JUDGMENT OF THE COURT (SECOND CHAMBER)
30 MAY 1973 [1]

Robert De Greef
v Commission of the European Communities

Case 46/72

1. *Officials — Appointing Authority — Powers — Exercise — Formalities — Division of functions — Deviations therefrom — Sub-delegation of powers — Admissibility — Conditions*
   (Decision of the Commission of 26 February, 1971, Article 5)
2. *Officials — Disciplinary proceedings — Procedure — Documents — Signature by the Chairman of the Disciplinary Board — Admissibility*
   (Staff Regulations, Annex IX, Articles 8 and 9)
3. *Officials — Disciplinary proceedings — Disciplinary measures — Gravity of acts alleged — Disciplinary Authority — Power of assessment — Court of Justice — Powers of interfering — Extent*
   (Staff Regulations, Article 87 and 91)

1. The sub-delegation of powers or deviation from standards laid down by the Commission in its Decision of 26 February 1971, for the division of functions within the service, cannot render void an act done by the administration, unless it involves the possibility of adversely affecting one of the guarantees given to officials by the Staff Regulations or the principles of good administration in staff management.
2. The signature by the Chairman of the Disciplinary Board of various documents relating to the disciplinary procedure merely constitutes the normal exercise of his prerogatives, which include the power of certifying the regularity of the procedure and of authenticating the Board's documents.
3. Once the truth of the fact alleged against the official has been established, the choice of disciplinary measure is a matter for the disciplinary authority. It is not a matter for the Court to substitute its own judgment for that of the disciplinary authority, except in cases of obvious disproportion or abuse of power.

In Case 46/72

ROBERT DE GREEF, a former official of the Commission of the European Communities, residing at St. Josse-ten-Noode, Brussels, represented by Maître

1 — Language of the Case: French.

Philippe Nimal, advocate of the Brussels Court of Appeal, with an address for service at Luxembourg at the chambers of Maître Jacques Mersch, 11a boulevard Prince Henri,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Mr Louis de la Fontaine, its legal adviser, as agent, with an address for service in Luxembourg at the chambers of its legal adviser Mr Emile Reuter, 4 boulevard Royal,

defendant,

Application for annulment of the decision of suspension of the applicant from his post, of the opinion of the Disciplinary Board in respect of him, of the decision of removal of the applicant from his post, and for damages.

THE COURT (Second Chamber)

composed of: P. Pescatore (Rapporteur), President of Chamber, M. Sørensen and A. J. Mackenzie Stuart, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of facts

Mr Robert De Greef, a Belgian national, entered the service of the Commission of the EEC on 25 September 1959, as an usher.

A decision to cancel his contract of employment, dated 28 June 1963 having been annulled by judgment of the Court of Justice (Second Chamber) of 1 July 1964 (Case 80/63, Rec. 1964, p. 767), Mr De Greef resumed his functions of usher-receptionist with the Directorate of Property and Internal Services, (Conference Service) on 13 July 1964.

He was appointed to Grade D 2, step 1, as from 21 January 1965.

On 9 December 1971 an official in the Personnel Division addressed a report to the Director of Personnel of the Commission concerning the circumstances surrounding the entry into

service of a temporary member of the staff.

It appeared from this report that Mr De Greef had been an accomplice of another official of the Commission, Mr. Giuseppe Drescig, who had extorted a sum of money from this person in order to enable her to enter the service of the Commission.

On 20 December 1971, an official of the Security Department of the Commission prepared for the Directorate of that department a report on the enquiries which he had made in relation to the activities of Mr De Greef and Mr Drescig.

On 21 December 1971, the Director of the Security Department forwarded this report to the Director-General of Personnel and Administration.

In his accompanying memorandum he underlined that in his opinion Mr De Greef had been guilty of the offence of participation in fraud under aggravating circumstances, resulting from the fact that he was an official of the Commission.

On 4 January 1972, the head of the Individual Rights Division of the Commission, in execution of an authority conferred upon him on 22 December 1971 by the Director of Personnel, proceeded to a hearing of Mr De Greef pursuant to Article 87 of the Staff Regulations.

On 11 January 1972, the Director of Personnel in his capacity of appointing authority referred the case of Mr De Greef to the Disciplinary Board pursuant to Article 1, Annex IX of the Staff Regulations.

