ORDER OF THE COURT (Second Chamber)
16 October 1997 *

In Case C-140/96 P,

Konstantinos Dimitriadis, a former official of the Court of Auditors of the European Communities, residing in Luxembourg, represented by Markos Papazissis, of the Thessalonika Bar, with an address for service in Luxembourg at the home of the appellant, 4A Boulevard Grande-Duchesse Charlotte,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) in Case T-294/94 *Dimitriadis* v *Court of Auditors* ECR-SC I-A-51 and II-151, seeking to have that judgment set aside,

the other party to the proceedings being:

Court of Auditors of the European Communities, represented by Jean-Marie Stenier, principal administrator in its Legal Service, Christos Komninos and Paolo Giusta, also of its Legal Service, acting as Agents, with an address for service at the seat of the Court of Auditors, 12 Rue Alcide de Gasperi, Kirchberg,

* Language of the case: Greek.

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, G. F. Mancini (Rapporteur) and G. Hirsch, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 29 April 1996, Konstantinos Dimitriadis brought an appeal under Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and EAEC Statutes against the judgment of the Court of First Instance of 28 February 1996 in Case T-294/94 *Dimitriadis* v *Court of Auditors* [1996] ECR-SC I-A-51 and II-151 (hereinafter 'the judgment appealed against'), in which that Court rejected his application for annulment of the appointing authority's decision No 8543 of 8 March 1994 to reject his request for assistance of 26 November 1993 and for the payment of compensation for the non-material damage he claims to have suffered.

2 As regards the facts underlying the dispute between Mr Dimitriadis and the Court of Auditors, the Court of First Instance found:

'1. At the material time the applicant was an official of the Court of Auditors of the European Communities employed in the Language Service as a Greek-language translator.

2. On 24 November 1993 Mr K., Head of the Greek Language Section and the applicant's immediate superior, left in the applicant's office and for his attention a

text to be translated by 9 December. On 25 November 1993 Mr K. and the applicant discussed the translation of the text in the applicant's office. The applicant said that he would not have time to translate the document by the deadline, because he was to take three days' leave in the meantime, he had certain domestic duties to attend to and he had health problems (dizzy spells); he suggested that the job be given to someone else in the department.

3. The discussion became heated. Mr K. called the applicant "vlakas" (a Greek term) and "assichtir" (a Turkish term), terms which the applicant considered to be insulting (he claims that these terms mean, respectively, "idiot" and "f... you").

4. On 26 November 1993 the applicant lodged a complaint at the Principal Public Prosecutor's Office in Luxembourg and submitted a request for assistance under the first paragraph of Article 24 of the Staff Regulations of Officials of the European Communities ("the Staff Regulations").

5. As certain formalities were not complied with on submission of that request, by note of 8 December 1993 the appointing authority asked the applicant to submit a new request.

6. On 9 December 1993, the applicant submitted a request pursuant to Article 90(1) of the Staff Regulations for the opening of an administrative inquiry and the imposition of disciplinary measures on Mr K.

7. On 14 January 1994 the appointing authority, acting in pursuance of the first paragraph of Article 24 of the Staff Regulations, instructed Mr F., Head of the Language Service, to conduct an inquiry to verify the facts alleged by the applicant in his request for assistance.

8. In the course of that inquiry on 19 January 1994 evidence was heard in turn from the applicant, from Mr K., and from four members of the language service relied upon by the applicant as witnesses. A last witness was heard on 27 January 1994.

9. Taking the view that there was some evidence that Mr K. and the applicant were both responsible, the appointing authority decided to hear those two officials in turn pursuant to the first paragraph of Article 87 of the Staff Regulations, relating to disciplinary measures. That procedure concerned, in the applicant's case, three alleged instances of refusal to work, including that occurring in the incident of 25 November 1993, and, in Mr K.'s case, the incident of 25 November 1993. The hearings were held on 28 January 1994. Two other members of the Greek Language Section were heard as witnesses on 31 January 1994.

10. On 31 January 1994 the applicant left his post as a translator at the Court of Auditors to take up appointment as a lawyer-linguist at the Court of Justice of the European Communities.

