3. Since there are no provisions in the Staff Regulations laying down special rules for determining an official's new step when he has been downgraded for disciplinary reasons, that determination is at the discretion of the appointing authority and a reduction in the step held by the official concerned in the grade which he occupied before the disciplinary measure was imposed is not to be regarded as a separate disciplinary measure.

OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 21 March 1985 *

Mr President,
Members of the Court,

A. Joined Cases 255 and 256/83, which I am to consider today, concern the legality of a disciplinary measure taken by the Commission of the European Communities against one of its officials.

In a letter of 10 September 1981 the Commission informed the applicant, a principal administrator in Grade A 5, that it had been informed that he had committed serious breaches of his obligations as an official under Articles 12 and 17 of the Staff Regulations of Officials of the European Communities. The Commission referred to two matters:

The sale of confidential documents to Theodor Trancu & Associates, Market Research and Public Relations Consultants, Milan, and

Engagement in unauthorized outside activity.

In the same letter the Commission summoned the applicant, pursuant to Article 87 of the Staff Regulations, to a hearing before one of its Directors General on 7 October 1981. The letter also contained a four-page annex setting out in detail the case against the applicant. It stated that the Commission had copies of the correspondence exchanged between the applicant and his buyer, which showed that the applicant had described the documents as confidential and difficult to obtain. The Commission regarded as aggravating circumstances the fact that the applicant could not have received the documents in the course of his official duties but must first have obtained them, the fact that he did so over a period of seven years (from September 1972 to April 1979) and the fact that he received payment.

The second allegation related to the applicant's engagement in an unauthorized activity. The applicant had on 1 September 1972 requested permission to engage in an outside activity involving an 'activité juridico-administrative, notamment traduction ou révision en franßais de textes législatifs, rapports du conseil et de l'assemblée etc.' for a 'Gruppo Saccarifero Veneto', for a monthly salary of BFR 12 000. He received further authorization

* Translated from the German.

for the same activity for the period between 25 September 1972 and 31 December 1976.

In relation to his subsequent activity he neither requested nor received authorization.

According to the Commission such an outside activity was unlawful because the applicant in fact had received payment which was considerably higher, and the activity had been full-time, causing damage to the Commission.

At the hearing on 7 October 1981 the applicant stated that the documents were disseminated by an organization named 'Meconsult', founded by a group of Italian journalists. At first it was the applicant's brother in particular who passed on the documents; after his brother's transfer to Tunisia, the applicant himself passed documents as an intermediary. No secret or confidential documents were handed over. He explained that the documents were described as 'secret or confidential' owing to journalistic practice, in which an unusual choice of words was often used.

The applicant denied the accusation that he had engaged in an outside activity on a full-time basis. He stated that his superiors had been aware of his activities outside working hours. He could only be blamed for not having applied for formal authorization in respect of a certain period.

The applicant further stated that the evidence in the Commission's possession had been collected arbitrarily by his former wife. Therefore the Commission did not have a complete set of documents. Moreover, only three documents had been submitted to him, and they were not conclusive. He could not comment on documents which the administration had in its possession but had not communicated to him. The administration was bound to submit to him any other proof, because he could only adopt a position on it once he had seen it.

On 23 November 1981 the applicant signed the draft minutes of the hearing of 7 October 1981. From 30 November 1981 to 31 January 1982, and again from 1 March 1982, he was on sick-leave. By letter of 20 January 1982 the defendant sent to him the final version of the minutes and requested him to return them signed. However, the applicant never received that letter, as he no longer lived at the address given to the defendant. He was personally handed a copy of the letter dated 20 January 1982 on 4 March 1982. The minutes were never signed.

On 11 June 1982 the defendant referred the matter to the Disciplinary Board and submitted to it the report which had been drawn up on 17 May 1982, in accordance with Article 1 of Annex IX to the Staff Regulations. In that report, the applicant was accused of the following breaches of his obligations as an official:

the sale of confidential documents,

engagement in unauthorized outside activity.

