# JUDGMENT OF THE COURT

6 March 2001 *

In Case C-273/99 P,

**Bernard Connolly**, a former official of the Commission of the European Communities, residing in London, United Kingdom, represented by J. Sambon and P.-P. van Gehuchten, avocats, Brussels, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 19 May 1999 in Case T-203/95 *Connolly* v *Commission* [1999] ECR-SC I-A-83 and II-443, seeking to have that judgment set aside,

the other party to the proceedings being:

**Commission of the European Communities**, represented by G. Valsesia, Principal Legal Adviser, and J. Currall, acting as Agents, assisted by D. Waelbroeck, avocat, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet (Rapporteur), V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and N. Colneric, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 12 September 2000,

after hearing the Opinion of the Advocate General at the sitting on 19 October 2000,

gives the following

## Judgment

1 By an application lodged at the Registry of the Court of Justice on 20 July 1999, Mr Connolly brought an appeal under Article 49 of the EC Statute of the Court of Justice and the corresponding provisions of the ECSC and the EAEC Statutes

against the judgment of the Court of First Instance of 19 May 1999 in Case T-203/95 *Connolly* v *Commission* [1999] ECR-SC I-A-83 and II-443 ('the contested judgment'), by which the Court of First Instance dismissed his action for annulment of the decision of 27 September 1995 by which the appointing authority suspended him from his duties as from 3 October 1995 and withheld one-half of his basic salary ('the contested decision').

## Legal background

2 Article 11 of the Regulations and Rules applicable to officials and other servants of the European Communities ('the Staff Regulations') provides:

'An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution.

An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service.'

3 Article 12 of the Staff Regulations provides:

'An official shall abstain from any action and, in particular, any public expression of opinion which may reflect on his position.

...

An official wishing to engage in an outside activity, whether gainful or not, or to carry out any assignment outside the Communities must obtain permission from the appointing authority. Permission shall be refused if the activity or assignment is such as to impair the official's independence or to be detrimental to the work of the Communities.'

4 The second paragraph of Article 17 of the Staff Regulations states:

'An official shall not, whether alone or together with others, publish or cause to be published without the permission of the appointing authority, any matter dealing with the work of the Communities. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the Communities.'

5 The first paragraph of Article 88 of the Staff Regulations provides:

'Where an allegation of serious misconduct is made against an official by the appointing authority, whether this amounts to failure to carry out his official duties or to a breach of law, the authority may order that he be suspended forthwith'.

## The facts giving rise to the dispute

6 The facts giving rise to the dispute are set out in the contested judgment as follows:

'2 At the material time, the applicant, Mr Connolly, was an official of the Commission in Grade A4, Step 4, and was Head of Unit 3, "EMS: National and Community Monetary Policies", in Directorate D, "Monetary Affairs", in the Directorate-General for Economic and Financial Affairs.

3 On 24 April 1995, Mr Connolly applied, under Article 40 of the Staff Regulations, for three months' unpaid leave on personal grounds commencing on 3 July 1995. The Commission granted him leave by decision of 2 June 1995.

4 By letter of 18 August 1995, Mr Connolly applied to be reinstated in the Commission service at the end of his leave on personal grounds. The Commission, by decision of 27 September 1995, granted that request and reinstated him in his post with effect from 4 October 1995.

5 Whilst on leave on personal grounds, Mr Connolly published a book entitled *The Rotten Heart of Europe — The Dirty War for Europe's Money* without requesting prior permission under the second paragraph of Article 17 of the Staff Regulations.

6 Early in September, and more specifically between 4 and 10 September 1995, a series of articles concerning the book was published in the European and, in particular, the British press.

7 By letter of 6 September 1995, the Director-General for Personnel and Administration, in his capacity as appointing authority... informed the applicant of his decision to initiate disciplinary proceedings against him for infringement of Articles 11, 12 and 17 of the Staff Regulations and, in accordance with Article 87 of those regulations, invited him to a preliminary hearing.

