ORDER OF THE COURT (Third Chamber)
16 July 1998 *

In Case C-252/97 P,

N, a former official of the Commission of the European Communities, represented by Xavier Magnée, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 15 May 1997 in Case T-273/94 *N* v *Commission* [1997] ECR-SC II-289, seeking the annulment of the decision to remove the appellant from his post and the award of damages,

the other party to the proceedings being:

Commission of the European Communities, represented by Gianluigi Valsesia, Principal Legal Adviser, acting as Agent, and by Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: French.

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber (Rapporteur), J. C. Moitinho de Almeida and J.-P. Puissochet, Judges,

Advocate General: F. G. Jacobs,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court on 11 July 1997, N brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 15 May 1997 in Case T-273/94 *N* v *Commission* [1997] ECR-SC II-289 (hereinafter 'the contested judgment'), in which the Court of First Instance dismissed his application for annulment of the Commission decision of 4 October 1993 removing him from his post and his claim for compensation for the non-material loss allegedly incurred by him.

2 As regards the factual background to the dispute between N and the Commission, reference is made to paragraphs 1 to 30 of the contested judgment.

The proceedings before the Court of First Instance

3 By application lodged on 2 August 1994 N brought an action before the Court of First Instance in which he claimed that the Court of First Instance should:

— annul the Commission's decision of 4 October 1993 removing the applicant from his post and the decision of 2 May 1994 rejecting his complaint;

— order his reinstatement with retroactive effect from 1 December 1993 and order the Commission to pay him the full arrears of his salary, plus interest at the rate of 8% per annum, from the date on which that salary became payable each month;

— order the Commission to pay him, by way of compensation for his non-material loss, the sum of BFR 3 million or any sum to be determined by the Court of First Instance;

— in the alternative, if it is decided that he should not be reinstated, to rule that the decision to remove him from his post was unfounded and consequently to order the Commission to pay him the sum of BFR 57 443 399 by way of compensation for his pecuniary damage and the sum of BFR 20 million by way of compensation for his non-material loss, or any sum to be determined by the Court of First Instance;

— order the Commission to bear all the costs.

4 In support of his application for annulment before the Court of First Instance, N had relied on three pleas in law alleging, first, irregularities in the disciplinary proceedings, second, manifest errors of assessment of the facts by the Commission and, third, breach of the principle of proportionality.

5 As regards the plea alleging irregularities in the disciplinary proceedings, the Court of First Instance first stated, at paragraphs 67 to 76 of the contested judgment, that the Commission had been right in initiating disciplinary proceedings, that the Commission was not prevented from initiating such proceedings merely because the information relied on by it may have been provided by a bank in breach of national provisions for the protection of banking secrecy and that the initiation of such proceedings did not constitute an infringement of the right to respect for private life.

6 The Court of First Instance then held, at paragraphs 77 to 84 of the contested judgment, that the applicant's argument that the Commission had infringed his rights of defence in the course of the disciplinary proceedings should be rejected since such an infringement could not be inferred from the fact that the Commission failed to inform him, at the beginning of the interviews, of the accusations made against him. Nor did the Commission breach the general principle of the adversarial nature of proceedings and equality of arms by not disclosing the identity of its source during the proceedings. The Court of First Instance pointed out, at paragraphs 85 and 86 of the contested judgment, that the Commission had not infringed the applicant's right not to incriminate himself and stated, at paragraphs 87 to 94 of the contested judgment, that it could not accept the applicant's assertion that his rights of defence had been infringed by the failure to transmit certain documents to him.

7 Finally, as regards the applicant's assertion that the Commission did not respect his right to a fair hearing, the Court of First Instance stated, at paragraph 95 of the contested judgment, that the Commission could not be characterised as a 'tribunal' within the meaning of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950 (hereinafter 'the ECHR'). Furthermore, the Court of First Instance considered, at paragraph 96 of the contested judgment, that the applicant had wrongly claimed that the decision rejecting his complaint had been taken by the same person who had adopted the original decision.

8 As regards the pleas alleging manifest errors of assessment of the facts and breach of the principle of proportionality, the Court of First Instance considered, at paragraphs 125 to 145 of the contested judgment, that there were no grounds for holding that the Commission had committed a manifest error of assessment by concluding that the applicant had committed a serious breach of his obligations under the Staff Regulations. The Court of First Instance added, at paragraphs 147 to 149 of the contested judgment, that there was nothing in the documents before it to justify the finding that the penalty imposed was manifestly disproportionate to the breach of obligations or that the Commission had used its powers for a purpose other than that for which they were conferred on it.

