JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
16 May 2000 *

(Officials – Disciplinary measures – Removal from post – Time-limits for proceedings – Rights of the defence)

In Case T-121/99,

**Sean Irving**, a former official of the Commission, represented by N. Butler, Barrister, and J. McGuill, Solicitor, with an address for service in Luxembourg at the Chambers of S. Le Goueff, 9 Avenue Guillaume,

applicant,

v

**Commission of the European Communities**, represented by J. Currall, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the decisions of the Commission of 16 July 1998 removing the applicant from his post and of 26 February 1999 rejecting the complaint lodged by the applicant against the first decision,

* Language of the case: English.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 February 2000,

gives the following

**Judgment**

**Background to the dispute**

1 The applicant, formerly a civil servant in Ireland from 1973 to 1985, was engaged by the Commission in 1985, and posted to Directorate-General ('DG') III (Industrial Policy) in Brussels. In January 1994 he was transferred to DG X (Information, communication, culture, audiovisual media) as administrative assistant and imprest officer, at Grade B 2, in the Commission Representation Office in Dublin.

2 Following the discovery of irregularities in the finance unit of that Office, the Director-General of DG X decided, on 26 September 1997, to open an administrative enquiry, conducted by various Commission departments, including UCLAF (Unité de coordination de la lutte antifraude – Unit on Coordination of Fraud Prevention).

3 Also on 26 September 1997, notice was served on the applicant of his transfer to Brussels in the interests of the service, with effect from 29 September 1997.

4 Following the UCLAF report of 28 October 1997, the appointing authority informed the applicant on 13 November 1997 of its decision to bring disciplinary proceedings against him. It alleged that he had drawn up false invoices, misappropriated Community funds, falsified accounting documents and taken advantage of his position as imprest officer.

5 On 13 November 1997, it further decided to suspend the applicant from his duties with effect from 16 November 1997 and to withhold 50% of his basic salary during the period of suspension.

6 The applicant was heard by the appointing authority on 18 November 1997.

7 The appointing authority submitted its report to the Disciplinary Board on 16 February 1998.

8 By reasoned opinion of 21 April 1998, the Disciplinary Board, after hearing the applicant, unanimously recommended that the appointing authority remove the applicant from his post without loss of pension entitlements. The applicant was informed of that reasoned opinion by letter of 4 May 1998 from the Chairman of the Disciplinary Board.

9 By letter of 29 May 1998 to the appointing authority, the applicant's lawyer complained about irregularities relating to the conduct of the disciplinary proceedings. He requested that the applicant be restored to full pay and that the amounts withheld since November 1997 be repaid to him. Pointing out that the applicant intended to be represented at all future stages of the procedure, he raised the question of the conditions governing the granting of legal aid. He also requested to be given adequate notice of the next hearing of the applicant.

10 On 8 June 1998, having been informed by the applicant that the Commission intended henceforth to pay his remuneration only into an account opened in Belgium, the applicant's lawyer, claiming that financial difficulties prevented his client from travelling to Brussels to open such an account, requested the appointing authority to arrange for the Commission to continue to pay his remuneration in Dublin.

11 On 10 June 1998, the appointing authority informed the applicant that, since no decision had been taken by the end of the four months following its decision of 13 November 1997 to suspend him, he was to receive his full remuneration once again, backdated to 15 March 1998, and would be reimbursed the amount of the remuneration withheld between 16 November 1997 and 14 March 1998.

12 On 16 June 1998, DG IX (Personnel and administration) informed the applicant's lawyer that, under the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), payment of the applicant's salary required that a bank account be opened in Belgium beforehand.

13 By letter of 22 June 1998 to the applicant's lawyer, the appointing authority replied to the letters of 29 May and 8 June 1998 sent by the applicant's lawyer. On the question of the request for legal aid, the appointing authority referred to Article 10 of Annex IX to the Staff Regulations. It denied the accusations of procedural irregularities. It appended a copy of its letter of 10 June 1998 informing the applicant that his salary would no longer be withheld. It also stated that it had instructed the competent Commission service to rectify the situation relating to payment of the applicant's salary. It pointed out that the applicant's hearing preceding the appointing authority's decision was set for 6 July 1998 in Brussels. The applicant's lawyer was invited to participate, subject to the applicant's consent.

14 On 3 July 1998, the applicant's lawyer, on being informed of the content of the appointing authority's letter of 22 June 1998 by the applicant, to whom the same letter was sent, asked that the hearing be postponed, claiming that it was impossible for his client to make the necessary arrangements to attend in such a short time. He further asked the appointing authority to provide the applicant with financial assistance to cover various expenses (lawyers' fees, travel costs) entailed by the abovementioned hearing.

15 On the same date, the appointing authority replied to the applicant's lawyer that, pursuant to the decision of 26 September 1997 (see paragraph 3 above), the applicant was obliged under Article 20 of the Staff Regulations to reside in Brussels. As the applicant had at no time requested the authorisation of the appointing authority to reside in Dublin, the appointing authority could not understand why he was not in a position to attend a hearing scheduled to take place a few days later in the place where he was employed. It pointed out that once he had received and countersigned the reasoned opinion of the Disciplinary Board on 6 May 1998 the applicant must have been aware that his final hearing by the appointing authority would take place in due course and stated that the hearing was still scheduled for 6 July 1998 and that the applicant was required to attend. It pointed out that the applicant's travel expenses would, by way of exception, be reimbursed in view of his difficult financial situation. However, on the question of legal fees, it referred to Article 10 of Annex IX to the Staff Regulations. A copy of that letter was sent to the applicant.

16 On 6 July 1998, the applicant's lawyer, having pointed out that the applicant had not accepted that his transfer to Brussels had been properly implemented, again asked for postponement of the hearing. He asked to be sent particulars of all matters alleged against the applicant, together with copies of any evidential material stated to support those allegations. He complained once again about the unfair way in which his client had been treated since the beginning of the disciplinary proceedings.

17 On 7 July 1998, the appointing authority informed the applicant's lawyer that it noted that the applicant did not attend the hearing. It scheduled a new date for that hearing, namely 10 July 1998. A copy of that letter was sent to the applicant.

18 On the same day, the applicant's lawyer reiterated his request for details of all allegations and particulars of the evidence against the applicant and his request for financial assistance. He asked for a further postponement of the hearing, suggesting that the appointing authority should propose three alternative dates on which that hearing could be held.

19 On 8 July 1998, the appointing authority replied to the applicant's lawyer stating that the applicant's travel expenses and subsistence costs in Brussels would be met in full by the Commission. It confirmed that the hearing was fixed for 10 July 1998 and pointed out that it would not be postponed any further. It added that, if the applicant did not attend, the disciplinary procedure would continue. As regards the complaints against the applicant, it referred the applicant's lawyer to the reasoned opinion of the Disciplinary Board. A copy of that letter was sent to the applicant.