Those breaches of obligation were stated to be infringements of Articles 12 and 17 of the Staff Regulations. The report makes no mention of the accusation that the applicant had engaged in *full*-time outside activities.

On 8 July 1982 the Chairman of the Disciplinary Board forwarded to the applicant's legal representative the report and all the evidence against the applicant.

On 12 October 1982 the applicant was heard by the Disciplinary Board in the presence of his legal representative. On 3 December 1982 the Disciplinary Board delivered the reasoned opinion provided for in Article 7 of Annex IX to the Staff Regu-

lations. In that opinion, the Disciplinary Board came to the following conclusions:

On the sale of confidential documents:

The accusation that the applicant had sold confidential Commission documents was not proved, as the documents contained in the file had been approved by the Commission and published.

On the supply of documents:

The applicant had, however, been paid over a period of seven years to supply documents of the Commission and the OECD, the appearance of which was sometimes deliberately altered in order to raise their price.

On the outside activities engaged in from 1972 to 1976:

The outside activities actually engaged in by the applicant were much wider than those authorized by the Commission.

On the outside activities engaged in from 1977 to 1982:

In respect of that period, the applicant neither requested nor received authorization to engage in an outside activity.

In conclusion, the Disciplinary Board also took the following considerations into account:

(i) Throughout the period in question the applicant's staff reports were favourable both as regards his abilities and as regards his conduct in the service.

(ii) The applicant was assisted in supplying the documents by his former wife, who kept a complete file of documents, of which she sent an extract to the Commission. The applicant claimed that he did not have a complete file at his disposal for the preparation of his defence.

(iii) At the time when the applicant was engaging in an unauthorized outside activity, his superiors were aware of that activity.

In view of all the circumstances, the Disciplinary Board proposed that the disciplinary measure provided for in Article 86 (2) (e) should be taken against the applicant: he should be downgraded from Grade A 5 to Grade A 6.

On 3 January 1983, after the applicant had again been heard on 20 December 1982, the appointing authority took its decision. In that decision it followed the opinion of the Disciplinary Board both in relation to the assessment of the facts and in relation to the appropriate disciplinary measure. With effect from 4 January 1983, the applicant was downgraded to Grade A 6, Step 4, with seniority in step from 1 January 1983.

On 29 March 1983 the applicant submitted a complaint against the decision, which was rejected by the appointing authority by decision of 18 August 1983 (notified to the applicant on 23 August 1983).

On 18 November 1983 the applicant brought two actions before the Court. In the first action (Case 255/83) he claims that the Court should:

(1) annul the defendant's decision of 3 January 1983 downgrading the applicant as a disciplinary measure;

(2) annul the express rejection of the applicant's complaint through official channels of 18 August 1983;

(3) order the defendant to pay to the applicant the difference in salary, from 4 January 1983, between what he would have received had he continued his normal career with the defendant, and

what he has received since his downgrading and what he will receive on early retirement;

(4) order the defendant to pay, as compensation for non-material damage, subject to amendment, BFR 10 000 000;

(5) order the defendant to pay the costs in their entirety.

In the second action (Case 256/83), which the applicant describes as being relevant only if the first action is dismissed, the applicant claims that the Court should:

(1) find that the Commission has been guilty of wrongful acts or omissions;

(2) declare that they are the sole cause of the applicant's serious and irremediable illness;

(3) order the defendant to pay to the applicant:

BFR 12 000 000 as compensation for material damage and

BFR 5 000 000 as compensation for non-material damage;

(4) Order the Commission to pay the costs.

The Commission claims that the Court should dismiss both actions and take a decision on costs in accordance with the law.

B. My view on the individual claims and submissions is as follows:

I. Annulment of the disciplinary measure

1. In his first submission the applicant alleges that there has been a breach of the general principle of regard for the rights of the defence inasmuch as the Commission did not communicate to him the entire file in its possession until nine months after the disciplinary proceedings had been commenced and did not inform him before the hearing on 7 October 1981 whether or not the adoption of the disciplinary measure envisaged required that the case be referred to the Disciplinary Board.

