ORDER OF THE COURT (First Chamber)
21 January 1997 *

In Case C-156/96 P,

Calvin Williams, a former official of the Court of Auditors of the European Communities, residing in Luxembourg, represented by Eric Boigelot, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 7 March 1996 in Case T-146/94 *Calvin Williams* v *Court of Auditors* [1996] ECR-SC II-329, 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, Jan Inghelram and Paola Giusta, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the seat of the Court of Auditors, 12 Rue Alcide de Gasperi, Kirchberg,

* Language of the case: French.

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber, P. Jann (Rapporteur) and M. Wathelet, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 7 May 1996, Mr Williams brought an appeal against the judgment of 7 March 1996 in Case T-146/94 *Williams* v *Court of Auditors* [1996] ECR-SC II-329, by which the Court of First Instance (Fifth Chamber) dismissed as unfounded his application for annulment of the decision by which the respondent imposed on the appellant with effect from 24 June 1993 the disciplinary measure of removal from post without reduction or withdrawal of entitlement to retirement pension.

2 The contested judgment found as follows:

— In 1974 the appellant was recruited by the Audit Board, the former financial auditing body operating under the auspices of the Council of the European

Communities, as a member of the temporary staff in Grade A 7; in 1976 he was appointed an official of that board in Grade A 7. In 1978 he was transferred to the Court of Auditors, where he was appointed Principal Administrator in Grade A 5 in 1984 (paragraph 1).

— By judgment of 26 November 1991 (Case T-146/89 *Williams* v *Court of Auditors* [1991] ECR II-1293) the Court of First Instance rejected as unfounded an action brought by the appellant against a decision by the Court of Auditors imposing a disciplinary measure on him, namely deferment of advancement to a higher step. That measure was taken following the drafting and distribution by the appellant of three notes containing views regarded as insulting to the Court of Auditors and to certain of its Members (paragraph 2).

— On 27 March 1992, when standing as a candidate for election to the Staff Committee of the Court of Auditors, the appellant distributed on its premises, specifically in the restaurant and cafeteria, two documents entitled 'Going political (I) and (II)'. He also sent copies to figures outside the Court of Auditors (paragraph 3).

— On 24 June 1993, after the disciplinary proceedings had run their course, the Secretary General of the Court of Auditors, in his capacity as appointing authority, imposed on the appellant, in view of the seriousness of the breaches he had committed and having regard to aggravating and mitigating factors, the sanction of removal from his post with effect from the same date without reduction or withdrawal of his entitlement to a retirement pension (paragraph 12).

— As to the facts, in its decision of 24 June 1993 the appointing authority found that the appellant was indeed the author of the two documents containing

insulting and defamatory remarks and attacking the honour of the Members and certain servants of the Court of Auditors and the Members of other institutions. The appointing authority also found that those documents had been published in that they were addressed to persons outside the Court of Auditors and had been distributed in the cafeteria and restaurant of the Court of Auditors, where people from outside the institution had been able to see them (paragraph 13).

— As to the legal appraisal of the facts so found, the appointing authority considered that the documents distributed by the appellant constituted a breach of both the first paragraph of Article 12 of the Staff Regulations of Officials of the European Communities, in that they detracted from the dignity of the office of principal administrator occupied by the appellant, and the first paragraph of Article 21 of the Staff Regulations, as the remarks made constituted, by their very nature, a breach of the duty of loyalty incumbent on all officials towards the institution for which they work and their superiors (paragraph 14).

— On 23 September 1993, the appellant lodged a complaint against the decision of 24 June 1993 with the general secretariat of the Court of Auditors and, in addition, brought an application before the Court of First Instance in which he sought, *inter alia*, annulment of that decision and full reinstatement to the duties he was performing on the date of the contested decision, basing himself in both cases on the same pleas, complaints and arguments (paragraphs 16 and 17).

— By order of 16 December 1993 the Court of First Instance rejected the application as inadmissible on the ground that it had been made prematurely (paragraph 21).

— On 24 January 1994 the Court of Auditors rejected the appellant's complaint as inadmissible and, in any event, as unfounded (paragraph 22).