By decision of the Director of Personnel dated 11 January 1972 and communicated to him on the same date, Mr De Greef was suspended from his duties, one half of his basic salary being withheld from 12 January 1972 pursuant to Article 88 of the Staff Regulations.

The Disciplinary Board met on 28 and 29 February, and 6 and 7 March 1972.

In the course of these meetings, it heard in particular Mr De Greef (assisted by his lawyer), Mr Drescig and several witnesses.

At its last meeting on 7 March 1972, the Disciplinary Board issued a reasoned opinion in which it expressed the view that the correct way of dealing with the matter would be to apply to Mr De Greef the penalty of removal from his post without reduction or withdrawal of his entitlement to retirement pension.

This opinion was on 16 March 1972 forwarded to the Director of Personnel.

Mr De Greef was on 5 April 1972 heard by the Commission's Director-General of Personnel and Administration as provided for in the third paragraph of Article 7, Annex IX, of the Staff Regulations.

By decision dated 14 April 1972, which was communicated to the party concerned on 15 April 1972, the Director-General of Personnel and Administration found in particular that Mr De Greef had made an offer to a person outside the Commission to assist her in entering its services; that he had approached Mr Drescig to request his help in this undertaking; that after having reach an agreement with Mr Drescig to this effect, he had communicated to the person concerned the conditions allegedly necessary to enter the services of the Commission, fixed by Mr Drescig as the payment of a sum of BF 12 000; that for this purpose he had arranged a meeting between himself, Mr Drescig and the applicant; that in the course of this meeting he had lent to Mr Drescig, in the presence of the person concerned, the sum of BF 12 000, a repayment of BF 3 000 having subsequently taken place; that Mr De Greef thus abused his status of an official by making a person outside the Commission believe, that on payment of a sum of money she could be engaged by the Commission; he thus caused great damage to the good name of the Commission; the argument that he had only intended to assist the person concerned to enter the employment of the Commission was not of a kind to

mitigate the gravity of the fact alleged against him; that these constituted grave breaches of the duty of an official as provided for by the Staff Regulations, in particular Articles 11 (1) and 12 (1).

Consequently the Director-General of Personnel and Administration decided to dismiss Mr De Greef without reduction or loss of his entitlement to retirement pension with effect from 1 May 1972.

II — Summary of the procedure

On 11 July 1972 Mr De Greef brought the present action for annulment and damages.

The written procedure followed the normal course.

By Order dated 27 October 1972 the Court (Second Chamber) upon report of the Judge-Rapporteur and having heard the Advocate-General, decided — applying Articles 43 and 95 of the Rules of Procedure — to join for the purposes of the oral proceedings the present action to that lodged under No 49/72 by Mr Drescig.

The Court (Second Chamber), having heard the Advocate-General, decided to open the oral procedure without any preparatory enquiry.

The oral observations of the parties were made at the hearing of 22 March 1973.

The Advocate-General delivered his opinion at the hearing of 5 April 1973.

III — Submissions of the parties

The *applicant* submitted that the Court should

— annul the decision taken by the Director of Personnel on 11 January 1972, the opinion of the Disciplinary Board pronounced on 7 March 1972 and the decision of 14 April 1972 dismissing him;

— order the Commission to pay him the sum of BF 30 000 by way of damages and interest;

— order the Commission to pay the costs of the action.

The *Commission* submitted that the Court should

— dismiss the application as unfounded;

— order the applicant to pay the costs.

IV — Pleas and arguments of the parties

The pleas and arguments of the parties may be summarized as follows:

A — As regards admissibility

The *Commission* does not in principle dispute the admissibility of the appeal, notwithstanding the fact that it was not proceeded by a complaint, as required by Article 91 (2) of the new Staff Regulations that came into force on 1 July 1972. It is a fact that the Regulation of the Council No 1473/72 of 30 June 1972, changing the Staff Regulations, was apparently only published on 16 July 1972, i.e. subsequent to the lodging of the appeal.

Nevertheless, it is right to underline that the appeal is not directed solely against the opinion of the Disciplinary Board and the decision of the dismissal, but equally against the decision to suspend of 11 January 1972. Now, this decision is not a simple preparatory act, but an autonomous decision capable of being the subject matter of a complaint; accordingly it ought to have been the subject of a complaint or of an appeal before 12 April 1972. Since this was not done, the appeal is inadmissible in so far as it is against the decision to suspend the applicant.