20 On 9 July 1998, the applicant's lawyer requested once again the postponement of the hearing and reiterated his request for legal aid.

21 On the same date, the appointing authority replied that the hearing remained fixed for 10 July 1998 and that a further postponement was not possible. A copy of that letter was sent to the applicant.

22 Neither the applicant nor his lawyer attended the hearing on 10 July 1998.

23 By decision of the appointing authority of 16 July 1998, which took effect on 20 July 1998, the applicant was removed from his post without loss of entitlement to pension.

24 On 9 October 1998, the applicant lodged a complaint with the appointing authority against its decision of 16 July 1998.

25 By decision of 26 February 1999, the appointing authority rejected that complaint.

**Procedure and forms of order sought**

26 It was against that background that, by application lodged at the Court Registry on 19 May 1999, the applicant brought the present action.

27 By separate document, lodged at the Court Registry on 29 July 1999, the applicant applied for legal aid. The Commission submitted its observations on that application on 7 September 1999. The application was dismissed by order of the President of the Third Chamber of the Court of First Instance of 12 October 1999.

28 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure without any preparatory measures of inquiry.

29 By letter of 18 February 2000 to the Registry of the Court of First Instance, the applicant's lawyer stated that, for reasons connected with the financial position of his client, he was unable to attend the hearing scheduled for 24 February 2000. Under the circumstances the Commission decided not to present its oral arguments and confined itself, at the hearing, to clarifying its replies to the written questions of the Court.

30 Since some of those replies were contradicted by the replies given by the applicant to the written questions put to him by the Court and the Court was unable to obtain the applicant's comments on the clarifications provided by the Commission at the hearing, it asked the Commission to produce documents which were lodged by the latter at the Registry of the Court of First Instance by letter of 9 March 2000. At the request of the Court of First Instance, a copy of those documents was sent by the Commission to the applicant's lawyer.

31 The applicant claims that the Court should:

– declare the action admissible;

– annul the Commission's decision of 26 February 1999 rejecting his complaint lodged against the latter's decision of 16 July 1998;

– annul the decision of the Commission of 16 July 1998 removing him from his post;

– in the event of such annulment, reinstate him in his post as official in Grade B 2 in DG X;

– order the defendant to pay him damages in respect of the losses sustained by him as a result of the defendant's decisions and actions;

– order the defendant to pay the costs.

32 The Commission contends that the Court should:

– dismiss the action;

– make an appropriate order as to costs.

**Substance**

33 The applicant puts forward his claims for annulment in two pleas in law. By the first plea, he alleges infringement of essential procedural requirements. By the second plea, he alleges breach of rights of the defence.

*First plea in law: infringement of essential procedural requirements*

Arguments of the parties

34 The applicant submits that the appointing authority's decision to remove him from his post (hereinafter 'the contested decision') is vitiated by an infringement of essential procedural requirements relating to the failure to comply with the procedural time-limits laid down in the third paragraph of Article 88 of the Staff Regulations and in the first and third paragraphs of Article 7 of Annex IX to the Staff Regulations, which should entail its annulment. Those time-limits were not complied with at three stages in the disciplinary procedure.

35 First, the applicant claims that, since the decision to suspend him took effect on 16 November 1997, the appointing authority should have taken a final decision on or before 16 March 1998. In not adopting the contested decision until 16 July 1998, the appointing authority thus infringed the third paragraph of Article 88 of the Staff Regulations.

36 Secondly, the applicant points out that the report which the appointing authority referred to the Disciplinary Board was dated 16 February 1998. However, it did not deliver its reasoned opinion until 21 April 1998, and that opinion was not transmitted to the applicant until 4 May 1998. By so doing, the appointing authority infringed the first paragraph of Article 7 of Annex IX to the Staff Regulations.

37 Thirdly, the applicant states that the Disciplinary Board transmitted its reasoned opinion to the appointing authority on 4 May 1998. However, the appointing authority did not adopt the contested decision until 16 July 1998, whereas, according to the third paragraph of Article 7 of Annex IX to the Staff Regulations, that decision should have been taken before 4 June 1998.

38 Relying on Case T-26/89 *de Compte* v *Parliament* [1991] ECR II-781, the applicant submits that, although the abovementioned time-limits are not mandatory, they do constitute rules of sound administration the purpose of which is to ensure that the appointing authority's decision bringing the disciplinary procedure to an end is taken within a reasonable period. There is thus a prima facie requirement on the Commission to comply with the time-limits unless there are circumstances or reasons which justify departure from them. In the present case, the Commission has offered no justification for its delay.

39 The applicant further submits that the Disciplinary Board did not conduct any inquiry pursuant to Article 6 of Annex IX to the Staff Regulations, so that the Commission cannot claim, as it does in its decision of 26 February 1999 rejecting his complaint, that the Disciplinary Board needed longer than the period specified in Article 7 of Annex IX to adopt its reasoned opinion. The applicant adds that none of the delay in the disciplinary procedure resulted from any action taken by the Commission to assist the applicant or to ensure fair treatment.

40 He submits further that he suffered prejudice due to those delays. He observes that, during the period of his suspension, he received no more than 50% of his salary. After a four-month period of suspension, the Commission did not restore his full pay as required under the Staff Regulations but instead ceased all payment until the applicant opened a bank account in Brussels. This placed the applicant in a difficult financial position, only exacerbated by the slow progress of the disciplinary proceedings. He points out that, when he was summoned to the hearing of July 1998, he had not been in receipt of any payment from the Commission since 15 May 1998. In view of those

financial difficulties, he was unable to arrange legal representation, which prejudiced his defence.

41 In his reply, the applicant observes that the Commission still does not offer the least explanation, in its defence, for that delay. He rejects the Commission's contention that such delay was attributable in part to him, pointing out that, at each stage of the procedure, he actively cooperated with the appointing authority. In that regard, the request for a postponement of the hearing of July 1998, in respect of which the notice had been inadequate, cannot, in his view, be considered to be a reason for delay attributable to him, in so far as the Commission had already by far exceeded the proper time-limits when it set the date for that hearing.

42 The applicant denies that the delay helped him, pointing out that, at the end of the four-month period of suspension, the Commission, rather than resuming payment of his full salary, continued to withhold 50% of it for a further two months before ceasing to pay him at the beginning of June 1998. The subsequent regularisation of his financial position did not undo the financial prejudice caused to him in the meantime.

43 The Commission states, first of all, that the fact that the appointing authority adopted the contested decision more than four months after having decided to suspend the applicant from his duties is irrelevant. The consequence of exceeding the four-month period laid down in the third paragraph of Article 88 of the Staff Regulations is purely financial, the Commission being required, in such cases, to restore the official to full salary and to repay the amounts of salary withheld during the suspension period. The applicant does not deny having received those sums.