3 On 11 April 1994, following the appointing authority's decision rejecting his complaint, the appellant brought a further action before the Court of First Instance against the appointing authority's decision and, by separate document, applied for interim relief in the form of suspension of operation of that decision. By order of the President of the Court of First Instance of 29 June 1994 in Case T-146/94 R *Williams* v *Court of Auditors* [1994] ECR-SC II-571, the application for interim relief was dismissed.

4 In his application the appellant alleged infringements of the first paragraph of Article 12 and the first paragraph of Article 21 of the Staff Regulations, breach of the principle of proportionality and failure to state relevant reasons.

5 The Court of Auditors contended that the application should be dismissed.

The contested judgment

6 By the contested judgment the Court of First Instance dismissed the application.

7 As regards the plea alleging infringement of the first paragraph of Article 12 of the Staff Regulations, the Court of First Instance found in the first place that the conduct of which the appellant stood accused reflected on the dignity of the appellant's office. Paragraph 67 of the contested judgment states as follows:

'In this case the Court of First Instance considers that several of the statements made in the documents in issue were insulting and prejudicial to the honour of

Members of the Court of Auditors and those of other institutions and also to that of officials and other servants of the Court of Auditors. These included in particular points 1, 2 (second part of the sentence), 3, 4, 7 and 8 (second indent) of the document entitled "Going political (I)" and points 2 and 4(c) of "Going political (II)". The documents in question must therefore be regarded as expressions of opinions which reflect on the applicant's position.'

8 At paragraph 69 of the judgment appealed against, the Court of First Instance held as follows:

'Finally, as for the applicant's argument that the documents cannot be defamatory since their contents reflect reality, the Court points out that, as it has already held in the judgment of 26 November 1991 in Case T-146/89 *Williams* v *Court of Auditors* (paragraph 80), if an official considers that certain measures taken by an institution offended against provisions of the Treaties, he is free to have recourse to all the legal remedies available to him or to take the appropriate action, but only in compliance with the principles laid down in the Staff Regulations, that is to say in observance, in both his written and oral utterances, of the obligation of reserve and moderation incumbent on every official.'

9 As for the plea alleging infringement of the first paragraph of Article 21 of the Staff Regulations, the Court of First Instance held as follows in paragraph 98 of the contested judgment:

'In this case, the Court considers that the remarks made by the applicant in his two documents, which have been held to be insulting and defamatory (see paragraph 67 of this judgment), constitute, by their very nature, a serious breach of the

duty of loyalty and cooperation incumbent on all officials towards the institution to which they belong and their superiors (see Case T-146/89 *Williams* v *Court of Auditors*, cited above, paragraph 72). The insulting and defamatory statements made by the applicant in the documents in issue refer almost exclusively to the way in which the Court of Auditors performs its task of auditing accounts within the institutional framework of the Community. Thus, the scope of the duty of loyalty and cooperation incumbent on the applicant with regard to the institution to which he belongs and his superiors must be assessed in the light of the fact that, as an official, he participates in the performance of the supervisory task entrusted to the Court of Auditors, the institution to which he belongs.'

10 In paragraph 101 of the contested judgment, the Court of First Instance added:

'Finally, as to the applicant's argument that in the contested decision the appointing authority disregarded the right of an official to express his opinions freely, it need only be observed that under no circumstances can that right be exercised by means of defamatory or insulting statements.'

11 Finally, as regards the plea alleging infringement of the principle of proportionality and absence of an adequate statement of reasons, the Court of First Instance held in paragraph 117 of the contested judgment as follows:

'Nor can the Court accept the applicant's second argument that the remarks made in an election campaign are liable to involve some intemperate language. It should be pointed out in the first place that the Court has held (see paragraph 67 of this

judgment) that the documents in issue contained insulting and defamatory remarks and that nothing can justify the use of that kind of language, even during an election campaign. Secondly, and purely for the sake of completeness, it should be pointed out that the insulting and defamatory statements by the applicant in the documents in issue refer almost exclusively to the way in which the Court of Auditors performs its task of auditing accounts in the institutional framework of the Community and that that task, which is described in Articles 188a and 188c of the EC Treaty, does not in any sense fall within the terms of reference of the Staff Committee to which the applicant wished to be elected. The terms of reference of the Staff Committee, as set out in Article 9 of the Staff Regulations, concern exclusively the internal operation of an institution and participation in staff management. There was therefore no connection between the work of the body to which the applicant wished to be elected and the content of the texts he had written. Accordingly, the statements contained in them cannot be regarded as possibly justifiable because made in the context of an election campaign, since they had absolutely no connection with the work of the body to which the applicant wished to be elected.'