8 The first hearing was held on 12 September 1995. The applicant then submitted a written statement indicating that he would not answer any questions unless he was informed in advance of the specific breaches he was alleged to have committed.

9 By letter of 13 September, the appointing authority again invited the applicant to attend a hearing, in accordance with Article 87 of the Staff Regulations, and informed him that the allegations of misconduct followed publication of his book, serialisation of extracts from it in *The Times* newspaper, as well as the statements he made in an interview published by that newspaper, without having obtained prior permission.

10 On 26 September 1995, at a second hearing, the applicant refused to answer any of the questions put to him and filed a written statement in which he

submitted that it was legitimate for him to have published his work without requesting prior permission because, when he did so, he was on unpaid leave on personal grounds. He added that the serialisation of extracts from his book in the press had been decided on by his publisher and that some of the statements contained in the interview had been wrongly attributed to him....

11 On 27 September 1995, the appointing authority decided, pursuant to Article 88 of the Staff Regulations, to suspend Mr Connolly from his duties with effect from 3 October 1995 and to withhold one-half of his basic salary during the period of his suspension. The following reasons were given for that decision:

"Whereas Mr Bernard Connolly has been an official of the Commission since 14 August 1978 and occupies the post of the Head of Unit II.D.3 (EMS, national and Community monetary policies) and whereas, since 3 July 1995, has been on leave on personal grounds for a period of three months;

Whereas Mr Connolly has written and had published a book entitled 'The Rotten Heart of Europe', extracts of which have been serialised in The Times newspaper, without having first requested and obtained the permission of the appointing authority as required under Article 17 of the Staff Regulations;

Whereas this book constitutes an unauthorised public expression of fundamental disagreement with and opposition to the very Commission policy which it was Mr Connolly's professional responsibility to implement;

Whereas Mr Connolly may also be in breach of his obligations arising under Articles 11 and 12 of the Staff Regulations;

Whereas the above allegations against Mr Connolly are of serious misconduct and justify initiating disciplinary proceedings;

Whereas in a letter dated 18 August 1995, Mr Connolly stated that he wished to be reintegrated into Commission service following the end, on 2 October 1995, of his leave on personal grounds and whereas the Commission, by decision of 27 September 1995, has granted this request and reinstated Mr Connolly in his former post which had remained vacant;

Whereas Article 88 of the Staff Regulations provides that where an allegation of serious misconduct is made against an official by the appointing authority, the authority may order that he be suspended forthwith and that the decision that an official be suspended shall specify whether he shall continue to receive his remuneration during the period of suspension or what part thereof is to be withheld;

Whereas the gravity and nature of the above-mentioned allegations of serious misconduct in relation to his official duties render the presence of Mr Connolly in the Commission's services inappropriate pending the outcome of the disciplinary enquiry and justify suspending him in accordance with Article 88 of the Staff Regulations;

..."

...

12 On 4 October 1995 the appointing authority decided to refer the matter to the Disciplinary Board under Article 1 of Annex IX to the Staff Regulations.

13 By letter of 18 October 1995, received at the Secretariat General of the Commission on 27 October 1995, the applicant submitted to the appointing authority a complaint under Article 90(2) of the Staff Regulations against the decisions to initiate disciplinary proceedings and to refer the matter to the Disciplinary Board, and against the decision to suspend him from his duties....

...

20 By letter of 27 February 1996 the Commission informed the applicant that his complaint of 27 October 1995 had been implicitly rejected.'

7 By an application lodged at the Registry of the Court of First Instance on 27 October 1995, Mr Connolly brought an action seeking:

— annulment of the appointing authority's decision of 6 September 1995 initiating disciplinary proceedings against him, of the contested decision and of the decision of 4 October 1995 referring the matter to the Disciplinary Board;

— an order that the Commission pay him BEF 750 000 in respect of the material and non-material damage suffered following the press campaign and the defamatory allegations made against him, and

— publication of the operative part of the judgment to be delivered, at the Commission's expense, in *The Times*, *The Daily Telegraph* and *The Financial Times*.

