

THE EUROPEAN UNION

'MYTHS'

INTRODUCTION

Ironically most of the disputes about the alleged European Union 'myths' can resolved very quickly using an Internet search engine. Like all bureaucracies the EU is fond of its paperwork and in the age of the Internet this information is just a 'click' away.

This document has been put together to provide reference material to spell out the realities behind some of the most common EU 'myths' .

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1. Bent Bananas.

Statements to the effect that bureaucratic overkill makes the EU so intrusive that it even legislates to control the curvature of fruit are often held up as a Eurosceptic 'myth'. This 'myth' is easy to prove as the documents are available direct from the EU's own web site.

Regulation 2257/94 (http://europa.eu.int/eur-lex/en/consleg/pdf/1994/en_1994R2257_do_001.pdf) deals with bananas. Section IV (b) 'Size Tolerances' states

'satisfying the sizing characteristics, up to a limit of 1cm for the minimum length of 14cm.'

Similarly with the 'bent' cucumber regulation (http://europa.eu.int/eur-lex/en/consleg/pdf/1988/en_1988R1677_do_001.pdf). Section II, B, (I), 'Classification' states

'.. must be well shaped and practically straight (maximum height of the arc 10mm per 10cm of length)..'

The standard response (after the initial denial) is that these are labelling and quality standards that don't stop anybody selling anything (the curvature definitions define the 'Class' of the fruit). For a start this ignores the fact that retailers are not going to want to label their produce 'second class' but it also ignores the fact that laws of this gob-smacking detail

- (a) are environmentally unsound - perfectly good food will be wasted due to its shape.
- (b) make taxes go up to pay for civil servants to administer this level of detail
- (c) make shop prices go up as the retailers have to put in extra work to comply with them.

The full cucumber regulation is enclosed below for reference.

COMMISSION REGULATION (EEC) No 1677/88 of 15 June 1988 laying down

Quality Standards for cucumbers

THE COMMISSION OF THE EUROPEAN COMMUNITIES.

Having regard to the Treaty establishing the European Economic Community,
Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organisation of the market in fruit and vegetables (1), as last amended by Regulation (EEC) No 1117/88 (2), and in particular Article 2 (3) thereof,

Whereas Council Regulation No 183/64/EEC (3) lays down quality standards for cucumbers; whereas a change has occurred in the production and marketing of those products, particularly as regards the requirements of consumer and wholesale markets; whereas the common quality

standards for cucumbers should therefore be changed to take those new requirements into account;

Whereas such changes entail alteration of the definition of the supplementary quality class as laid down by Council Regulation (EEC) No 1194/69 (4) as last amended by Regulation (EEC) No 79/88 (5); whereas account should be taken, in defining that class, of the economic importance to producers of the products concerned and of the need to meet consumer requirements;

Whereas the standards are applicable at all stages of marketing; whereas transportation over a long distance, storage for a certain length of time or the various handling operations may bring about deterioration due to the biological development of the products or their tendency to perish; whereas, therefore, account should be taken of such deterioration when applying the standards of marketing stages following dispatch;

Whereas in the interests of clarity and certainty as to legal requirements and for ease of use the standards thus changed should be consolidated in a single text;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

the quality standards for cucumbers, falling within subheading 0707 00 11 and 0707 00 19 of the combined nomenclature shall be as set out in the Annex hereto. Those standards shall apply at all marketing stages, under the conditions laid down in Regulation (EEC) No 1035/72. However, at stages following dispatch the products may show, in relation to the standards prescribed a slight

lack of freshness and turgescence and slight alteration due to their biological development and their tendency to perish.

Article 2

Regulation No 183/64/EEC is hereby amended as follows:

- the second indent of Article 1 (2) is deleted,
- Annex I/2 is deleted.

Article 3

Regulation (EEC) No 1194/69 is hereby amended as follows:

- in Article 1, the words 'and cucumbers' are deleted,
- Annex VII is deleted.

Article 4

This Regulation shall enter into force on 1 January 1989.

This Regulation shall be binding in its entirety and directly applicable in all Member States. Done at Brussels, 15 June 1988. For the Commission

ANNEX : QUALITY STANDARDS FOR CUCUMBERS

1. DEFINITION OF PRODUCE

This standard applies to cucumbers grown from varieties (cultivars) of *Cucumis sativus* L. to be supplied fresh to the consumer, cucumbers for processing and gherkins being excluded.

II. PROVISIONS CONCERNING QUALITY

The purpose of the standard is to define the quality requirements for cucumbers after preparation and packaging.

A. Minimum requirements

In all classes, subject to the special provisions for each class and the tolerances allowed, cucumbers must be:

- intact,
- sound;

produce affected by rotting or deterioration such as to make it unfit for consumption is excluded,

- fresh in appearance,
- firm,
- clean, practically free of any visible foreign matter,
- practically free from pests,
- practically free from damage caused by pests,
- free of bitter taste (subject to the special provisions for classes II and III under the heading 'Tolerances'),
- free of abnormal external moisture,
- free of foreign smell and/or taste.

Cucumbers must be sufficiently developed but their seeds must be soft.

The condition of the produce must be such as to enable it to withstand transport and handling, and

- to arrive in satisfactory condition at the place of destination.

B. Classification

Cucumbers are classed into the four classes defined below:

(i) 'Extra' class

Cucumbers in this class must be of superior quality. They must have all the characteristics of the variety. They must:

- be well developed
- be well shaped and practically straight (maximum height of the arc: 10 mm per 10 cm of length of the cucumber)
- have a typical colouring for the variety
- be free of defects, including all deformations and particularly those caused by seed formation.

(ii) Class I

Cucumbers in this class must be of good quality. They must:

- be reasonably developed
- be reasonably well shaped and practically straight (maximum height of the arc: 10 mm per 10 cm of the length of cucumber).

The following defects are allowed:

- a slight deformation, but excluding that caused by seed formation

- a slight defect in colouring, especially the light coloured part of the cucumber where it touched the ground during growth
- slight skin blemishes due to rubbing and handling or low temperatures, provided that such blemishes have healed and do not affect the keeping quality.

(iii) Class II:

This class includes cucumbers which do not qualify for inclusion in the higher classes but satisfy the minimum requirements specified above. However, they may have the following defects:

- deformations other than serious seed development,
- defects in colouring up to one-third of the surface; in the case of cucumbers grown under protection, considerable defects in colouring in the affected part are not allowed,
- healed cracks,
- slight damage caused by rubbing and handling which does not seriously affect the keeping quality and appearance. All the defects listed above are allowed for straight and slightly crooked cucumbers. In the other hand, crooked cucumbers are allowed only if they have no more than slight defects in colouring and have no defects or deformation other than crookedness. Slightly crooked cucumbers may have a maximum height of the arc of 20 mm per 10 cm of length of the cucumber.

Crooked cucumbers may have a greater arc and must be packed separately.

(iv) Class III (1):

This class includes cucumbers which do not qualify for inclusion in the higher classes but satisfy the requirements specified for Class II. However, crooked cucumbers may have all the defects allowed in Class II for straight and slightly crooked cucumbers and they must be packed separately.

III. PROVISIONS CONCERNING SIZING

Sizing is determined by the weight of the cucumber.

(i) Cucumbers grown in the open must weigh 180 g or more. Cucumbers grown under protection must weigh 250 g or more.

(ii) Moreover, 'Extra' Class and Class I cucumbers grown under protection weighing:

- 500 g or more must be not less than 30 cm long,
- between 250 and 500 g must be not less than 25 cm long.

(iii) Sizing is compulsory for classes 'Extra' and I.

The difference in weight between the heaviest and lightest cucumbers in the same package must not exceed:

- 100 grams where the lightest piece weighs between 180 and 400 grams,
- 150 grams where the lightest piece weighs 400 grams or more.

(iv) The provisions concerning sizing are not applicable to 'short cucumbers'.

IV. PROVISIONS CONCERNING TOLERANCES

Tolerances in respect of quality and size are allowed in each package for produce not satisfying the requirements for the class indicated.

