must have appeared as and from November 1981; the decision of the Parliament of 11 July 1986 stating that a discrepancy amounting to BFR 4 136 125 and arising prior to 30 April 1982 had been entered in the Parliament's accounting documents.

192 Secondly, the Parliament rejects as inaccurate the applicant's argument that proof has not been adduced that the discrepancy of BFR 4 100 000 is due to a loss of documents for which he is responsible. The Parliament notes that Mr Young, the applicant's successor as accounting officer, and Mr de Poortere, head of the service for Parliamentary allowances, replied orally and in writing to the questions referred by the Disciplinary Board concerning the problems alluded to by the applicant in this regard, and that each time the applicant disputed the explanation of figures or documents, the accounting department was able to demonstrate that documentation was lacking only in respect of the sum corresponding to the amounts of the two cheques drawn on the Midland Bank. The Parliament also contends that the precise correspondence between the amount of the cheques and that of the deficit is significant only once an unequivocal deficit has been established. It points out that the complaint made against the applicant is that he failed to retain supporting documents, not that he used the two cheques to make good the deficit.

193 So far as concerns the division of responsibilities between the accounting officer and the administrator of advance funds with regard to the obligation to retain supporting documents, the defendant blames the applicant for having failed in his analysis to identify the liability proper to the accounting officer. It notes in this

connection that the cash payments by the Sogenal Bank in Luxembourg on 4 September and 11 November 1981 were made to the accounting officer in person. That, according to the Parliament, was the reason why the Disciplinary Board did not hold the administrator of advance funds liable in the proceedings brought against Mr Offermann. The Board regarded as decisive the fact that the latter had 'never seen the completed cheques, that is to say, the cheques bearing a second signature and the amount of the withdrawal' and that 'Mr de Compte (had) declared that he himself had entered the transactions in question in the accounts and allocated the sums to the various cash offices' (point 63 of the Disciplinary Board's reasoned opinion in the Offermann case). According to the defendant, the applicant is liable under Articles 17, 20 and 70(1) of the Financial Regulation.

194 The defendant also submits in its rejoinder that, in the absence of any explanation whatever by the applicant of the deficit in question, the following seems to it to be the most plausible explanation. It points out that during the examination of the members' cash office by the Court of Auditors on 18 March 1982 the auditor responsible had found a surplus of BFR 14 552 in respect of which he had noted: 'difference to be explained' and then goes on to observe that if this amount is subtracted from the BFR 4 136 125 officially recorded on the accounting form of the 'Belgian franc cash fund' on 28 February 1982 but in fact entered, according to the Court of Auditors, at a date after 18 March 1982, the result comes to BFR 4 121 573, which is exactly the amount of the non-entry in expenses admitted by the applicant in his note of 30 March 1982.

195 The Court finds that the parties' arguments regarding this complaint relate essentially to two questions: in the first place, whether it has been sufficiently established for legal purposes that the deficit of approximately BFR 4 100 000 recorded in the members' cash office and which lacks supporting documentation is due to the entry noting the encashment, for an overall amount expressed in Belgian francs, of two cheques drawn on the Midland Bank; secondly, whether, in connection with an advance fund, the obligation and the corresponding responsibility to effect expenditure only on presentation of proper supporting documents and to retain those documents devolve on the administrator of advance funds or on the accounting officer.

196 So far as the first question is concerned, it must be pointed out that the appointing authority gave reasons for the conclusion reached in its disciplinary decision by relying on the following findings. The balance of the 'Belgian franc cash fund' account at the end of the 1981 financial year corresponded to the amount of the balance indicated on the 'Belgian franc cash fund' accounting form at the time of