11. On completion of its inquiry, the appointing authority decided to reject the applicant's request for assistance by letter No 8543 of 8 March 1994 addressed to the applicant. It did so on the basis that there was "some evidence that both parties were responsible" and in the light of the general context of the case. It cited, in particular, the following facts: Mr K. had never denied having used the terms in question, which were used in the course of a quarrel, and at the hearing on 19 January 1994 Mr K. offered to apologize. The appointing authority therefore concluded that it was in the interest of the service to take no further measures against Mr K.

12. The appointing authority also decided, by letter No 8544 of 8 March 1994 addressed to the applicant, to close the disciplinary procedure instituted against him without imposing disciplinary measures since it took the view that two of the three instances of refusal to work were not proven and that the third (which gave

rise to the incident of 25 November 1993) was not such as to justify the adoption of disciplinary measures even though the reasons adduced by the applicant did not appear convincing.

13. Finally, by letter of 9 March 1994 addressed to Mr K., the appointing authority decided to halt the disciplinary procedure instituted against him without imposing disciplinary measures.

14. On 11 April 1994 the applicant submitted a complaint under Article 90(2) of the Staff Regulations against the appointing authority's decision No 8543 of 8 March 1994. In it he requested the adoption of the measures necessary to ensure his protection under Article 24 of the Staff Regulations and the payment of ECU 25 000 by way of compensation for the non-material damage allegedly suffered because of the appointing authority's attitude.

15. The complaint was expressly rejected by the appointing authority by letter of 1 July 1994.'

3 Accordingly, by application lodged with the Registry of the Court of First Instance on 27 September 1994, the appellant brought an action for annulment in which he claimed that that Court should:

(1) annul decision No 8543 of 8 March 1994 and decision No 8912 of 1 July 1994 rejecting his complaint;

(2) order the defendant to pay him compensation of ECU 25 000 to make good the non-material damage suffered as a result of the decisions and the attitude of the appointing authority;

(3) order the defendant, as the party jointly responsible, to pay him the sum of BFR 100 000 pursuant to the second paragraph of Article 24 of the Staff Regulations to compensate him for the non-material damage allegedly suffered by reason of the words addressed to him by Mr K.; and

(4) order the defendant to pay the costs.

The judgment appealed against

4 The Court of First Instance held that the action was inadmissible or unfounded.

5 As regards the applicant's first head of claim, it pointed out in paragraph 39 of the judgment appealed against that, when an institution is faced with an incident which is incompatible with the good order and tranquillity of the service, it must intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case with a view to ascertaining the facts and, consequently, taking the appropriate action in full knowledge of the facts (Case T-5/92 *Tallarico* v *Parliament* [1993] ECR II-477, paragraph 31). Moreover, the institution cannot take disciplinary action against the official in question unless the preliminary measures ordered clearly establish that the official concerned has engaged in conduct detrimental to the proper functioning of the service or to the dignity and reputation of another official (Case 55/88 *Katsoufros* v *Court of Justice* [1989] ECR 3579, paragraph 16).

6 It went on to find in paragraphs 40 and 41, having considered whether the Court of Auditors had breached its duty to assist under Article 24 of the Staff Regulations, that, in this case, it had:

— opened an inquiry a few days after the applicant's request for assistance;

— heard the parties;

— heard the witnesses whom the applicant wished to be heard;

— opened disciplinary proceedings against each of the parties;

— heard the parties again in the course of those proceedings; and

— heard further witnesses in the course of the same proceedings.

7 It also noted, in paragraph 42 of the judgment appealed against, that the appointing authority had heard the four direct witnesses to the argument and that in so far as an inquiry carried out pursuant to the first paragraph of Article 24 of the Staff Regulations is intended, *inter alia*, to establish the facts, the appointing authority cannot be criticized for not having heard persons who were not present during the whole or part of the incident between the two officials and whose testimony could not, in the light of the information available, usefully have contributed towards establishing the facts.