12 As to the aggravating circumstance of the applicant's record of re-offending, the Court of First Instance held as follows in paragraphs 128 to 133 of the contested judgment:

'128 It should be made clear at the outset that, as the Court of Auditors has rightly pointed out, the aggravating circumstance under consideration is not the fact that the applicant's actions were inappropriate but the fact that he re-offended, that is to say, he had recourse to actions comparable to those for which disciplinary measures had already been applied to him in the past. In that connection, the Court of Justice has held that, notwithstanding the gravity of the charges made, the administration is justified in imposing only a mild penalty, taking into account circumstances independent of the complaints made, such as the absence of any previous disciplinary measure (Joined Cases 27/64 and 30/64 *Fonzi* v *Commission of*

the EAEC [1965] ECR 481, at 501). Conversely, it may be inferred from that decision that the appointing authority is entitled to take into account as an aggravating circumstance the fact that a disciplinary measure was imposed previously.

129 The Court of First Instance finds that the documents before it show that the applicant had already been the subject of two disciplinary measures on account of matters similar to those in point in the present case. By decision of 1 February 1984 the appointing authority of the Court of Auditors imposed a warning on him for a note lacking the most elementary courtesy towards a superior. By decision of 13 February 1989 the appointing authority of the Court of Auditors imposed on him the penalty of deferment of advancement to a higher step from 13 February 1989 to 16 October 1995 for documents the terms of which had been held to be insulting and defamatory with regard to the Court of Auditors, its Members and servants. The latter was the subject of an action which the applicant brought before the Court and which resulted to the judgment of 26 November 1991 in *Williams* v *Court of Auditors*, cited above, which upheld in its entirety the disciplinary measure imposed on the applicant.

130 Consequently, the fact that the events which gave rise to the present dispute took place during an election campaign within the institution, whereas, in the previous disciplinary proceedings, the facts alleged against the applicant fell within a different context, is not such as to invalidate the appointing authority's finding that the applicant's behaviour was recidivist in nature.

131 Moreover, it must be held that the notes which gave rise to the disciplinary measure which was the subject of the judgment of 26 November 1991 in *Williams* v *Court of Auditors*, cited above, and the leaflets which gave rise to the penalty of removal from post by way of disciplinary measure, were held to contain insulting and defamatory statements about Members of the Court of Auditors.

132 Finally, it should be pointed out that in the opinion of the Disciplinary Board of 10 July 1992 it was considered that the existence of previous disciplinary measures for documents held to be discourteous, calumnious or defamatory constituted an aggravating circumstance.

133 The Court therefore considers that the defendant was entitled to take into account as an aggravating circumstance the fact that the applicant had already been the subject of two disciplinary measures for activities similar to those in this case.'

The appeal

13 In support of his appeal, the appellant maintains in very general terms that the reasoning of the contested judgment is vitiated by errors of law and fact and that it is, moreover, manifestly contradictory. The only concrete plea which he raises, however, consists of a criticism that the Court of First Instance accepted that the remarks contained in the documents in issue were defamatory without considering whether those remarks corresponded to the reality.

14 According to the appellant, the Court of First Instance did not establish the existence of defamation. Yet it assumed on several occasions that the appellant's conduct was defamatory in order to dismiss the plea alleging disregard of the right freely to express opinions and the plea that his conduct was not recidivist. In that regard the appellant refers to paragraphs 98, 101, 117, 129, 131 and 133 of the judgment appealed against, in which the Court of First Instance mentions the defamatory nature of the statements in question. In some of those paragraphs, the Court of First Instance went so far as to state that the appellant's remarks had been held

to be insulting and defamatory in paragraph 67 of the contested judgment, although that paragraph does not expressly mention any defamation. As to the insulting nature of his assertions, the appellant maintains that the Court of First Instance erred in its appraisal of the facts.

Findings of the Court

15 Under Article 119 of the Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time, by reasoned order, dismiss it, without opening the oral procedure.