the examination carried out by the Court of Auditors on 18 March 1982. The Parliament's accounting books show that an entry for BFR 4 136 125, representing the total amount in Belgian francs of the two cheques drawn on the Midland Bank, was made on 28 February 1982. The Court of Auditors does not believe that that entry could have been made on 28 February 1982 in view of the fact that it was not found during the examination of the members' cash office carried out in March 1982. That entry revealed a discrepancy between, on the one hand, the 'accounting forms — Midland Bank' and 'Belgian franc cash fund' accounts and, on the other, the cash book which accompanies liquid assets in the safe. This discrepancy amounts to a cash office deficit of the same extent, that is to say, BFR 4 136 125, the existence of which was confirmed by the Court of Auditors, internal investigations by the Parliament and by the Parliament's decision of 11 July 1986 granting a discharge for the 1982 financial year. In the letter which he sent to the President of the Parliament on 30 March 1982, the applicant admitted failing to record in the accounts expenditure of BFR 4 121 573. In his capacity as accounting officer required to justify every transaction in the cash office, the applicant failed to produce any supporting document for the payment of an amount equivalent to that of the deficit in the cash office and also failed to explain the origin of that deficit.

197 It should also be pointed out that in its reasoned opinion (which was followed by the appointing authority), the Disciplinary Board stated that it had been faced during its deliberations with two conflicting theories. The first explained the difference between the cash office and the general accounts by connecting it with the encashment of the two Midland Bank cheques; the second rejected this connection and expressed the view that the deficit represented the end result of a series of accounting errors. The Disciplinary Board states that it sent a list of questions to Mr Young, the Parliament's accounting officer, and to Mr de Poortere, head of the service of Parliamentary allowances, for the purpose of casting light on the various problems raised by the applicant in his provisional statement of defence with regard to the origin of the deficit. Messrs Young and de Poortere replied in writing to those questions and were then heard in the presence of the defence. The Disciplinary Board confirms that at each challenge concerning presentation or explanation of figures or documents, the accounting department was able to demonstrate that 'documentation was lacking only in respect of the sum corresponding to the amounts of the two cheques drawn on the Midland Bank'. The Disciplinary Board also confirms that the applicant was never able to provide any convincing explanation which would have justified a finding that the deficit established was unconnected with the two cheques. The Disciplinary Board acknowledges that it is difficult to draw a conclusion from a coincidence between the recorded discrepancy and the amount of the two cheques and it quotes in this connection the statement made during his hearing by the representative of the

Court of Auditors to the effect that even an exact equivalence between those two figures would not allow the conclusion to be drawn with absolute certainty that the deficit resulted from the encashment of the two cheques. Finally, the Disciplinary Board confirms that it took cognizance of the findings of the Court of Auditors, of the internal investigations carried out *a posteriori* and the Parliament's decision of 11 July 1986 granting discharge for the 1982 financial year, while also mentioning that the Parliament's accounting officer had not been able to provide supporting documents relating to a recorded deficit of some BFR 4 100 000.

198 It should also be borne in mind that the Court of Auditors had begun in July 1991 to examine the members' cash office in the Parliament. The result of that examination was the subject-matter of a memorandum of 29 October 1981 and a special report of 6 July 1982. The conclusions of the memorandum refer to the extensive disorder within the members' cash office and the almost total lack of supervision on the part of the accounting officer and the financial controller. In its special report, the Court of Auditors noted, among other irregularities found to exist in the administration of the members' cash office, that two cheques for UKL 35 176.98 and UKL 17 189.15 had been exchanged for cash, but no trace of the transactions could be found in the imprest accounts.

199 It might be added in this connection that the President of the Parliament, by letter of 24 July 1985, requested the Court of Auditors, on behalf of the Committee on Budgetary Control, to deliver a second opinion on the deficit in the members' cash office. In its opinion of 7 November 1985, the Court of Auditors recapitulated all the relevant facts which it had established during its investigation, along with the conclusions which could be drawn from those facts. The following are the central points in its conclusions. At the latest from November 1981 there existed a deficit of approximately BFR 4 100 000 in the accounts of the members' cash office corresponding to the amount of the cheques made out in pounds sterling which had been drawn in September and November 1981. This deficit was not immediately highlighted when the balance was drawn up on 31 December 1981 or when the Court of Auditors carried out its examination on 18 March 1982 because the encashment of the two cheques drawn on the Midland Bank account had not been entered in the Parliament's accounts. It was only after the entries relating to the transactions in question had been recorded that the deficit was identified. The Court of Auditors took the view that the accounting officer and administrator of advance funds should be held responsible for the condition of the members' cash office as they had failed to exercise reasonable care in respect of the Parliament's assets, as required by Article 20 of the Financial Regulation, and had failed to keep proper accounts pursuant to the measures of implementation.