9 Finally, as regards the claim for compensation, the Court of First Instance held, at paragraphs 159 and 160 of the contested judgment, that the claim was admissible but was unfounded in so far as examination of the pleas submitted in support of the action for annulment had disclosed no illegality on the part of the Commission and thus no fault such as to give rise to its liability.

10 The Court of First Instance consequently dismissed the application in its entirety.

The appeal

11 By his appeal, N asks the Court to set aside the judgment of the Court of First Instance and:

— annul the Commission's decision of 4 October 1993 removing the him from his post and the decision of 2 May 1994 rejecting his complaint;

— order his reinstatement with retroactive effect from 1 December 1993 and order the Commission to pay him the full arrears of his salary, plus interest at the rate of 8% per annum, from the date on which that salary became payable each month;

— order the Commission to pay him, by way of compensation for his non-material loss, the sum of BFR 3 million or any sum to be determined by the Court;

in the alternative, if it is decided that he should not be reinstated,

— to rule that the decision to remove him from his post was unfounded and consequently to order the Commission to pay him the sum of BFR 57 443 399 by way of compensation for his pecuniary damage and the sum of BFR 20 million by way of compensation for his non-material loss, or any sum to be determined by the Court;

in the alternative, before giving judgment and without prejudice,

— to authorise him to prove by any legal means, including evidence from witnesses, that he did not give any instructions to any person whatsoever concerning performance of the alleged 'contract' at issue and did not sign that contract;

— appoint an expert graphologist with the task of verifying the writing.

12 In its observations on the appeal, the Commission claims that the Court should:

— dismiss the appeal as inadmissible in so far as it relates to alleged errors of fact committed by the Court of First Instance;

— dismiss the appeal as unfounded in its entirety;

— dismiss the appellant's claims for compensation as unfounded;

— make an appropriate order as to costs.

13 In support of his appeal, the appellant raises three categories of plea in law concerning, first, the statement of the facts by the Court of First Instance, second, the disciplinary proceedings and, third, the Court of First Instance's appraisal of the facts and breach of the principle of proportionality.

Findings of the Court

14 Pursuant to Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time, by reasoned order dismiss the appeal without opening the oral procedure.

15 Before considering the pleas raised by the appellant, it should be borne in mind that, according to settled case-law of the Court of Justice, under Article 168a of the EC Treaty and the first subparagraph of Article 51 of the EC Statute of the Court of Justice, an appeal may rely only on grounds relating to infringement of rules of law, to the exclusion of any appraisal of facts (see, in particular, order in Case C-59/96 P *Koelman* v *Commission* [1997] ECR I-4809, paragraph 31).

16 Consequently, where the Court of First Instance has established the facts or appraised them, the Court of Justice has jurisdiction only to exercise review under Article 168a of the Treaty with respect to the legal characterisation of those facts and the inferences in law which the Court of First Instance has drawn from it. Similarly, the Court of Justice does not in principle have jurisdiction to examine evidence in support of those facts which the Court of First Instance has accepted. Where that evidence has been properly obtained, and the general principles of law and rules of procedure governing the burden of proof and the taking of evidence have been observed, it is for the Court of First Instance alone to assess the weight to be attributed to the evidence submitted to it (see, in particular, order in Case C-30/96 P *Abello and Others* v *Commission* [1998] ECR I-377, paragraph 53).

17 Article 112(1)(c) of the Rules of Procedure of the Court provides that an appeal is to specify the pleas in law and legal arguments relied on.

18 It follows from those provisions that an appeal must indicate precisely the contested elements of the judgment which it is sought to have set aside and also the legal arguments supporting the application.

19 According to settled case-law, an appeal which simply repeats or reproduces *verbatim* the pleas in law and arguments already submitted to the Court of First Instance, including those based on factual allegations expressly dismissed by that Court, does not meet that requirement; such an appeal amounts, in reality, to no more than a request for reconsideration of the application submitted to the Court of First Instance, a matter which, by virtue of Article 49 of the EC Statute of the

Court of Justice, falls outside the jurisdiction of the Court of Justice (see, in particular, order in Case C-403/95 P *Obst* v *Commission* [1998] ECR I-27, paragraph 18).