A. Quality tolerances:

(i) 'Extra' Class:

5 % by number of cucumbers not satisfying the requirements for the class but meeting the requirements for Class I, or exceptionally coming within the tolerances for that class.

(ii) Class I:

10 % by number of cucumbers not satisfying the requirements for the class but meeting the requirements for Class II, or exceptionally coming within the tolerances for that class.

(iii) Class II:

10 % by number of cucumbers satisfying neither the requirements for the class nor the minimum requirements, to the exclusion of produce affected by rotting or deterioration such as to make it unfit for consumption. Within this tolerance a maximum of 2 % by number of cucumbers may have tips with a bitter taste.

(iv) Class III:

15 % by number of cucumbers satisfying neither the requirements for the class nor the minimum requirements, to the exclusion of produce affected by rotting or deterioration such as to make it unfit for consumption. Within this tolerance a maximum of 4 % by number of cucumbers may have tips with a bitter taste.

B. Size tolerances:

For all classes: 10 % by number of cucumbers not satisfying the size requirements. However, this tolerance is applicable to produce which differs by not more than 10 % from the size and weight limits specified.

V. PROVISIONS CONCERNING PRESENTATION

A. Uniformity:

The contents of each package must be uniform and contain only cucumbers of the same origin, variety or type, quality and size (where required). For cucumbers in Class III, uniformity may be limited to origin and variety or type. The visible part of each package must be representative of the entire contents.

B. Packaging:

The cucumbers must be packed in such a way as to protect them properly. The cucumbers must be packed sufficiently tightly as to avoid damage during transport. The materials used inside the package must be new, clean and of a quality such as to avoid causing any external or internal damage to the produce. The use of materials and particularly of paper or stamps bearing trade specifications is allowed provided that the printing or labelling has been done with a non-toxic ink or glue. The packages must be free of any foreign matter.

VI. PROVISIONS CONCERNING MARKING

Each package must bear the following particulars in letters grouped on the same side, legibly and indelibly marked and visible from the outside:

A. Identification:

1.2 // Packer and/or Despatcher // Name and address or officially issued or accepted code mark.

B. Nature of produce:

- 'Cucumbers' if the contents are not visible from the outside,
- 'under protection', where appropriate, or an equivalent expression,
- 'short cucumbers' or 'mini-cucumbers', as appropriate.

C. Origin of produce:

Country of origin and, optionally, district where grown, or national, regional or local trade name.

D. Commercial specifications:

- Class and, as appropriate, for Classes II and III, 'crooked cucumbers',
- Size (if the produce is sized) expressed in minimum and maximum weight of the cucumbers,
- Number of units (optional).

E. Official crate marking (optional)

Additional class within the meaning of Article 2 (1) of Regulation (EEC) No 1035/72. The use of this quality class or some of its specifications is subject to a decision to be taken on the basis of Article 4 (1) of the same Regulation. END

2. The EU suppresses free speech using blasphemy laws

RUIZ-JARABO COLOMER the Advocate-General of the European Court of Justice gave a legal opinion (in case C-274/99) in 19 October 2000 that criticism of the EU, its institutions or its leading figures was akin to blasphemy. Further, that, because laws against blasphemy were acceptable both under the common law of England and the existing European Human Rights Convention, it then followed that punishing someone for allegedly criticizing the EU was not an infringement of free speech

This opinion was given as a result of a case against a British European Commission official Bernard Connolly, who had written 'The Rotten Heart Of Europe', a book critical of the EU.

The European Court of First Instance found against him, ruling that the EU may restrict political speech to protect its interests.

Initially Mr. Connolly had argued that a landmark British case, *Wingrove VS. United Kingdom*, had established that political speech could not be limited except in extreme circumstances of blasphemy. The *Wingrove* case concerned a pornographic video showing St. Teresa of Avila engaged in various sexual acts.

The advocate general turned that argument upside down and argued that the blasphemy ruling implied a broader protection for the 'rights of others'. It was the cornerstone of his argument that the EU can legitimately punish dissent.

The meat of the issue is in sections 15 to 20 where the advocate general refers to the *Wingrove* case in the UK

Section 15 gives some of the *Wingrove* case background basically saying that "It appears from the judgment that English law defined the offence of blasphemy in the following terms: 'Every publication is said to be blasphemous which contains any contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ or the Bible, or the formularies of the Church of England as by law established. ... the Court of Human Rights ... acknowledged that the national authorities needed sufficient flexibility to enable them to assess whether certain facts fell within the definition of the offence.'"

Section 17 states affirms that censorship is fine in the case of 'the protection of the reputation or the rights of others, which, without any doubt, encompasses a Community institution's rights in relation to the reputation of its members'

20 concludes "To put it in positive terms, the decision dismissing Mr Connolly for having contravened that provision satisfies the requirement of proportionality in that it finds that the work which was published caused serious prejudice to the Communities' interests"

The full text is included below (this can be obtained from the Court of Justice of the European Communities website (<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=C-274%2F99&datefs=&datefe=&nomusuel=&domaine=&mots=&resmax=100>) but it is very hard

to find using the site search engine (perhaps they are not proud of this one?) the EU Observer site has a direct link from this article <http://www.euobserver.com/index.phtml?aid=1640>.)

OPINION OF ADVOCATE GENERAL

RUIZ-JARABO COLOMER

delivered on 19 October 2000 [\(1\)](#)

Case C-274/99 P

Bernard Connolly

v

Commission of the European Communities

(Appeal - Officials - Disciplinary proceedings - Articles 11, 12 and 17 of the Staff Regulations - Freedom of expression - Duty to serve the institution loyally and preserve the dignity of the office)

1.

Mr Connolly, a former Commission official, is appealing against the judgment of the Court of First Instance of 19 May 1999, [\(2\)](#) which dismissed his application for annulment of the opinion of the Disciplinary Board of 7 December 1995 and the decision of 16 January 1996 removing him from his post with effect from 1 February 1996.

I. Background

2.

The facts taken as proved in the judgment at first instance are, in summary, the following:

- The appellant was a grade A4 official and head of Unit 3, 'EMS: National and Community Monetary Policies in Directorate D, which dealt with monetary affairs in the Directorate General for Economic and Financial Affairs.

- During and after 1991, Mr Connolly requested permission, in accordance with the second paragraph of Article 17 of the Staff Regulations of Officials of the European Communities [\(3\)](#) (the Staff Regulations), to publish up to three articles on monetary questions. Permission was refused.

- On 24 April 1995 he 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 and, by a further decision of 27 September 1995, agreed that he should be reinstated in his post on 4 October 1995.

- Whilst on leave, Mr Connolly published a book entitled *The Rotten Heart of Europe - The Dirty War for Europe's Money* without requesting prior permission as required by the second paragraph of Article 17 of the Staff Regulations. Early in September, in particular on 4 and 10 September, a series of articles concerning the book was published in the British press.

- The Director-General for Personnel and Administration, acting in his capacity as appointing authority, sent a letter to the appellant on 6 September informing him of his decision to bring disciplinary proceedings for infringements of Articles 11, 12 and 17 of the Staff Regulations and, in accordance with Article 87 of those regulations, summoned him to a hearing.

- The appellant was heard for the first time on 12 September 1995. At that hearing he submitted a written statement indicating that he would not answer any questions as he had not been informed in advance of the specific infringements he was alleged to have committed. On the following day he was given notice of a further hearing and was informed that the conduct of which he was accused consisted in publishing his

book, allowing extracts from it to appear in *The Times* newspaper and making statements in an interview published by that newspaper, without having requested prior permission to do so.

- On 26 September, when he was heard again, he 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. He added that the publication 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. Finally, Mr Connolly expressed some doubt as to whether the disciplinary procedure to which he was subject was objective.

- On 27 September 1995 the appointing authority decided, in accordance with 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 for the duration of his suspension. On 4 October 1995, it decided to submit a report to the Disciplinary Board under Article 1 of Annex IX to the Staff Regulations.