200 From the submissions contained in the file documents analysed above, the Court concludes that the appointing authority, in the contested decision, accepted that there was a link between the appearance of a deficit of BFR 4 100 000 in the members' cash office and the encashment of the two disputed cheques drawn on the Midland Bank through reasoning that the entry confirming that transaction had not been made on Sunday 28 February 1982 but at some time after 18 March 1982, the date on which the Court of Auditors carried out its examination. The appointing authority considered as established that the late registration of the entry relating to the encashment of the two cheques revealed a deficit of BFR 4 136 215 corresponding to the total amount of those cheques. The Court takes the view that this interpretation by the appointing authority of the facts presented to it is supported by the successive opinions of the Court of Auditors and the Disciplinary Board, which carried out meticulous examinations and investigations with the object of casting light on the background to the deficit.

201 In those circumstances, and taking into consideration the declaration made by the Court of Auditor's representative before the Disciplinary Board to the effect that even a strict identity between the recorded accounting discrepancy and the amount of the two cheques would not make it possible to conclude with absolute certainty that the deficit in question resulted from the encashment of the two cheques, it must be held that the contested decision was quite properly entitled to consider as established that the absence of supporting documents was connected in this case to the encashment of the two cheques drawn on the Midland Bank. From this it follows that the applicant has failed to prove that the contested measure is inadequately reasoned or is vitiated by a manifest error, in fact or in law, or by an abuse of power, concepts which represent the limits of the examination of the legality of an administrative measure by a court called on to annul that measure.

202 In the alternative, it should be pointed out, as is mentioned in the disciplinary decision, that the applicant admitted, in his note of 30 March 1982 addressed to the President of the Parliament, that he had failed to enter in the accounts expenditure of an amount (BFR 4 121 573) approximately equivalent to the face value of the two cheques and requested that this situation be placed on a proper footing through the adoption of an expenses order. Even if one were to accept the applicant's argument that this deficit had nothing to do with the encashment of the two cheques, the conclusion to be drawn would still be the same given that the applicant was unable throughout the disciplinary proceedings to identify the supporting documents for the amount in question. The Court cannot accept as adequate the applicant's general argument that the difference identified was attributable to a structural discrepancy inherent in the accounting system in force in the Parliament at that period.

203 With regard to the second question, as to whether the obligation and consequently the responsibility to retain supporting documents relating to the encashment of the two cheques rested in this case on the applicant or on the administrator of advance funds, reference should be made to Articles 20 and 70(1) and (2) of the Financial Regulation and Articles 50 to 53 of the measures of implementation. Those provisions make it clear that the responsibility for the production and retention of supporting documents for advance funds rests in the first instance on the administrator of advance funds. The accounting officer, who is required to check the accounts of the advance fund and to issue instructions to the administrator of advance funds, becomes jointly responsible from the moment at which he fails to issue appropriate instructions for the retention of the supporting documents.

204 As has already been made clear in this case, the applicant was personally involved in the encashment of the two cheques in view of the fact that he himself provided the second signature and, according to his own statements, himself placed the cash, provided in three separate currencies, in the Parliament's safe in Luxembourg. In those circumstances, the disciplinary decision was perfectly correct in taking the view that the applicant had been gravely negligent in failing to take proper care of the Parliament's assets.

205 In the light of the foregoing, the present plea in law must be dismissed in its entirety as unfounded.

The alternative plea relating to the infringement of Article 86(1) of the Staff Regulations and of Articles 70(1) and 71 of the Financial Regulation, the failure to comply with the principles of equality, equity and the impartial administration of justice, and the misuse of powers

206 In this alternative plea, the applicant first contends that it is not possible to conclude that there has been negligence within the meaning of Article 86(1) of the Staff Regulations or, *a fortiori*, serious negligence within the meaning of Article 70(1) of the Financial Regulation and, secondly, that he is the only person who has been the subject of disciplinary measures in this case. This, he argues, amounts to a failure to comply with the principles of equality, equity and the impartial administration of justice and also constitutes a misuse of powers.