44 Secondly, the Commission contends that the period laid down in the first paragraph of Article 7 of Annex IX to the Staff Regulations is merely a rule of sound administration (see *de Compte* v *Parliament*, cited at paragraph 38 above). Failure to comply with that time-limit therefore constitutes a ground for annulment only where it has been substantially overstepped without reasonable explanation and where that delay is not attributable to the official in question.

45 However, in the present case, although it is true that the Disciplinary Board delivered its reasoned opinion a little over a month late, the applicant does not explain in what way that delay was unreasonable and affected his position. On the contrary, that exceeding of the time-limit allowed the applicant to enjoy his full salary for longer, of which he cannot complain (Case T-96/95 *Rozand-Lambiotte* v *Commission* [1997] ECR-SC II-97, paragraph 71). The Commission adds that, contrary to his claim, the applicant once again received his full salary at the end of the suspension period and no harm could have resulted from the Disciplinary Board's delay in delivering its reasoned opinion.

46 Thirdly, with regard to the time-limit laid down in the third paragraph of Article 7 of Annex IX to the Staff Regulations, the Commission first makes comments similar to those set forth in paragraph 44 above. It then points out that, although the contested decision was indeed adopted a little over a month late, the applicant does not explain in what way that delay was unreasonable and affected his rights. On the contrary, that delay was financially advantageous for the applicant. The Commission adds that it was, moreover, largely attributable to the applicant, who sought to delay proceedings by refusing to attend the hearing preceding the adoption of the contested decision.

47 In its rejoinder, the Commission states that, in his reply, the applicant still does not explain what harm he could have suffered as a result of the time-limit in question having been slightly exceeded. It repeats that the time-limit laid down in the third paragraph of Article 7 of Annex IX to the Staff Regulations was exceeded because of the applicant's conduct in that, after having insisted that his trip to Brussels should be subsidised by the Commission, he declined its offer, requested postponement of the hearing, obtained it, and finally failed to attend it. It further states that it was

constrained to deposit the salary due to the applicant in Belgium in a temporary Commission account in view of creditors' claims against the official.

Findings of the Court

48 It should first be observed that the third paragraph of Article 88 of the Staff Regulations provides:

'A final decision shall be taken within four months from the date when the decision that an official be suspended came into force. Where no decision has been taken by the end of four months, the official shall again receive his full remuneration.'

49 The purpose of that provision is to prevent an official subject to disciplinary proceedings from being deprived of his remuneration for over four months without his case being decided. That time-limit of four months is therefore mandatory only to the extent that, following its expiry, the official once again becomes entitled to payment of his full remuneration and to payment of the amounts withheld from his salary (Case T-549/93 *D* v *Commission* [1995] ECR-SC II-43, paragraphs 32 and 33, and Case T-219/96 *Y* v *Parliament* [1998] ECR-SC II-1235, paragraphs 33 and 42). On the other hand, the fact that the appointing authority has not reached a final decision on the case of the official concerned within the period prescribed for that purpose cannot, as such, result in the unlawfulness of the decision closing the disciplinary procedure against him.

50 In the present case, the applicant's claim for the annulment of the contested decision on the ground that it was adopted on 16 July 1998, that is to say more than four months after 16 November 1997, the date of the entry into force of the Commission's decision to suspend him from his post, is not founded.

51 Second, the first paragraph of Article 7 of Annex IX to the Staff Regulations provides:

'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 of the disciplinary measure appropriate to the facts complained of and transmit the opinion to the appointing authority and to the official concerned within one month of the date on which the matter was referred to the board ...'

52 The third paragraph of Article 7 of that Annex provides:

'The appointing authority shall take its decision within one month; it shall first hear the official concerned.'

53 According to the case-law of the Court (Case 13/69 *Van Eick* v *Commission* [1970] ECR 3, paragraph 7, Case 228/83 *F* v *Commission* [1985] ECR 275, paragraph 30, and Joined Cases 175/86 and 209/86 *M* v *Council* [1988] ECR 1891, paragraph 16), the time-limits laid down in Article 7 of Annex IX are not mandatory but constitute rules of sound administration the purpose of which is to avoid, in the interests both of the administration and of officials, undue delay in adopting the decision terminating the disciplinary proceedings with the result that a failure to observe it may render the institution liable for any damage caused to those concerned.

54 Whilst the Court of First Instance has repeatedly held that failure to comply with that period may result in the decision being declared void (see, for example, the judgments in *de Compte* v *Parliament*, cited above at paragraph 38, paragraph 88, and *D* v *Commission*, cited above at paragraph 49, paragraph 25; see also Case T-12/94 *Daffix* v *Commission* [1997] ECR-SC II-1197, paragraphs 130 to 133), that case-law cannot be interpreted as penalising every failure to comply with time-limits by automatic annulment (Case T-242/97 *Z* v *Parliament* [1999] ECR-SC II-401, paragraph 40). In the abovementioned cases the Court did not in fact annul the measures in question.

55 It follows from the foregoing that only the fulfilment of a set of specific conditions can, in specific cases, affect the validity of a disciplinary measure imposed after expiry of a time-limit (Z v *Parliament*, cited in the previous paragraph, paragraph 41).

56 In the present case, it is common ground between the parties that the time which elapsed between the appointing authority's referral of the case to the Disciplinary Board and the appointing authority's submission to the Board of its reasoned opinion was two and a half months (from 16 February to 4 May 1998). Following receipt of that reasoned opinion, the appointing authority took two and a half months to adopt the contested decision (from 4 May to 16 July 1998). The two procedural time-limits laid down by Article 7 of Annex IX to the Staff Regulations were thus exceeded only by approximately one and a half months each. Such delays, whatever the reasons for them, cannot, in any event, be considered unreasonable, having regard to their impact on the total duration of the disciplinary procedure. In total, eight months elapsed between the opening of the disciplinary procedure against the applicant and the adoption of the contested decision (from 13 November 1997 to 16 July 1998), which is not excessive.

57 For the rest, the applicant confines himself to demonstrating that the time-limits were exceeded and pointing out that the Commission gave no explanation for this, without putting forward any particular facts liable to justify the annulment of the penalty imposed on him after that period of eight months.

58 The financial disadvantage he alleges cannot, in any event, be attributed to the fact that the time-limits laid down by the third paragraph of Article 88 of the Staff Regulations and Article 7 of Annex IX to those Regulations were exceeded. Although the applicant complains that the Commission was slow in regularising his financial position after the first four months of his suspension, he conceded, in his reply of 14 February 2000 to a written question from the Court, that he received from the Commission, in November 1999, the whole of his remuneration for the eight months which the disciplinary procedure lasted, a period during which he did not have to go to work because he was suspended from his duties. The applicant is therefore wrong to argue that the exceeding of those time-limits put him at a disadvantage.