- Mr Connolly lodged a complaint on 27 October in accordance with Article 90(2) of the Staff Regulations, applying for annulment of the measures by which it had been decided (a) to bring disciplinary proceedings against him, (b) to submit a report to the Disciplinary Board and (c) to suspend him from his post.

- On 27 February 1996, the Commission informed Mr Connolly that his complaint had been dismissed by implied decision. However, he had already made an application to the Court of First Instance, which gave rise to Case T-203/95.

- On 7 December 1995 the Disciplinary Board delivered its opinion, in which it recommended that the disciplinary measure prescribed by Article 86(2)(f) of the Staff Regulations should be imposed on Mr Connolly, namely removal from his post without withdrawal of entitlement to retirement pension.

- On 9 July 1996, the appellant was heard by the appointing authority in accordance with the third paragraph of Article 7 of Annex IX to the Staff Regulations.

- By decision of 16 January 1996, the appointing authority ordered that Mr Connolly should, by way of disciplinary measure, be removed from his post but that his entitlement to a retirement pension should not be withdrawn.

- By letter of 7 March 1996 received at the Secretariat-General of the Commission on 14 March 1996, the appellant submitted a complaint under Article 90(2) of the Staff Regulations against the Disciplinary Board's reasoned opinion and against the decision to remove him from his post. That complaint was expressly rejected by the Commission in a letter to Mr Connolly dated 18 July 1996.

- On 13 March 1996 Mr Connolly brought an action before the Court of First Instance for annulment of the reasoned opinion of the Disciplinary Board (Case T-34/96) and, on 18 October 1996, he brought a further action in respect of the decision removing him from his post (Case T-163/96).

II. The appeal

3.

The present appeal was lodged at the Registry of the Court of Justice on 20 July 1999. It is based on thirteen pleas in law, many of which are subdivided into several parts which, in turn, contain different grounds of appeal. I shall analyse each of those pleas in turn, although I shall not examine those complaints which, even if well founded, are manifestly incapable of constituting grounds for setting aside, even partially, the judgment under appeal.

First plea in law: the obligation to obtain permission before publishing a text does not comply with the requirements of freedom of expression

4. By his first plea, comprising two parts which I shall deal with together, the appellant claims essentially that the judgment at first instance should be set aside on the ground that Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter 'the Convention or 'the ECHR) has been infringed.
5. In the context of this plea, the appellant sets out at considerable length his various complaints concerning the judgment under appeal. First, he submits that the Court of First Instance should have held that Articles 12 and 17 of the Staff Regulations impose a system of prior censorship, which is in itself unacceptable in that it is contrary to the requirements of Article 10 of the ECHR, as interpreted by the European Court of Human Rights (hereinafter 'the Court of Human Rights).

Furthermore, those articles do not provide the procedural and substantive safeguards which, under Article 10, must go hand in hand with any limitations imposed on the fundamental rights which it protects, such as the requirement that any restriction must pursue a legitimate objective, must be prescribed by a legislative provision whose application is foreseeable and must be necessary and appropriate to the purpose in question, as well as being subject to effective judicial review.

Lastly, he considers that there has also been a breach of the obligation to balance the various interests at stake before any restriction is placed on a fundamental right such as freedom of expression.
6. As a preliminary point, the Commission contends that, if the appellant wishes to challenge the very lawfulness of the system set up by Article 17 of the Staff Regulations, rather than the Court of First Instance's interpretation of it, he should have lodged an objection of illegality in due time, in accordance with Article 241 EC (formerly Article 184 of the EC Treaty).
7. For my part, I take the view that although it is true that the complaints contained in the first plea may, by reason of their generality, be interpreted as challenging the validity of the rules on the granting of permission laid down in Article 17 in the abstract, it may nevertheless be inferred from the very breadth of the complaints that the actual method adopted by the Court of First Instance is being challenged. There is no need, therefore, either to look further into the question concerning the appropriate legal procedure for lodging an objection of illegality or to ascertain whether the procedure followed by the appellant amounted to lodging such an objection.
8. That does not mean that I reach the same conclusion as the appellant. In my view, the Court of First Instance did not misinterpret Article 10 of the ECHR, when it considered, chiefly in paragraph 146 et seq. of its judgment, the alleged infringement of the fundamental freedom laid down in that provision.
9. Freedom of expression is one of the fundamental pillars of any democracy. As the Court of Human Rights has stated in one of the finest passages found in its case-law: 'Freedom of expression constitutes one of the essential foundations of [a democratic society], one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society. (4)
10. It is evident that officials of the European Communities enjoy the right of freedom of expression as it has been laid down in the ECHR and that they may rely on it before the Court of Justice as a general principle of Community law. That is clear from, *inter alia*, Article 6(2) of the Treaty on European Union. The corollary of that proposition is that, in the exercise of Convention rights and freedoms, Community officials are subject to the restrictions which are necessary in a democratic society, the imposition of

which can be a matter only for the Community institutions. The appellant's argument that the power to lay down the conditions under which Convention rights may be exercised is a matter for the State as traditionally viewed therefore fails.

11.

The Convention, whose cardinal importance as a source for defining the fundamental rights of the Community legal order was recognised by the Court of Justice long before the Maastricht reforms, has its own review mechanism, which, at present, essentially consists in bringing the matter before the Court of Human Rights. That Court uses, as did the Commission of Human Rights which is no longer extant, its own method of interpreting the Convention. Allow me to outline it.

12.

As regards complaints based on Articles 8 to 11 of the Convention, which are all structured in a similar way, the Court of Human Rights usually examines certain requirements successively. It analyses, in the first place, whether the act giving rise to the application may be considered as interference by the State with one of the rights and freedoms protected by the first paragraph of each of those four provisions. If that is the case, the Court then considers whether the interference can be justified under the second paragraph of those provisions. To that end, it determines, first, whether the act or measure in question was pursuing one of the stated objectives - which, in the case of Article 10, include protection of the following interests: national security, territorial integrity or public safety, prevention of disorder or crime, protection of health, morals or the reputation or rights of others, prevention of disclosure of certain information and maintenance of the authority and impartiality of the judiciary - and, second, whether the act or measure was prescribed by a sufficiently clear law. Finally, if all those requirements are satisfied, the Court of Human Rights determines whether the interference was necessary in a democratic society.

We are concerned, therefore, with an interpretative approach which does not impose any obligations distinct from those flowing from the Convention. It follows that simply using a different method does not of itself constitute an infringement of the Convention, although the way in which the appellant has worded this plea might suggest that it does. In so far as the present plea is seeking to challenge the Court of First Instance's use of certain canons of interpretation which differ from those used by the Court of Human Rights, it must be declared ineffective.

13.

In any event, it is my opinion that, contrary to the appellant's assertions, the analytical criteria, the alleged absence of which forms the basis of this plea, are to be found in the judgment of 19 May 1999.

14.

It seems to me beyond doubt that the disciplinary measure imposed on the appellant, in so far as it is founded partly on his failure to obtain permission prior to publication, constitutes, in principle, an interference with his right to freedom of expression understood in the general sense.

15.

That interference is prescribed by law. The second paragraph of Article 17 of the Staff Regulations - approved by a Council regulation - which makes publication of any matter dealing with the work of the Communities conditional upon obtaining permission, is indisputably a binding legal obligation.

The provision also embodies an adequate degree of foreseeability so far as the disciplinary measure adopted was concerned. The relative lack of precision of the reference in the last sentence to 'the interests of the Communities may be explained by the fact that the aim of the provision is to prevent conduct which may take many forms and that it is impossible to condense all the hypothetical cases into one more concrete expression. I take the view, however, that the wording of the provision enabled the appellant to foresee, to a degree that was more than reasonable given the circumstances of the case, that, had he requested permission to publish *The Rotten Heart of Europe*, it would have been refused. The judgment under appeal recognises that to be the case when it points out, in paragraph 154, that one of the grounds for making the decision to remove Mr Connolly from his post was that he 'could not have been unaware that he would have been refused permission to publish on the same grounds as those on which he was previously refused permission to publish various articles with a similar content.