The argument of inadmissibility is one of public interest and the failure by one

party to raise such a plea would not absolve the Court from examining it. Besides, in the event, the annulment of the decision of dismissal and the reinstatement of the applicant would not have the consequence of a reimbursement of moneys withheld as a result of the suspension. This decision, which can no longer be the subject matter of a specific order of annulment by the Court, would remain in force. One would not be faced with the case provided for in Article 88 of the Regulations; it would have been decided upon within the period of four months and the annulment of the decision of dismissal would start a new period running.

The *applicant* argues that in the event of annulment of the decision to dismiss, the Commission ought to reinstate him with all consequences in law following from this. This annulment would have the result that no decision upon his status would have occurred within a period of four months from the date when the decision to suspend had taken effect and, applying Article 88 (4) of the Regulations, he would not only have to be paid again the full amount of his remuneration but that he would also be entitled to a reimbursement of the amounts deducted on account thereof. The arguments raised by the Commission would in these circumstances have no practical effect on the outcome of the case.

Besides, the Court of Justice has found (Case 16/67, Labeyrie v Commission, Judgment of 11 July 1968, Rec. 1968, p. 431) that in the case of provisional or conservatory decisions, the official may appeal, either immediately or at the end of the case.

B — As regards the main issues

1. Infringement of Article 5 of the Commissions decision of 26 February 1971 and of the second paragraph of Article 87 of the Staff Regulations.

The *applicant* stresses that under the provisions of the second paragraph of Article 87 of the Staff Regulations, disciplinary proceedings shall be iniated by the appointing authority 'after hearing the official concerned'. He argues that the Commission's Decision of 26 February 1971, relating to the exercise of powers conferred by the Staff Regulations upon the appointing authority, provides by its Article 5 that as regards officials in categories C and D, the powers delegated upon the appointing authority by the second paragraph of Article 87, second sentence, (prior hearing of the official concerned and the initiation of the disciplinary proceedings) are exercised by the Director of Personnel. However, the Director of Personnel had authorized another official to conduct the prior hearing of the applicant. Such a delegation of powers is illegal in that it is clearly contrary to the express wording of the Commission's Decision itself, by which it is bound. The Decision on 26 February 1971 conferred upon an official of high rank the authority to proceed with the hearing preceding the initiation of disciplinary proceedings, so as to avoid such an important action being taken by junior officials or of admissions or alleged admissions being obtained in doubtful circumstances. In this particular case the infringement of the Decision does not therefore constitute a mere formal effect but a defect in procedure; in a disciplinary matter this amounts to a substantial defect, tainting the whole procedure with illegality.

The *Commission* maintains that from the very terms used by the second paragraph of Article 87 of the Staff Regulations, as well as the relationship between the text of this provision with that of the third paragraph of Article 7 Annex IX, it follows that the hearing prior to the initiation of the disciplinary proceedings does not have to be undertaken by the appointing authority itself. But the Court has recognized this principle in its Judgment of 11 July 1968

(Case 35/67, *Van Eick* v *Commission,* Rec. 1968, p. 481); this is likewise admitted by the applicant.

As regards the Commission's Decision of 26 February 1971, this states in its first Article that the object of subsequent articles is to lay down the manner of exercising the powers conferred under the Staff Regulations upon the appointing authority. Certain acts are the preserve of this authority and others can originate with the administration. The prior hearing envisaged by the second paragraph of Article 87 is not the preserve of the appointing authority; Article 5 of the Decision of 26 February 1971 has no other purpose than to confer on the Director of Personnel the power to decide whether or not there is a case for proceeding to a prior hearing, but that this in no way imposes an obligation on him to conduct the hearing himself.

This interpretation is in conformity with the Judgment of the Court in Joined Cased 27 and 30/60 (Fonzi v Commission, Judgment of 8 July 1965, p. 616).

In entrusting the prior hearing of the applicant to a Head of Division, an experienced official who for many years has administered the Individual Rights Division, whom by reason of his seniority was called upon to replace him in case he was not available, the Director of Personnel did not either disregard the wording or the spirit of the provision, the infringement of which is wrongly alleged.

In any event, the infringement of the second paragraph of Article 87 does not constitute a substantial defect, affecting the legality of either the opinion of the Disciplinary Board or the decision of dismissal.