First category of plea: the statement of the facts by the Court of First Instance

20 By this first category of plea, N submits that the Court of First Instance committed factual errors which had the effect of distorting the conclusions in the contested decision and prejudicing his interests.

21 N criticises the Court of First Instance, first, for having disregarded the fact that he himself telephoned his bank and objected to the transfer of the sum in issue to his bank account, second, for having referred, at paragraph 7 of the contested judgment, to 'a contract between the applicant and Nigeria', a fact which he has always disputed, and, third, for having failed to find as a fact that there was no 'credible explanation' for the transfer to his bank account since he had forbidden the transaction as soon as he was informed of the sum involved. According to the appellant, it was not his responsibility to dispel the Commission's legitimate doubts after having confirmed to his bank that it should not carry out the transaction. Fourth, N claims that he did not have access to all the information and sensitive files.

22 In that respect, it is sufficient to note that, by that argument, N is merely challenging findings of fact, and the appraisal of the facts in question, by the Court of First Instance.

23 The first category of plea in law must consequently be dismissed as clearly inadmissible.

Second category of plea: irregularities in the disciplinary proceedings

24 In the second category of plea, the appellant, under his first plea, criticises the Court of First Instance for having considered, at paragraph 70 of the contested judgment, that since the 'source' had acted on its own initiative, the Commission could use the information provided to it in breach of a duty of secrecy and initiate an investigation and, subsequently, disciplinary proceedings on that basis. He states in that respect that the reason for the Commission's refusal to disclose the identity of that source raises all kinds of questions and the mere fact that the bank asked to remain anonymous should have prompted the Commission to think very carefully.

25 Next, the Court of First Instance disregarded the fact that the Commission's involvement in the original wrongful conduct results, at least, from its use and exploitation of that conduct. It disregarded the general principle of law *fraus omnia corrumpit* by holding, at paragraph 69 of the contested judgment, that the Commission could circumvent this automatic nullity on the pretext that it was obliged to protect 'its interests' which were, furthermore, not otherwise defined.

26 In that respect, it should be pointed out that, as is clear from paragraph 19 above, an appeal which merely repeats or reproduces *verbatim* the pleas in law and arguments already submitted before the Court of First Instance does not meet the requirements of Article 168a of the Treaty and the first subparagraph of Article 51 of the EC Statute of the Court of Justice.

27 The Court finds that the arguments set out above are directed essentially to obtaining a reconsideration of the application submitted to the Court of First Instance and do not demonstrate in what respect the contested judgment is vitiated by an error of law.

28 As regards the argument that the Court of First Instance disregarded the general principle of law *fraus omnia corrumpit*, it should be noted that that principle does not constitute a separate plea in law on the basis of which it is possible to challenge the findings of the Court of First Instance that the Commission was not prevented from initiating disciplinary proceedings merely because the information relied upon by it may have been provided by a bank in breach of national provisions for the protection of banking secrecy and the initiation of such proceedings did not constitute an infringement of the right to respect for private life.

29 The first plea in that category must therefore be dismissed as clearly inadmissible.

30 Under the first part of the second plea, N criticises the Court of First Instance for having confused separate events, namely the initiation of an investigation, referred to in paragraph 69 of the contested judgment, and the initiation of disciplinary proceedings, referred to at paragraph 70. According to the second part of that plea, the Court of First Instance failed to substantiate the reasons for which the Commission's interests could not have been satisfied by a simple investigation rather than disciplinary proceedings leading to the removal of the appellant from his post. In that respect, N submits that the primacy of the general interest over a legitimate individual interest must constitute an exception in any democracy and can be justified only if sacrifice of the individual interest is indispensable and proportionate to the general interest pleaded.

31 The second plea is based on a clearly erroneous reading of the contested judgment.

32 First, at paragraph 69 of the contested judgment, the Court of First Instance explained the reasons for which it was for the Commission to initiate a preliminary investigation whilst, at paragraph 70, it responded to N's plea to the effect that there had been an irregularity in the disciplinary proceedings in that they had been initiated following the communication of information by a bank in breach of national provisions for the protection of banking secrecy.