8 As regards the argument relating to the 'pressure and threats' to which the applicant was allegedly subjected, the Court of First Instance found, in paragraph 43 of the judgment appealed against, that the two parties' versions of the substance of the remarks, which were not denied, were contradictory. Moreover, there was nothing to indicate that an inquiry into this point would have shed any light on the matter. The Court of First Instance accordingly dismissed that argument.

9 On the question of the time the appointing authority took to act, the Court of First Instance found, in paragraph 46 of the judgment appealed against, that, in total, three and a half months elapsed between the argument and the final decisions

adopted by the appointing authority. In that time the appointing authority had decided to open an inquiry to establish the facts, carried out that inquiry and conducted disciplinary proceedings against each of the parties to the argument.

10 In those circumstances the Court of First Instance considered that no complaint of belated intervention amounting to infringement of the first paragraph of Article 24 of the Staff Regulations could lie against the appointing authority.

11 As to whether, after completing its inquiry, the appointing authority, in knowledge of the facts, took the appropriate action, bearing in mind the discretion vested in it (Case T-59/92 *Caronna* v *Commission* [1993] ECR II-1129, paragraph 64) the Court of First Instance considered, in paragraphs 48 and 49 of the judgment appealed against, that, whilst it was not disputed that Mr K. used the terms in question, it did appear that the inquiry did not enable the appointing authority to determine the respective responsibilities of each of the parties, as the record of the witnesses' evidence shows. The appointing authority was therefore entitled, without exceeding its discretion, to reject the applicant's request for assistance and to close, without imposing any disciplinary sanction, the proceedings initiated against Mr K. specifically by reason of the argument in point.

12 For the rest, in paragraphs 50 to 53 of the judgment appealed against, the Court of First Instance considered that the arguments put forward by the applicant were not such as to affect that conclusion. First, in an inquiry the very purpose of which was to establish facts and responsibilities, the appointing authority was entitled to consider previous complaints made by one of the parties to assist it in its observations on the incident in point. Second, it considered that there was no need to rule on allegations that documents had been forged since there was no evidence whatsoever in the decisions in issue that the appointing authority had taken account of the documents in question. Third, the Court of First Instance considered that the appointing authority had taken the decision in issue because it had found it impossible, following its inquiry, to establish the facts and responsibilities with certainty. Accordingly, it had only mentioned the intransigent attitude of the applicant as a supplementary point.

13 Finally, as regards the alleged refusal to work which, according to the appointing authority, was behind the incident, the Court of First Instance pointed out, in paragraph 54 of the judgment appealed against, that it had before it only an application for annulment of decision No 8543 on the rejection of the applicant's request for assistance and not letter No 8544 relating to the alleged instances of refusal to work. It therefore only considered this point to the extent that the appointing authority's reply of 1 July 1994 rejecting the applicant's complaint stated that 'the fact (...) that the incident of 25 November 1993 occurred when you refused, on very unconvincing grounds, to do at Mr K.'s request a translation which you subsequently did without any protest at Mr F.'s request can be included here as a factor in the analysis'. On that point, the Court of First Instance found, first, that the file showed that the applicant had refused to carry out work which his immediate superior had requested him to do. Second, it took the view that, as the appointing authority had noted, the explanations given by the applicant did not seem reasonable or such as to justify his refusal. For instance, the applicant's explanation relating to domestic duties (washing and ironing, as he explained at the hearing) could not be regarded as reasonable. The Court of First Instance also considered that the excuse relating to leave should not be taken into account given that the applicant had neither applied for nor taken any at that date and that, moreover, he had just taken three days' leave the week before the incident. As to the explanation based on his alleged dizzy spells, it noted that no medical certificate had been produced by the applicant. Finally, as regards his suggestion that the translation be given to someone else in the department and that he be given a less urgent job, the Court of First Instance took the view that, while an unequal distribution of work in a department might justify a request for an explanation addressed to an immediate superior, it could not justify a refusal to work. Moreover, it pointed out that the applicant had confirmed at his disciplinary hearing that, in the days preceding the argument, he 'had had nothing to do'. The Court of First Instance therefore took the view, in paragraphs 57 and 58 of the judgment appealed against, that the appointing authority could not be accused of having infringed the first paragraph of Article 24 of the Staff Regulations and that the claims seeking annulment should be dismissed.