2. Infringement of the rights of the defence

The *applicant* states that the official having the function of deciding upon the initiation of disciplinary proceedings, i.e. the Director of Personnel, only has the right to base himself upon matters arising from a preliminary hearing before himself. In the present case, not having heard the applicant and the latter not having been able to put his point of view before the competent authority, the Director of Personnel in fact based himself on hearings before officials not qualified in this respect. The officials of the Security Department have no authority under the Staff Regulations to collect statements in a disciplinary matter and the declarations made to them ought to be treated as non-existing; as regards the official appointed by the Director of Personnel to proceed to the prior hearing of the applicant, he purely and simply adopted the statements and reports of the hearings of the said officials of the Security Department.

Besides, this official used terms from criminal law in relation to the facts alleged against the applicant and which were contained in these reports; he thus exceeded his authority and usurped the power which only belongs to a judge in criminal jurisdiction. These terms were again used in the report directed to the Disciplinary Board by the Director of Personnel; constantly repeated, they were of a nature to have a decisive influence on both the Disciplinary Board as well as on the official who took the decision of dismissal.

Accordingly the defects in the preliminary hearing of the applicant by the competent official and his hearing before unqualified officials weighed heavily against him all through the course of the disciplinary procedure.

The disciplinary procedure was invalidated from the start. The opinion of the Disciplinary Board of 7 March 1972 and the Decision of the removal of the applicant from his post of 14 April 1972 ought to be annulled; the Decision of suspension of 11 January 1972 ought to be annuled for the same reasons.

The *Commission* maintains that the report of the security office was the

result of an administrative enquiry which preceded any disciplinary proceedings; that took place at the request of the Directorate of Personnel; this report was added by the Director of Personnel to his own report. These two reports formed part of the file submitted at the deliberations of the Disciplinary Board and the appointing authority; they had to be communicated to the applicant, who all through the procedure had every possibility of putting forward his own views.

As regards their qualifications, it is right to stress in the first place that had the applicant been called upon to deal with the material issues of these facts, his statements would have been no different; the Director of Personnel therefore had no alternative but to put the matter before the Disciplinary Board.

Besides, all through the disciplinary procedure the applicant had enjoyed every latitude in presenting his defence.

Finally, the appraisal of the facts did not exist in law and the terms criticized did not appear in either the opinion of the Disciplinary Board or in the decision of removal of the applicant from his post; these only dealt with the facts and examined if those facts constituted a breach of duty capable of resulting in a disciplinary measure.

3. Infringement of Articles 8 and 9 of Annex IX of the Regulations

The *applicant* points out that under the provisions of Article 4 of Annex II of the Regulations, the Disciplinary Board is made up of a chairman and four members; according to Article 8 of Annex IX the chairman shall not take part in the decisions of the Board, save on procedural questions or in case of equality of votes; finally Article 9 of this Annex provides that the reasoned opinion which the Disciplinary Board is called upon to deliver by a majority vote as regards the disciplinary measure which it considers appropriate to the facts complained of, shall be signed by all members of the Board.

It follows from these provisions read together, that the Regulation draws a distinction between the chairman and the members of the Disciplinary Board in that in particular the chairman is not a member of the Board and accordingly ought not to sign the reasoned opinion. The chairman's non-participation in the decisions of the board is a logical one, since the latter is composed equally of two officials put forward by the appointing authority and of two officials put forward by the Staff Committee.

In the present case, not only was the reasoned opinion of the Disciplinary Board signed by its chairman but it emerges from the minutes of the deliberations of the Board on 6 and 7 March 1972, that the chairman took an active part in the deliberations when in fact no situation existed in which the Regulations exceptionally allow him to take part.

For this reason there was a violation of the parity element in the Board's proceedings, as well as of a specific provision in the Regulations.

The *Commission* states in reply that in signing, the chairman of the Disciplinary Board did no more than authenticate the Disciplinary Board's advice; his signature could obviously not constitute proof that he had participated in the decision itself.

Articles 8 and 9 of Annex IX of the Regulations in no way prevent the chairman of the Disciplinary Board from participating in the proceedings thereof since it is his function to preside at all its meetings; he is only forbidden to take part in the decision itself by voting for or against the proposal relating to the substance of the matter, save in case of equality of votes. In the present case, since the members of the Disciplinary Board were unanimous both in regard to the proposed sanction and in regard to the reasoned opinion, the chairman would not have had to vote and did not in fact vote.