33 Next, at paragraph 74, the Court of First Instance held that, by initiating an investigation and, subsequently, disciplinary proceedings after receiving information which might have related to unlawful acts on the part of the appellant and, consequently, serious breaches of his obligations under the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations'), the Commission had not in any way acted in a disproportionate manner.

34 It follows that the Court of First Instance did not confuse the two procedures and gave sufficient particulars of the reasons justifying the initiation of disciplinary proceedings by the Commission.

35 The second plea must therefore be dismissed as clearly unfounded.

36 Under the first part of the third plea, N submits that, at paragraph 74 of the contested judgment, the Court of First Instance was wrong in holding that the initiation of the disciplinary proceedings did not constitute an infringement of the right to respect for private life. The Court of First Instance thus failed to take into account, first, the fact that N had not committed any unlawful act and, second, the fact that the general interest justifying a derogation to the fundamental right conferred by Article 8 of the ECHR could be sufficiently protected by a simple investigation. Under the second part of that plea, he submits that he was justified in complaining that he had been denied the right to bring any form of action to seek review of the legality of the conduct which had deprived him of the right to respect for private life.

37 Under the fourth plea, N criticises the Court of First Instance for having failed to recognise that his rights of defence had been infringed. He submits that the Court of First Instance could not hold that it was not necessary for the matters alleged to be clearly indicated at the stage of the preliminary interviews, since it could not refer to the concept of 'preliminary interviews' in order to justify an exception to the requirement of clarity laid down in Article 1 of Annex IX to the Staff Regulations concerning disciplinary proceedings, and the preliminary interviews amounted to major interrogations in the course of which he was unlawfully led to incriminate himself.

38 As regards those two pleas, it should be borne in mind that, as already pointed out at paragraph 19 above, an appeal which simply repeats or reproduces *verbatim* the pleas in law and arguments already submitted to the Court of First Instance does not meet the requirements of Article 168a of the Treaty and Article 51 of the EC Statute of the Court of Justice.

39 The appellant reproduces the arguments he had raised before the Court of First Instance in order to demonstrate that initiation of the disciplinary proceedings constituted an infringement of the right to respect for private life and that his rights of defence had been infringed in that the matters alleged had not been clearly indicated at the time of the preliminary interviews, but he does not add anything enabling the Court to understand in what respect the contested judgment was vitiated by an error of law.

40 Furthermore, it should be noted that the Court of First Instance specifically reviewed the legality of the alleged infringement of the right to respect for private life at paragraphs 71 to 75 of the contested judgment.

41 The first part of the third plea and the fourth plea must consequently be dismissed as clearly inadmissible, and the second part of the third plea must be dismissed as clearly unfounded.

42 Under his fifth plea, N submits that the Court of First Instance could not properly hold, at paragraph 81 of the contested judgment, that the Commission was under a duty to protect the anonymity of the informant since it at no time demonstrated that the bank had requested that anonymity and the bank had never denied being the informant. The contested judgment cannot be based on the informant's professional secrecy since the bank has no professional reason to reveal its secrets and, to the contrary, has a professional duty to maintain secrecy.

43 In that respect, it should be pointed out that, in so far as the fifth plea relates to an erroneous assessment of the facts by the Court of First Instance, it is clearly inadmissible.

44 As regards the objection concerning the obligation to protect the anonymity of the informant, it is clear from the case-law of the Court of Justice, as the Court of First Instance pointed out at paragraph 81 of the contested judgment, that Article 214 of the EC Treaty — which requires the members and the servants of the institutions of the Community not to disclose information of the kind covered by the obligation of professional secrecy — constitutes a general principle which even applies to information supplied by natural persons, if that information is of the kind that is confidential. In the case of information supplied on a purely voluntary basis, but accompanied by a request for confidentiality in order to protect the informant's anonymity, an institution which accepts such information is bound to comply with such a condition (see Case 145/83 *Adams* v *Commission* [1985] ECR 3539, paragraph 34). Furthermore, proceedings initiated on the basis of information from an undisclosed source are lawful, provided that this does not affect the opportunity for the person concerned to make known his views on the truth or implication of the facts or documents communicated or on the conclusions drawn by the Commission from them (Case 85/76 *Hoffmann-La Roche* v *Commission* [1979] ECR 461, paragraph 14).