14 As regards the applicant's second head of claim, the Court of First Instance found, in paragraph 61 of the judgment appealed against, that, as consideration of the first head of claim had revealed no breach of the duty to provide assistance incumbent on the Court of Auditors under Article 24 of the Staff Regulations, the application for compensation for the non-material damage allegedly suffered by the applicant by reason of the decision rejecting his request for assistance should be dismissed as unfounded.

15 As regards the applicant's third head of claim, the Court of First Instance pointed out, in paragraph 67 of the judgment appealed against, that, under Article 113 of its Rules of Procedure 'the Court of First Instance may at any time of its own motion consider whether there exists any absolute bar to proceeding with' an action. Accordingly, it took the view that it could consider the question of the admissibility of the applicant's request without needing to consider whether the plea of inadmissibility raised by the Court of Auditors in its rejoinder was a new plea.

16 The Court of First Instance went on to find, in paragraph 69, that the applicant had not shown that domestic remedies had been exhausted. Moreover, it considered that the applicant had not furnished evidence such as to give rise to serious doubt about the effectiveness of the protection provided by the remedies available in Luxembourg. Whilst the fact that the person who was the subject of the complaint had changed address without informing the relevant authorities was likely to make it more difficult to open the procedure, it was not sufficient to give rise to such doubt. Accordingly, in paragraph 70 of the judgment appealed against, the Court of First Instance declared the application under the second paragraph of Article 24 of the Staff Regulations for compensation for the non-material damage allegedly suffered as a result of the remarks addressed to him by Mr K. to be inadmissible.

17 Finally, on the question of costs, the Court of First Instance noted in paragraph 73 of the judgment appealed against that, under Article 87(2) of its 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. Article 88 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. However, under the second subparagraph of Article 87(3), the Court of First Instance may order even the successful party to pay costs which it considers that party to have unreasonably or vexatiously caused the opposite party to incur.

18 The Court of First Instance held, having regard to the facts of the case and, in particular, the significance of the incident which gave rise to the case, the course of the procedure and the applicant's attitude, and given that the appointing authority had been unable to establish the facts and responsibilities with any certainty, that Article 87(3) of the Rules of Procedure should be applied and that the applicant should be ordered to bear all the costs.

Forms of order sought and pleas in law

19 Mr Dimitriadis seeks, first, an order that the Registrar of the Court of First Instance place on the file for the appeal the minutes of the hearing on 8 February 1996, the oral argument of the parties' lawyers and the transcript of the evidence given by Mr F. as a witness in Case T-326/94 *Dimitriadis* v *Court of Auditors* [1996] ECR-SC I-A-217 and II-613 and, second, the annulment of all or part of the judgment appealed against. He also claims that this Court should rule on the merits of the case itself and that the Court of Auditors should be ordered to pay the costs of both the appeal and the proceedings at first instance.

20 The appellant puts forward eight pleas in law in support of his appeal, alleging respectively:

— procedural irregularities before the Court of First Instance;

— infringement of Article 24 of the Staff Regulations;

— error of law in the findings of fact;

— violation of the right to a fair hearing;

— error in the determination of responsibility;

— infringement of Community law and lack of jurisdiction of the Court of First Instance;

— error of law in the rejection of the application for compensation for non-material damage; and

— substantial procedural irregularity.

21 The Court of Auditors contends that the appeal should be declared inadmissible or rejected as unfounded.

Assessment of the appeal by the Court

22 As a preliminary point, this Court considers that the measures of inquiry requested by Mr Dimitriadis are not necessary. As it made clear in its order of 12 June 1997 in Case C-8/95 P *New Holland Ford* v *Commission*, not published in the ECR, paragraph 10, none of the provisions governing the organization of the Court of First Instance requires the preparation of a full record of hearings. As for the minutes of the hearing on 8 February 1996, this Court considers that they would be of no value to the investigation it has to carry out for the purposes of this appeal.

23 As regards the merits of the appeal, under Article 119 of the Rules of Procedure of the Court of Justice, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.