The Commission admits that the applicant was not immediately provided with a complete set of documents. This was because the applicant did not request access to the documents and also the Commission was convinced that it was unnecessary to communicate the documents to him, because he was familiar with their contents. They were, in fact, his own correspondence. In any event, the applicant was not hindered in preparing his defence because he was able to prove that the documents which he had supplied were not confidential.

The Commission contends that at the hearing on 7 October 1981 the applicant was given an opportunity of commenting on the complaints made against him. Although the hearing was governed by the rules laid down in Article 87 of the Staff Regulations, it was intended in particular to enable the appointing authority to decide what was the appropriate course of action: to terminate the procedure or to continue with the disciplinary proceedings.

As it is not disputed that all the documents relating to the disciplinary proceedings were handed to the applicant's legal representative on 8 July 1982, it is necessary to determine whether that was early enough. That question necessitates a more detailed examination of Article 87 and Annex IX to the Staff Regulations.

According to the first paragraph of Article 87, the appointing authority has the right to issue a written warning or a reprimand; the official concerned must be heard before such action is taken. I would describe that first alternative as 'informal disciplinary proceedings'.

The second paragraph of Article 87 provides that other (more severe) measures shall be ordered by the appointing authority after the disciplinary procedure provided for in Annex IX has been completed; once again, the official concerned must first be heard. I would describe this second alternative as 'formal disciplinary proceedings'.

Thus Article 87 of the Staff Regulations provides that the official concerned must be heard in two cases: before he is given a written warning or a reprimand in accordance with the first paragraph of that article or before formal disciplinary proceedings are initiated in accordance with the second paragraph.

I take the view that it is possible for the hearings required by the two paragraphs of Article 87 entirely to coincide. If, after the hearing, the appointing authority considers that the official was guilty of only a minor breach of his obligations, it may immediately issue a written warning or a reprimand; if, however, after the hearing the breach proves to be more serious, the matter must be referred to the Disciplinary Board. However, the appointing authority cannot be required to decide before the hearing, as the applicant maintains that it should, to refer the matter to the Disciplinary Board in accordance with the second paragraph of Article 87. The hearing is ultimately intended to enable the applicant to present his defence and to enable the defendant to decide on its course of action. If the official concerned has been heard and the appointing authority is aware of the seriousness of the breach of which he is accused, there is then no purpose in a new hearing, if the appointing authority already intends to refer the matter to the Disciplinary Board. In the first place, a hearing as required by the second paragraph of Article 87 has already taken place; also, the official concerned then enjoys the procedural safeguards which are contained in Annex IX to the Staff Regulations and which confer more extensive rights upon him. Thus it does not seem to me that a second hearing is required by the Staff Regulations.

According to Article 2 of Annex IX to the Staff Regulations, the official charged shall have the right, on receipt of the report (submitted to the Disciplinary Board by the appointing authority) to see his complete personal file and to take copies of all documents relevant to the proceedings.

The report drawn up on 7 May 1982 for the Disciplinary Board was submitted to the Board on 11 June 1982, so initiating the formal disciplinary proceedings. Both the report and all the documents relating to the proceedings were handed to the applicant's legal representative on 8 July 1982. The applicant thus had over three months, which was in my view an adequate period, in which to prepare his defence before the Disciplinary Board, since the hearing took place on 11 October 1982.

The remaining question to be answered is whether the appointing authority was obliged by the wording of the Staff Regulations to provide the official concerned with the entire file even before it initiated formal disciplinary proceedings. As I have already mentioned, the Staff Regulations does not make any such provision, and such an obligation cannot be inferred even from the judgment of the Court of Justice of 17 December 1981 in Case 115/80 [1]. In Case 115/80, the appointing authority had refused to allow counsel for the official concerned in that case to see the documents relating to the disciplinary proceedings. In this case, however, there was not even a request to see all the documents; the applicant had merely stated that he could not express a view in relation to documents which had not been communicated to him.