207 The applicant's argument in this connection is that, even if the complaints made against him were partially or fully justified, they could not lawfully justify measures against him given the background to the present case, which rules out negligence and, *a fortiori*, serious negligence, and in the light of the fact that, since he was not the only person responsible, sanctions could not be imposed on him if they were not imposed on others who might also be responsible and against whom (with the exception of Mr Offermann) proceedings had not even been brought. In support of this argument, the applicant refers to the declarations made by Mr Aigner, chairman of the Committee on Budgetary Control, and Mr Mart, a Member of the Parliament, during the Parliament's sessions of 11 July 1986 and 10 April 1984 respectively. According to those declarations, the hierarchy of responsibilities had not been properly recognized and all complaints had been directed against one man, whereas the debates had made it clear that it was quite simply the system itself which was at fault. Finally, the applicant refers once again to the poor organization of the Parliament's financial services in view of the fact that the liability of the administrator of advance funds and that of the authorizing officer exclude, in his opinion, that of the accounting officer, to the absence of liability as a result of the final discharge and to the absence of a statement of accounts at the time of transfer of functions.

208 In addition, the applicant argues that he has been treated as the 'scapegoat' in this case, which raises questions of responsibility at a number of levels. He believes that in order to conclude the matter it was absolutely necessary to offer up a 'sacrificial victim' against whom formal complaints would be made (which would make it possible to dispense with an investigation into the substance which might have led to some unpleasant surprises) but against whom sanctions could be imposed as if the formal complaints were properly established complaints going to the substance. The applicant claims that by acting in this manner, the administration misused its powers.

209 To this the defendant replies that it has nothing new to add on this plea as the applicant's arguments are identical to those which he set out in support of the previous plea in law concerning the substantive legality of the contested decision; it accordingly refers to its reply on that plea. However, it makes a point of rejecting categorically the applicant's claim that there was in this case a 'frantic search for a scapegoat', a claim to which it does not intend to reply in view of the fact that it is not supported by any evidence. So far as the opinions expressed by Messrs Aigner and Mart are concerned, the defendant institution asserts that they do not constitute proof of the misuse of powers alleged. In any case, according to the Parliament, even if the administrator of advance funds had also been partially responsible, this would in no way reduce the applicant's own liability.

210 The Court notes that this plea consists of three separate parts: in the first place, infringement of Article 86(1) of the Staff Regulations and of Articles 70(1) and 71 of the Financial Regulation by reason of the fact that the complaints upheld against the applicant did not amount to serious negligence; secondly, breach of the principles of equality, equity and the impartial administration of justice by reason of the fact that the applicant was the only person subjected to disciplinary measures, in contrast to the administrator of advance funds, the authorizing officer and the financial controller, against whom no measures were taken; thirdly, misuse of powers, inasmuch as the applicant was punished for formal complaints as if these had been properly established complaints relating to substance.

211 So far as the first part of the plea is concerned, the Court takes the view that the complaints made against the applicant do amount to serious negligence within the meaning of Article 70(1) of the Financial Regulation. The irregularities surrounding the opening of the disputed account with the Midland Bank in London, as set out in paragraph 169 of this judgment, the failure to enter or the late entry of certain transactions relating to the encashment of the two cheques on 4 September and 21 November 1981, and the failure to comply with the obligation to effect expenditure only upon presentation of proper supporting documents and to ensure their retention, all complaints which the Court has held to be well founded, constitute negligence on the part of the applicant which is all the more serious in the light of the fact that he, as the accounting officer, held the most senior position in the accounts administration of the Parliament.