Like the appellant, I turn, by way of illustration, to the judgment of the Court of Human Rights in *Wingrove v United Kingdom*. (5) On that occasion the Court had to consider whether the refusal of a distribution licence for a video, which was considered to be blasphemous, interfered with the right to freedom of expression upheld in Article 10 of the Convention. It appears from the judgment that English law defined the offence of blasphemy in the following terms: 'Every publication is said to be blasphemous which contains any contemptuous, reviling, scurrilous or ludicrous matter relating to God, Jesus Christ or the Bible, or the formularies of the Church of England as by law established. (6) The imprecision of that definition did not hamper the Court of Human Rights in forming a view as to foreseeability. On the contrary, it acknowledged that the national authorities needed sufficient flexibility to enable them to assess whether certain facts fell within the definition of the offence.

16.

Nor do I believe that there can be any serious doubt either that the Commission, in imposing the disciplinary measure, was pursuing a legitimate objective or that the objective was compatible with the exceptions provided for in Article 10(2) of the Convention. Although those restrictions are set out exhaustively, there is none the less a general reference to 'the protection of the reputation or the rights of others, which, without any doubt, encompasses a Community institution's rights in relation to the reputation of its members and the loyalty of its employees. The Court of First Instance made a clear statement to that effect in paragraph 150 of its judgment, holding that 'the requirement that permission should be obtained prior to publication pursues the legitimate objective of ensuring that any matter dealing with the work of the Communities does not prejudice the interests of the Communities and, in particular, as in the present case, the reputation and image of one of its institutions.

17.

Furthermore, the Court of Human Rights has somewhat softened its approach when assessing whether an objective is legitimate, analysing a breach of the Convention by reference to, in particular, whether it is necessary in a democratic society. It is sufficient to turn once again to *Wingrove*, in which the Court of Human Rights held that the offence of blasphemy, which was by its definition discriminatory in that it was limited to protecting the Anglican church and its beliefs, pursued an aim which undoubtedly corresponded to the 'protection of the rights of others within the meaning of Article 10(2). (7)

18.

Finally, the appellant's assertion that the person whose reputation is to be protected and whose rights may justify an interference cannot be a public authority, and still less the authority imposing the punishment, does not have any legal basis.

First, unless I am mistaken, the Court of Human Rights has never accepted the view that a body which is a public authority may not legitimately limit a fundamental freedom in order to protect its reputation. The opposite seems to be the case. In the case of *Thorgeir Thorgeirson v Iceland*, (8) the Court of Human Rights acknowledged that an action for defamation brought by the police against a journalist who had accused them of brutality was pursuing the legitimate aim of protecting the reputation of others. It did not attach any significance to the fact that the authority seeking the imposition of a penalty was also the authority whose reputation was to be protected. Thus, in its judgment of 26 February 2000 in *Fuentes Bobo v Spain*, (9) the Court of Human Rights acknowledged that the disciplinary measure imposed by a public radio and television broadcasting authority on one of its employees for having made insulting remarks about its managers had a legitimate aim in that it was seeking to protect the reputation of others.

Furthermore, as the defendant has pointed out, the Commission, in punishing Mr Connolly's conduct in accordance with the second paragraph of Article 17, was acting not as a public body protecting its reputation against a member of the public but as the employer of an official who has breached his duty of loyalty and rendered himself liable to disciplinary measures.

19.

The appellant complains that by failing, in the judgment under appeal, to balance the various interests at stake the Court of First Instance erred in law. For the reasons set out above, the plea that the lack of any express weighing of those interests amounts to a breach of the general principle of protection of freedom of expression cannot be accepted. As I have said, what is at issue here is the interpretative method and not

any substantive condition governing the conformity of the disputed acts with the Convention. It is therefore not surprising that the Court of Human Rights has never found a breach of the Convention based on the sole ground that the national authorities omitted to carry out a specific exercise of that nature.

20.

Rather, the Court of Human Rights, when considering the question of 'necessity in a democratic society, analyses whether the interference is based on relevant and adequate grounds and whether it is proportionate to the legitimate aim pursued. I shall confine myself to observing that in the contested judgment the Court of First Instance proceeded in almost exactly that way. Paragraph 154 summarises the reasons for which the appointing authority considered that the second paragraph of Article 17 of the Staff Regulations had been infringed, namely that the appellant had not fulfilled the requirement of seeking permission prior to publication, that he could not have been unaware that, had he done so, permission would have been refused, and that publication of the book had caused serious harm to the interests of the Communities, in particular to the Commission's image and reputation. These reasons are clearly relevant and, furthermore, were considered adequate by the Court of First Instance since it stated, in paragraph 155, that nothing in the decision removing Mr Connolly from his post suggested that a breach of Article 17 would have been found if the Communities' interests had not been adversely affected. That finding, which is expressed in a way reflecting the role that the Court of First Instance has to play, is particularly significant in the present context. It can be seen from it that a failure to comply with the obligation laid down in the second paragraph of Article 17 of the Staff Regulations may serve as a basis for the imposition of such a serious disciplinary measure as removal from office only where the unauthorised publication has jeopardised the Communities' interests. To put it in positive terms, the decision dismissing Mr Connolly for having contravened that provision satisfies the requirement of proportionality in that it finds that the work which was published caused serious prejudice to the Communities' interests.

21.

Moreover, in paragraphs 152 and 153 of its judgment, the Court of First Instance considered in the abstract whether the rules laid down in the second paragraph of Article 17 are proportionate. It may not have undertaken a detailed evaluation of the proportionality of the disciplinary measure actually imposed on Mr Connolly but that is explained by the fact that his conduct was not merely contrary to Article 17 but at the same time involved other infringements, including that of Article 12 of the Staff Regulations. The Court's overall assessment is found, however, in the context of the sixth plea for annulment put forward at first instance.

22.

It is thus clear that the Court of First Instance, when considering whether the disciplinary measure of removal from post, so far as it was based on Article 17 of the Staff Regulations, was compatible with the requirements of freedom of expression, took account of *relevant* and *adequate* reasons and rightly found that the measure was *proportionate*. The appellant contends, nevertheless, that the Court of First Instance's assessment of the necessity of the measure is not legally valid. However, his argument appears to be limited to criticising the omission in its reasoning of the term 'pressing social need, so that it must be dismissed as manifestly unfounded.

23.

It should be added that under the second paragraph of Article 17 of the Staff Regulations, permission may be refused only where the proposed publication is liable to prejudice the interests of the Communities. In other words, permission is the rule and refusal the exception. Furthermore, in this context, which is exceptional, the verb 'to prejudice must not be understood as 'to have an effect on or 'to affect, but as nothing less than 'to jeopardise. The Court of First Instance rightly interpreted the expression in that way in its judgment in *Cwik v Commission*. (10) Upholding an application for annulment brought by a Commission official in respect of a decision refusing him permission to publish the text of a lecture, the Court of First Instance held that 'in a democratic society founded on respect for fundamental rights, the public expression by an official of points of view which differ from those of the institution for which he works cannot, in itself, be regarded as jeopardising the Communities' interests. (11) The Court of Human Rights has, on many occasions, recognised the power of judicial bodies to rely on their case-law to expound the concept of 'applicable law. (12)

In short, a mere difference of opinion between the Community institution and one of its officials is not sufficient. The text concerned must be capable of seriously prejudicing the interests of the Communities.

24.

It seems to me that the appellant's criticisms of the very principle of what he calls a system of prior censorship are more worthy of attention. He contends that a system of that kind is contrary to both Article 10 of the Convention and the constitutional traditions of a large number of the Member States. By failing to acknowledge that fact, the Court of First Instance erred in law.

25.