16 It is common ground that, in paragraphs 64 to 72 of the contested judgment, the Court of First Instance examined whether the appellant's conduct reflected on the dignity of his office.

17 In paragraph 66 of the contested judgment, it considered that the insulting remarks constituted in themselves a reflection on the dignity of his office. At paragraph 67, it expressly referred to certain of the remarks contained in the documents written by the appellant, describing them as insulting and considering them to reflect on the honour of Members both of the Court of Auditors and of other institutions.

18 The appellant maintains in that connection that the Court of First Instance erred in its appraisal of the facts in considering that his remarks were insulting.

19 Under Article 51 of the EC Statute of the Court of Justice, appeals are limited to points of law, to the exclusion of any factual appraisal. In so far as the appellant is seeking to call in question the findings of fact made by the Court of First Instance, his argument is therefore clearly inadmissible.

20 It should be noted that the appellant has not adduced any specific argument with a view to establishing that the Court of First Instance erred in law in considering that the insulting remarks were capable of reflecting on his office.

21 As regards the allegation that the Court of First Instance wrongly described the appellant's statements as defamatory without examining whether they corresponded to the reality, it should be observed that, in assessing the lawfulness of the appointing authority's decision in the light of the first paragraph of Article 12 of the Staff Regulations, the Court of First Instance was not required to examine whether the appellant's conduct constituted defamation as it might be defined in criminal law. In order to categorize the statements in question as reflecting on the dignity of the appellant's office, it was sufficient for the Court of First Instance to examine whether they constituted serious insults detrimental to the honour of the persons to whom they referred. Moreover, in order to ascertain that the appellant's conduct contravened the first paragraph of Article 12 of the Staff Regulations, the Court of First Instance also had to examine the public nature of the opinions expressed, which it did in paragraphs 79 to 83 of the contested judgment.

22 It follows that the Court of First Instance used the term 'defamatory' in order to characterize seriously insulting statements detrimental to the honour of certain persons, which were published both inside and outside the institution. For the purposes of disciplinary proceedings, that appraisal cannot be contested.

23 Accordingly, in paragraphs 67 and 69 of the judgment appealed against, the Court of First Instance refuted, to a sufficient standard in law, the appellant's argument that his conduct could not be regarded as defamatory.

24 Lastly, the appellant alleges that the reasoning of the Court of First Instance is incoherent, inasmuch as it refers on several occasions to the allegedly defamatory nature of his statements without first having established that they were defamatory in paragraph 67 of the contested judgment, to which the Court of First Instance nevertheless subsequently refers.

25 It is sufficient to observe in this connection, as has already been indicated in paragraph 22 of this order, that, in examining the legality of disciplinary proceedings, the Court of First Instance was not required to establish that the assertions were 'defamatory' in the sense usually given to that term by the criminal law of certain Member States, since the fact that they were seriously insulting was sufficient to justify the legal description chosen. Moreover, the repeated reference to paragraph 67 of the contested judgment shows that the Court of First Instance intended, in using the term 'defamatory', to refer to a statement reflecting on a person's honour. This choice of vocabulary cannot be criticized.

26 Accordingly, as the Court has already intimated, the appellant has not succeeded in calling in question the characterization of his statements as insulting and defamatory — in the sense in which the Court of First Instance uses that term — as reflecting on the dignity of his office. Nor, consequently, has the appellant succeeded in calling in question the conclusions, drawn by the Court of First Instance from that characterization in paragraphs 98, 101, 117, 129, 131 and 133 of the contested judgment, namely that the statements constituted a serious breach of his duty of loyalty, that the right freely to express opinions cannot be relied on in order to justify those statements, that the context of an election campaign did not

justify the use of this kind of language and that the fact that the applicant had already been the subject of two disciplinary measures relating to similar facts could be regarded as constituting an aggravating circumstance.

27 It follows from the foregoing that the appeal must be dismissed as clearly unfounded.

Costs

28 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 of those Rules, Article 70 does not apply to appeals brought by officials or other servants of the institutions. Since Mr Williams' appeal has been unsuccessful, he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (First Chamber)

hereby orders:

1. The appeal is dismissed.

2. The appellant is ordered to pay the costs.

Luxembourg, 21 January 1997.

R. Grass

Registrar

L. Sevón

President of the First Chamber