At the same time, it should be pointed out that Case 115/80 [1] concerned what I have

1 — Judgment of 17 December 1981 in Case 115/80, *René Demont* v *Commission*, [1981] ECR 3147.

described as 'informal disciplinary proceedings'. In that connection, the Court of Justice stated that it could not be inferred from the second paragraph of Article 4 of Annex IX to the Staff Regulations that the rights granted in that provision to the official concerned in formal disciplinary proceedings were *a contrario* not conferred upon the official concerned in informal disciplinary proceedings. The Court of Justice did not decide, however, that, in formal disciplinary proceedings, the official concerned should have additional rights to defend himself, not contained in Article 87 or in Annex IX to the Staff Regulations.

In view of the foregoing, I consider both parts of the first submission unfounded.

2. In his second submission, the applicant alleges that the appointing authority adopted its decision on the basis of an incomplete file and failed to hear, or even confront the applicant with, its informant, the applicant's former wife.

In reply, the Commission contends that the applicant had an opportunity of submitting to it any documents in support of his defence; moreover, he did not ask during the proceedings for the file to be completed or to hear the informant.

I consider that this submission, too, is unfounded.

First, the applicant did not request that the measures of inquiry mentioned should be carried out during the disciplinary proceedings. Moreover, he has not shown what could have been achieved by such measures. He has not even given an indication of what might be contained in the documents not put before the Disciplinary Board or in what way a confrontation with his former wife could have thrown further light on the case.

Consequently, neither the Disciplinary Board nor the appointing authority can be reproached for failing to take necessary measures of inquiry.

3. In his third submission, the applicant alleges that the appointing authority did not properly carry out its duty to assist officials as required by Article 24 of the Staff Regulations. That duty to assist officials required the appointing authority to verify immediately whether the documents supplied to it had in fact been confidential and whether the applicant had fulfilled his obligations as an official towards the Commission. Moreover, the appointing authority ought to have protected the applicant against the defamatory allegations made by its informant.

The Commission contends that the duty of assistance under Article 24 of the Staff Regulations requires that, in conducting the disciplinary proceedings, it should have absolute respect for the official's rights to defend himself. The disciplinary proceedings did in fact lead to a finding that the complaints originally raised were not entirely justified.

I agree with the Commission that a correct interpretation of the duty of assistance laid down in Article 24 of the Staff Regulations requires first that, where serious allegations are made against an official, disciplinary proceedings should be conducted correctly. I do not consider it impermissible for an official first to be confronted with the complaints made against him, so that he can then at a hearing present his defence. That is the very purpose of the disciplinary procedure.

It is certainly extraordinary that the appointing authority accused the applicant of having engaged in an 'outside activity' on a full-time basis from 1972, so that his work at the Commission was at best a part-time

activity. On the other hand, the applicant can scarcely complain that the Commission immediately confronted him with that complaint. Should it perhaps first have made inquiries with third parties? After hearing the applicant on 7 October 1981 the Commission abandoned that complaint.

In my view, similar considerations apply in relation to the Commission's failure immediately to verify that the documents supplied were confidential.

In the correspondence submitted to the Commission, the documents supplied by the applicant were described as confidential or secret. It is not clear why the appointing authority did not then refer the matter to its security service, as was required by a Commission Decision of 1975. It ought to have done so, however, not in the interests of the person concerned, but in the interests of official security. It is true that from the very first hearing, on 7 October 1981, the applicant denied that he had transmitted confidential or secret documents. By way of explanation for the fact that the documents in question were described in the correspondence available as secret or confidential, however, he referred to 'journalistic practices'. If he had explained at once at the hearing that the description 'secret or confidential' was a fabrication on the part of Meconsult, he would have obliged the appointing authority immediately to check whether the documents were confidential or secret. However, as the applicant did not give any indication of that kind, the appointing authority cannot be blamed for the fact that the true nature of the documents was only established by the Disciplinary Board.