I must start by saying that I share the appellant's aversion to rules which, more or less directly, entail the general imposition of pre-publication censorship. In my opinion, censorship may be justified only in those exceptional cases in which the misuse of freedom of expression may give rise to serious prejudice - serious in the sense of being intolerable from society's point of view - which is, moreover, irreparable. I am thinking of situations in which minors need to be protected from images or other publications capable of interfering with the normal development of their personality or in which the dissemination of certain private or confidential information should be prohibited.

However, as the Court of First Instance rightly observed in paragraphs 152 and 153 of its judgment, the second paragraph of Article 17 does not entitle the appointing authority to act as a censor in the traditional sense of the term. First, that provision applies only to publications dealing with the work of the Communities and permission may be refused only in those exceptional cases where publication is liable to jeopardise the interests of the Communities, and a decision to that effect may be appealed against. Second, if permission is granted, the official is, to a considerable degree, protected from disciplinary measures in the event that publication of the text does actually jeopardise the Communities' interests. It would be an over-simplification, and thus wrong, to compare rules of this kind to the forms of censorship which are prohibited by the constitutional laws of various Member States.

On the contrary, the mechanism at issue is preventive and is justified by the special relationship of trust between employer and employee, in particular where the employee is carrying out duties of a public nature, as is the case here. The Court of Human Rights has recognised, specifically in the two main cases relied on by the appellant in support of his claims, namely *Vogt v Germany* (13) and *Wille v Liechtenstein*, (14) that the duties and responsibilities of public officials assume particular significance in relation to Article 10(2) of the ECHR, which justifies allowing the competent authorities greater latitude in determining whether a penalty is necessary. (15)

26.

It must be pointed out, furthermore, that contrary to what may be inferred from the appellant's submissions, the Court of Human Rights has not declared unlawful, as contrary to the Convention, even rules which result in the creation of systems of real censorship. I refer again to the legislation considered in *Wingrove*. The grant in the United Kingdom of a distribution licence - which could be refused if, *inter alia*, the video in question contravened criminal law, including the law against blasphemy - did not exempt its owner from any liability whatsoever. However, the Court of Human Rights confined itself to ruling, confirming the point of view expressed in its judgment in the case of *Observer and Guardian v United Kingdom*, (16) that 'the fact that the present case involves prior restraint calls for special scrutiny by the Court. (17) In addition, in the latter judgment the Court of Human Rights had declared 'for the avoidance of doubt that Article 10 does not of itself prohibit all pre-publication restrictions. (18)

27.

Referring to *Observer and Guardian v United Kingdom*, the appellant contends that the Court of Human Rights requires that any system of prior restraint must be amenable to effective judicial review, including a requirement of expeditiousness which Community law and practice are unable to fulfil.

It need merely be observed that at no time did Mr Connolly request permission to publish the book at issue and he could not, for that reason, exercise his right to bring an action for annulment of any decision refusing him permission. His argument is, therefore, purely hypothetical and thus cannot be accepted.

28.

The various allegations contained in the first plea are, therefore, ineffective, inadmissible or unfounded, which leads me to propose that they should be rejected.

Second plea in law: it was wrong in law to fail to take account of the fact that officials on unpaid leave are not required to obtain permission to publish a text

29.

The appellant claims that the obligation laid down in the second paragraph of Article 17 of the Staff Regulations applies only to officials in active employment and not to those who are taking unpaid leave on personal grounds. He also submits that, by not allowing him to call witnesses to testify that his proposed interpretation reflected the prevailing practice in the Commission's Directorate- General II, the Court of First Instance distorted the evidence.

30.

This ground of appeal is utterly without foundation. It is clear from paragraph 161 of the judgment of 19 May 1999 that the 'principle to which the appellant refers may be deduced solely from the fact that in 1985, when, on another occasion, the appellant took unpaid leave in order to spend a year working for a private financial organisation, the then Director-General of DG II did not deem it necessary to approve or comment on the texts prepared by Mr Connolly for that organisation. That statement is not, in itself, indicative of a practice, and confirmation of it would therefore be pointless. Consequently, it cannot be accepted that the evidence was distorted.

Moreover, the plea merely repeats the argument developed before the Court of First Instance and does not undermine the validity of the conclusion reached by that court in holding that it may be inferred from Article 35 of the Staff Regulations that, when on unpaid leave, an official does not lose his status as an official. He therefore remains subject to the obligations borne by every official, in the absence of express provision to the contrary.

The second plea must therefore be rejected in its entirety.

Third plea in law: it was wrong in law to equate royalties with remuneration for the purposes of the second paragraph of Article 11 of the Staff Regulations

31.

In both parts of this plea, the appellant argues that the Court of First Instance's interpretation of the second paragraph of Article 11 of the Staff Regulations is wrong in law, in so far as it equates royalties with payment for the purposes of that article, since royalties do not constitute consideration for any service rendered and do not compromise an official's independence. Furthermore, the Court of First Instance's finding is in breach of the right to property laid down in Article 1 of the First Protocol to the Convention and fails to take account of the Commission's usual practice of authorising an official taking leave on personal grounds to receive royalties.

32.

In this plea, the appellant reiterates submissions which he made before the Court of First Instance in the context of his second plea for annulment and which were properly rejected. In paragraph 108 of the judgment under appeal, the Court of First Instance stated correctly that the prohibition contained in the second paragraph of Article 11 of the Staff Regulations is objective and extends to all types of payment, of whatever kind. It cannot be denied that royalties constitute consideration for personal creative effort, for which reason they must not be confused with income produced by, for example, investments in property or securities.

There has, moreover, been no interference with the appellant's right to property since no claim has been laid to the sums he received from the sale of his book but, even if the appellant's spurious argument were accepted and it were conceded that such interference had occurred, it would be warranted on the ground that Article 11 pursues the legitimate aim of ensuring the independence of public servants and would be entirely proportionate to that objective. That is the reasoning in paragraphs 110 and 111 of the judgment under appeal.

Finally, the complaint concerning the second sentence of paragraph 113 of the judgment is directed against reasoning which the Court of First Instance included only for the sake of completeness, for which reason the plea must be held, at best, to be ineffectual.

33. Therefore, the third plea in law must also be rejected.

Fourth plea in law: errors in the classification and examination of the charges against Mr Connolly

34. In the first part of the fourth plea, the appellant alleges that the Court of First Instance's classification of the charges against him was not consistent with that used in the disciplinary proceedings, with the result that the basis of the investigation was irregular. Specifically, the Court of First Instance found, in paragraph 125 of the contested judgment, that the book at issue contained numerous 'frequently defamatory remarks about senior members of the Commission's staff and about the institution itself, something which was not complained of by the appointing authority in its report to the Disciplinary Board.

35. Although it is true that the Court of First Instance did not use exactly the same terms as were employed in the appointing authority's report to the Disciplinary Board, the fact remains that, in point 25 of that document, the appointing authority found that 'Mr Connolly makes certain derogatory and unsubstantiated attacks on Commissioners and other members of the Commission's staff in such a way as to reflect on his position and to bring the Commission into disrepute contrary to his obligations under Article 12. Even though the expression 'defamatory statements may be perceived to be a little more serious than 'derogatory attacks liable to bring [the Commission] into disrepute, the slight semantic discrepancy, if discrepancy there be, is not sufficient to vitiate the arguments relied on by the Court of First Instance to show that the appointing authority was entitled to treat Mr Connolly's conduct as a breach of his duty of loyalty under Article 12 of the Staff Regulations.

36. The first part of this plea is thus unfounded.

37. In the second part of the plea, the appellant criticises the Court of First Instance for saying, in paragraph 128 of its judgment, that the book at issue publicly expressed 'the applicant's fundamental opposition to the Commission's policy, the implementation of which was his responsibility. That statement was borrowed from the Commission but was not to be found anywhere in the charges set out by the appointing authority in its report to the Disciplinary Board. Furthermore, if any expression of dissent from the policy of a Community institution on the part of one of its officials were regarded as a breach of the duty of loyalty, freedom of expression as laid down in Article 10 of the Convention would become a dead letter. Finally, Mr Connolly's duties did not involve carrying out Community policy but, more moderately, as stated in the Disciplinary Board's opinion, involved 'monitoring monetary policy in the Member States and analysing progress towards economic and monetary union.