24 Further, under the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal is limited to points of law and lies on grounds of lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant or the infringement of Community law by the Court of First Instance.

25 In his first plea, the appellant argues, first, that the Court of First Instance's assessment would have been completely different if it had taken account of the argument alleging the ineffectiveness of the protection afforded by the remedies available in Luxembourg. Second, he alleges that the Court of First Instance did not take account of the evidence of Mr F. before it in Case T-326/94, cited above, in which he admitted having said to the appellant that if he did not withdraw his request for assistance he would be transferred to the Court of Justice with a poor staff report. The appellant argues that it is clear from this evidence that the statement which the defendant attached to its rejoinder is mendacious. Third, he alleges that the defendant placed on the file a statement by Mrs S., Mr K.'s wife, that she did not telephone the appellant's wife to apologize to her, and that the Court of First Instance accepted a statement by the appellant's wife contradicting that made by Mrs S. However, the judgment appealed against did not refer to those facts at all. The appellant claims that the Court of First Instance completely ignored facts which would expose the mendacious nature of the statements placed on the file by the defendant, to the extent that he harbours doubts as to that Court's neutrality and objectivity. Finally, the request by the appellant's counsel that evidence be taken from a former member of the Court of Auditors, Mr A., was not taken into consideration. Since the Court of First Instance would certainly have reached a different decision if those allegations had been taken into account, the appellant submits that the judgment appealed against should be annulled in whole or in part.

26 In that connection, it must be noted that an appeal may be based only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts. The Court of First Instance has exclusive jurisdiction, first, to establish the facts, except where the substantive inaccuracy of its findings is attributable to the documents submitted to it and, secondly, to assess those facts. Once the Court of First Instance has made findings of fact or assessed facts, the Court of Justice has jurisdiction under Article 168a of the Treaty to review the legal characterization of those facts by the Court of First Instance and the legal conclusions it has drawn from them (see Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435, paragraph 39).

27 In that context, it is for this Court to ensure that the evidence examined by the Court of First Instance has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of

evidence have been observed (see *San Marco* v *Commission*, cited above, paragraph 40). However, it is clear from Article 66(1) of the Rules of Procedure of the Court of First Instance, under which that Court decides on the measures of inquiry it considers appropriate, that it remains competent, in principle, to assess the relevance of the evidence put before it.

28 In this case, the Court of First Instance could justifiably take the view, in paragraphs 42 and 43 of the judgment appealed against, that the evidence of people who did not witness the incident involving the two officials could not help to establish the facts and that the adoption of measures of inquiry would not shed any light on the facts as regards the pressure and threats to which Mr Dimitriadis was allegedly subjected. For the rest, the plea concerns questions of fact.

29 As the first plea is, in part, clearly inadmissible and, in part, clearly unfounded it must be dismissed.

30 In his second plea, the appellant argues that the grounds of the Court of First Instance's judgment directly contradict the judgment in *Katsoufros*, cited above. He claims that the conditions established by this Court in that judgment — conduct detrimental to the dignity and reputation of another official and the fact that such conduct was clearly established — were fulfilled in this case. Accordingly, the appellant considers that the defendant was legally bound to take appropriate measures against Mr K., to protect the appellant from further insults. He argues, further, that the determination of the respective responsibilities of the parties to the argument and the existence of doubt in that connection were a separate matter from the subject of his complaint and could not, therefore, be considered to justify the appointing authority's refusal to take appropriate measures in respect of the insults uttered to him by his immediate superior. The appellant argues that the Court of First Instance went beyond the subject-matter of the proceedings, namely the adoption of measures of assistance and not the determination of the respective responsibilities of the parties.

31 On that point, in paragraph 16 of the judgment in *Katsoufros*, cited above, this Court held that, although, according to its case-law, the administration is required, when faced with an incident which is incompatible with the good order and tranquillity of the service, to intervene with all the necessary vigour so as to ascertain the facts and to take the appropriate action in full knowledge of the matter, it cannot take disciplinary action against the official in question unless the preliminary measures ordered clearly establish that the official concerned has engaged in conduct detrimental to the proper functioning of the service or to the dignity and reputation of another official.

