JUDGMENT OF THE COURT (Sixth Chamber)
2 June 1994 *

In Case C-326/91 P,

Henri de Compte, a retired official of the European Parliament, residing in Strasbourg (France), represented by Edmund Lebrun and 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 in Case T-26/89 of 17 October 1991 between Henri de Compte and European Parliament, seeking to have that judgment set aside,

the other party to the proceedings being:

European Parliament, represented initially by Jorge Campinos, Jurisconsult, and subsequently by François Vainker, of its Legal Service, assisted by Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, M. Diez de Velasco, C. N. Kakouris (Rapporteur), F. A. Schockweiler and J. L. Murray, Judges,

* Language of the case: French.

Advocate General: C. O. Lenz,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 November 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 16 December 1991, Mr de Compte (hereinafter 'the applicant') brought an appeal against the judgment of 17 October 1991 in Case T-26/89 *De Compte* v *Parliament* [1991] ECR II-781 in which the Court of First Instance dismissed his application for the annulment of the decision of 18 January 1988 adopted by the President of the Parliament in his capacity as appointing authority, which imposed on the applicant the sanction of downgrading from Grade A 3, Step 8 to Grade A 7, Step 6.

2 It is apparent from the contested judgment that the following complaints made by the appointing authority against the applicant, who was an accounting officer of the Parliament until 30 April 1982, were declared by the Court of First Instance to be well founded:

(a) responsibility for the opening by Mr Offermann (the administrator of advance funds and an official in the Treasury and Accounts Division) and by Miss Cesaratto (an official in the same division) of an interest-bearing account with the Midland Bank, London, on 21 July 1981 with the amount of UK £400 000

bearing 16% annual interest without prior authorization, accounting entries relating to those operations or entries regarding interest in the Parliament's accounts for 1980 and 1981;

(b) encashment on 4 September 1981 and 11 November 1981, without specific and valid justification, of two cheques drawn on the Midland Bank in the amounts of UK £17 189.15 and UK £35 176.98, which were paid in cash by the Sogenal Bank in Luxembourg in BFR, DM and FF; failure to record those operations in the Parliament's accounts during the 1981 financial year; registration after a six-month delay (28 February 1982) in the overall amount of BFR 4 136 125 although the withdrawal had been made in a number of currencies;

(c) failure to comply with the obligation imposed on the accounting officer to effect expenditure only on production of proper supporting documentation and to ensure the safeguarding of the Parliament's assets (absence of supporting documentation relating to the sum of BFR 4 100 000 missing from the Parliament's funds).

3 The applicant's pleas in law in support of his appeal are set out below, as and when the relevant issues from the contested judgment are examined.

The expiry of the limitation period

4 At paragraph 68 of the contested judgment the Court of First Instance states that the Staff Regulation of Officials of the European Communities (hereinafter 'the Staff Regulations') do not provide for any limitation period with regard to the initiation of disciplinary proceedings. It states further that it cannot be accepted that the expiry of the period laid down by Article 72 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ 1977 L 356, p. 1, hereinafter 'the Financial Regulation') for delivery of a final discharge to an accounting officer can result in the barring of all disciplinary proceedings against the latter.

5 In that connection the Court of First Instance refers (at paragraph 69) to the principle that disciplinary proceedings are independent of other administrative proceedings. It observes that disciplinary proceedings are designed to safeguard the internal order of the public service, whereas the delivery of a final discharge is designed to verify officially the accuracy and propriety of the accounts and, more generally, their presentation and auditing, in order that an end may be put to the uncertainty regarding the liability of the accounting officer concerned for a given financial year. It concluded that the putative granting of an implied final discharge on the expiry of a two-year period could not preclude the bringing of disciplinary proceedings against the applicant.

6 Finally, the Court of First Instance noted (at paragraph 70) that the applicant's plea would have had to be dismissed as unfounded in any event, because the disciplinary proceedings initiated against him had to be treated as having been initiated, at the very latest, on 13 April 1983, that is to say before the 'grant' of the alleged implied final discharge.

7 The applicant contends that the findings made in paragraph 68 of the contested judgment are not justified, because the Court only examined the provisions of the Staff Regulations and neither considered nor analysed the scope of other provisions, in particular those governing the facts at issue. He also claims, with regard to paragraph 69 of the contested judgment, that the final discharge has a minimum implication, namely the release of the accounting officer from responsibility for the formal regularity of the accounts.

8 The applicant's plea is in substance that the period laid down in Article 72 of the Financial Regulation for the delivery of the final discharge also applies, by analogy, as a limitation period for the initiation of disciplinary proceedings.

9 That plea must be rejected. One of the requirements for applying a provision by analogy is that the objective of the provision in question must be the same as that of the case at issue. As the contested judgment correctly points out, the objective of the disciplinary proceedings is different from that of the final discharge.

10 The applicant claims that the objective of the two procedures is the same where the disciplinary proceedings concern exclusively formal irregularities committed by the accounting officer and do not involve any complaint as to matters of substance.

11 That contention cannot be accepted. It cannot be held that there are two alternative regimes concerning the initiation of disciplinary proceedings against an accounting officer, the choice depending on the nature of the complaints made: one relating solely to complaints concerning formal matters and limiting the initiation of the disciplinary proceedings to the period laid down for delivery of the final discharge, and the other relating to complaints regarding matters of substance and which are not subject to any limitation period.

12 Moreover, in disciplinary proceedings and proceedings for the grant of a final discharge purely formal complaints have different features, because their objectives differ. That difference is also apparent with regard to the body empowered to act in each case: whereas, under Article 72 of the Financial Regulation, the institution itself is competent to deliver the final discharge, the initiation of disciplinary proceedings is a matter for the body determined in accordance with Article 2 of the Staff Regulations.

13 It therefore follows that that plea by the applicant must be rejected.

14 Since the contested judgment adopted the correct interpretation, it is not necessary to consider either the admissibility or the merits of the applicant's plea contesting the findings, made in the alternative in paragraph 70 of the contested judgment (paragraph 6 above), regarding the date on which the disciplinary proceedings were initiated.

The delivery of the final discharge for the 1981 financial year

15 At paragraph 79 of the contested judgment the Court of First Instance states that even if the applicant had obtained a final discharge in respect of the 1981 financial year, as he claims, that fact cannot preclude the institution of disciplinary proceedings against him, since the disciplinary proceedings are independent of the proceedings for the grant of a final discharge.