38. All those complaints are unfounded. First, it is clear from the report to the Disciplinary Board that one of the facts complained of was that the appellant had committed a breach of the general duty of discretion with regard to facts and information connected with the performance of his duties, laid down in the first paragraph of Article 17. That duty encompasses *a fortiori* expressions of dissent relating to those facts

and information. In any event, it is apparent from the documents before the Court that that charge was clearly explained to the Disciplinary Board, the body responsible for the investigative stage of the proceedings, and that Mr Connolly had an opportunity to defend himself. As to the limits which may be imposed on freedom of expression, I refer to the remarks made in the course of my analysis of the first ground of appeal. Finally, the assessment of what Mr Connolly's substantive duties comprise is a question of fact which cannot be examined in an appeal. However, it is clear even from the appellant's preferred description of his duties that, in performing them, he did actually play a role in implementing the Commission's policy.

39.

In the third part of the fourth plea, the appellant states that the Court of First Instance erred in finding that the Disciplinary Board and the appointing authority had not dropped the charge that he had contravened Article 12 of the Staff Regulations. According to the appellant, it is clear from the attitude adopted by the Commission in its defence that the charge had been dropped.

It need only be pointed out, without accepting the convoluted inferences which the appellant's legal adviser draws from the views expressed by the Commission in the proceedings, that in any event it is not for the Commission to define how the disciplinary procedure is to be presented to the court examining its legality.

40.

I therefore propose that the fourth plea in law should be rejected as being inadmissible in part and, for the rest, unfounded.

Fifth plea in law: the judgment errs in its reasoning as regards the classification of the charges against the appellant

41.

Mr Connolly claims that at the appropriate time he stated in writing that, if the Disciplinary Board intended to take into account allegations of substantive infringements of Article 12 of the Staff Regulations, it should stay the disciplinary proceedings and refer the matter back to the appointing authority so that it might hear the appellant's views on them. The appellant submits that the Court of First Instance erred in law in holding that the charges against him included not only formal infringements of Articles 11, 12 and 17 of the Staff Regulations but also breaches relating to the contents of the book. In particular, the Court of First Instance was wrong to rely on arguments concerning the defamatory nature of the book in response to allegations relating to the charge of publishing an opinion which was at odds with the Commission's policy.

42.

This plea reproduces the arguments advanced by the appellant before the Court of First Instance, which that court duly considered in paragraph 40 et seq. of its judgment without, in my view, committing any error which it is appropriate to examine in appeal proceedings. The Court of First Instance's concern was to refute the appellant's argument that it was inappropriate to include any charge relating to the contents of the book among the matters complained of and it did so in relation to the allegation that the appellant had brought his office into disrepute. Once the contents of the book were included amongst those matters, the exact classification at law of the statements it contains could be developed as the case progressed without any breach of the right to a fair hearing. Furthermore, the observation made by Mr Connolly before the Disciplinary Board referred specifically to charges based on Article 12 and cannot therefore serve to support the appellant's contention that there was confusion in the Court of First Instance.

43.

Accordingly, the fifth plea must also be rejected as manifestly unfounded.

Sixth plea in law: wrongful consideration of charges in relation to which the principle audi alteram partem had not been observed and substitution of grounds

44.

In the first part of the sixth plea, the appellant again complains that, in its reasoning, the Court of First Instance accepted a fact that was not proved in the course of the disciplinary proceedings, namely that there was a divergence of opinion between him and the Commission in relation to the establishment of economic and monetary union, and that the court relied for that purpose on a quotation from the book at issue which did not appear in the file.

45.

Suffice it to say, as the Court of First Instance does in paragraph 97 of its judgment, that the reasoned opinion of the Disciplinary Board, under the heading 'II - Explanations given by Mr Connolly in the company of his adviser, Mr Van Gehuchten, contains Mr Connolly's avowal of his fundamental disagreement with the Commission's policy, expressed in his book. That disagreement was, furthermore, patent and well known and the book merely constituted an expression of it, as may be inferred from the passage quoted by the Court of First Instance. Therefore, it was a question not of adducing evidence which had not been established during the adversarial stage of the proceedings but of illustrating, by means of a quotation from the book giving rise to the dispute, a fact which the Court of First Instance, in its absolute discretion with regard to facts, considered to be well known and was entitled to accept as proven.

46.

The second part of the plea challenges the accuracy of the findings made by the Disciplinary Board under the heading mentioned above. It is manifestly inadmissible in that the aim pursued is to secure a new appraisal of facts which the Court of First Instance has already considered. The minutes of the meeting of the Disciplinary Board, on which the appellant seemingly purports to found the allegation that the evidence has been distorted, reveal, on the contrary, in particular on page 4, that the summary included by the Disciplinary Board in the disputed section of its reasoned opinion is correct.

47.

In short, the sixth plea in law must, like those preceding it, be rejected.

Seventh plea in law: error of assessment consisting in holding that the appellant, at his final meeting with the appointing authority, neither claimed that the reasoned opinion was based on charges which should have been regarded as new nor applied for the disciplinary proceedings to be reopened

48.

Mr Connolly challenges the Court of First Instance's finding in paragraph 47 of its judgment that, in the course of the hearing before the appointing authority on 9 January 1996, he neither contended that the charges on which the Disciplinary Board's reasoned opinion was founded were new nor applied for the disciplinary proceedings to be reopened in accordance with Article 11 of Annex IX to the Staff Regulations. According to the appellant, it is clear from the minutes of that meeting that during it his representative handed to the appointing authority the defence submissions already lodged with the Disciplinary Board in which, among other things, he requested that the proceedings be suspended and that the matter be referred back to the appointing authority so that a new hearing could be held, if the Disciplinary Board wished to take account of an alleged substantive infringement of Article 12 of the Staff Regulations.

49.

The Court of First Instance does not appear to have committed a manifest error of assessment in that, as regards the matter under consideration, the minutes of the hearing on 9 January 1996 do not contain any explicit complaint concerning the introduction of new charges and makes only a general reference to the defence lodged with the Disciplinary Board.

In any event, it must be borne in mind that the court's reasoning in paragraph 47 was *obiter* since it had already concluded that the appointing authority's report set out the facts complained of sufficiently clearly for the appellant to be able to exercise his right to a fair hearing. This ground of appeal must, therefore, in any event fail.

50. Accordingly, the seventh plea in law must also be rejected.

Eighth plea in law: statement of grounds vitiated by failure to reply adequately to a submission made at first instance

51. In paragraph 48 of its judgment, the Court of First Instance holds that the statements in point 19 of the report to the Disciplinary Board refute Mr Connolly's contention that he was not charged in the report either with publishing an article on 6 September 1995 or with giving an interview on 24 September 1995.

The appellant, however, maintains that what he challenged at first instance was not the absence of any reference to those facts in the appointing authority's report but rather the fact that he was not heard by the authority in relation to them.

52. This ground of appeal is also nugatory since, even if it were accepted, it would have no legal effect. I must emphasise, however, that what the Court of First Instance was concerned to do (and did indeed do) was to draw attention to the fact that the appellant knew what the conduct complained of was and that he could not claim that his right to a fair hearing had in any way been prejudiced.

53. Being of no effect, the eighth plea in law cannot therefore be accepted.

Ninth plea in law: errors in the taking and appraisal of evidence adduced to show that there were procedural irregularities before the Disciplinary Board

54. In the two parts into which he divides this plea, the appellant complains that the Court of First Instance, in paragraphs 74, 84, 95 and 101 of its judgment, (i) did not draw the right conclusions from the documentary evidence before it and (ii) did not agree to take account of the additional evidence that he had produced. Otherwise, the Court would have concluded that there were irregularities in the proceedings before the Disciplinary Board. Specifically, the Board's rapporteur failed to produce the prescribed report and the Board itself was perfunctory and biased in the exercise of its functions, judging by the attitude of its Chairman, and acted over-hastily when the time came to deliver its reasoned opinion, failing to give due consideration to the defence case. Furthermore, the Court of First Instance did not specifically address the appellant's offer of witness evidence intended to establish procedural irregularity before the Disciplinary Board.