The minutes of the Board's meetings establish that the chairman in no way exceeded his powers. The arguments

founded upon the alleged infringement of Article 8 of Annex IX of the Regulations are devoid of all basis.

4. Erroneous description of the facts

The *applicant* complains that in the opinion of the Disciplinary Board and the Decision to remove him from his post his actions were regarded as criminal acts. Yet the evidence received from the Disciplinary Board showed that he had no other intention than to be helpful to a person desirous of entering the service of the Commission, without any profit motive entering into it. Accordingly, the opinion of the Disciplinary Board and the decision to remove him from his post constituted an inaccurate description of the facts to the extent that they considered the applicant had put forward the payment of a sum of money as a necessary condition precedent for entering the service of the Commission.

The *Commission* replies that in neither the opinion of the Disciplinary Board nor the decision to dismiss the applicant from his post was the term 'criminal act' used; nevertheless at these two stages the facts alleged against the applicant were assessed as grave disciplinary offences.

It was established by his own statements, confirmed by those of the interested parties and of Mr Drescig, that the applicant had in fact made the candidate believe that in order to enter the services of the Commission, it was necessary to pay a sum of BF 12 000. Neither can it be contested that this amount was paid by the applicant on behalf of the interested party to Mr Drescig. It appears from the documents on the file, when taken together, that it was rightly decided that the amount of FB 3 000 was an advance by the applicant which was ultimately repaid to him.

Accordingly both the opinion of the Disciplinary Board as well as the decision for his removal rightly stated that the fact found proved against the applicant constituted a grave disciplinary offence.

5. The gravity of the disciplinary measure

The *applicant* considers that the disciplinary measure imposed upon him is disproportionate to the gravity of the acts alleged against him, particularly so when one compares them with the acts alleged against Mr Drescig.

The *Commission* considers this argument to be unacceptable; it is not a matter for the Court in matters of seriousness of the disciplinary measure to substitute its own judgment for that of the appointing authority. The Court ought to restrict itself to the task of verifying whether the facts alleged are materially correct and whether in law they constitute a disciplinary offence. An obvious disproportionality between the disciplinary offence and the disciplinary measure imposed might doubtless amount to an abuse of power but such an abuse of power does not apply in the present case.

In fact the appointing authority rightly considered the facts alleged against the applicant to have been of such gravity as to justify the order of removal from his post without withdrawal of entitlement to retirement pension.

6. Damages and interest

The *applicant* considers himself entitled to claim against the Commission by way of damages and interest an amount of BF 30 000 in respect of fees due to the advocate who had assisted him in the course of the disciplinary proceedings.

The *Commission* points out that under the provisions of Article 10 of Annex IX of the Regulations, the costs incurred by the interested party in the course of disciplinary proceedings, particularly the fees due to a defending counsel are not a matter for the Community and are his responsibility in a case where disciplinary proceedings result in a Decision of removal from his post.

Only in cases of annulment of both the advice of the Disciplinary Board and of the Decision of removal from his post is it a matter for the Court to assess the amount of damages and interest.

Grounds of judgment

1 The action has as its object the annulment of the Decision of removal from his post given on 14 April 1972 by the Director-General of Personnel of the Commission, including the preliminary stages coming within the ambit of the disciplinary proceedings brought against the applicant arising out of his participation in the reprehensible activities of another official, Giuseppe Drescig (Judgment in Case 49/72 of even date) which amount to an abuse of official status, and a demand for payment from a person desiring to obtain employment with the Commission.

2 Without denying the facts leading to the disciplinary measures imposed, the applicant argued against the validity of the decision taken, by invoking arguments based upon irregularities in the disciplinary procedure, an erroneous statement of facts, and the excessive nature of the disciplinary measures imposed.

3 He furthermore applied to the Court for an order against the Commission to pay him the sum of BF 30 000 by way of damages and interest.

As regards the admissibility of the application for revocation of the preliminary Decision to suspend

4 The appeal aims not only at the revocation of the Decision of 14 April 1972 to remove him from his post, but also at all the preliminary stages, including the Decision to suspend the applicant as from 11 January 1972.