I therefore consider that this submission is also unfounded.

4. In his fourth submission the applicant claims that there was a breach of the general principle that the accused must be given the benefit of the doubt; at the same time, he considers that there are certain contradictions in the statement of the reasons on which the decision to downgrade him is based. No account is taken of the fact that it has not been proved that the applicant obtained personal advantage from supplying the documents; nevertheless, it was assumed that the applicant's role was more important than that of a 'mere intermediary'.

In reply the Commission states that the fact that the applicant did not obtain any personal advantage from supplying the documents was taken into account; furthermore, there was no doubt that for several years the applicant had assisted in the transmission of documents with full knowledge of the circumstances.

It is clear from the opinion of the Disciplinary Board and the appointing authority's decision downgrading the applicant that it could not be proved that he had obtained personal advantage from transmitting the documents. However, since before the Disciplinary Board the applicant admitted *inter alia* that he had sometimes obtained documents himself and had paid the person who supplied them, it is also in my view established that his role was not limited to that of a 'mere intermediary'.

I therefore consider that that submission is also unfounded.

5. In his fifth submission the applicant also alleges that a series of errors was committed by the appointing authority with regard to the legal consequences to be attached to the facts actually proved and to the statement of the reasons on which the disciplinary measure was based. He alleges that he was wrongly accused of altering the content and description of the documents, in order to increase the price of them. He did not write the words 'confidential' on the documents; moreover, the prices of documents were not changed.

In assessing the outside activity which he had engaged in, the appointing authority wrongly included in the remuneration which he received the representation expenses which he was paid; it wrongly maintained that the outside activity engaged in constituted more than 'activité juridico-administrative', as it was described by the applicant; lastly, it was wrong to regard the outside activity engaged in as a serious breach of his obligations as an official, since his superiors were aware of the position and considered that his performance in the service was not affected.

In reply the Commission states that the contested decision did *not* assert that the applicant had *personally* altered the documents; it merely stated that the applicant, with full knowledge of the facts, had taken part in the transmission of altered documents. As regards the outside activity, it followed from the amount that he was paid that such activity involved greater responsibility than that revealed by the applicant in his application for authorization.

It is clear from the decision to downgrade the applicant and from the opinion of the Disciplinary Board that he was not charged with *personally* altering documents. So far as his outside activity was concerned, I also consider that the assessment by the appointing authority was accurate. Since he received remuneration of BFR 12 000 per month for 'translation in particular', representation expenses of BFR 25 000, that is to say more than double the amount of the remuneration, must be specially accounted for. Otherwise, such expenses must be regarded either as additional remuneration or, if they were true expenses, then the applicant's outside activity was wider than he admitted. He himself admitted that he was the *intermediary* between the Italian and Belgian members of the sugar association referred to (Gruppo Saccarifero Veneto).

Therefore I consider that the fifth submission is also unfounded.

6. In his sixth submission the applicant alleges that there was a breach of the principle of proportionality. The disciplinary measure adopted, by which he was downgraded to a lower grade and lower step, is out of reasonable proportion to the facts established against him, namely that from 1977 he failed to obtain authorization to engage in an outside activity.

The Commission replies that the disciplinary measure imposed on the applicant relates to two distinct breaches of duty. By adopting the measure in question, the Commission did not exceed the wide discretion conferred upon it in such matters.

It should first be pointed out that the disciplinary measure in question was in fact imposed by reason of two breaches of duty: the transmission of documents and engagement in an unauthorized outside activity, in which a distinction must again be drawn between the period from 1972 to 1977 and the period thereafter; in respect of the first period, the proposed outside activity was not described as fully as was required and in respect of the second period no application was made for authorization to engage in an outside activity. This puts the breach of duty in question in a somewhat different light.