16 Moreover it points out that, with respect to the 1981 financial year, the applicant has in any event never obtained a final discharge for the irregularities complained of in the course of the disciplinary proceedings (paragraphs 80 and 81 of the contested judgment).

17 The applicant claims that the findings of the Court of First Instance at paragraph 79 of the contested judgment are not founded in law, because the final discharge extends by implication at least to the final discharge of the accounting officer's liability regarding the formal correctness of the accounts, which is the only matter at issue in this case.

18 That plea must be rejected. The disciplinary proceedings are independent of the proceedings for a final discharge. Consequently, the Court of First Instance was correct in holding that, even if the delivery of the final discharge were deemed to have been established, that fact cannot preclude the initiation of disciplinary proceedings. That finding is not called into question by the fact that the final discharge, when delivered, can be taken into account as one piece of evidence alongside all the others in order to determine the liability of the accounting officer in the course of disciplinary proceedings.

19 Having regard to the above finding, which is a sufficient basis for the reasoning of the contested judgment, it is unnecessary to consider either the applicant's pleas to the effect that, by reason of its very nature, the final discharge cannot be partial, so

that the Court of First Instance ought to have held that a full discharge for the 1981 financial year had been delivered, or the pleas contesting the finding of the Court of First Instance that the 1981 financial year cannot be considered to be relevant to the examination of the matters at issue.

Infringement of the principle requiring proceedings to be brought within a reasonable period

20 It is apparent from the contested judgment that on 30 September 1982 the appointing authority decided for the first time to refer to the Disciplinary Board the complaints made against the applicant. Following the latter's observations, the appointing authority informed him on 14 January 1983 that it had decided to annul that procedure. On 13 April 1983 the matter was again referred to the Disciplinary Board, which met several times between 2 June 1983 and 10 February 1984, the date on which it adopted its reasoned opinion. On 24 May 1984 the appointing authority downgraded the applicant. The applicant brought an action before the Court of Justice for the annulment of that decision. By judgment dated 20 June 1985 in Case 141/84 ([1985] ECR 1951) the Court of Justice found that the procedure followed by the Disciplinary Board had been vitiated by a fundamental defect (examination of witnesses in the absence of the applicant and his legal representative) and accordingly annulled the appointing authority's decision. After obtaining an opinion from the Court of Auditors and awaiting the outcome of the parliamentary procedure concerning the grant of a final discharge for the 1982 financial year, the appointing authority informed the applicant on 9 December 1986 of its intention to re-open the disciplinary procedure against him. By letter of 24 June 1987 it brought the matter before the Disciplinary Board. The disciplinary procedure culminated in the disciplinary measure which was reviewed by the contested judgment.

21 In that judgment the Court of First Instance, after recognizing the principle that each procedural step must be taken within a reasonable period following the previous step, and stating that the failure to comply with that period can be assessed only in the light of the specific circumstances of the case (paragraph 88), held at paragraph 89 that the disciplinary proceedings followed, in principle, the normal course. However, it stated that, after subtracting the time spent by the applicant in preparing his defence for the Court of Justice (from 24 May 1984 to 20 June 1985), the question whether a reasonable period was complied with could only relate

either to the period of eight months before the matter was referred to the first Disciplinary Board (from 2 June 1983 to 10 February 1984), or to the period subsequent to 20 June 1985.

22 The applicant claims in substance that the disciplinary proceedings did not follow the normal course and that the Court of First Instance wrongly subtracted the time spent by the applicant in preparing his defence before the Court of Justice (from 24 May 1984 to 20 June 1985), because the commencement of his action, which proved to be justified, was required as a result of factors for which the defendant was to blame. Moreover, the subtraction of time spent 'in preparing his defence' infringed the rights of the defence, since those rights were impaired by such subtraction.

23 That plea must be rejected. The applicant's claims do not affect the finding that from 24 May 1984 to 20 June 1985 the disciplinary proceedings could not be pursued at all, since they had been terminated by the decision adopted on 24 May 1984 and re-opened after, and as a result of, the judgment of the Court of Justice of 20 June 1985.

24 At paragraph 90 of the contested judgment, the Court of First Instance finds that the eight-month duration of the first Disciplinary Board's proceedings (from 2 June 1983 to 10 February 1984) was due to the applicant's cumulative absences of four months on medical grounds and the fact that an inquiry had to be organized at which representatives of all parties could be heard.

25 The applicant claims that the Court of First Instance wrongly fixed the beginning of that period at 2 June 1983 instead of 30 September 1982, the date on which the matter was first referred to the Disciplinary Board, that procedure having been annulled on 14 January 1983 by the appointing authority itself.

26 In that respect, it should be observed that, since the measure of 30 September 1982 was then revoked by the appointing authority itself, because it contained a formal defect, that date cannot be adopted as the starting point for the assessment of a reasonable period.

27 As to period of 18 months (from 20 June 1985 to 9 December 1986) which elapsed between the annulment of the procedure by the Court of Justice and the dispatch of the letter from the President of the Parliament inviting the applicant to submit his observations in accordance with the second paragraph of Article 87 of the Staff Regulations, the Court of First Instance, in order to assess the plea submitted by the Parliament to the effect that the appointing authority was obliged to await the outcome of the final discharge proceedings for the 1982 financial year (completed on 11 July 1986) before re-opening the disciplinary proceedings, points out certain special circumstances which surrounded the origin of the dispute (paragraph 92) and reaches the following conclusion:

'93. In the light of the matters of fact and law just outlined, it must be accepted that the complexity of the case and its sensitivity with regard to the prestige of the Parliament, the particular position of the appointing authority within that institution, the comments in the order of the Court of Justice of 3 July 1984 on the conclusions arrived at by the Parliamentary Committee on Budgetary Control along with the ambiguity as to the scope and apportionment of responsibilities among theofficials and staff incriminated, together constitutes special circumstances which in this case justify the appointing authority's decision to await the outcome of the parliamentary procedure concerning the final discharge for the 1982 financial year before re-opening the disciplinary proceedings against the applicant ...'

28 The applicant submits that the Court of First Instance was wrong to exclude from its analysis the period from 9 December 1986 (the date of the letter from the appointing authority announcing its intention of reinstating the disciplinary proceedings) to 24 June 1987 (the date on which the matter was again referred to the Disciplinary Board) or 9 July 1987 (the date on which the board began its proceedings). The applicant also claims that the Court of First Instance is inconsistent when it fixes 9 December 1986 as the end of the second period. In that respect it claims that, when the Court fixes the *dies a quo* of the first period (from 2 June 1983 to 10 February 1984) it takes into consideration the date of the first meeting of the Disciplinary Board and not that of the President's letter (14 January 1983), whereas, when it fixes the *dies ad quem* of the second period under consideration (20 June 1985 to 9 December 1986) it takes into account the date of the President's letter (9 December 1986), but not the date on which the matter was referred to the Disciplinary Board (24 June 1987), and still less the date of the Disciplinary Board's first meeting (9 July 1987).