59 Accordingly, the first plea must be rejected.

*The second plea in law: breach of rights of the defence*

60 The second plea in law is in four parts. In the first part, the applicant complains about the inadequacy of the notice of the date of the hearing of July 1998. The second part concerns the Commission's refusal to finance his legal expenses in respect of that hearing. In the third part, the applicant claims that there were procedural irregularities relating to his hearing of 18 November 1997. In the fourth part, he argues that his transfer to Brussels in September 1997 affected his rights of defence during the disciplinary procedure.

– The first part: inadequate notice of the date of the hearing of July 1998

Arguments of the parties

61 The applicant submits that he was not given proper notice for the hearing scheduled in Brussels for July 1998. He observes, first of all, that he was living in Dublin and that he expressed the desire to be represented at the hearing by a lawyer practising in Dublin. The applicant's lawyer moreover specifically informed the Commission that he would be representing the applicant at that hearing and had requested adequate notice of it.

62 The applicant claims that, contrary to the Commission's assertion in its decision of 26 February 1999 rejecting his complaint, he responded to the letters from the appointing authority requesting him to attend the hearings and provided valid reasons for his failure to attend. They related, on the one hand, to the short notice for that hearing and, on the other, to the fact that it was impossible for the applicant to meet the legal expenses in relation to such hearing. The applicant refers in this respect to the correspondence exchanged between his lawyer and the Commission, appended as Annex X to his application. He submits that four and three days' notice respectively are clearly inadequate, in the context of disciplinary proceedings, to make it possible to attend a hearing to be held in a country other than that in which the official is habitually resident. In his view, the Commission must, moreover, have suspected that such a short period of time would not enable his lawyer to prepare for the hearing. Since the applicant and

his lawyer were not given sufficient time to organise themselves and prepare for the hearing, it is submitted that the notice given of that hearing was not valid.

63 In his reply, the applicant states that the fact that he should have expected a hearing in the month following dispatch of the reasoned opinion of the Disciplinary Board does not excuse the failure to give proper notice in good time.

64 The Commission points out, first of all, that the applicant had an opportunity to exercise his right to be heard at earlier stages of the procedure. The particular importance which the applicant seeks to confer on his final hearing before the appointing authority is therefore exclusively attributable to the fact that he did not take the opportunity offered to him during the procedure. The Commission also points out the abstract nature of the applicant's arguments; he does not indicate what arguments he was purportedly prevented from putting to the appointing authority as a result of the alleged procedural defects.

65 It states that, following notification on 3 July 1998, the applicant had a week available to him in which to prepare for that hearing as a result of its postponement until 10 July 1998. It adds that the applicant was informed of the reasoned opinion of the Disciplinary Board on 4 May 1998. On reading the relevant provisions of the Staff Regulations he would have realised that he needed to prepare his defence as quickly as possible in view of a hearing which should in theory have taken place within a month. The appointing authority's delay in organising the hearing therefore in fact gave the applicant and his lawyer an additional month to prepare for it. Pointing out that the applicant has never claimed, nor claims in his application, that the short notice made it difficult for him to organise himself, the Commission states that a longer notice might have been desirable only as a matter of courtesy. Its view that the applicant did not in actual fact have anything to say to the appointing authority in the final hearing is borne out by the fact that he never requested to be allowed to submit his arguments in writing to make up for his alleged physical and financial inability to attend that hearing.

66 In its rejoinder, it states that nothing prevented the applicant from contacting the appointing authority from 4 May 1998, instead of waiting to be summoned to that hearing before explaining his difficulties and suggesting other alternative methods of being heard. However, the applicant did nothing in this regard. Referring to the case-law of the Court of First Instance in matters of access to files in competition cases, the Commission submits that a decision will only be annulled on grounds of infringement of the right to be heard where the applicant can show that the alleged infringement deprived him of the opportunity to put an argument in his defence before the Commission. However, in the present case, the applicant does not say what argument he was prevented from putting effectively to the appointing authority as a result of the cancellation of the hearing of July 1998.

Findings of the Court

67 The third paragraph of Article 7 of Annex IX to the Staff Regulations, which is cited in paragraph 52 above, does not lay down any time-limit for summoning the official concerned to the hearing preceding the adoption by the appointing authority of its decision closing the disciplinary proceedings brought against that official.

68 In the present case, it appears from the letter sent on 3 July 1998 by the applicant's lawyer to the appointing authority that the applicant and his lawyer were not in a position to take cognisance of the contents of the letter of 22 June 1998, informing them that the hearing would take place on 6 July 1998, until the beginning of July 1998. In his reply of 14 February 2000 to a written question by the Court, the applicant stated that he received that letter on the afternoon of 2 July 1998 and that at that point his lawyer had not yet received it.

69 However, whilst there is no need to investigate the reasons for the delay in the receipt of that letter by its addressees, it must be observed that, at the request of the applicant's lawyer, the appointing authority, having noted the absence of the applicant at the hearing of 6 July 1998, by letter faxed to the applicant and his lawyer on 7 July 1998, scheduled a further hearing for the afternoon of 10 July 1998 (see above, paragraph 17). In reply to a fax from the applicant's lawyer of 7 July 1998, it informed him and the applicant,

by fax of 8 July 1998, that that hearing would not be postponed and that if the applicant did not attend the disciplinary procedure would continue (see paragraph 19 above).

70 Once the Commission had had to note the applicant's absence at the hearing on 6 July 1998 and to schedule another hearing for 10 July 1998 to allow for the financial difficulties alleged by the applicant and his lawyer and had explicitly put them on notice that the second hearing would be the last one, they were under an obligation to make the necessary arrangements to be able to attend.

71 If the applicant and his lawyer still found it absolutely impossible to attend, there was nothing to prevent them from writing to the appointing authority, before it adopted its decision, to put to it any comments it had on reading the disciplinary file, which was sent to the applicant on 24 February 1998, and on reading the reasoned opinion of the Disciplinary Board, which was sent to him on 4 May 1998 and which set out in detail the complaints upheld against him. In that regard, the total failure, both at that time and during the proceedings before the Court, to provide information or evidence which the applicant and his lawyer could have put forward if they had been able to attend the hearing in question bears out the Commission's view that the applicant's arguments on this point were purely abstract and formal.

72 It must be added that the applicant, who, like all officials, is presumed to know the Staff Regulations, of which Annex IX is an integral part (see the judgment in *Daffix* v *Commission*, cited at paragraph 54 above, paragraph 116), must have been aware, from the moment he received the reasoned opinion of the Disciplinary Board, that his hearing by the appointing authority was imminent and that it was therefore necessary to prepare as soon as possible his defence, for the hearing, against the complaints with which that opinion was concerned. Contrary to the applicant's argument, his late receipt of the letter calling on him to attend that hearing could not have affected the preparation of his defence for that hearing. On the contrary, as the Commission rightly points out, the applicant and his lawyer had a further few days for such preparation as a result of the postponement of the hearing from 6 to 10 July 1998.