32 While it must be held that the use of the terms in issue was wholly unacceptable, nevertheless, as the Court of First Instance found in paragraph 11 of the judgment appealed against, Mr K. did offer to apologize to the appellant. Moreover, as the inquiry did not enable the appointing authority to determine the respective responsibilities of the parties, it was entitled, as the Court of First Instance stated in paragraph 49 of the judgment appealed against, without exceeding the limits of its discretion, to reject the request for assistance made by the appellant and close the disciplinary procedure opened against Mr K. with specific reference to the argument without imposing any disciplinary measure.

33 The second plea put forward in the appeal should therefore be dismissed as clearly unfounded.

34 As regards the third plea, the appellant considers that, in paragraph 43 of the judgment appealed against, the Court of First Instance erred in law in that it should have ruled as to whether the remarks made to the appellant by Mr F. and by the Secretary-General of the defendant institution were genuine threats rather than confining itself to finding that those remarks were not denied but that the persons concerned gave different versions of them. He takes the view that, in the light of the evidence of Mr F. in Case T-326/94, cited above, there was no longer any doubt that the threats made were genuine and the Court of First Instance could not have been unaware of such an important point, since the appellant was reporting threats which in themselves constituted a breach of the duty to provide assistance by the appointing authority and entailed an obligation that it provide compensation.

35 In that connection, it must be noted that, in accordance with the case-law of this Court, the appraisal by the Court of First Instance of the evidence put before it does not constitute (save where the clear sense of that evidence has been distorted) a point of law which is subject, as such, to review by the Court of Justice (see Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42).

36 As the appellant is disputing the assessment by the Court of First Instance of some of the evidence put before it relating to the pressure allegedly exerted on the appellant by Mr F. and by the Secretary-General of the Court of Auditors, his third plea is clearly inadmissible and must, therefore, be dismissed.

37 It is therefore necessary to consider the fourth plea, in which the appellant alleges that the assessment by the Court of First Instance of the appointing authority's decision not to hear two of the witnesses cited by him at the hearing constitutes a breach of Community law because it allows the appointing authority to choose which witnesses it will hear and to exclude without justification those the person concerned wishes to call. It allows, he claims, the appointing authority arbitrarily to exclude witnesses who were not present at the time of the incident in issue and thereby distort evidence or exclude certain parts of it for its own lawful or unlawful purposes. Moreover, a person who requests the assistance of the appointing authority is deprived of any opportunity to demonstrate the truth of his allegations, in patent violation of his right to a fair hearing.

38 It must be noted, in this connection, that the Court of First Instance found that the two witnesses the appellant wished to call were not present for the whole or even part of the incident in issue so that it was entitled to conclude, as it did at paragraph 42, that their evidence could make no useful contribution to the establishment of the facts.

39 In his fifth plea, the appellant argues that the determination of responsibilities for the incident in issue must be part of the procedure for requesting assistance and must be confined to the incident to which that request for assistance refers and

cannot be extended to accusations made by the appointing authority relating to incidents long past having no connection whatsoever with the subject-matter of the request for assistance. The appellant claims that the Court of First Instance's finding, in paragraph 51 of the judgment appealed against, with regard to the consideration of previous complaints relating to a refusal to work by the appellant directly contradicts Article 24 of the Staff Regulations under which the Communities must assist an official. Even if the accusations concerning refusal to work were true, they could in no circumstances justify the uttering of insults to someone who refused to carry out that work.

40 On that point, suffice it to note that the Court of First Instance could justifiably consider that the incident to which the request for assistance related could not be assessed in isolation.

41 The respective responsibilities of those who were involved thus had to be assessed in the light of their conduct before and after the events in issue.

42 Accordingly, that plea must be dismissed as clearly unfounded.

43 In his sixth plea, the appellant argues that the Court's finding that he did not agree to carry out a piece of work at the time of the incident of 25 November 1993 should be annulled for several reasons.