8 On conclusion of the disciplinary proceedings, the appointing authority, by decision of 16 January 1996, based on a recommendation from the Disciplinary Board, removed the applicant from his post without withdrawal or reduction of his entitlement to a retirement pension.

9 Mr Connolly brought separate actions before the Court of First Instance for annulment of the opinion of the Disciplinary Board and of the decision to remove him from his post (Cases T-34/96 and T-163/96, arrêt des 19 mai 1999, RecFP p. I-A-87 et II-463). Having brought the action in Case T-163/96 against the decision to remove him, the applicant discontinued the proceedings in Case T-203/95 except as regards his criticisms concerning the validity of the contested decision. In paragraphs 29 and 30 of the contested judgment the Court of First Instance formally recorded that partial discontinuance.

## The contested judgment

10 Before the Court of First Instance, the appellant relied, in support of his application for annulment of the contested decision, on two pleas in law, alleging, first, infringement of Articles 25 and 88 of the Staff Regulations and, second, breach of the principle of equal treatment of officials.

### *The alleged infringement of Articles 25 and 88 of the Staff Regulations*

11 In essence, the appellant criticised the Commission for failing to give an adequate statement of the reasons on which the contested decision was based, in that it did

not explain why the facts alleged against him constituted serious misconduct within the meaning of Article 88 of the Staff Regulations.

12 The Court of First Instance rejected that plea in law on the following grounds:

'46 It must be borne in mind that, according to the case-law, since a decision to suspend an official is an act adversely affecting him, it must, in accordance with the first paragraph of Article 25 of the Staff Regulations, state the reasons on which it is based. The statement of reasons must comply with the requirements of the first paragraph of Article 88 of the Staff Regulations, which do not permit the appointing authority to suspend an official forthwith unless serious misconduct is alleged, whether this amounts to a failure to carry out his official duties or to a breach of law (judgment in Joined Cases 18/65 and 35/65 *Gutmann* v *Commission* [1966] ECR 103).

47 In this case, it is clear from the contested decision that the allegation of serious misconduct made against the applicant related to events which, if taken as proved, constituted, in the view of the appointing authority, an infringement of Article 17 of the Staff Regulations and might also have constituted a breach of the obligations laid down in Articles 11 and 12 of the Staff Regulations.

48 However, contrary to the applicant's contention, the decision does not confine itself to indicating that the work in question was written and published without prior permission, contrary to Article 17 of the Staff Regulations. The decision describes the seriousness of the alleged misconduct in full detail. First, it refers to the grade and duties of the applicant, who was then Head of Unit 3, "EMS: National and Community Monetary Policies", in the Directorate-General for Economic and Financial Affairs. Second, it cites the controversial wording used in the title of the book and indicates that extracts of it were serialised in *The Times* newspaper, thus referring to the way in which it was specially publicised and promoted. Finally, the decision emphasises that the book expresses a fundamental disagreement with the

Commission policy which the applicant was nevertheless responsible for implementing.

49 It was also on the basis of those events that the appointing authority considered that the applicant might also have infringed Articles 11 and 12 of the Staff Regulations, under which an official must conduct himself solely with the interests of the Communities in mind and must abstain from any public expression of opinion which might reflect on his position. Accordingly, the applicant cannot validly contend that the appointing authority failed to give details of the factual circumstances which, in its view, were capable of constituting an infringement of those provisions. It must also be emphasised that Article 88 of the Staff Regulations requires the appointing authority not to take a final decision concerning breach of the obligations laid down by the Staff Regulations but merely to set out the reasons for which an allegation of serious misconduct is made against the official concerned.

50 It clearly follows that the appointing authority's statement of reasons for its decision to suspend the applicant from his duties pending the outcome of the disciplinary proceedings commenced against him was of the requisite legal standard.'