29 By such submissions the applicant contests findings of fact made by the Court of First Instance. Consequently, those submissions must be rejected as inadmissible.

30 The applicant also claims generally that the Court of First Instance failed to deal with his argument that the Parliament had accepted that it had exceeded a reasonable period, since the Disciplinary Board and, accordingly, the appointing authority, which accepted its reasoned opinion, had recognized that (a) the length of the disciplinary proceedings had affected the applicant's morale and health and (b) the excessive duration of those proceedings was a mitigating factor in his case.

31 It should be pointed out, in that respect, that, in order to assess whether proceedings had been brought within a reasonable period, the Court of First Instance had to take into consideration only the period which had elapsed between one procedural step and the next such step. That assessment is a matter separate from the total length of the proceedings, which the Disciplinary Board and the appointing authority took into consideration for the purpose of determining the sanction. The applicant's argument was therefore unrelated to the assessment of the reasonable period within which the proceedings should have been brought. Accordingly, the Court of First Instance was not obliged to deal with it. The applicant's plea must therefore also be rejected.

The plea relating to formal defects vitiating the disciplinary proceedings and resulting from the approval of the minutes of the meeting of 26 November 1987 following which the reasoned opinion was adopted

32 In paragraph 113 of the contested judgment, the Court of First Instance finds that the Disciplinary Board met on the morning of 26 November 1987, that during that meeting it decided to meet *in camera* in the afternoon of the same day and all day Friday 27 November 1987, and that the minutes of the meeting of 26 November were approved on Monday 30 November.

33 Having regard to those circumstances, the Court of First Instance rejects as unfounded the applicant's claim that the Disciplinary Board's reasoned opinion adopted on 27 November 1987 is vitiated by a formal defect because the minutes at issue were approved after the issue of the reasoned opinion. The contested judgment points out that the legality of the reasoned opinion cannot be questioned simply because those minutes were approved at a later date, and that Article 9 of Annex IX to the Staff Regulations in no way requires that minutes be signed immediately after the meeting of the Disciplinary Board in order for them to be valid (paragraph 114 of the contested judgment).

34 The applicant claims that the reasoning of the Court of First Instance is defective, since his complaint is not that the minutes in question were not signed immediately after the meeting of the Disciplinary Board, but that they were signed after its proceedings were terminated following the issue of the reasoned opinion.

35 The applicant's plea must be rejected. It does not follow from the first paragraph of Article 9 of Annex IX to the Staff Regulations that those minutes could not have been validly signed after the reasoned opinion was adopted.

The plea relating to infringement of the rights of the defence

A — *The communication of certain documents*

36 In the contested judgment (paragraphs 120 and 122), after noting that under Article 2 of Annex IX to the Staff Regulations the official charged has the right to see

his complete personal file and to take copies of all documents relevant to the proceedings, the Court of First Instance finds as follows:

(a) the applicant and his defence counsel were allowed to have access to the entire file and to request the production of documents corresponding to the stage of examination of the file by the Disciplinary Board; the applicant does not appear to question the implementation of that principle (paragraphs 123 and 124);

(b) none the less, the applicant takes the view that the appointing authority was unable to provide him with a number of supporting documents which he fails to specify and which apparently relate to the management of the accounts (paragraph 124);

(c) under those circumstances, the Court of First Instance takes the view that the applicant has not proved his allegation that the administration unjustifiably refused to communicate certain documents to him (paragraph 124);

(d) with respect to the argument advanced by the applicant in his reply that the problem of identifying the documents requested would never have arisen if he had not been refused free access to the accounts, the Court of First Instance considers that, in so far as that argument must be interpreted as a new plea in law, it must be declared inadmissible and, in so far as it should be regarded as a development of an earlier plea, it holds that the documents on the file show that the administration did indeed initially grant the applicant access to its archives (paragraph 125).

37 The applicant does not dispute that he was allowed to have access to the whole of the file and to request the production of specific documents. He complains that he was not given free access to all the management accounts, which is necessary for the identification of documents which should be requested: since the alleged loss did not concern a particular item of expenditure but an aggregate amount, the obligation to communicate documents could not be understood in its ordinary sense, but necessarily implied free access to the accounts. In order to provide valid justification for the rejection of that complaint the Court of First Instance ought therefore to have stated in what respect free access to the accounts was unnecessary, or why it was of the opinion that such access had been given to him.

38 Paragraph 125 of the contested judgment is based on two lines of reasoning. The applicant does not contest that his argument is inadmissible in so far as it is to be interpreted as a new plea in law. The other line of reasoning, which the Court adopted on the assumption that the applicant's argument was admissible, is based on the finding that the administration did indeed initially grant the applicant access to its archives. Accordingly, the plea contesting that finding of fact must be declared inadmissible.

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

39 It is apparent from the contested judgment that the applicant had in his possession an unsigned copy of the reverse entry of BFR 4 136 125 made on 25 August 1982. A few days before the termination of the disciplinary proceedings the original signed document was communicated to the applicant. In that regard, the contested judgment states as follows:

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

40 Apart from his submission that the Court of First Instance held that his rights of defence had been infringed (a submission which is contradicted by the wording of

the judgment), the applicant claims that in such a complex case the period of five days which he was allowed was insufficient for a thorough examination of the original reverse entry.

41 That plea by the applicant calls into question the finding of fact by the Court of First Instance with respect to the adequacy of the period of five days, having regard to the circumstances of the case. Accordingly, it must be declared inadmissible.

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

42 As a preliminary point, it should be noted that Article 86 of the Staff Regulations sets out the principle that the official is liable to disciplinary action in respect of any failure to comply with his obligations under the Staff Regulations, whether intentionally or through negligence; it then lists the various disciplinary measures which may be taken; finally, it provides that a single offence is not to give rise to more than one disciplinary measure. Article 70 of the Financial Regulation sets out the principle and the conditions whereby accounting officers, assistant accounting officers and administrators of advance funds may incur liability to disciplinary action and, in certain cases, to pay compensation for an intentional mistake or serious negligence. Finally, as noted in paragraph 4 above, Article 72 of the Financial Regulation sets at two years the period allowed to the institutions to deliver the final discharge to the accounting officers.