55. By this plea, the appellant is merely seeking to submit questions relating to the taking and appraisal of evidence to the scrutiny of the Court of Justice. Such matters are not admissible in an appeal. As regards the alleged error concerning the refusal to take witness evidence which Mr Connolly sought to adduce in order to prove that the Disciplinary Board had not been impartial, it need only be pointed out - as the Commission has done - that, for Mr Connolly to persuade the Court of First Instance to take oral testimony, he would have to have given a sufficiently clear indication that the evidence was relevant and likely to be of use.

56. Therefore, the ninth plea in law must be rejected.

Tenth plea in law: improper administration of evidence relating to the alleged misuse of powers

57. The appellant complains, furthermore, that the Court of First Instance failed to give adequate reasons for not acceding to the application for production of a memorandum dated 28 July 1995 on the calculation of

salary reductions in cases of suspension which he made in support of his submission that the decision removing him from his post entailed misuse of powers.

58.

This is a further ground of appeal that is immaterial in that, even if it were taken into account, it would not form a sufficient basis for setting aside the judgment under appeal so far as the alleged misuse of powers is concerned. I shall merely observe that, in paragraph 174 of the contested judgment, the Court of First Instance held that the memorandum in question did not specifically concern Mr Connolly's dismissal and that it did not therefore establish the irregularity complained of. Having found that the memorandum was not relevant for the purposes claimed, the Court of First Instance, in declining to order its production, did not fail to deal with it properly.

59.

Consequently, the tenth plea in law must be rejected.

Eleventh plea in law: failure to respond to allegations of misuse of powers

60.

By this plea the appellant asserts that, in paragraphs 172 to 175 of the judgment under appeal, the Court of First Instance failed to reply to certain arguments capable of establishing that the disciplinary proceedings were invalidated by misuse of powers. These included complaints relating to the existence of 'parallel proceedings,' the failure to reply to the question concerning the exact scope of the disciplinary proceedings in relation to Articles 11, 12 and 17 of the Staff Regulations, 'the absence of a logical connection between the premisses and the conclusions drawn in relation to the disciplinary proceedings, the fact that 'the Commission maintained in its pleadings that the Disciplinary Board was not even obliged to read the contested book and to 'the deliberate and provocative appointment of the Secretary-General as Chairman of the Disciplinary Board.

61.

As the Commission rightly observes, it is clear from paragraphs 171 to 175 of the judgment under appeal that the Court of First Instance did not consider that Mr Connolly's suppositions constituted 'objective, relevant and consistent evidence capable of supporting his argument that the disciplinary measure imposed on him was pursuing an aim other than that of safeguarding the internal order of the Community civil service. Although courts are obliged to give reasons for their decisions, they do not have to respond in detail to every single argument advanced. (19) The appellant has not established that his submissions were sufficiently clear and precise, or that they were adequately supported by evidence (20) such as to prove that, in not responding to them in detail, the judgment under appeal was vitiated by defective reasoning.

62.

Therefore, the eleventh plea in law must be rejected.

Twelfth plea in law: misapplication of rules of evidence relating to presumptions and of inductive logic

63.

The appellant complains that the reasoning of the Court of First Instance is flawed where, in paragraph 155 of the contested judgment, it states that 'it cannot be inferred from the decision removing him from his post that the infringement of the second paragraph of Article 17 which the applicant is alleged to have committed would have been penalised had there been no prejudice to the Communities' interests, so that the appointing authority's application of that provision does not appear disproportionate to the objective pursued and therefore, is not contrary to the principle of freedom of expression. The appellant submits that, in making that statement, the Court of First Instance inferred a previously unknown fact from one that was uncertain, whereas a properly drawn presumption involves inferring a previously unknown fact from one that is certain. Furthermore, an inference, being uncertain ('it cannot be inferred from ...), cannot serve as a basis for sound reasoning.

64.

In my opinion, the appellant believes he can discern an error of logic because he has read the passage in question incorrectly and taken it out of context. It is clear from paragraph 140 of the judgment under appeal that Mr Connolly complained that the system of prior permission gave rise to 'unlimited censorship, contrary to Article 10 of the ECHR. The Court of First Instance set out a reasoned rejection of that argument in paragraph 152, recalling that permission is refused only exceptionally and that refusal may be justified only where the publication concerned is liable to prejudice the interests of the Communities. It went on to say (paragraph 154) that the decision dismissing Mr Connolly was based, amongst other things, on the fact that his behaviour caused serious prejudice to the interests of the Communities, and, in particular, to the reputation and image of the Commission. It concluded (paragraph 155) that there was nothing to suggest that, had Community interests not been prejudiced, the disciplinary measure of removal from his post for contravention of the second paragraph of Article 17 would have been imposed, for which reason there can be no basis for speaking of 'unlimited censorship. Having thus rejected, both generally and specifically, the possibility that the second paragraph of Article 17 might be relied on to prohibit all types of publication, as the appellant contended, the Court of First Instance was not precluded from finding, as it did, that the restraint actually imposed was not disproportionate in relation to the aim pursued.

65.

The twelfth plea in law is therefore based on a manifestly incorrect reading of the judgment and must be dismissed.

Thirteenth plea in law: defective reasoning of the judgment under appeal

66.

By his last plea, the appellant asserts that it must be inferred from his other grounds of appeal that the charges against him have not been proved. Therefore, he contends, the analysis of whether the disciplinary measure was proportionate, which the Court of First Instance opens with the statement in paragraph 166 that 'the facts of which the applicant is accused have been proved, is invalid.

Moreover, by failing to take account of evidence of essential importance, in that no order was made for production of the memorandum of 28 July 1995 on the calculation of salary reductions in cases of suspension, the Court of First Instance's conclusion that there was no misuse of powers (paragraph 175) is vitiated by defective reasoning.

67.

The first ground of appeal must fail as a result of the rejection of each and every one of the other pleas in law.

As regards the second ground of appeal, I refer to what I have already said in my analysis of the tenth plea and, in particular, to the lack of relevance of the evidence offered.

68.

Accordingly, the thirteenth plea in law must also be rejected as manifestly unfounded.

Costs

69.

Under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs. Consequently, if, as I suggest, the thirteen pleas in law relied on by the appellant are rejected, he should be ordered to pay the costs.

Conclusion

70.

For the reasons that I have set out above, I propose that the Court of Justice should declare that the appeal is inadmissible in part and, for the rest, unfounded, for which reason it should be dismissed and the appellant should be ordered to pay the costs.

1: Original language: Spanish.

2: - Joined Cases T-34/96 and T-163/96 *Connolly v Commission* [1999] ECR-SC I-A-87 and II-463.

3: - Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968, Series I, p. 30). That regulation, which made numerous substantial amendments to Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 (OJ English Special Edition 1959-1962, p. 135), has itself been amended on numerous occasions (as at March 1999, no fewer than 80 amendments).

4: - Judgment of 7 December 1976, *Handyside v United Kingdom* (Series A, No 24), paragraph 49.

5: - Judgment of 25 November 1996, *Wingrove v United Kingdom*, Collection of Judgments and Decisions, 1996-V, p. 1957.

6: - Paragraph 27.

7: - Paragraphs 48 to 51 of the judgment in *Wingrove*.

8: - Judgment of 25 June 1992, Series A, No 239, paragraph 58.

9: - Application No 3923/98, unreported.

10: - Case T-82/99 *Cwik v Commission* [2000] ECR II-0000.