73 Accordingly, the first part of the plea considered must be rejected.

– The second part: the Commission's refusal to finance the applicant's legal expenses in relation to the hearing of July 1998

Arguments of the parties

74 The applicant submits, first of all, that, given the gravity of the accusations made against him and the prospect that legal action might be taken against him in Ireland, he needed to engage a lawyer based in Dublin and licensed to practise in the Irish Courts. In a judgment of 24 May 1996, the European Court of Human Rights held that a defence counsel was entitled to have travelling expenses reimbursed pursuant to Article 6 of the European Convention on Human Rights and Fundamental Freedoms ('EHRC') where special reasons made it imperative that the defence was prepared where the defendant was resident.

75 The applicant then complains that the Commission did not grant him any financial assistance in meeting his legal expenses relating to the hearing of July 1998, although it was aware of his precarious financial position as a result of the withholding of part of his salary since 16 November 1997. By its refusal, the Commission allegedly deprived him of his right to be represented during the disciplinary procedure.

76 The applicant claims that the Commission cannot rely, as it does in its decision of 26 February 1999, on Article 10 of Annex IX to the Staff Regulations. He claims that that provision, besides being unfair in that it makes the reimbursement of the costs of legal presentation conditional on the outcome of the disciplinary proceedings, does not preclude the Commission from making financial assistance available during the procedure to the official concerned in order to enable him or her, in the interests of fairness, to cover his or her legal expenses. In the present case, various special circumstances, relating to the fact that his hearing was scheduled to take place in Brussels whereas he had resided and worked in Dublin since 1994 and the offences alleged against him had been committed there, the fact that he was likely to be removed from his post in view of the gravity of those offences, as well as the need to engage the

services of a lawyer established in Ireland in view of the prospect that criminal and civil proceedings might be brought against him in that country, would have justified the Commission providing such an advance to the applicant during the disciplinary procedure.

77 Responding to the Commission's contention, in its decision of 26 February 1999, that he was free to submit his comments in writing to the appointing authority before it adopted the contested decision, the applicant states that at no time during the disciplinary procedure did the Commission suggest to him that he could proceed in that way if he did not consider himself able to attend the hearing, although it was aware of his precarious financial position. By that conduct, the Commission infringed the applicant's right to fair procedures. Pointing out that it is not clear from the Staff Regulations that written comments could be submitted during a disciplinary procedure, the applicant adds that the Commission cannot argue that such a possibility exists in defence of the regularity of the disciplinary procedure at issue. Nor can the Commission be permitted to take advantage of the applicant's failure to exercise a right which he did not know existed.

78 In his reply, the applicant argues that the fact that he did not consult a solicitor during the earlier stages of the disciplinary procedure, for whatever reason, is totally irrelevant for the purposes of assessing whether his argument that his rights of defence at a subsequent stage of that procedure were infringed is well founded. He points out, moreover, with particular emphasis, the fact that the financial difficulties which he faced during his suspension as a result of part of his salary being withheld by the Commission, combined with the burden of his family responsibilities, prevented him from being able to spend any money at all on legal expenses throughout that period. He further submits that the fact that the Commission was prepared to meet the costs of his personal travel expenses in relation to the hearing of July 1998, but not his legal expenses, cannot be considered as safeguarding his right to a fair procedure.

79 The Commission first expresses its surprise that the applicant should not have thought about engaging the services of a lawyer until May 1998, after becoming aware of the reasoned opinion of the Disciplinary Board unanimously recommending that he be removed from his post, whereas he had been aware since February 1998 of the gravity

of the complaints laid against him. The applicant cannot in any event, in the Commission's view, rely in that respect on financial difficulties attributable to the Commission. First of all, he must have known that, on account of his transfer to Brussels, his salary would be paid henceforth into an account opened in Belgium, in accordance with the Staff Regulations. Next, he did not mention any difficulties until June 1998. Those difficulties, besides being, in his own words, temporary, do not explain why he did not consult a lawyer in February 1998. Finally, in the Commission's view, the applicant cannot have experienced financial difficulties as a result of his suspension, since he continued to receive in Dublin 50% of his salary from November 1997 to March 1998, before receiving his restored full salary as from 15 March 1998 and being reimbursed the amounts withheld from his salary for four months (see the letter from the Commission of 10 June 1998, appended as Annex IX to the application).

80 Referring to the applicant's letter of 8 July 1998, appended as Annex X to the application, the Commission states that it did not, moreover, refuse all financial assistance to the applicant. It had in fact stated that it was willing to meet his personal costs, which was an exceptional concession, in view of the wording of Annex IX to the Staff Regulations. Although it understands that the appointing authority is required to bear the costs incurred by an official if the case it brought is not proved or if the penalty is trivial, it is unacceptable, in its view, that a person who has admitted to defrauding it should none the less expect to receive further largesse from the Commission in the form of unofficial legal aid, in circumstances not even contemplated by the legislature.

81 In its rejoinder, the Commission reiterates its doubts about the applicant's financial inability to engage a lawyer before May 1998. It repeats the reasons for which, according to the Commission, the applicant is not, in any event, justified in blaming the Commission for any financial hardship he may have experienced during that period. Nor can the applicant, in its view, reasonably rely on the burden of his family obligations in that regard. The Commission claims that it cannot believe that the applicant could not afford to pay his lawyer's travel expenses relating to the hearing of July 1998, pointing out how low certain Dublin-Brussels air fares were.

Findings of the Court

82 There is no provision in the Staff Regulations for a right for an official subject to disciplinary proceedings to obtain from the Commission during such proceedings financial assistance to enable him to meet his legal fees incurred in the course of the proceedings. Article 10 of Annex IX to the Staff Regulations provides: 'Costs incurred on the initiative of an official in the course of disciplinary proceedings, in particular fees to a person chosen for his defence from outside the three European Communities, shall be borne by the official where the disciplinary proceedings result in any of the measures provided for under Article 86(2)*(c)* to *(g)* of the Staff Regulations ...'. It follows from that provision that the payment by the Commission of expenses incurred by an official on his own initiative in the course of disciplinary proceedings, and legal fees in particular, can only be made on conclusion of such proceedings and, moreover, is only possible if no disciplinary measure or only a minor disciplinary measure is imposed at the end of the proceedings.