5 The Commission argues the non-admissibility of the appeal against this last mentioned measure by reason af delay.

6 In fact, according to the Commission, the suspension was not a simple preparatory stage but an independent decision which ought to have been the subject matter of an objection or of a legal appeal within the time limited.

7 This ground of appeal is only relevant in cases of revocation of the Decision to dismiss.

8 It is accordingly necessary to examine in the first place the grounds of appeal directed against this Decision.

As regards the pleas based upon disregard of the rights of the defence and inparticular the violation of Article 87 of the Staff Regulations and of the Commission's Decision of 26 February 1971

9 The applicant argues that under the terms of Article 87 of the Staff Regulations the disciplinary procedure shall be initiated by the appointing authority after hearing the official concerned.

10 Under the terms of the Commission's Decision of 26 February 1971 concerning the exercise of the powers conferred by the Regulation upon the appointing authority, the hearing, as regards officials in his category, was a matter for the Director of Personnel.

11 In disregard of this provision, the applicant was never heard by this official.

12 In fact the Director of Personnel instructed the head of the Individual Rights Division, who in turn based himself upon an enquiry conducted by officials of the Security Department of the Commission, which has no legal basis under the Staff Regulations.

13 The lack of a proper hearing weighed heavily against the applicant all through the proceedings.

14 One cannot object to the correctness of the intervention in the course of the preliminary enquiries by the Security Department which was properly set up and authorized within the ambit of the power of setting up an organization conferred on the Commission by Article 16 of the Treaty establishing a single Council and a single Commission of the European Communities.

15 As regards the formal part of the disciplinary procedure, this is under the provisions of the second paragraph of Article 87, second sentence, of the Regulations initiated by the appointing authority 'after hearing the official concerned'.

16 The Regulations do not state more fully the matters and formalities applicable to this hearing.

17 The Commission's Decision of 26 February 1971 — taken under the provisions of Article 2 of the Regulations under which each institution shall determine who within it shall exercise the powers conferred by the Regulations on the appointing authority — provides by its Article 5 that the Director of Personnel shall in regard to officials in categories C and D exercise the powers conferred on the appointing authority in regard to the preliminary hearing, provided for by the second paragraph of Article 87, second sentence, of the Regulations.

18 The general system created by this Decision, which contains a detailed enumeration of functions of very varied importance shows that one is dealing with a distribution of business within the Commission services, rather than with the conferment of rigid powers, the nonobservance of which could entail the nullity of acts done outside the limits laid down.

19 The fact that this is the nature of the Decision of 26 February 1971 is confirmed by the fact that it was published by the Commission not in the *Official Journal*, but in an information bulletin intended for the staff.

20 In these circumstances one cannot interpret this document as excluding in advance all possibility of sub-delegation by the officials appointed or of a deviation from the principles of division of functions laid down by the Commission.

21 A sub-delegation or deviation from these standards can only result in the nullity of an act done by the Administration if it is capable of affecting one of the guarantees given to officials by the Regulations or of affecting the principles of good administration in matters of staff administration.

22 In the event this was not the case, the Director-General of Personnel having entrusted the hearing to an official particularily qualified in this respect, i.e. the head of the Individual Rights Division under the Directorate General of Personnel.

23 Examination of the report prepared by this official shows that the applicant had the benefit of a thorough and impartial enquiry in the course of which the rights of the defence had been fully respected.

24 The official entrusted with the hearing did, together with the applicant, go through the details of the facts alleged in the course of the preliminary enquiries and that the applicant without reservation admitted that they were correct.

25 In these circumstances the fair nature of both the hearing and the enquiry which preceded it cannot be disputed.

26 The objections ought therefore to be rejected.

On the arguments arising from erroneous description of the facts

27 The applicant also maintained that during the whole preliminary procedure the officials carrying out the investigation had in relation to the facts alleged against him continually used terms drawn from criminal law, that is to say 'extortion' and 'fraud'.

28 These terms ought not to have been used in disciplinary proceedings and in doing so, the officials had usurped a power which only belongs to a judge in criminal law.

29 Besides, the relationship between the applicant and the person whom he had introduced to Giuseppe Drescig with a view to her entering the services of the Commission upon payment of a sum of money, was described incorrectly, even maliciously, by the officials entrusted with the preliminary enquiry, when in fact the applicant's intention was no more than to assist the person in question.