45 It follows that the fifth plea is in part clearly inadmissible and in part clearly unfounded.

46 Under the sixth plea, N submits that, at paragraph 83 of the contested judgment, the Court of First Instance was wrong in not recognising that his rights of defence had been infringed since the identity of the informant had been concealed from him. The whole procedure was vitiated by the failure to disclose the fact that the preliminary investigation and the disciplinary proceedings were both based solely on the unlawful conduct of the bank.

47 Under his seventh plea, N criticises the Court of First Instance for having dismissed the argument to the effect that his right not to incriminate himself had been infringed. The most serious charges against him in fact resulted from his own statements.

48 In that respect, it need merely be observed that an appeal which simply repeats or reproduces *verbatim* the pleas in law and arguments already submitted to the Court of First Instance does not meet the requirements of Article 168a of the Treaty and Article 51 of the EC Statute of the Court of Justice.

49 In the present case, N's assertions are, in reality, directed to obtaining a reconsideration of the application submitted before the Court of First Instance and do not demonstrate in what respect the contested judgment was vitiated by an error of law.

50 The sixth and seventh pleas must therefore be dismissed as clearly inadmissible.

51 Under the eighth plea, N submits that, by relying on the fact that the Commission cannot be characterised as a 'tribunal' within the meaning of Article 6 of the ECHR, the Court of First Instance wrongly deprived him, at paragraph 95 of the contested judgment, of the guarantees laid down in that provision. He adds that, even if that institution cannot be characterised as a tribunal, the Court of First Instance itself should at least have complied with that provision.

52 First, it should be noted that, as the Court of First Instance held at paragraph 95 of the contested judgment, proceedings before the Commission are administrative, rather than judicial, with the result that the Commission cannot be characterised as a 'tribunal' within the meaning of Article 6 of the ECHR (see Joined Cases 100/80 to 103/80 *Musique Diffusion Française* v *Commission* [1983] ECR 1825, paragraph 7).

53 Furthermore, no specific basis is put forward for N's assertion that the Court of First Instance itself failed to comply with Article 6 of the ECHR.

54 The eighth plea must consequently be dismissed as clearly unfounded.

55 Finally, under the first part of the ninth plea, N criticises the Court of First Instance for having rejected, at paragraph 96 of the contested judgment, the objection that the decision of 4 October 1993, removing him from his post, and that of 2 May 1994, dismissing his complaint, emanated from the same person. Under the second part of that plea, he submits that the Court of First Instance failed to respond to his argument, to the effect that, without stating the reasons for his own decision, the Director had decided to remove the applicant from his post, against the advice of the Disciplinary Board which merely recommended downgrading, and the Commission had also failed to give reasons for that decision.

56 Since it concerns an appraisal of facts by the Court of First Instance, the first part of the plea must be held to be clearly inadmissible.

57 The second part of the plea must be dismissed as clearly unfounded. As is clear from paragraph 112 of the contested judgment, the appellant submitted before the Court of First Instance that, even though the Disciplinary Board had recommended that he be downgraded, the appointing authority had opted to remove him from his post for reasons which had not been proved to be correct in the present case, either in fact or in law. At paragraphs 142 and 143 of the contested judgment, the Court of First Instance responded to that argument by holding that the appointing authority's statement in the contested decision was the reflection of a global appraisal of the facts, that the applicant had therefore been wrong to concentrate on the question whether proof had been provided for that statement in isolation and, finally, that the appointing authority had merely envisaged a hypothesis which was considered plausible in the light of the circumstances of the case and, in particular, of the appellant's failure to cooperate in good faith, which had resulted in the crystallisation of legitimate suspicions.

Third category of plea: the appraisal of the facts by the Court of First Instance and breach of the principle of proportionality

58 In this third category of plea, N submits, under his first plea, that the charges against him were inconsistent to such an extent that the Court of First Instance should have held that there was no justification for removing him from his post, a measure which conflicted with the opinion of the Disciplinary Board. The Commission and the Court of First Instance both based themselves on a mere hypothesis with the trappings of plausibility, the former in order to impose the penalty at issue and the latter to justify it. Furthermore, the Court of First Instance was wrong in holding, at paragraph 147, that it was for the appointing authority to choose the appropriate disciplinary measure to be imposed and that review of the question whether the penalty was proportionate to the wrongful conduct could be limited to cases of manifest error.