83 Moreover, even if, despite the absence of any provision in the Staff Regulations on this point and despite the fact that, according to case-law, Article 6 of the EHRC cannot as a rule be relied upon as such in disciplinary proceedings (see Case T-273/94 *N* v *Commission* [1997] ECR-SC II-289, paragraph 95, and Case T-74/96 *Tzoanos* v *Commission* [1998] ECR-SC II-343, paragraph 339), observance of the rights of the defence, which is a fundamental principle of Community law applicable in all proceedings, including administrative proceedings, in which sanctions may be imposed (Joined Cases T-10/92, T-11/92, T-12/92 and T-15/92 *Cimenteries CBR and Others* v *Commission* [1992] ECR II-2667, paragraphs 38 and 39, Case T-65/89 *BPB Industries and British Gypsum* v *Commission* [1993] ECR II-389, paragraph 30, Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775, paragraph 59, Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847, paragraph 69, and Case T-37/91 *ICI* v *Commission* [1995] ECR II-1901, paragraph 49), implies that an official who can prove financial difficulty preventing him from meeting the expenses relating to his defence in disciplinary proceedings brought against him can ask the Commission for financial assistance for that purpose, it must be held that in the present case the applicant's argument on this point is not borne out by the facts.

84 First of all, the applicant does not dispute that until 15 May 1998 he received from the Commission half of his basic salary paid into his bank account in Dublin. He also received the allowances to which he was entitled, since such allowances are not included in the basic salary part of which may be withheld under the third paragraph of Article 88 of the Staff Regulations.

85 Second, on 10 June 1998, the Commission informed the applicant that, since no decision had been taken by the end of the four months following its decision of 13 November 1997 to suspend him, he was to receive his full remuneration once again, backdated to 15 March 1998, and would be reimbursed the amount of the remuneration withheld between 16 November 1997 and 14 March 1998 (see paragraph 11 above). In the knowledge of this intention of the Commission, the applicant could have assured his lawyer of his ability to pay, in the near future, the fees arising in connection with the hearing at issue. His lawyer was, moreover, informed directly by the Commission, by letter of 16 June 1998, that the applicant's salary would be paid as soon as details of the bank account which he was asked to open in Belgium were received, details which he himself sent to the Commission on behalf of his client on 22 June 1998 (see Annex 4 to the reply of the Commission of 9 March 2000 to the request for the production of documents mentioned in paragraph 30 above).

86 Finally, it is clear from the letters it sent on 3 and 8 July 1998 to the applicant and his lawyer that the Commission undertook, by way of exception, to pay the expenses incurred in connection with the applicant's journey to and stay in Brussels for the purpose of attending his hearing by the appointing authority (see paragraphs 15 and 19 above).

87 Even if, between 15 May 1998 and the beginning of July 1998, the applicant received no money from the Commission, these various facts thus show that the applicant's contention that financial difficulties prevented him from attending, with his lawyer, the hearing by the appointing authority scheduled for the beginning of July 1998 in Brussels is not borne out by the facts.

88 Accordingly, the second part of the plea considered must be rejected.

– The third part: procedural irregularities relating to the hearing of 18 November 1997

Arguments of the parties

89 The applicant submits that his hearing of 18 November 1997 was conducted unfairly. Not only was he not assisted by a lawyer, he was not given an opportunity, either before or during the hearing, to examine the documents annexed to the UCLAF report, on which the Disciplinary Board based its reasoned opinion. The applicant refutes the Commission's assertion in its decision of 26 February 1999 that, in the absence of a specific request from the official concerned, there is no obligation on the appointing authority to communicate the complete file prior to the hearing, and claims that he was never informed that such a right existed, so that the Commission cannot take advantage of his failure to make such a request. Furthermore, compliance with fair procedures entails an obligation on the Commission to inform the official concerned of all of his rights during the disciplinary procedure, especially where, as in the present case, that official is not represented by a lawyer. Finally, he submits that the minutes of the meeting in question contain errors which are prejudicial to him, as a result of the fact that the proceedings were not recorded.

90 In his reply, he points out the fundamental importance of his hearing of November 1997. It served as the basis for the report drawn up by the appointing authority for the Disciplinary Board. For that reason, in view of the fact that he was not represented at that hearing, the Commission was particularly required to observe the procedural rules. The applicant adds that the subsequent communication of the relevant documents cannot rectify the irregular circumstances in which he admitted the matters raised against him during the course of the hearing in question. Finally, he claims he never approved the minutes of that hearing. After setting out, in a fax of 29 January 1998, his comments on the draft which was forwarded to him, he received a revised version which the Commission asked him to sign and return, something he did not do on the ground that that version did not include all the points made by him and included matters which did not appear in the original draft.

91 The Commission observes first of all that the applicant is not claiming that the appointing authority prevented him from being represented by a lawyer during the hearing on 18 November 1997. It points out, next, that some of the evidence adduced in support of the conduct alleged against the applicant consisted in his own admissions, made without any pressure on him during that hearing. The Commission states that the hearing pursuant to Article 87 of the Staff Regulations is a preliminary hearing only which allows the appointing authority to decide whether or not it is necessary to refer the case to the Disciplinary Board and points out that it was only in the report forwarded on 16 February 1998 by the appointing authority that the complaints against the applicant and the evidence against him are set out. However, the applicant does not deny that, after the initial hearing, those documents were forwarded to him and that he had the opportunity to make his observations before the Disciplinary Board issued its reasoned opinion. Finally, the Commission states that a copy of the draft minutes of the hearing in question was sent to the official, who forwarded his corrections by fax of 29 January 1998. It contends that that fax also confirmed the admissions of fraud made by the applicant at the hearing.

92 In its rejoinder, the Commission points out that the applicant cannot change the rules of procedure nor extend his own rights of defence by deliberately choosing not to be represented by a lawyer at that hearing. It contends, furthermore, that the fact that the applicant did not sign the copy of the minutes of the hearing in question is irrelevant, since, in his fax of 29 January 1998, he confirmed the content of the minutes in relation to the admissions he made during that hearing. The aforementioned admissions were, moreover, reiterated by the applicant during the judicial proceedings brought against him by the Commission in Ireland.

Findings of the Court

93 It must first be observed that, in his reply (paragraph 3), the applicant concedes that the Commission did not prevent him from being represented by a lawyer at his hearing on 18 November 1997. The fact that he did not attempt to be represented was therefore the result of his own decision.

94 Second, it must be borne in mind that the purpose of the hearing provided for in the second paragraph of Article 87 of the Staff Regulations is to enable the appointing authority to assess the seriousness of the matters of which the official concerned is accused in the light of the explanations provided by the official (Case T-183/96 *E* v *ESC* [1998] ECR-SC II-159, paragraph 25) and to decide whether disciplinary measures should be imposed on him and whether or not it is necessary to refer the case to the Disciplinary Board before adopting such a measure.

95 Having regard to the purpose of this preliminary hearing and in the absence of a request to do so, no obligation on the part of the appointing authority to communicate the entire file to an official against whom disciplinary proceedings have been initiated can be inferred from the Staff Regulations, which contain no provision on that point, before the matter has been referred to the Disciplinary Board (see Joined Cases 255/83 and 256/83 *R* v *Commission* [1985] ECR 2473, paragraph 17). In the present case therefore, the applicant, who made no request to that effect at the time, is wrong to criticise the Commission for not forwarding to him, before or during his hearing of 18 November 1997, the documents annexed to the UCLAF report mentioned in paragraph 4 above.