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

43 At paragraph 166 of the contested judgment the Court of First Instance notes that the applicant does not contest the relevance of the facts concerning the opening of

the account at issue by way of a letter signed by the administrator of advance funds, Mr Offermann, and an official from the Treasury and Accounts Division, Miss Cesaratto.

44 The Court of First Instance also states (at paragraph 168) that it follows from the division of responsibilities between the accounting officer and the administrator of advance funds, defined in particular by the third paragraph of Article 17 and by Articles 20, 49, 63 and 70 of the Financial Regulation, as well as Articles 46 to 54 of Commission Regulation 75/375/Euratom, ECSC, EEC of 30 June 1975 on measures of implementation of certain provisions of the Financial Regulation on 25 April 1973 (OJ 1975 L 170, p. 1 hereinafter, 'the measures of implementation'), that the accounting officer 'is jointly responsible if, once informed of possible irregularities, he fails to take appropriate measures or refrains from carrying out ordinary or extraordinary checks on the accounts of the advance funds office'.

45 The Court of First Instance then states that the applicant does not contest having been informed by Mr Offermann that the account at issue had been opened, and that he is therefore jointly responsible for all the irregularities surrounding the opening of that account, that is to say, the absence of authorization from the budgetary authorities of the Parliament, the failure to inform the relevant departments that the account had been opened, and the failure to keep a record of the relevant transactions and interest payments in the Parliament's accounts (paragraph 169).

46 According to the contested judgment, the fact that no sanction was imposed on the administrator of advance funds at the conclusion of the disciplinary proceedings brought against him cannot in any way affect the legality of the disciplinary measure imposed on the applicant in view of the fact that each set of disciplinary proceedings is distinct and separate. The difference between the opinions issued in each of the two proceedings does not relate to the recorded facts, but to the assessment of those facts. In particular, the disciplinary authorities in the case of Mr Offermann took the view that the responsibility for the actions of the administrator of advance funds devolved on his immediate superior, namely the applicant, whereas the Disciplinary Board in the proceedings instituted against the applicant reached the conclusion that the applicant and Mr Offermann were both responsible. The Court of First Instance finds that even if the decision taken by the appointing authority against Mr Offermann were unlawful, the applicant may not rely, in support of his claim, on an unlawful act committed in favour of another (paragraph 170).

47 The applicant claims that the Court of First Instance was wrong to hold, at paragraph 170 of the contested judgment, that the independent nature of the disciplinary proceedings against the person primarily responsible and the person with joint responsibility rendered irrelevant any comparison between a matter (the concealment of the transaction at issue) which was considered not to have been established in one set of proceedings but established in the other, while at the same time refraining from ascertaining which of those different assessments made with regard to the same fact was incorrect.

48 In that respect it should be pointed out that the Court of First Instance has not drawn the inferences alleged by the applicant from the principle that each set of disciplinary proceedings is distinct and separate. In reality, it stated that the facts found by the two opinions were the same and that only the appraisals reached regarding responsibility were different. The applicant's plea must therefore be rejected as it is based on an incorrect hypothesis.

49 The applicant further claims that it is wholly incorrect to state that the lack of any sanction against Mr Offermann is due solely to the fact that the disciplinary bodies in Mr Offermann's case considered that responsibility for his conduct lay with his immediate superior (the applicant). The Disciplinary Board in Mr Offermann's case also gave other reasons (the transaction had never been concealed, the defendant should have the benefit of any doubt and, in any event, there was neither an intentional mistake nor serious negligence) which the Court of First Instance did not take into account and which are equally valid for the applicant, since the line of reasoning is the same. At the very least, the Court of First Instance ought to have explained why they were not.

50 Since that plea is in substance directed against the appraisal by the Court of First Instance, on the one hand, of certain factual matters in the reasoned opinion in the Offermann case which relate to the responsibility of the administrator of advance funds and, on the other hand, the significance of that opinion for the review of the applicant's case, it must be declared inadmissible.

51 The applicant also claims that the Court of First Instance wrongly invokes the principle that a person may not rely on an unlawful act committed in favour of another. In order to invoke that principle, it would first have been necessary to

indicate how the decision made in favour of another (Mr Offermann) was unlawful. The Court of First Instance ought then to have explained why a matter which is true for one person is not true for another, and why what is true for both only benefits one person, but not the other.

52 In so far as that plea does not question the appraisal of the facts (which would be inadmissible), it should be stated that the reasoning of the Court of First Instance is to the effect that the applicant's responsibility must be considered objectively, that is to say without reference to any lawfulness or unlawfulness of the decision taken with respect to Mr Offermann. Since that responsibility is established, it is irrelevant to consider whether Mr Offermann was lawfully or unlawfully acquitted. Consequently, the applicant's plea must be rejected.

53 The Court of First Instance considers that the dispute between the parties regarding the applicant's alleged failure to disclose to his superiors the existence of the new account is irrelevant, because the applicant's liability lies essentially in the fact that he failed within a reasonable time to record the transactions relating to it (paragraph 171). It adds that the documents on the file do not in any way suggest that the authorizing officer or the financial controller were aware that the bank account at issue had been opened. In support of that finding, the Court of First Instance refers to a note of 5 June 1981 from the applicant to Mr Paludan-Müller, then Director of Finances and authorizing officer, and a note of 22 January 1982 to the applicant from Mr Etien, who at that time was the financial controller (paragraph 172).

54 With regard to the question considered at paragraph 171 of the contested judgment, the applicant claims that the Court of First Instance cannot, for the reason given by it, deny that it was in any way relevant without first having dealt with the argument that the applicant is not responsible for the failure to record the transactions relating to the bank account at issue either under Article 63 of the Financial Regulation (because that article relates to general accounts, whereas the account at issue is a matter falling within the administration of advance funds) or under Articles 50 and 51 of the measures of implementation (because those provisions referred to the personal obligations of the administrator of advance funds).

55 Contrary to the applicant's claims, the Court of First Instance has already expressed an opinion on that argument at paragraphs 167 to 169 of its judgment. If the applicant's plea is to the effect that the Court of First Instance wrongly holds him to be jointly responsible, it must be rejected as being unfounded because the Court rightly held that, having regard to the third paragraph of Article 17 and Articles 20, 49, 63 and 70 of the Financial Regulation, as well as Articles 46 to 54 of the measures of implementation, the accounting officer is jointly responsible fo irregularities committed by the administrator of advance funds if, having been informed of those irregularities, he does not take the appropriate measures or refrains from carrying out ordinary or extraordinary checks on the accounts of the advance funds office.