*The plea alleging breach of the principle of equal treatment of officials*

13 The appellant contended that the Commission had infringed the principle of equal treatment of officials, first, because it did not follow its usual practice of authorising, without prior examination, publication of works by officials who

had taken leave from their duties, and, second, because other officials who had acted in an incontestably serious manner whilst in active employment had not been subjected to such a measure.

14 The Court of First Instance also rejected the second plea in law, on the following grounds:

'57 According to settled case-law, there is a breach of the principle of equal treatment only where two classes of persons whose factual and legal situations are not essentially different are treated differently or where different situations are treated in an identical manner (Case T-100/92 *La Pietra* v *Commission* [1994] ECR-SC II-275, paragraph 50, and the case-law cited therein).

58 As regards, first, the argument alleging the existence of a general practice on the part of the Commission — which, incidentally, has not been proved — whereby the publication of works prepared by officials whilst on unpaid leave on personal grounds is not subject to the requirement of prior permission laid down in the second paragraph of Article 17 of the Staff Regulations, that practice could not prove any breach of the principle of equal treatment since it relates to a situation different from that of the applicant. Even assuming that such a practice existed and applied to publications dealing with the work of the Communities within the meaning of Article 17, it is enough that, as is clear from the contested decision, the seriousness of the misconduct allegedly committed by the applicant consisted not merely in the absence of prior permission to publish but in a set of circumstances specific to this case, such as the content of the work in question, the publicity surrounding it and the possible infringement of Articles 11 and 12 of the Staff Regulations.

59 As regards the allegation that the appointing authority did not suspend another official who, whilst in active employment, published abusive

pamphlets, the Court observes that the applicant has produced no evidence to that effect, for which reason that argument must also be rejected.

60 In any event, the first paragraph of Article 88 of the Staff Regulations does not require the appointing authority to suspend an official against whom an allegation of serious misconduct is made, but provides that it "may" take such a decision if that condition is fulfilled. It follows that, in such circumstances, the appointing authority enjoys a considerable degree of latitude, which it may exercise having regard to the specific circumstances of each case.'

15 The Court of First Instance concluded by dismissing the application and ordering the parties to bear their own costs.

## The appeal

16 In his appeal, Mr Connolly claims, first, that the contested judgment should be set aside and, second, repeats the claims which he made before the Court of First Instance. He also asks the Court of Justice to order publication of the operative part of the judgment to be delivered in the publications mentioned in paragraph 7 of this judgment.

17 The Commission contends that the appeal should be dismissed in its entirety and, in particular, that the claims for compensation and for publication of the judgment should be dismissed as inadmissible.

*The admissibility of the appeal*

18 Under Article 113(2) of the Rules of Procedure of the Court of Justice, the subject-matter of the proceedings before the Court of First Instance may not be changed in the appeal.

19 As indicated in paragraph 9 of this judgment, the Court of First Instance formally recorded the fact that, at the hearing, the appellant discontinued his action to the extent to which it related to the appointing authority's decisions to initiate disciplinary proceedings against him and to refer the matter to the Disciplinary Board, and his claims for compensation and publication of the judgment. Accordingly, the Court of First Instance examined only the pleas relied on in support of the claim for annulment of the contested decision.

20 It follows that the claims in the appeal for annulment of the appointing authority's decisions of 6 September 1995 to initiate disciplinary proceedings against the appellant and of 4 October 1995 to refer the matter to the Disciplinary Board, and for an order that the Commission pay damages and publish the judgment, must be rejected as inadmissible.

*Substance*

21 Mr Connolly relies, in support of his appeal, on three pleas in law. The first alleges that the judgment did not adequately set out the grounds on which it was based and that the first paragraph of Article 88 of the Staff Regulations was misinterpreted. The second alleges distortion of the statement of the reasons on which the contested decision was based and breach of the principle that documents must be construed in accordance with their actual terms. The third alleges infringement of the rules on burden of proof and of the principle of fairness.