96 It must be added that, according to Article 2 of Annex IX to the Staff Regulations, an official summoned before the Disciplinary Board has the right, on receipt of the report submitted to the Disciplinary Board by the appointing authority, to see his complete personal file and to take copies of all documents relevant to the proceedings (*R* v *Commission*, cited in the previous paragraph, paragraph 14). In the present case, the applicant does not dispute that, after submitting the report to the Disciplinary Board on 16 February 1998, the appointing authority, on 24 February 1998, sent him and the Disciplinary Board the complete disciplinary file, including the UCLAF report and its annexes mentioned in the paragraph above. It is common ground between the parties that the applicant was heard by the Disciplinary Board on 17 April 1998. The time thus given to him to examine the disciplinary file complied with Article 4 of Annex IX to the Staff Regulations, which provides that the official charged is to have not less than 15 days from the date of receipt of the report initiating disciplinary proceedings to prepare his defence. Since the applicant does not dispute that all the relevant documents were in the disciplinary file, it must be concluded that, at the stage of the proceedings before the Disciplinary Board, he was able to have knowledge of all the facts on which the contested decision was based in sufficient time to submit his observations (see *de*

*Compte* v *Parliament*, cited above in paragraph 38, paragraph 122, *N* v *Commission*, cited above in paragraph 83, paragraph 88 and Case T-141/97 *Yasse* v *EIB* [1999] ECR-SC II-929, paragraph 91).

97 Finally, as regards the minutes of the hearing of 18 November 1997, it must be pointed out that, following that hearing, the applicant received from the Commission, by letter dated 28 November 1997 (Annex 2 to the Commission's reply of 9 February 2000 to a written question from the Court), a version of those minutes, which he corrected by fax sent to the Commission on 29 January 1998. In that fax he also made a number of comments concerning matters which he considered not to have been sufficiently discussed at the hearing in question. On 12 February 1998, the Commission sent him two copies of the amended version of those minutes 'taking into account [his] comments made in the fax of 29 January 1998' (Annex 1 to the reply), asking him to send back a signed copy as soon as possible. As the Commission confirmed in its rejoinder, the applicant did not comply with that request.

98 It is not necessary to rule on the merits of the grounds put forward by the applicant for this omission, as it is sufficient to observe that, in the comments he sent to the Commission on 29 January 1998, the applicant did not retract the confessions he made at the hearing regarding the acts of which he was accused. On the contrary, he stated: 'In closing I must express my sincere regret for my actions which have resulted in this procedure and my wish to return the monies concerned' (Annex to the defence, p. 3). Moreover, even if the Commission did not take full account of the comments made by the applicant in his fax of 29 January 1998, this does not explain how taking full account of his comments could have caused the disciplinary proceedings to have a different result.

99 To conclude, the third part of the plea considered must be rejected.

– The fourth part: transfer of the applicant to Brussels in September 1997

Arguments of the parties

100 The applicant first of all submits that, although during the first few months of his suspension, the Commission continued to make all the payments due to him to his account in Dublin, it subsequently suspended all payments until the applicant opened a bank account in Brussels, on the ground he was now established in Brussels. It was presumably for the same reason that the disciplinary proceedings against him were conducted in Brussels.

101 The applicant states that his rights of defence were seriously affected inasmuch as, during the disciplinary procedure, he was resident in Dublin and all of the evidence and material relevant to the proceedings were in Dublin.

102 He considers that, if the transfer was valid for the purposes of transferring the disciplinary proceedings to Brussels, he should logically have been entitled, on transfer, to an installation allowance, daily subsistence allowances and an expatriation allowance and, upon removal from his post, to reimbursement of his travel expenses and to a resettlement allowance. None of those allowances was paid to him.

103 The applicant claims that, since, as he contends, his transfer to Brussels was not valid, the hearing of July 1998 should have been held in Dublin, which would have enabled him to attend and be represented. Since the Commission had, despite everything, decided to organise that hearing in Brussels, it should have given him financial assistance such as to enable both him and his lawyer to travel to Brussels for that purpose, which would have offset the economic hardship he suffered as a result of that hearing being held in a country other than that of his residence and of his place of employment.

104 In his reply, the applicant asserts that the Commission never indicated the legal basis for its decision to transfer him to Brussels. Moreover, it used that transfer solely to its advantage. Thus, at the material time, it relied on the fact that the applicant had now been posted to Brussels in order to refute the latter's argument that he was unable to attend the hearing of July 1998 because of the short notice given for it. On the other hand, it refused to grant the applicant the allowances which in principle such a transfer entails, on the ground that the applicant was not resident in Brussels.

105 The Commission observes, first of all, that the applicant concedes that he is time-barred from attacking its decision of 26 September 1997 transferring him to Brussels.

106 It denies the applicant's contentions that financial hardship resulted from the transfer decision and the change of address for payment of his salary. The applicant was not in fact deprived of his salary as a result of that transfer. He even continued to receive it in his account in Dublin during the first five months of his suspension, that is to say during the stage of the disciplinary procedure when it was particularly important for him to be represented in exercise of his rights of defence.

107 The Commission states, next, that the transfer of the applicant to Brussels had no bearing on the place where the disciplinary proceedings were to be conducted. It points out that, even without such a transfer, the proceedings would most probably have been held in Brussels, as that is the Commission's main establishment and where the appointing authority is based, since no rule prescribes that disciplinary proceedings are to be conducted at the official's place of employment (Case T-549/93 *D* v *Commission* [1995] ECR-SC II-43). It adds that, in any event, the applicant continued to reside in Dublin even after he was transferred, so that his claim that that transfer affected his defence during the disciplinary procedure is not based on fact.

108 It further claims that the applicant was not entitled to any allowances whatsoever, in particular an installation allowance, upon his transfer to Brussels, because, as he himself admits, he did not in fact actually settle there. Immediately after his transfer, the applicant took leave in Dublin, before being suspended from his duties, so that he no longer had any employment-related reason to be in Brussels. The Commission adds that, in any case, the applicant should have realised, from the beginning of 1998, that the allowances to which he considered himself entitled had been refused, so that he was barred from requesting them in his complaint lodged against the contested decision.

Findings of the Court

109 First of all, it must be observed that it is common ground between the parties that the applicant is not seeking annulment of the Commission's decision to transfer him to Brussels as such (application, section II, paragraph 16; defence, paragraph 29), which has, in any case, become definitive. Accordingly, without it being necessary to rule on the admissibility of this point, raised at the stage of the reply, the applicant's complaint that the Commission did not indicate the legal basis for the abovementioned decision cannot, in any event, succeed.