44 First, if he did refuse to work, his immediate superior should, by virtue of the principle of legality, have used the proper channels and referred the matter to the head of the translation service, rather than taking matters into his own hands and insulting his subordinate. The appellant argues that the Court of First Instance appears to have accepted, indirectly but unequivocally, that the refusal to work justifies the insult uttered and that, this being so, the appointing authority can take

no steps to protect and assist the party insulted without infringing the first paragraph of Article 24 of the Staff Regulations. The Court of First Instance thus erred in law, since it ignored the principle of legality.

45 Second, he claims that the Court of First Instance exceeded the limits of its jurisdiction and of its right of judicial review in that, in paragraphs 54, 55 and 56 of the judgment appealed against, it considered — without first having ordered measures of inquiry on this point — the merits of the reasons given for the appointing authority's decision of 1 July 1994 to the effect that the incident in issue was triggered by the appellant's refusal to work. He argues that, according to consistent case-law, the Court of First Instance cannot substitute its own assessment for that of the appointing authority but must simply ascertain whether there was any lack of competence, breach of essential procedural requirements, breach of a rule of law, manifest error or misuse of powers. The appellant claims that the Court of First Instance erred in law in considering the reasons given for the decision of the defendant institution of 1 July 1994.

46 Third, the appellant considers that the Court of First Instance infringed his right to a fair hearing by not adopting measures of inquiry on this point and by giving him no opportunity to demonstrate the truth of his allegations. In addition, he alleges, it ruled *ultra petita* in that, since it had already ruled the appointing authority's refusal to take measures against Mr K. reasonable in paragraph 49 et seq. of the judgment appealed against, the finding that he had refused to work in paragraphs 54 to 56 was superfluous and had not been sought. The appellant argues further that, in ruling on its own initiative, in the judgment appealed against, on certain substantive issues on which its assessment was not necessary and had not been requested, the Court of First Instance had also prejudged the decision to be given in Case T-326/94, cited above, and thus created a risk of conflict between two contradictory decisions on the same facts.

47 Fourth, he claims, the Court of First Instance breached the principle of the neutrality, freedom from interference and objectivity of the judicature. In paragraph 56 of the judgment appealed against, it made reference to the appellant's domestic duties — washing and ironing. The appellant submits that it failed to take account of his argument that, because of the absence of his wife, who was working in

Greece, he had custody of his two young daughters and was therefore also obliged to undertake domestic duties. Even if the Court of First Instance had sole jurisdiction to determine issues of fact, it was not entitled to distort or diminish the appellant's allegations by taking such a harsh view of his arguments. Further, in taking the view that the justification put forward by the applicant was not reasonable, it erred in law, given the appellant's legal obligation to maintain his children.

48 Finally, the appellant claims that paragraph 56 of the judgment appealed against, concerning the appellant's statement that he had had nothing to do in the days preceding the incident in issue, distorts his allegations. In fact what he said at the hearing was that he had nothing to do, not because he did not want to work, but because he had finished his work more quickly than his colleagues. The appellant argues that the Court of First Instance was also in breach of the prohibition on *reformatio in pejus*, which must benefit the person seeking the protection of the courts and which is a fundamental principle of both Community and national procedure in administrative disputes. The appellant concludes that paragraphs 54 to 57 of the judgment appealed against should be annulled.

49 First, as regards the assessment of the Court of First Instance relating to the refusal to work, the appellant's domestic duties and his allegation that he had had nothing to do in the days preceding the incident in issue, suffice it to note that, for the reasons given in paragraph 26 of this order, this part of the sixth plea is clearly inadmissible, since it concerns findings of fact which this Court has no power to review. That conclusion is not affected by the fact that the appellant attempts to present an issue of fact as an issue of law by alleging that the principle of the neutrality of the judicature has been breached.

50 Next, as regards the complaint that the Court of First Instance ruled *ultra petita*, this Court has held that, where one of the grounds relied on by the Court of First Instance is sufficient to justify the operative part of the judgment, any defects in another ground which is also relied on in the judgment are irrelevant to that operative part and any plea relying on them is also irrelevant and must be dismissed (see Case C-326/91 P *De Compte* v *Parliament* [1994] ECR I-2091, paragraph 123).