At the same time I would refer to the judgments of the Court of Justice which confer upon the appointing authority a wide discretionary power to take a disciplinary

measure. Thus in its judgment of 4 February in Case 13/69 [2], the Court decided that the assessment of the seriousness of the shortcomings found by the Disciplinary Board in respect of the person concerned and the choice of the disciplinary measure which appeared, in view of those shortcomings, to be the most appropriate, lay within the discretionary power of the appointing authority. The applicant in Case 13/69 had shown nothing of a factual or legal nature capable of demonstrating that that evaluation bore no relationship to the shortcomings established or that the disciplinary measure imposed was disproportionate to the facts found against him. The Court of Justice therefore rejected the submission in question as unfounded.

In its judgment of 30 May 1973 in Case 46/72 [3] the Court of Justice found as follows:

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

I cannot find that the disciplinary measure imposed was disproportionate to the breach of duty, or that there was a manifest error of law or misuse of power. The applicant did engage in an outside activity to an extent of which the appointing authority was unaware. He worked for an undertaking or group of undertakings operating in the sugar sector, which on account of its production and marketing difficulties is very strictly regulated by Community law. Moreover, the transmission of allegedly confidential Commission documents created the impression that Community officials could be bought. The applicant at least assisted in that trade in documents and thus seriously damaged the reputation of Community officials.

For those reasons, I can find no evidence of the disproportion between offence and penalty required by the judgments of the Court; on the contrary, I take the view that in imposing the disciplinary measure in question the appointing authority remained within permissible limits.

It remains to be decided whether the fixing of the applicant's step must be regarded as an independent penalty. Superficially, it might appear to be one, because Article 86 (2) (d) provides for relegation in step as an independent disciplinary measure. As, in the opinion which it drew up, the Disciplinary Board merely suggested that the applicant be downgraded and the appointing authority downgraded him from Grade A 5, Step 6, to Grade A 6, Step 4, two separate disciplinary measures might be distinguished in the appointing authority's decision. However, the result of that would be that the decision re-classifying the applicant in step would be annulled and would have to be referred back to the Commission for a fresh decision. That follows from the judgments of the Court of Justice, which stated in the judgment of 29 January 1985 in Case 228/83 [4] that the Court of Justice could not substitute its own judgment for that of the appointing authority except in the case of a manifest error or misuse of power. The Court went on to state, however, that in order to enable the Court

2 — Judgment of 4 February 1970 in Case 13/69, *August Joseph van Eick* v *Commission*, [1970] ECR 3

3 — Judgment of 30 May 1973 in Case 46/72, *Robert de Greef* v *Commission*, [1973] ECR 543.

4 — Judgment of 29 January 1985 in Case 228/83, *F.* v *Commission*, [1985] ECR 290, at paragraph 34.

to carry out that limited review, it was indispensable that the preamble to the decision should specify the acts which the official was found to have committed and the considerations which led the appointing authority to impose the particular penalty. If the penalty imposed by the appointing authority was severer than that suggested by the Disciplinary Board in its opinion, the reasons for that should be clearly stated.

However, no such reasons are given here.

I nevertheless do not consider that the fresh classification in step may be regarded as an independent disciplinary measure. That is clear from the rules relating to step laid down in the Staff Regulations. In particular, it follows from the rules on promotion provided for in Article 46 of the Staff Regulations that a step is not, at least for the great majority of officials who are promoted at some time in the course of their career, a fixed level which is established when the official enters the service and then changes only as a result of the lapse of time. When an official is promoted his step is not retained but is refixed on the basis of the calculation provided for in Article 46 of the Staff Regulations, which almost always results in his being given a step in the higher grade which is lower than he had previously. A change of grade necessarily results in a change of step; so far as promotion is concerned, that is provided for in Article 46 of the Staff Regulations, although there is no provision relating to downgrading. From that I conclude that classification in step is within the discretion of the appointing authority in the performance of its duties. I do not consider that, by classifying the official concerned in a new, lower step when he was downgraded, the appointing authority exceeded the discretion conferred upon it, especially in view of the fact that downgrading to a lower grade does not necessarily entail downgrading to *the next lowest* grade.

