

# Case T-307/01

**Jean-Paul François**

**v**

**Commission of the European Communities**

(Officials — Disciplinary measures — Relegation in step — Contract for guarding the Commission buildings — Reasonable period — Criminal proceedings — Action for compensation)

Judgment of the Court of First Instance (Fifth Chamber), 10 June 2004 . . . II - 1674

## Summary of the Judgment

1. *Officials — Disciplinary measures — Disciplinary proceedings — Time-limits fixed by Article 7 of Annex IX — Obligation on the administration to act within a reasonable period — Non-compliance — Consequences*  
(*Staff Regulations, Annex IX, Art. 7*)

2. *Officials — Disciplinary measures — Initiation of disciplinary proceedings — Limitation period — None — Obligation on the administration to act within a reasonable period — Non-compliance — Consequences*  
(Staff Regulations, Arts 86 to 89; Annex IX)
3. *Officials — Disciplinary measures — Disciplinary proceedings — Disciplinary and criminal proceedings conducted in parallel on the basis of the same facts — Obligation on the administration to take a final decision only after a final verdict has been reached by the criminal court*  
(Staff Regulations, Art. 88, fifth para.; Annexe IX, Art. 7, second para.)
4. *Officials — Disciplinary measures — Disciplinary proceedings — Disciplinary and criminal proceedings conducted in parallel on the basis of the same facts — Purpose of the suspension of the disciplinary proceedings — Obligation to respect the findings of fact made by the criminal court — Possibility to characterise them in the light of the concept of disciplinary offence*  
(Staff Regulations, Art. 88, fifth para.)
5. *Officials — Rights and obligations — Abuse of a guarding contract comprising the engagement of an employee assigned to administrative tasks — Widespread and not inherently fraudulent practice — Failure of the official to report or to distance himself from the practice — Infringement of obligations under the Staff Regulations — None, in view of the fact that the official was in category B*  
(Staff Regulations, Art. 11)
6. *Officials — Actions — Actions for damages — Annulment of the contested measure not ensuring adequate compensation for the non-material damage suffered — Non-material damage caused by improper disciplinary proceedings*  
(Staff Regulations, Art. 91)

1. Although the strict time-limits laid down by Article 7 of Annex IX of the Staff Regulations for the conduct of disciplinary proceedings 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. Therefore, the 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 observe such a period, which can be assessed only in the light of the

specific circumstances of the case, may result in the measure adopted after the expiry of the period being declared void.

may prove particularly difficult if a substantial period of time has elapsed between the time when those facts and that conduct took place and the start of the disciplinary inquiry.

(see para. 47)

(see paras 48, 49)

2. Even in the absence of a limitation period (laid down by Articles 86 to 89 and Annex IX of the Staff Regulations), disciplinary authorities, in particular from the time when the administration becomes aware of facts and conduct which are liable to constitute breaches of an official's obligations under the Staff Regulations, are under an obligation to ensure that proceedings intended to result in a disciplinary measure are initiated within a reasonable period. Failure to observe this period, which depends on the specific circumstances of the case, may render any disciplinary proceedings initiated with undue delay by the administration unlawful and, accordingly, may result in the annulment of the disciplinary measure adopted at the conclusion of those proceedings.
3. The fifth paragraph of Article 88 of the Staff Regulations precludes the appointing authority from giving a final decision on the disciplinary aspect of the case involving the official concerned by adjudicating on facts which are at the same time in issue in criminal proceedings, so long as the decision given by the criminal court seised has not become final. That article does not, therefore, confer any discretion on the said authority, unlike the second paragraph of Article 7 of Annex IX to the Staff Regulations, under which, in the event of criminal proceedings, the Disciplinary Board may decide not to deliver its opinion until after the court has given its decision.

The principle of legal certainty is undermined if the administration delays unduly the initiation of disciplinary proceedings. In fact, both the assessment by the administration of the facts and conduct liable to constitute a disciplinary offence and the exercise by the official of his rights as the defendant

(see para. 59)

4. The fifth paragraph of Article 88 of the Staff Regulations has a twofold

rationale. Firstly, that article is intended to ensure that the position of the official in question is not affected in any criminal proceedings instituted against him on the basis of facts which are also the subject-matter of disciplinary proceedings within his institution. Secondly, suspension of the disciplinary proceedings pending the conclusion of the criminal proceedings makes it possible to take into consideration, in those disciplinary proceedings, the findings of fact made by the criminal court when its verdict has become final. In fact, the fifth paragraph of Article 88 of the Staff Regulations establishes the principle that disciplinary proceedings arising out of a criminal offence must await the outcome of the criminal trial, a rule which is justified, in particular, by the fact that the national criminal courts have greater investigative powers than the appointing authority. Consequently, where the same facts may constitute both a criminal offence and a breach of the official's obligations under the Staff Regulations, the administration is bound by the findings of fact made by the criminal court in the criminal proceedings. Once that court has established the existence of the facts in the case, the administration can then undertake their legal characterisation in the light of the concept of a disciplinary offence, ascertaining, in particular, whether they constitute breaches of obligations under the Staff Regulations.

(see para. 75)

5. It is unreasonable to accuse an official in category B, whose duties, according to Article 5(1) of the Staff Regulations, are executive duties, and not administrative duties, which correspond to those assigned to officials in category A, of failing to comply with his obligations under the Staff Regulations merely by virtue of not having reported that a colleague performing purely administrative duties was being paid by the company awarded the guarding contract, or of not having distanced himself from that practice in the appropriate ways, when that practice had been organised by the various departments of the institution, was widespread, had been instigated by the hierarchy of the institution and, although irregular, was not inherently fraudulent.

(see paras 92, 93)

6. Save in special circumstances, the annulment of the decision contested by an official is in itself appropriate and, in principle, adequate compensation for the non-material damage suffered by the applicant.

On the other hand, where, in the context of disciplinary proceedings, various administrative decisions and opinions made accusations against the applicant

which proved to be incorrect, the institution initiated the disciplinary proceedings in breach of the principle that a reasonable period should be observed, the proceedings moreover continued for a period of almost three years until the measure was adopted and were not suspended pending the conclusion of the criminal proceedings against the applicant, that set of circumstances must be considered as having caused injury to the applicant's reputation, disrupted his

private life and placed him in a state of prolonged uncertainty, causing him non-material damage which cannot be considered to be adequately compensated for by the annulment of the contested decision, as the latter could not nullify retroactively the non-material damage.

(see para. 110)