212 Turning to the second part of the plea, it is first of all necessary to refer to the earlier points in this judgment (paragraphs 167 to 172, 183, 203 and 204) at which the Court ruled on the delimitation between the applicant's responsibilities and those of the other officials in the Finance Division. The difference between the decisions taken at the conclusion of the disciplinary proceedings brought against the administrator of advance funds and against the accounting officer cannot have any bearing on the present case in the light of the principle that every set of disciplinary proceedings is independent, and since compliance with that principle must be reconciled with the principles of equality, equity and the impartial administration of justice relied on by the applicant.

213 Finally, with regard to the third part of the plea, the Court has consistently held that an administrative decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been

taken for purposes other than those stated (judgments of the Court of First Instance in Case T-108/89 *Scheuer* v *Commission* [1990] ECR II-411 and in Case T-46/89 *Pitrone* v *Commission* [1990] ECR II-577).

214 It must be held in this case that the applicant has failed to provide relevant proof to justify the conclusion that, by instituting disciplinary proceedings against him, the appointing authority was pursuing an objective other than that of safeguarding the internal order of the European public service. The fact that the applicant was downgraded for formal irregularities does not suffice to establish that the administration, as he contends, brought proceedings against him with the sole purpose of offering him up as a sacrificial victim.

215 It follows from the foregoing that all three parts of this plea must be dismissed.

The plea relating to the breach of the principle of proportionality

216 In the further alternative, the applicant contends that there is a flagrant discrepancy between the seriousness of the complaints upheld against him and the gravity of the disciplinary measure imposed on him.

217 His first observation concerns the gravity of the disciplinary measure imposed. In his opinion, the penalty imposed (downgrading) is in itself one of the most serious disciplinary measures available. In this case, it is even more serious than would have been the sanction of removal from his post with the right to retain his retirement pension, both in the light of its extent and the age of the applicant, who had practically completed the maximum number of years of pensionable service taken into account for the calculation of a retirement pension. The applicant takes the view that under those conditions the extenuating circumstances accepted by the Disciplinary Board aggravated the matter in the final analysis. Moreover, although the complaints upheld against him were formal rather than substantive, the disciplinary measure adopted was that which ought normally to have been imposed if the charge against him had related to a complaint of substance and had been treated as established.

218 The applicant's second observation relates to the comparison of the reasoned opinions delivered by the first and second Disciplinary Boards on 10 February 1984 and 27 November 1987 respectively. He points to an inconsistency between those two opinions in that the first Disciplinary Board, which had upheld against him other complaints in addition to those upheld by the second one, recommended that he be reprimanded, whereas the second recommended that he be downgraded. From this he deduces that the course of events suggests that the second Disciplinary Board had wished to impose the sanction recommended by the appointing authority, but, in particular, that the extenuating circumstances accepted were accepted only for the sake of appearance, without any real effect on the sanction proposed and that ultimately imposed.

219 In reply, the defendant argues that it is not correct to claim that the appointing authority attempted to curtail the investigation 'into the substance' by ultimately accepting only the formal complaints. It confirms that, while the appointing authority did not wish to accuse the applicant directly of fraudulent conduct, which would logically have had to lead to criminal charges, the formal complaints upheld are nevertheless extremely numerous and serious in themselves. The defendant also points out that downgrading is not the most serious disciplinary measure provided for by the Staff Regulations and that the applicant could have been the object of several disciplinary measures much more serious than downgrading, which the appointing authority would have imposed if a charge of fraud had been established against the applicant. Finally, the downgrading would have taken effect only on 1 February 1988 and not at an earlier date, despite the fact that retroactive downgrading would have been possible in law in view of the fact that the Court of Justice had annulled the first disciplinary decision only because of a formal defect.

220 The Court first of all points out that the Court of Justice has consistently held that once the truth of the allegations against the official has been established, it is for the appointing authority to choose the appropriate penalty. The Court cannot substitute its own judgment for that of the appointing authority except in the case of a manifest error or misuse of powers (judgments in Case 46/72 *De Greef* v *Commission* [1973] ECR 543, at 556; in Case 228/83 *F.* v *Commission*, cited above; in Joined Cases 255 and 256/83 *R.* v *Commission*, cited above; and in Case 403/85 *F.* v *Commission* [1987] ECR 645, at 671).