51 Finally, as regards the appellant's claim that the Court of First Instance exceeded the limits of its jurisdiction and of its right of judicial review in that, in paragraphs 54, 55 and 56 of the judgment appealed against, it assessed the reasons given for the decision of the appointing authority of 1 July 1994, that part of the plea should be dismissed as unfounded since it has consistently been held that, while the Court of First Instance cannot substitute itself for the appointing authority and review its findings except to find that there has been a manifest error of assessment (see Joined Cases T-160/89 and T-161/89 *Kalavros* v *Court of Justice* [1990] ECR II-871), it may nevertheless examine means which may have led to the evaluation made by the appointing authority (see Case 62/65 *Serio* v *Commission* [1966] ECR 561). Accordingly, that part of the sixth plea must be dismissed as clearly unfounded and the sixth plea as a whole must be dismissed.

52 In his seventh plea, the appellant argues that, if the other arguments raised in the appeal are allowed, paragraphs 59 to 61 of the judgment appealed against should also be annulled since the Court of First Instance rejected his application for compensation for the non-material damage he suffered. He claims that it based its decision on the fact that the appointing authority's conduct was reasonable and did not represent a breach of the first paragraph of Article 24 of the Staff Regulations, and did not take into account the insults and threats of Mr F. and of Mr E., who was Secretary-General of the Court of Auditors at the time, and, in paragraph 43 of the judgment appealed against, underestimated the scale of those insults and threats.

53 Since the appellant's pleas seeking to establish that the Court of First Instance ruled wrongly that the defendant did not breach its duty to provide assistance have already been dismissed as clearly inadmissible or unfounded in the present order, it follows that the plea concerning the existence or the scale of the non-material damage suffered as a result must also be dismissed.

54 Finally, in his eighth plea, the applicant states that, as the provisions of Article 87(3) of the Rules of Procedure of the Court of First Instance lay down an exception to the principle in Article 88 according to which, in proceedings between the Communities and their servants, the institutions are to bear their own costs, those

provisions must be interpreted restrictively. In paragraph 74 of the judgment appealed against, he asserts, the Court of First Instance referred, in general and vague terms, to the circumstances of the case, without making it clear, as required by Article 87(3) of its Rules of Procedure, whether the costs were incurred unreasonably or vexatiously. Nor did it sufficiently substantiate the questions of fact on which its assessment was based.

55 The Court of First Instance, he claims, should have stated, first of all, whether he had unreasonably or vexatiously caused the defendant to incur costs, which was not obvious given the lack of clarity in paragraph 74 of the judgment appealed against. This allowed doubts to remain which were objectionable to the appellant and, moreover, no clear fact was alleged as a ground for the 'disciplinary measure'. According to the appellant, the reference to the 'significance of the incident' and to the 'attitude of the appellant, although the appointing authority had been unable to establish the facts and responsibilities with certainty' is incomprehensible. Whilst the Court of First Instance considered the incident to be of little importance, the appellant considered it to be very important because he was abused, threatened and insulted. As for its suggestion that his attitude had never been conciliatory, he counters that the person who abused him had to that day never apologized and the appointing authority expected him to both excuse the person who abused him and withdraw his application before the perpetrator of that abuse had even apologized.

56 On that point, the second paragraph of Article 51 of the Statute of the Court of Justice provides that no appeal is to lie regarding only the amount of the costs or the party ordered to pay them. Accordingly, where all the other pleas in an appeal have been rejected, the plea concerning the illegality of the decision of the Court of First Instance as to costs must, by virtue of that provision, be rejected as inadmissible (see Case C-396/93 P *Henrichs* v *Commission* [1995] ECR I-2611).

57 In accordance with Article 119 of the Rules of Procedure the appeal must therefore be dismissed in its entirety.

Costs

58 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Article 70 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. However, by virtue of Article 122, Article 70 is not to apply to appeals brought by officials or other servants of the institutions. Since Mr Dimitriadis's appeal has been unsuccessful he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (Second Chamber)

hereby orders:

1. The appeal is dismissed.

2. The appellant shall pay the costs.

Luxembourg, 16 October 1997.

R. Grass — Registrar

R. Schintgen — President of the Second Chamber