For those reasons, I also regard the sixth submission as unfounded.

7. In his seventh submission, the applicant claims that the defendant infringed Articles 12, 86 and 87 of the Staff Regulations and the principles of general disciplinary law and the rights of the defence. He relies upon the fact that, on the basis of the established facts, the breach of duty of which he was guilty was to be regarded as an infringement not of Article 17 of the Staff Regulations but only of Article 12. He considers that the disciplinary proceedings ought to have been freshly instituted on the basis of the lesser charge.

The defendant, however, contends that the measure which was finally adopted was linked precisely with the facts on which the applicant had originally been heard in October 1981. The Disciplinary Board merely made a different legal assessment of that breach of duty.

In fact, the legal assessment of the offence changed in the course of the disciplinary procedure. In particular the original complaint — that the applicant transmitted secret or confidential documents — could not be substantiated. Therefore the Disciplinary Board regarded the facts proved against him only as an infringement of Article 12 of the Staff Regulations, which states as follows: 'an official shall abstain from any action and, in particular, any public expression of opinion which may reflect on his position'.

Even if it is in theory conceivable that in the course of disciplinary proceedings circumstances might be discovered which entirely alter the original complaint and which might necessitate the re-opening of the disciplinary proceedings, I do not consider that any reasons for doing so have been put forward in this case.

Although the disciplinary proceedings led to a finding that the applicant had been guilty of a less serious breach of duty, the complaint originally made did not in fact essentially change. Under those circumstances I see no reason why the disciplinary procedure should be re-opened. It is intended to verify the validity of the complaints originally made. In general, an allegation of an infringement of Article 17 of the Staff Regulations also contains a (subsidiary) allegation of the infringement of Article 12. An infringement of the duty of secrecy and of discretion contained in Article 17 is also generally regarded as action which might reflect on an official's position.

I therefore also regard the seventh submission as unfounded.

II. On the claims for damages in Cases 255/83 and 256/83 I can be quite brief.

1. As the applicant himself sets out, the claim in Case 255/83 is for compensation for the material and non-material damage which the plaintiff suffered as a result of the *unlawful* decision to downgrade him. Thus the claim is linked to the alleged illegality of the disciplinary measure adopted. As I have been unable to accept that that decision was unlawful, I regard the claim made in Case 255/83 as unfounded.

2. The claim for damages in Case 256/83

Here, the applicant seeks monetary compensation for the damage which he claims that he suffered by reason of the wrongful acts or omissions of the Commission during the disciplinary procedure.

The claim was made in the event that the actual disciplinary measure adopted was considered by the Court of Justice to be lawful. It relates to material and non-material damage; the plaintiff alleges that the disciplinary measure prematurely ended his career and damaged his health and reputation. He attributes all the damage suffered to the wrongful act or omission committed by the defendant in the course of the disciplinary procedure, that is to say, the same wrongful conduct as has already been contested in Case 255/83.

As I have already explained, I consider that not only is the appointing authority's final decision, imposing the disciplinary measure of downgrading, lawful, but so is the procedure by which it reached that decision. It is true that the disciplinary proceedings lasted for a long time, and the applicant several times asked that they should be expedited; on the other hand, however, the applicant also contributed to the delays, inasmuch as he failed to sign the final version of the minutes of the hearing on 7 October 1981, despite several requests that he should do so, and in addition could not be reached at the address which he had given during his absence from work on sick

leave. Thus he has not demonstrated that the defendant *negligently* delayed the disciplinary procedure. Moreover, throughout the disciplinary procedure the applicant continued to enjoy the rights attaching to his former grade. Since, as I have shown, I cannot discover any measure of the defendant which was manifestly defective, I consider that the claim for damages in Case 256/83 is also unfounded.

C. In view of the foregoing, I propose that the Court of Justice should dismiss both claims raised in Joined Cases 255 and 256/83 as unfounded and order the parties to pay their own costs in accordance with Article 70 of the Rules of Procedure.