56 With regard to the findings set out in paragraph 172 of the contested judgment, the applicant further claims that the Court of First Instance, without giving any reasons, failed to take into account the evidence from which the Disciplinary Board in the Offermann case deduced that the existence of the bank account at issue had not been concealed, namely the possibility, which any authorized person had always had, of perusing the file relating to the Midland Bank account. Moreover, he claims that the Court of First Instance fails to take account of the applicant's arguments, put forward in his reply, to the effect that contrary to the statements in the reasoned opinion of the Disciplinary Board in his case , it appears from the reasoned opinion of the Disciplinary Board in the Offermann case that in February 1982 Mr Paludan-Müller, Director of Finances and authorizing officer of the Parliament, was aware of the bank account at issue.

57 In that respect it should be pointed out that in paragraph 172 of its judgment the Court of First Instance merely makes a finding of fact that it is not apparent from the documents before it that either the authorizing officer or the financial controller was aware of the opening of the bank account at issue at least until 22 January 1982, which is the relevant period. Since the plea put forward by the applicant is in substance directed against that finding by the Court of First Instance, it must be declared inadmissible.

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

58 At paragraph 174 of the contested judgment the Court of First Instance states that the applicant, before setting out his arguments on the complaint concerning the encashment of the two cheques drawn on the Midland Bank, quotes the relevant passage from the contested decision, which states that '... by cashing those two cheques without specific and valid justification, ... by failing to ensure that a record was kept of the payment made into the Luxembourg cash office in the "accounting forms for cash extracts", ... by failing to record immediately in the accounts the encashment of those cheques, Mr de Compte has failed in his duty to administer payment credits in a proper manner ...'. The Court of First Instance then finds (paragraph 175) that the applicant interprets that complaint as meaning that he is being blamed only for having failed immediately to make the entries necessitated by the encashment of the two cheques referred to above.

59 At paragraph 181 of the contested judgment the Court of First Instance observes that the applicant is wrong in restricting the scope of that complaint to the 'non-immediate entry in the accounts' of the two cheques, because the disciplinary decision also charges him with having cashed those cheques without specific and valid justification and with having failed to record the withdrawal on the 'accounting forms for cash extracts' of the Parliament's cash office in Luxembourg in the three currencies in which that withdrawal had been made.

60 The applicant claims that the reasoning set out in paragraph 181 of the contested judgment is incorrect or in any event insufficient, because in his application he had reproduced certain extracts from the Saby report which tended to refute the complaint regarding the encashment of the two cheques without specific and valid justification. Consequently, the applicant had not restricted the scope of that complaint to the 'non-immediate entry in the accounts' of the two cheques, as the Court of First Instance wrongly finds.

61 As the Advocate General finds at points 125 and 127 of his Opinion, the Court of First Instance correctly appraised the scope of the applicant's plea. It is clear from

paragraph 64 to 66 of the application lodged at the Court of First Instance that the applicant intended exclusively to go into the question of the late accounting entry and that the quotation from the Saby report was intended to rebut that specific complaint, as is apparent from the underlined passages which appear in it.

62 Consequently, the applicant's plea must be rejected.

63 At paragraph 182 of the contested judgment it is held that the fact that the disciplinary decision took into account, as constituting extenuating circumstances, the poor organization of the Parliament's financial departments and the inadequacy of the staff and material resources at that time cannot be regarded as inconsistent with the affirmation of the applicant's obligation to administer the credit payments in a proper manner.

64 The applicant claims that the Court of First Instance had no legal basis for its finding that there was no inconsistency in taking those matters into account as extenuating circumstances, but nevertheless criticizing him for having failed to administer the credit payments in a proper manner.

65 The reasoning of the contested judgment is not vitiated by an error, because there is no contradiction between the fact that the matters indicated above are regarded as extenuating circumstances but not as circumstances which could relieve the applicant of his obligation to administer the credit payments in a proper manner. Consequently, the applicant's plea must be rejected.

66 The Court of First Instance also states (at paragraph 182) that the same circumstances (poor organization, inadequacy of resources) can also not amount to

justification for the purposes of the present complaint in so far as the delay established in the recording of the two cheques in question was accompanied by a catalogue of other failings at the time of their encashment.

67 The applicant claims that the Court of First Instance was required to set out the other failings in question. Furthermore, if it is referring to the alleged lack of specific and valid justification, the applicant considers that he has already rebutted that complaint.

68 On that point it should be observed that at paragraph 181 of the contested judgment the Court of First Instance exhaustively lists the complaints other than the 'non-immediate entry in the accounts' of the two cheques which were made against the applicant in the context of the encashment of the cheques and which, according to the Court of First Instance have not been contested by the applicant. Consequently, the structure of the Court's reasoning enables the 'other failings' to which it refers in paragraph 182 of the contested judgment to be identified.

69 Accordingly, that plea must be rejected.

70 In the same paragraph of the contested judgment the Court of First Instance finds that the applicant's senior position in the financial division precludes him from relying on material difficulties which may have existed at a particular time in order to secure release from all liability.

71 The applicant claims that such an assertion by the Court of First Instance is incompatible with the fact that proceedings have not been initiated against other officials whose seniority is greater than his, such as the financial controller, even though they were implicated, in particular by the Court of Auditors' special report relating to the delegates' account.

72 Since the applicant's plea is directed against a finding of fact made by the Court of First Instance, it must be declared inadmissible.

73 With regard to the applicant's argument that it was the administrator of advance funds who was responsible for making accounting entries in respect of the two cheques in question, because the cheques were drawn on the bank account of an advance funds office, the Court of First Instance refers to the considerations which it set out regarding the previous complaint (concerning the opening of the interest-bearing account) and adds that the applicant was much more extensively implicated in the failures surrounding the encashment of the two cheques than in those which related the opening of the account (paragraph 183).

74 The applicant criticizes those considerations and, with regard to the (in his view, exclusive) responsibility of the administrator of advance funds, he refers to the arguments submitted in the context of the complaint regarding the opening of the interest-bearing account. Moreover, he claims that the reasoning regarding his implication in the failures surrounding the encashment of the two cheques is inadequate given the failure of the Court of First Instance to indicate how that implication could have had any effect at all on the management responsibilities of the administrator of advance funds.