110 It is clear from the applicant's written pleadings that the line of argument under consideration must mainly be understood as seeking to assert that his transfer to Brussels affected the exercise of his rights to defend himself, in that, as a result of that transfer, the disciplinary proceedings were held in Brussels although he lived in Dublin and the evidence required for his defence was located there.

111 On that point, it must first be observed that the Staff Regulations do not cater for the question of the place where disciplinary proceedings against an official are to be held. In the present case, given that, when the Commission decided, on 13 November 1997, to bring disciplinary proceedings against the applicant, he had been transferred to Brussels, and under Article 20 of the Staff Regulations he was supposed to reside in that city or at least at a reasonable distance from it and that, moreover, the Commission had its headquarters there, its decision to hold the disciplinary proceedings there cannot be called into question, particularly as the applicant never lodged a complaint pursuant to

Article 90(2) of the Staff Regulations against the Commission's decision to transfer him to Brussels in September 1997.

112 Furthermore, the applicant's argument requires the establishment of an automatic link between the place of employment of the official against whom disciplinary proceedings are brought and the place where those proceedings are held, which cannot be inferred from any provision of the Staff Regulations. Even if the Commission had not decided to transfer him to Brussels, there is no rule which would have prevented them from holding the disciplinary proceedings in that city. Nothing on the file suggests that this transfer had a decisive influence on the choice of the place where the proceedings were held. For instance, the applicant provides no evidence that the Commission, at the material time, justified its decision to hold the disciplinary proceedings in Brussels by the fact that he had been transferred there. For its part, the Commission does not claim, in its written pleadings, that the reason for holding the disciplinary proceedings in Brussels lay in the applicant's transfer to that city. On the contrary, it argues that 'the proceedings would almost certainly have been in Brussels in any case, as that is the Commission's main establishment and where the ... [appointing authority] ... is physically based' (defence, paragraph 30).

113 In any event, whatever the Commission's reasons may have been for deciding to hold the disciplinary proceedings in Brussels, it must be concluded that the fact that the applicant was residing in Dublin during those proceedings did not prevent him from being heard by the appointing authority on 18 November 1997 and by the Disciplinary Board on 17 April 1998. As regards the hearing scheduled for July 1998, it must be observed that, in its letters of 3 and 8 July 1998, the Commission undertook to pay all the applicant's personal expenses incurred in connection with that hearing (see above, paragraphs 15 and 19). For the rest, reference is made to the reasons set out above at paragraphs 67 to 72 and at paragraphs 83 to 85 and 88 respectively in the examination of the applicant's arguments that the rights of the defence were infringed by the failure to give proper notice of the date of that hearing and the Commission's refusal to pay his lawyer's expenses, in particular the lawyer's travel expenses, in connection with that hearing.

114 For the rest, the applicant claims that the documents necessary for the preparation of his defence were in Dublin. Moreover, the reasoned opinion of the Disciplinary Board was sent to him directly at his home in Dublin (see the letter from the Commission of 4 May 1998, attached as Annex VI to the application). Consequently, the fact that, after his transfer to Brussels, the applicant continued to live in Dublin could only have made access to documents on the disciplinary file easier and, therefore, made the preparation of his defence in the disciplinary proceedings easier.

115 As regards the allowances referred to in paragraph 102 above, the applicant's argument on this point must be understood, not as a complaint that he was not allowed those allowances despite his transfer to Brussels, – which he is, moreover, precluded from disputing before the Court and which, in any event, cannot affect the legality of the contested decision – but as seeking to point out the inconsistent and inequitable conduct of the Commission, which, while not granting him those allowances after his transfer to Brussels, still decided to hold the disciplinary proceedings there because the applicant had been transferred there.

116 However, that argument cannot be upheld. First, the granting of the allowances in question is dependent on compliance with specific conditions (see Article 71 of and Annex VII to the Staff Regulations) and thus is not an automatic right arising on a transfer. Second, the applicant's complaint is based on the premiss, which is not proven (see above, paragraph 112), that there is in the present case a causal link between his transfer to Brussels and the holding of the disciplinary proceedings in that city.

117 Finally, in so far as the applicant still seeks to argue that, because of his transfer to Brussels, there was a delay in the Commission's regularising his financial position after the four-month period laid down in the third paragraph of Article 88 of the Staff Regulations, so that he faced financial difficulties which prejudiced the exercise of his rights to defend himself in the disciplinary proceedings, it must be observed that the applicant, who, like any official, is presumed to know the Staff Regulations and its annexes (see, to that effect, *Daffix* v *Commission*, cited above at paragraph 54, paragraph 116), must have known that, from the time he was transferred to Brussels,

he was obliged, under Article 17(1) of Annex VII to the Staff Regulations, to open a bank account in that city in order to have his salary paid. In not complying with that formality until June 1998 (see above, paragraph 85), he therefore personally contributed to the financial difficulties he claims to have suffered as a result of his transfer to Brussels.

118 In any event, those difficulties did not prevent him from travelling to Brussels to be heard by the Disciplinary Board on 17 April 1998. Moreover, although the Commission would have been entitled to suspend payment of all the applicant's salary until he opened a bank account in Brussels, the applicant does not dispute that, until 15 May 1998, the Commission continued to pay 50% of his basic salary into his account in Dublin (see his reply of 14 February 2000 to a written question by the Court). In addition to such payments, the applicant received the allowances due to him. Therefore, the applicant's argument to the effect that, because of his transfer to Brussels, he was faced with financial difficulties which prevented him from being represented by a lawyer at his hearing by the Disciplinary Board is not borne out by the facts.

119 As regards the hearing in July 1998, reference is made to the reasoning set out in paragraphs 84 to 87 above.

120 Accordingly, the fourth part of the plea considered cannot be upheld.

121 In conclusion, the second plea must be rejected in its entirety.

122 On conclusion of consideration of the claims for annulment, they must be rejected as unfounded.

123 As a result of that rejection, the head of claim seeking the applicant's reinstatement as an official in Grade B 2 in DG X must also be dismissed, particularly since such a claim is, in any event, inadmissible, as, when the Community judicature reviews the legality of an act in accordance with Article 91 of the Staff Regulations, it has no jurisdiction to issue directions (see, in particular, Case T-588/93 *G* v *Commission* [1994] ECR-SC II-875, paragraph 26, and the case-law cited there).

124 Since consideration of the claims for annulment has not established that the Commission's conduct was vitiated by an irregularity such as to entail any liability towards the applicant in the disciplinary proceedings brought against him, the claim for damages and interest must also be dismissed.

**Costs**

125 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under Article 88 of those Rules, in proceedings between the Communities and their servants, the institutions are to bear their own costs.

126 Since the applicant has been unsuccessful in all his pleas and claims and the Commission has asked the Court to make an appropriate order as to costs, each of the parties must be ordered 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.**

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 16 May 2000.

H. Jung
Registrar

K. Lenaerts
President