The first ground of appeal

22 By his first ground of appeal, the appellant criticises the Court of First Instance for taking the view, in paragraphs 47 to 49 of the contested judgment, that the appointing authority gave a detailed account, in accordance with Articles 25 and 88 of the Staff Regulations, of the seriousness of the alleged misconduct. He submits that those articles impose on the appointing authority the obligation not only to allege serious misconduct against the official concerned but also to explain why such misconduct renders his immediate suspension necessary.

23 In terms of the first paragraph of Article 88 of the Staff Regulations, where an allegation of serious misconduct is made against an official by the appointing authority, 'whether this amounts to failure to carry out his official duties or to a breach of law, the authority may order that he be suspended forthwith'.

24 The Court of First Instance found in that respect, in paragraph 47 of the contested judgment, that the serious misconduct of which the appellant was accused 'related to events which, if taken as proved, constituted, in the view of the appointing authority, an infringement of Article 17 of the Staff Regulations and might also have constituted a breach of the obligations laid down in Articles 11 and 12 of the Staff Regulations'.

25 The Court of First Instance added, in paragraph 48, that the contested decision contained full details of the misconduct attributed to the appellant, in that, first, it specified the grade and the duties of the appellant within the Directorate-General for Economic and Financial Affairs. It then noted that the decision referred to the controversial wording used in the title of the book and that it indicated that extracts from it had been serialised in *The Times* newspaper, thus highlighting the way in which it had been specially publicised and promoted.

Finally, it observed that the decision emphasised that the book expressed a fundamental disagreement with the Commission policy which the applicant was responsible for implementing.

26 Further, after emphasising in paragraph 49 of the contested judgment that Article 88 does not require the appointing authority to take a final decision as to the existence of an infringement of the obligations laid down by the Staff Regulations but merely to set out the reasons for which an allegation of serious misconduct is made against the official concerned, the Court of First Instance concluded, in paragraph 50, that the appointing authority had set out, to the requisite legal standard, the reasons for its decision to suspend the applicant from his duties pending the outcome of the disciplinary proceedings against him.

27 The contested judgment, the content of paragraphs 47 to 49 of which has just been recounted, did not in any way contravene Articles 25 and 88 of the Staff Regulations.

28 It is clear from the first paragraph of Article 88 of the Staff Regulations that the only condition to be fulfilled before the appointing authority can suspend an official from his duties pending the outcome of disciplinary proceedings against him is that an allegation of serious misconduct has been made against him.

29 In this case, the Court of First Instance was right to take the view that the contested decision set out, in accordance with Article 25 of the Staff Regulations, an adequate statement of the reasons on which it was based as regards the seriousness of the misconduct allegedly committed by the applicant. The appointing authority was under no obligation to give, in addition to that statement, any explanation of the reasons for which the immediate suspension of the person concerned was necessary nor, *a fortiori*, was the Court of First Instance required to verify the existence and validity of those reasons.

30 The first ground of appeal must therefore be rejected as unfounded.

The second ground of appeal

31 By his second ground of appeal, the appellant alleges that, in paragraph 49 of the contested judgment, the Court of First Instance distorted the statement of the reasons on which the contested decision was based and infringed the principle that documents must be construed in accordance with their actual terms.

32 He maintains that the reference in the contested decision to the possibility of an infringement of the obligations imposed on officials by Articles 11 and 12 of the Staff Regulations was merely subsidiary and that the use of the word 'may' in describing the latter infringement means that the conduct allegedly contrary to Articles 11 and 12 of the Staff Regulations was not the same as that already known to the appointing authority and mentioned specifically by it in relation to the infringement of Article 17 of those regulations.

33 According to the appellant, the Court of First Instance stated, in paragraph 49 of the contested judgment, that, in relation to that same conduct, the appointing authority took the view that the applicant might also have infringed Articles 11 and 12 of the Staff Regulations.