59 Under the first part of the second plea, N submits that the Court of First Instance was not entitled to hold against him the fact that he had given contradictory explanations, since none of the variations mentioned was such as to perpetuate the Commission's legitimate doubts as regards acts liable to cause it considerable harm. Under the second part of that plea, the applicant criticises the Court of First Instance for having upheld his dismissal solely because he had remained silent, even though he was entitled to do so.

60 Those pleas are based on a clearly erroneous reading of the contested judgment.

61 First, it does not appear from the contested judgment that the Court of First Instance confirmed the decision to remove the appellant from his post merely because he had given conflicting explanations. At paragraph 142 of the judgment, the Court of First Instance noted that the appointing authority had stated in the contested decision that all the evidence suggested that N had become involved in the attempted fraudulent transfer of a very large sum of money to his bank in Brussels and that that statement was consistent with a global appraisal of the facts. Furthermore, the Court of First Instance held, at paragraph 144 of the contested

judgment, that it could in any event be concluded from the appellant's statements that he had maintained contacts in a third country in a field in which, in his capacity as a Community official, he had access to sensitive information, without advising his hierarchical superiors. The Court of First Instance thus stated, at paragraph 145, that there were no grounds for holding that the Commission had committed a manifest error of assessment in concluding that the appellant had committed a serious breach of his obligations under the Staff Regulations. That finding was made after the Court had pointed out, at paragraph 129, that the Staff Regulations gave rise to a duty of loyalty on the part of an official to the institution to which he belongs and that as a consequence of that duty he must conduct himself in a manner that is beyond suspicion, in order that the relationship of trust between that institution and himself may at all times be maintained.

62 Next, as the Court of First Instance pointed out at paragraph 147 of the contested judgment, according to the settled case-law of the Court of Justice, where the truth of the facts alleged against an official is established, it is for the appointing authority to choose the appropriate disciplinary measure to be imposed and that choice may be the subject of censure by the Community judicature only in the event of manifest error or misuse of powers (see, in particular, Case 228/83 *F.* v *Commission* [1985] ECR 275, paragraph 34).

63 As the Court of First Instance correctly pointed out at paragraph 148 of the contested judgment, there is nothing in the documents in the case to justify the conclusion that the penalty imposed was manifestly disproportionate to the breaches of duty found to have been established or that the Commission used its powers for a purpose other than that for which they were conferred on it.

64 In those circumstances, the two pleas must be dismissed as clearly unfounded.

65 Under the first part of the third plea, N submits first of all that the Court of First Instance wrongly rejected the hypothesis of attempted fraud which had, however, proved to be correct, and his explanations relating thereto. Under the second part, he criticises the Court of First Instance for having refused to penalise the supposedly serious error committed by the appointing authority in basing itself on a glo-

bal appraisal of the facts. Finally, under the third part of that plea, the appellant submits that, at paragraph 132 of the contested judgment, the Court of First Instance wrongly considered that it was necessary to give preference to a presumption of guilt and to deny him the benefit of the doubt. The Court of First Instance thus reversed the burden of proof and ignored the presumption of innocence.

66 As regards the first part of the plea, it is sufficient to note that it relates to an erroneous assessment of the facts by the Court of First Instance and must consequently be dismissed as clearly inadmissible.

67 The second part of the plea must be dismissed as clearly unfounded. At paragraph 145 of the contested judgment, the Court of First Instance stated that it found no grounds for holding that the Commission committed a manifest error of assessment of the facts by basing itself on a global appraisal.

68 Finally, the third part of that plea is based on a clearly incorrect reading of the contested judgment. It is clear from paragraph 132 of the judgment not that preference should be given to a presumption of guilt and that N should be denied the benefit of the doubt, but that he could not rely on the general principles of law and, in particular, a presumption of innocence, in order to justify a failure to cooperate. The Court of First Instance thus considered that, since he was the only person in possession of information relating to a transaction of which he claimed to be the victim, it was for him to cooperate in good faith with the Commission, rather than to establish his innocence.

69 It follows from all the foregoing considerations that the pleas in law raised by the appellant in support of his appeal are either clearly inadmissible or clearly unfounded. The appeal must therefore be dismissed pursuant to Article 119 of the Rules of Procedure.

Costs

70 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant was unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby orders:

1. The appeal is dismissed;

2. The appellant is ordered to pay the costs.

Luxembourg, 16 July 1998.

R. Grass — Registrar

C. Gulmann — President of the Third Chamber