221 With specific regard to the question whether the penalty imposed in this case is disproportionate to the complaints upheld against the applicant, it must be stressed that the provisions of the Staff Regulations on disciplinary measures (Articles 86 to 89) do not specify any fixed relationship between the measures provided for and the various types of failures by officials to comply with their obligations. The determination of the penalty to be imposed in each individual case is therefore based on a comprehensive appraisal of all the particular facts and the aggravating or mitigating circumstances peculiar to the case (judgment of the Court of Justice in Case 403/85 *F.* v *Commission*, cited above).

222 It must be noted in this regard that the complaints upheld against the applicant in the disciplinary decision concern instances of serious failure to comply with his obligations under the Financial Regulation and that, according to the provisions of that regulation, the applicant, as the accounting officer of the institution, was primarily responsible for the proper functioning of the accounting division. It should be added that the appointing authority followed the recommendations of the Disciplinary Board with regard to the determination of the relevance of the facts and their legal nature as well as the assessment of the extenuating circumstances and the choice of an appropriate disciplinary measure. Under those circumstances, the Court is unable to treat the applicant's downgrading to Grade A 7 as constituting a manifestly disproportionate measure.

223 The final plea for annulment, based on breach of the principle of proportionality, must for those reasons be dismissed.

The submissions concerning the appointment of a committee of experts

224 In his reply, the applicant requests in the alternative that the Court 'appoint a committee of three experts which will have the task of delivering a reasoned opinion on the complaints upheld against the applicant and replying to all relevant questions posed by the parties'.

225 In its statement of rejoinder, the defendant points that these are new submissions. It argues that under Article 38(1)(d) of the Rules of Procedure of the Court of Justice the application instituting proceedings must state the form of order sought by the applicant, and stresses that Article 42(1) of those Rules provides that if further evidence is offered in the reply, the applicant must give reasons for the delay in offering it. The defendant also takes the view that the only effect of appointing a committee of experts would be to delay the course of the proceedings and that the complaints upheld against the applicant have up to now been the subject of sufficiently long and detailed investigations to justify their being exempted from yet further investigations. The defendant also points out that the case has been examined on several occasions by the Court of Auditors, by the Parliament's Committee on Budgetary Control, by an independent firm of auditors and also by a number of Disciplinary Boards. For those reasons, the defendant argues that the applicant's alternative submissions should be rejected.

226 The Court finds that the applicant's alternative submissions request essentially that the Court order a committee of experts to be established with the purpose (as set out by the applicant during the hearing) of delivering an opinion on whether the third charge, namely, the absence of supporting documents for an amount in the region of BFR 4 100 000, was justified.

227 It should be noted in this connection that Article 45(1) of the Rules of Procedure of the Court of Justice, which, at the date of the hearing, was applicable *mutatis mutandis* to proceedings before the Court of First Instance, provides that the latter 'shall prescribe the measures of inquiry that it considers appropriate by means of an order setting out the facts to be proved'. It follows clearly from this provision that it is for the Court itself to decide whether such a measure can serve a useful function.

228 In the present case, it follows from all the documents on the file, as analysed in the course of the Court's examination into the justification of the charge based on the failure to present supporting documentation (see paragraphs 195 to 202 above), that the measure of inquiry sought by the applicant would serve no useful function for the Court, which considers that it has received sufficient information from the entire course of the proceedings, by reason of the fact that the applicant has failed to comment on the report summarizing the state of the accounts on 30 April 1982

(which was drawn up by the Parliament at the request of the Court) and in view of the long period which has elapsed since the matters in dispute. For those reasons, the alternative forms of order sought must also be rejected.

229 It follows from all the foregoing that the application must be dismissed in its entirety.

Costs

230 Under Article 69(2) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 70 of those Rules provides that, in proceedings brought by servants of the Communities, the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby

1. Dismisses the application;

2. Orders the parties to bear their own costs.

Yeraris Saggio Vesterdorf

Delivered in open court in Luxembourg on 17 October 1991.

H. Jung
Registrar

B. Vesterdorf
President