75 In so far as the applicant's plea concerns the demarcation of his responsibility from that of the administrator of advance funds, that plea has been considered and rejected in the context of the complaint relating to the opening of the interest-bearing account. The remainder of that plea must be declared inadmissible, because it is directed against a finding of fact by the Court of First Instance.

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

76 In view of the manner in which the pleas in the appeal are presented, the following paragraphs from the contested judgment should be noted:

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

196. So far as the first question is concerned, it must be pointed out that the appointing authority gave reasons for the conclusion reached in its disciplinary decision by relying on the following findings. The balance of the "Belgian franc cash fund" account at the end of the 1981 financial year corresponded to the amount of the balance indicated on the "Belgian franc cash fund" accounting form at the time of the examination carried out by the Court of Auditors on 18 March 1982. The Parliament's accounting books show that an entry for BFR 4 136 125, representing the total amount in Belgian francs of the two cheques drawn on the Midland Bank, was made on 28 February 1982. The Court of Auditors does not believe that that entry could have been made on 28 February 1982 in view of the fact that it was not found during the examination of the members' cash office carried out in March 1982. That entry revealed a discrepancy between, on the one hand, the "accounting forms — Midland Bank" and "Belgian franc cash fund" accounts and, on the other, the cash book which accompanies liquid assets in the safe. This discrepancy amounts to a cash office deficit of the same extent, that is to say, BFR 4 136 125, the existence of which was confirmed by the Court of Auditors, internal investigations by the Parliament and by the Parliament's decision of 11 July 1986 granting a discharge for the 1982 financial year. In the letter which he sent to the President of the Parliament on 30 March 1982, the applicant admitted failing to record in the accounts expenditure of BFR 4 121 573. In his capacity

as accounting officer required to justify every transaction in the cash office, the applicant failed to produce any supporting document for the payment of an amount equivalent to that of the deficit in the cash office and also failed to explain the origin of that deficit.

[...]

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

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

202. In the alternative, it should be pointed out, as is mentioned in the disciplinary decision, that the applicant admitted, in his note of 30 March 1982 addressed to the President of the Parliament, that he had failed to enter in the accounts expenditure

of an amount (BFR 4 121 573) approximately equivalent to the face value of the two cheques and requested that this situation be placed on a proper footing through the adoption of an expenses order. Even if the applicant's argument that this deficit had nothing to do with the encashment of the two cheques were accepted, the conclusion to be drawn would still be the same given that the applicant was unable throughout the disciplinary proceedings to identify the supporting documents for the amount in question. The Court of First Instance cannot accept as adequate the applicant's general allegation that the difference identified was attributable to a structural discrepancy inherent in the accounting system in force in the Parliament at the material time.

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

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

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

77 The applicant states, in vague and general terms, that the reasoning adopted by the Court of First Instance is not permissible in law and that it is, as the case may be, wrong in law or in fact. Moreover, he pleads that there was a failure to provide legal reasons for the decision which amounted to a defect in the reasoning of the judgment; he also claims that the rights of the defence were not observed.

78 The pleas put forward in specific terms by the applicant will be considered below, to the extent that they are relevant.

79 With regard to paragraph 195 of the contested judgment, the applicant claims that the first question is wrongly framed in so far as it takes as established from the outset what was required to be established, namely that there was a deficit of BFR 4 100 000 recorded in the member's cash office, for which supporting documentation was lacking.

80 That plea must be rejected. It is apparent from the contested judgment as a whole that the Court of First Instance considered whether the appointing authority was wrong in finding that such a deficit existed.

81 The applicant then claims, with regard to the second question set out in paragraph 195, that the Court of First Instance failed to take into account the responsibility of any other persons, in particular that of the authorizing officer.

82 That plea must be rejected because the applicant gives no indication of the reason for which the alleged omission ought to lead to the annulment of a judgment concerning his own responsibility.

83 The applicant puts forward various pleas with regard to paragraph 196 of the contested judgment.

84 Those pleas must be rejected on the grounds that they are irrelevant, since paragraph 196 merely sets out the reasoning of the appointing authority's decision contested before the Court of First Instance, and is not a finding or a legal appraisal by that court.

85 The applicant also contests the findings made by the Court of First Instance at paragraph 200 of the contested judgment. In particular, he states that the link between the appearance of the 'deficit' of BFR 4 100 000 and the encashment of the two cheques is refuted by the Parliament itself, which points out that the complaint against the applicant is that he failed to retain supporting documents and not that he used the two cheques to make good the deficit (paragraph 192 of the judgment, *in fine*).

86 That plea must be declared inadmissible, because through various arguments it calls into question the findings of fact made by the Court of First Instance.

87 The applicant also claims, again with regard to paragraph 200 of the contested judgment, that the Court of First Instance was not entitled to conclude as a matter of law, in particular on the basis of the opinions delivered by the Court of Auditors in July 1982 and 1985, that the origin of the 'deficit' had been established. One of the recitals in the preamble to the Parliament's decision of 11 July 1986 relating to the discharge for the 1982 financial year states that 'the difference between the cash office and the general accounts ... has not been clearly explained'. At the very least the Court of First Instance ought to have indicated the reasons for which that decision by the Parliament did not have to be taken into consideration. Finally, the applicant claims that the Court of First Instance could not hold that the link between the appearance of the 'deficit' and the encashment of the two cheques had been established or consider 'light to have been cast on the background', since the

applicant and his successor had been treated in the same way by the Parliament itself with regard to the release and final discharge for the 1982 accounting year.

88 Since those pleas are directed against findings of fact made by the Court of First Instance, they must be declared inadmissible.

89 The applicant also claims that the same conclusion reached by the Court of First Instance at paragraph 201 of the contested judgment is wrong, because he has shown that the Court of First Instance was wrong in concluding that there was link between the 'deficit' and the encashment of the two cheques.

90 That plea must also be declared inadmissible because it calls into question a finding of fact by the Court of First Instance.

91 The applicant also claims that the conclusion by the Court of First Instance (paragraph 201 of the contested judgment) is wrong, because in the circumstances of the present case the Court of First Instance could not lawfully conclude that the applicant had failed, as alleged, to prove the matter at issue, because he was not granted free access to the accounts and, moreover, his supplementary request for a report by an expert appointed by the Court of First Instance was rejected. He argues that the Court of First Instance therefore failed to observe his rights of defence.