34 As the Commission correctly points out, this ground of appeal is based on a misreading of the contested decision.

35 The second paragraph of the grounds of that decision refers first to the publication of a book, extracts from which were serialised in *The Times* newspaper, without the appellant having first sought and obtained permission from the appointing authority, contrary to the requirements of Article 17 of the Staff Regulations. The third paragraph then indicates that the book constitutes an

unauthorised public expression of fundamental disagreement with the Commission policy and opposition to that policy, which Mr Connolly was responsible for implementing. Finally, it is clear from the fourth paragraph of the grounds that Mr Connolly 'may' also have infringed his obligations under Articles 11 and 12 of the Staff Regulations.

36 Those various matters were accurately recorded in paragraphs 48 and 49 of the contested judgment.

37 As the Advocate General observed in point 23 of his Opinion, the fact that the appointing authority used the word 'may' in relation to the infringement of Articles 11 and 12 of the Staff Regulations, whereas it used the present indicative in relation to the infringement of Article 17 thereof, is accounted for by the very nature of the alleged infringements. Thus, the mere fact of issuing a publication concerned with the work of the Communities, without first seeking the permission of the appointing authority, constitutes an infringement of Article 17 of the Staff Regulations, which can be the subject of a simple finding of fact. In contrast, substantiation of an infringement of Article 11 or 12 of the Staff Regulations calls for an assessment of factual circumstances which cannot be made, or at least cannot be finalised, when a decision is taken under Article 88 of the Staff Regulations.

38 Consequently, the second ground of appeal must also be rejected as unfounded.

The third ground of appeal

39 By his third ground of appeal, the applicant alleges that the Court of First Instance infringed the rules on the burden of proof and the principle of fairness of

legal proceedings in that, in paragraph 59 of the contested judgment, it rejected for lack of evidence his allegation that the appointing authority had not suspended another official who had published abusive pamphlets, even though he was in active employment.

40 He submits that, in his action for annulment, he contended that the only penalty imposed on that official was a reprimand, but that he had no other evidence because it was impossible for him to obtain further information concerning the circumstances of officials on whom the Commission had imposed penalties. According to the appellant, to ensure fairness in legal proceedings, the defendant institution should have demonstrated what policy it followed in the event of a serving official publishing a text without the requisite prior permission.

41 It must be borne in mind that, provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it. That appraisal does not therefore constitute, save where the clear sense of the evidence has been distorted, a point of law which is subject as such to review by the Court of Justice (Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 24).

42 In this case, the Court of First Instance found, in paragraph 59 of the contested judgment, that the applicant had not produced evidence to support his allegation as to the attitude taken by the Commission in the other specific case to which he referred of publication without prior permission. It is also clear that he produced no indication or information that might have enabled that case to be identified. The Court of First Instance cannot therefore be criticised for not asking the Commission to give an account of its practice in this respect and to prove that it

had not exceeded its powers or infringed the principle of equal treatment of officials.

43 In any event, even if it is assumed that an official who infringed the second paragraph of Article 17 of the Staff Regulations was not penalised, the principle of equal treatment of officials cannot be construed as meaning that the appellant would be entitled to rely on that fact in order to avoid the measure being taken against him.

44 Consequently, the third ground of appeal must also be rejected.

45 It follows from all the foregoing considerations that the appeal must be dismissed.

## Costs

46 Under Article 69(2) of the Rules of Procedure, which apply to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 70 of those Rules, in proceedings between the Communities and their servants, the institutions are to bear their own costs. However, pursuant to the second paragraph of Article 122 of the same Rules, Article 70 does not apply to appeals brought by an official or other servant of an institution against that institution. Since the appellant has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the appeal;**

2. **Orders Mr Connolly to pay the costs.**

Rodríguez Iglesias Gulmann La Pergola

Wathelet Skouris Edward

Puissochet Jann Sevón

Schintgen Colneric

Delivered in open court in Luxembourg on 6 March 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President