30 Nothing prevents the disciplinary authorities from using approximations to the concepts of criminal law for the purpose of defining and possibly qualifying the facts submitted for their consideration.

31 In the light of the basic separation between the disciplinary system and the criminal procedure there therefore exists no risk of confusion to the prejudice of an official who is the subject of a disciplinary procedure.

32 Besides, one cannot in any way criticize the officials entrusted with the enquiry for having speculated upon the applicant's motives, such conjectures being an integral part of any method of investigation.

33 Neither can the applicant complain of terms, even if hardly of a flattering nature, which are, objectively speaking, justified in relation to the substance of the facts.

34 The appeal ought accordingly to be rejected.

As regards the arguments based on the violation of Articles 8 and 9 of Annex IX of the Regulations

35 The applicant further cast doubt on the validity of the proceedings of the Disciplinary Board by reason of the fact that the reasoned opinion was not only signed by the chairman, but it also appeared from the minutes that the chairman had taken an active part in the proceedings, when in fact under the terms of Article 8 of Annex IX of the Regulations, the chairman of the Disciplinary Board does not take part in the decisions, save on procedural questions or in the case of equality of votes and Article 9 provides that the reasoned opinion only be signed by members of the Board.

36 Article 8 of Annex IX had as its object to permit the parity element which lies at the basis of the constitution of the Disciplinary Board to function to the fullest extent that it is possible on that basis for Boards to produce a majority.

37 Under this system the chairman is called upon to intervene with his vote only in case of equalitiy of votes and, apart from this, on procedural questions.

38 In other respects the chairman, by virtue of his office, enjoys all powers necessary for ensuring the normal function of the Disciplinary Board.

39 It appears from the minutes attached to the file that the chairman did not have reason to intervene in the decision upon the reasoned opinion since the members of the Board were able to reach unanimity on the subject.

40 The chairman's act in signing the various documents relating to the disciplinary procedure constitutes merely the normal exercise of his prerogatives, which include the power of certifying the regularity of the procedure and of authenticating the Board's documents.

41 The validity of these documents cannot therefore be affected by the fact that they bear the chairman's signature.

42 The appeal must therefore be rejected.

As regards the seriousness of the disciplinary measure

43 The applicant considers that the disciplinary measure imposed upon him — removal from his post without loss of his entitlement to retirement pension —

is disproportionate to the gravity of the facts alleged against him, particularly so if one compares them with the facts alleged against his accomplice Giuseppe Drescig.

44 The Commission considers this ground of appeal to be inadmissible bearing in mind that it is not for the Court to substitute its opinion for that of the disciplinary authority.

45 The facts alleged against the applicant having been established, the choice of appropriate disciplinary measure is a matter for the disciplinary authority.

46 The subject matter not being of a pecuniary kind, the Court cannot substitute its own assessment for that of the authority in question, except in a case of a clearly excessive measure or of an abuse of power.

47 This is not so in the present case.

48 Accordingly the complaint based on the gravity of the sanction imposed must be rejected.

Damages and interest

49 Since all the applicant's grounds of appeal have been rejected the claim for damages and interest is devoid of any basis.

Costs

50 Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party is ordered to pay the costs.

51 The applicant has failed in his action.

52 Nevertheless, under the terms of Article 70 of the Rules of Procedure, institutions shall bear their own costs in actions by officials of the Communities.

On these grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the parties;

Upon hearing the opinion of the Advocate-General;
Having regard to the Staff Regulations, especially Article 87 and Articles 7, 8 and 9 of Annex IX;
Having regard to the Protocols on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Dismisses the action.**
2. **Orders each party to pay its own costs.**

Pescatore Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 30 May 1973.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL TRABUCCHI DELIVERED ON 5 APRIL 1973 [1]

Mr President,
Members of the Court,

Two cases (Case 46/72 and Case 49/72) concerning illegal conduct of extreme seriousness are submitted for our examination and your judgment. Fortunately the Court, in its control of the disciplinary measures imposed by the Commission, does not have to examine the details of an affair which still 'male olet'; in fact, the parties concerned are not contesting the facts. And it even seems strange that in a disciplinary matter, where the facts are of pre-eminent importance, we find ourselves dealing with two cases in which the material accuracy of the

1 — Translated from the Italian.