92 The plea based on the alleged refusal to grant free access to the accounts has already been declared inadmissible (see paragraph 38 above). With regard to the additional allegation concerning the rejection by the Court of First Instance of the request that it appoint an expert, the applicant puts forward a specific argument

regarding that section of the contested judgment, which is considered below (see paragraph 121 et seq.).

93 The applicant then puts forward a number of pleas directed against the findings of the Court of First Instance set out in paragraph 202 of the contested judgment.

94 In paragraph 202 the Court of First Instance sets out an alternative line of reasoning. Since the applicant's pleas contesting the principal line of reasoning have been rejected, there is no need to consider those contesting the alternative reasoning.

95 The applicant claims that paragraph 203 of the contested judgment is vitiated by a defect in its reasoning, because, contrary to what is stated by the Court of First Instance, the supporting documents relating to the encashment of the two cheques existed and were, in any event, retained until 30 April 1982, the date on which the applicant was transferred; that is not disputed and is demonstrated by the documents before the Court. The missing supporting documents are the very ones which could justify the 'deficit' in the cash office.

96 The error to which the applicant points is simply a drafting error, as is apparent from a comparison between the wording used in paragraph 203 and that employed in paragraph 195, in which the Court of First Instance sets out the questions with which it wishes to deal in the following paragraphs. A reading of paragraph 195 shows that the Court of First Instance links the lack of supporting documents to the deficit of BFR 4 100 000 and not to the transaction by which those two cheques were encashed. In those circumstances, the drafting error cannot be regarded as an error of reasoning which could justify the annulment of the contested judgment on that point (see, to that effect, with regard to regulations, the

judgment of the Court of Justice in Case C-27/90 *SITPA* v *ONIFLOHR* [1991] ECR I-133, paragraph 13).

97 The applicant claims that paragraph 204 of the contested judgment is vitiated by an error of reasoning, because (a) primarily, his alleged involvement in the encashment of the two cheques cannot be connected in any way with the obligation to 'take proper care of the Parliament's assets', because the supporting documents relating to that transaction are not missing, (b) in the alternative, that involvement has no bearing on the obligation to take proper care of the Parliament's assets, and (c) in the further alternative, the Court of First Instance itself states (at paragraph 203) that in this case the obligation to retain supporting documents rests on the administrator of advance funds, the accounting officer having a duty to issue instructions, and the Court of First Instance does not show that that duty has been infringed.

98 In view of the finding made in paragraph 96 above, the applicant's first argument has become irrelevant. As to the arguments put forward in the alternative and the further alternative, it should be pointed out first of all that the statement in paragraph 204 of the contested judgment that the applicant was personally involved in the encashment of the two cheques 'in view of the fact that he ... according to his own statements, himself placed the cash ... in the Parliament's safe' is only an argument which the Court of First Instance bases on the applicant's own statements, and does not indicate that the Court considers them to be correct. On the contrary, the Court of First Instance has already held in substance, at paragraph 201, that the encashment of the two cheques drawn on the Midland Bank was the reason for the deficit found.

99 In the light of that clarification, the point underlying paragraph 204 of the contested judgment is that the applicant should have been able to explain what had become of the missing amount, since he was personally involved in the encashment

of the cheques which caused the deficit, and that in the absence of such an explanation, he had to be considered as jointly responsible for the absence of supporting documentation for that amount.

100 The applicant claims that the Court of First Instance cannot hold him to be jointly responsible for the lack of supporting documents in respect of the missing amount on the ground that he was involved in the encashment of the two cheques, since that involvement is not connected with the lack of supporting documents.

101 In view of the reasoning set out in paragraph 204 of the contested judgment, as explained above (paragraph 99), the applicant's plea is directed against a finding of fact by the Court of First Instance and must therefore be rejected as inadmissible.

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

102 Article 71 of the Financial Regulation specifies the provisions of the Staff Regulations (Articles 86 to 89 in particular) in accordance with which the liability to payment of compensation and disciplinary action of authorizing officers, financial controllers, accounting officers, assistant accounting officers and administrators of advance funds may be determined. The content of Article 86 of the Staff Regulations and Article 70 of the Financial Regulation has already been noted at paragraph 42 above.

103 In the contested judgment the Court of First Instance states that the matters alleged against the applicant amount to serious negligence within the meaning of Article 70(1) of the Financial Regulation. It considers that the irregularities surrounding the account in question with the Midland Bank in London, the failure to

enter or the late entry of certain transactions relating to the encashment of the two cheques, and the failure to comply with the obligation to effect expenditure only on presentation of proper supporting document and to ensure their retention, all complaints which the Court of First Instance held to be well founded, constitute negligence on the applicant's part which is all the more serious because he, as accounting officer, held the most senior position in the accounts administration of the Parliament (paragraph 211).

104 The applicant claims that the reasoning based on the validity of the complaints made against him is not legally justified, if it is accepted that the reasoning leading to the finding of their validity is unlawful.

105 The pleas put forward by the applicant contesting the reasoning in the contested judgment on the basis of which the complaints made against him were held to be well founded have all been rejected above. Moreover, the Court's characterization of the irregularities and failures committed as amounting to serious negligence within the meaning of Article 70(1) of the Financial Regulation is not unlawful.

106 The applicant also claims that the reasoning based on the fact that he 'held the most senior position in the accounts administration' contradicts the previous finding that, as far as the accounts of the office of advance funds was concerned, his obligation was not to administer, but to supervise and issue instructions; furthermore, the Court of First Instance fails to take into account the responsibility of the financial controller for the administrator of advance funds, which is parallel to that of the accounting officer.

107 The reasoning contested by the applicant is supplementary in nature and is not necessary for the purpose of characterizing his conduct. In any event, there is no inconsistency in the contested judgment, because the meaning of the passage cited is not that the position held by the applicant was one which involved an obligation to administer, but that it was a position of fundamental importance, and therefore with increased responsibility in the functioning of the accounting system (see also paragraph 222 of the contested judgment). The plea must therefore be rejected.

108 Finally, the applicant considers that the Court of First Instance failed to answer his arguments based on the numerous warnings given to him and the poor general organization of the Parliament's financial services and the inadequacy of resources.

109 While those factors could possibly influence the appointing authority's choice of the sanction to be imposed, they were not of such a nature as to have a bearing on the characterization of his conduct by the Court of First Instance. That plea must therefore be rejected.

110 It is held in the contested judgment that the difference between the treatment of the administrator of advance funds and that of the accounting officer, that is to say the applicant himself, cannot have any bearing on the present case in the light of the principle that every set of disciplinary proceedings is independent, the principles of equality, equity and the impartial administration of justice having to reconcile themselves with the observance of that principle (paragraph 212).

111 The applicant claims that the Court of First Instance fails to take into account the lack of any disciplinary proceedings against any other persons who might be responsible such as, in particular, the financial controller. He considers that the principle that each set of disciplinary proceedings is independent cannot be used as the basis for justifying that difference. In any event, the Court of First Instance fails to indicate how the general principles referred to can be reconciled with the treatment — which is so diametrically opposed to those principles — of the persons who might be responsible.

112 The plea put forward by the applicant is based on the premise that there were other persons responsible and that it was possible for the Court of First Instance to consider and make a finding regarding the responsibility of those persons, and even to call into question the acquittal of the administrator of advance funds following the disciplinary proceedings against him. Since the disciplinary proceedings leading to the decision of 18 January 1988 concern only the applicant, the principle that every set of disciplinary proceedings is independent prevented the Court of First Instance from proceeding in the manner suggested by the applicant. Accordingly, that plea must be rejected as unfounded.

113 Referring to the rejection by the Court of First Instance of his plea based on a misuse of powers (paragraphs 213 and 214), the applicant states that he leaves it to the judgment of the Court of Justice to consider whether, having regard to the arguments submitted by him, the Court of First Instance has exceeded the limits of its power of appraisal.

114 That statement cannot be regarded as a plea made in the appeal, since the applicant does not refer to any specific error in the reasoning of the Court of First Instance.

115 In the contested judgment, the Court of First Instance points out that the Court of Justice has consistently held that the Court cannot substitute its own judgment for that of the appointing authority except in the case of a manifest error or misuse of powers (paragraph 220), and that since the Staff Regulations do not specify any fixed relationship between the disciplinary measures provided for and the various types of failures by officials to comply with their obligations, the determination of the penalty to be imposed in each individual case is therefore based on a comprehensive appraisal of all the particular facts and circumstances peculiar to the case (paragraph 221).

116 It continues its reasoning as follows:

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

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

117 The applicant claims that the reasoning in paragraph 222 of the contested judgment is not permissible as a matter of law. In particular, the Court of First Instance does not answer the arguments specifically expounded in that regard in his reply, in which he refers to the formal nature of the complaints made against him and the existence of wide-ranging mitigating circumstances.

118 The plea must be rejected. As is apparent from the contested judgment, the Court of First Instance took into account the arguments put forward by the applicant.

119 The applicant also claims that the reasoning based on the fact that he was the person with prime responsibility for the accounting division is incompatible with what the Court of First Instance acknowledged (at paragraph 203) with regard to the administrator of advance funds; moreover, it is incorrect, because it is common ground and not disputed that the accounts in question in this case are those of the office of advance funds.

120 That plea must be rejected. The argument that the accounts in question are those of the office of advance funds has already been rejected above (see paragraphs 54, 55, 74, 75 and 97 to 99). At paragraphs 203 and 204 of the contested judgment, the Court of First Instance, while referring to the obligations of the administrator of advance funds, also finds that the applicant has failed to perform his own obligations.

The refusal by the Court of First Instance to appoint a committee of experts

121 The Court of First Instance rejected the applicant's alternative request that it appoint a committee of experts. After stating that the purpose of the experts' evidence requested (as explained by the applicant during the hearing) would be to deliver an opinion on whether the third charge (the lack of supporting documents for an amount of BFR 4 100 000) was well founded, and after pointing out that under Article 45(1) of the Rules of Procedure it was for itself to assess whether such a measure of inquiry was appropriate, the Court of First Instance states as follows:

'228. In the present case, it follows from all the documents on the file, as analysed in the course of the Court's examination into the justification of the charge based on the failure to present supporting documentation (see paragraphs 195 to 202 above), that the measure of inquiry sought by the applicant would serve no useful function for the Court, which considers that it has received sufficient information from the entire course of the proceedings, by reason of the fact that the applicant has failed to comment on the report summarizing the state of the accounts on 30 April 1982 (which was drawn up by the Parliament at the request of the Court) and in view of the long period which has elapsed since the matters in dispute. For those reasons, the alternative forms of order sought must also be rejected.'

122 The applicant claims that by rejecting that request the Court of First Instance exceeded the reasonable limits of its discretion and based itself on grounds which were not permissible in law. In particular, the reasoning founded on the justified nature of the charge based on the failure to present supporting documentation is not permissible in law, having regard to the confusion displayed by the Court of First Instance, when considering that charge, between the supporting documents relating to the encashment of the cheques at issue (which are not missing) and the documents supporting expenditure of an amount more or less the same as that of the two cheques (which are the only documents at issue). He argues that the reasoning based on the applicant's failure to comment on the report summarizing the state of the accounts on 30 April 1982 is factually incorrect. In that respect, the applicant refers to the relevant passage in his reply lodged with the Court of First Instance, in which he states in particular that the report in question cannot be adduced against him because it was drawn up by the administration at a later date

and without his knowledge. The applicant also claims that the reasoning based on the long period elapsed since the matters in question is also not permissible in law and, moreover, is an infringement of the rights of the defence. Finally, the Court of First Instance failed to take into consideration the fact that the applicant has never been able to conduct the necessary investigations or that there was no statement of accounts drawn up between himself and his successor at the time of his transfer.

123 The reasoning in the contested judgment is based on the finding that 'the measure of inquiry sought by the applicant would serve no useful function for the Court, which considers that it has received sufficient information from the entire course of the proceedings'. The matters referred to in paragraph 228 are additional grounds which are not the essential basis for the decision. The pleas put forward by the applicant, directed against those additional grounds, do not call that finding into question. They must therefore be rejected as inadmissible.

124 It follows that the appeal must be rejected.

Costs

125 Article 70 of the Rules of Procedure provides that in proceedings between the Communities and their servants the institutions are to bear their own costs. However, by virtue of the second paragraph of Article 122 of those rules, Article 70 is not to apply to appeals brought by officials or other servants of the institutions. In such proceedings Article 69(2) of the Rules of Procedure should therefore be applied, which provides that the unsuccessful party is to be ordered to pay the costs. In this case the applicant has been unsuccessful; he must therefore be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the applicant to pay the costs.

Mancini Diez de Velasco Kakouris

Schockweiler Murray

Delivered in open court in Luxembourg on 2 June 1994.

R. Grass
Registrar

G. F. Mancini
President of the Sixth Chamber