3. The British people have been systematically lied to.

In May 1970 the Labour government under Harold Wilson declared that it intended to begin negotiations for the UK to join the EU. One month later the Conservatives under Ted Heath took over and the process of negotiation got underway. This culminated in a White Paper which the government shortened into a booklet to persuade a sceptical public. The following quotes about a Britain inside the European Community are taken from that booklet:-

1. ***“There is no question of Britain losing essential national sovereignty”***
2. ***“When a government considers that vital national interests are involved, decisions are only made if all members agree”***
3. ***“The English Welsh and Scottish legal systems will continue as before ...”***
4. ***“The (existing members) have not lost any of their national identities, national institutions and points of view. Nor will Britain.”***

Similarly in 1975 the pamphlet, produced by Harold Wilson’s government, to support the ‘yes’ vote in the 1975 referendum contained the following:

- 1 ***“There was a threat to employment from the movement in the Common Market towards Economic and Monetary Union. This could have forced us to accept fixed exchange rates for the pound (Sterling), restricting industrial growth and so putting jobs at risk. This threat has been removed.”***
- 2 ***“The minister representing Britain can veto any proposal ... if he considers it to be against British interest.”***

In retrospect it is easy to see that these statements are untrue but in reality the politicians of the time must have also known that they were untrue. Take, for example, the 1971 Foreign and Commonwealth Office memo FCO 30/1048. This was put under a 30 year secrecy law and was released to the public in 2002. The mere fact that the government of the time felt the need to suppress this document speaks volumes.

'Loss of sovereignty' is mentioned throughout this document (if played down in many cases) and a couple of the points are quite remarkable.

Point 18. warns that '*essential aspects of sovereignty*' would '*increasingly be transferred to the Community itself*' and that majority voting would be used (i.e. We would lose the veto).

Point 24 (i) also states '*After entry there would be a major responsibility on HMG and on all political parties not to exacerbate public concern by attributing unpopular measures or unfavourable economic developments to the remote and unmanageable workings of the Community.*' - need we say more

The full text of this document follows below (<http://catalogue.pro.gov.uk/> then put "FCO 30/1048" in "go to reference")

SOVEREIGNTY AND THE EUROPEAN COMMUNITIES

FCO 30/1048 - 1971

1. The object of this paper is to examine the implications of entry into the European Communities for British Sovereignty. The subject is one which arouses widespread if somewhat vague public concern and which could become the central political issue in the national debate on entry to the Community. The paper does not seek to provide a comprehensive philosophical analysis of sovereignty but sets out to clarify the various ways in which the term is commonly used in present circumstances; to identify the relevant changes which will be involved in joining the European Communities; and to suggest a number of conclusions and implications for policy.

1. THE CONCEPT OF SOVEREIGNTY

(a) Historical Background

2. Historically the concept of sovereignty has been of major importance to both political scientists and jurists. The growth of its use was closely associated with the development of the system of nation states in Western Europe: there was no full mediaeval equivalent and the wider claims of the Holy Roman Empire and the temporal power of the Pope cannot really be considered in terms of national sovereignty or nation states. Sovereignty was initially invoked to describe the powers of the ruler within his State. When dealing with other States the ruler asserted his (internally) sovereign status, an attribute which, given the identification between the ruler and his State, attached, also to his State. Since the other States similarly had sovereign rulers, and regarded themselves equally as sovereign States, the relationship between such sovereign States had to be formally one of equality and independence. On the international plane the Sovereignty of the "sovereign" State is not a truly international sovereignty, but a transposed internal concept of sovereignty - a description of a legal status possessed in some other (i.e., the internal) legal order.

3. Consequently, from the outset the antithesis between the connotation of "sovereignty" in its internal and external aspects has been evident. Internal sovereignty has been primarily a matter of positive possession of ultimate power in a hierarchically structured internal legal framework, so that interest has lain in identifying the location of that power within the State; but external sovereignty has been primarily a negative matter of denying the existence of an external sovereign authority, with consequent emphasis on equality and, independence as the legal framework for international relations. In the particular instance of the United Kingdom the State, externally, is legally equal to and independent of all other "sovereign" States; the international personality is that of the United Kingdom as a State, represented internationally by the Crown as head of State (a situation accurately reflected in our internal constitutional law by the Crown's prerogative in matters of foreign affairs). Internally, the sovereign power in the State (at least in matters of legislation) is usually considered to be located in the Queen in Parliament.

4. The technical legal aspects of sovereignty, both internal and external (particularly the latter), must not be confused with the realities of power. Ultimately it is the latter which count. There may be a tendency that, in proportion as the facts about the realities of power are unpalatable, so emphasis on and interest in the comforting and reassuring legal aspects of sovereignty increases,

(b) Contemporary Aspects of Sovereignty

5. In the contemporary political system we can distinguish the internal and external aspects of sovereignty.

External Sovereignty

6. Sovereignty in external relations still includes formal equality of status with other states, A striking expression is in voting arrangements in the UN General Assembly, where, for example, Mauritius has the same vote as the

US (but the realities of power are reflected by the veto in the Security Council, and by systems of weighted voting in many organisations, not least the European Communities), it involves also the absence of any formally superior source of authority external to the State. It does not mean equal power or influence, or freedom of action in the international scene, or even within the state itself, though these ideas naturally spring to mind in the context of sovereignty. To take an extreme example, while the Central American republics are sovereign states recognised as such by other states, in practice they are limited by their relations with the US Government, and perhaps more critically with private US interests, both in their freedom of international action and in their ability to regulate affairs within their own boundaries. All states are under some degree of external constraint and most have deliberately limited their freedom of action in pursuit of national interests, for example by military alliances, entry into international organisations or even by the conclusion of routine treaties. These limitations are reinforced by the increasing interdependence of modern states and the development of economic and other links which cut across national boundaries. It is therefore generally recognised that sovereign states can lose some degree of independence of action in external relations without forfeiting their international legal status. But it is always a question of degree in each particular case whether the restraints are so extensive as to be incompatible with continued existence as an equal and independent member of the international community, with the capacity to conduct its own international relations.

7. The effect of the above is that, externally, sovereignty is a technical concept with in many ways only limited bearing on the questions of power and influence that form the normal preoccupation of foreign policy. As a result, much of the debate on entry into the Communities in terms of the power and influence we should gain or lose thereby and on the corresponding effect of non-entry, while a crucial debate in terms of political decisions and British interests, is strictly not a debate on the legal issues of external sovereignty. It is, however, a debate which arises naturally from that issue and which is tied up with ideas of sovereignty in the public mind (see paragraph 15(iv) below).

Internal Sovereignty

8. Internally within the United Kingdom, the notion of sovereignty is bound up with the doctrine of Parliamentary Sovereignty, which in turn is the outcome of the battle between Crown and Parliament as to which should wield supreme power in the land. The formal compromise has been to accept that supreme power to legislate should rest with the Queen in Parliament. For present day practical and political purposes in the UK, Parliamentary sovereignty may be taken to involve the exclusive power to make supreme law. This power has three essential features:

(a) a statute which has been duly enacted by Parliament and received the Royal assent cannot be declared invalid by the courts on any grounds, for example that its provisions are contrary to constitutional law or to common law or to international law;

(b) Parliament may enact any law it wishes; consequently no Parliament is bound by the acts of its predecessors, and any prior statute may be amended or repealed later statute;

(c) there is no legislative power in the land save by the authority of Parliament.

9. To the layman those features mean that the Queen in Parliament has sovereign lawmaking power in the territory, unchallenged by any rival national or international source of authority and that its freedom to enact legislation is in law untrammelled by acts of its predecessors or otherwise. The purity of this doctrine is not absolute, particularly as regards the second feature mentioned. For example, Parliament has for all practical purposes limited the jurisdiction of its successors in a geographical sense, by granting independence to colonial and other territories. It is unthinkable that Parliament would attempt to repeal an independence act so as forcibly to regain legislative power over the territory in question. But there has been no comparable (and irrevocable) transfer of authority within the UK itself purporting to bind successor Parliaments; and although Parliament has occasionally enacted legislation which in terms purports to regulate the freedom of action of future Parliaments, in strictly legal terms such legislation does not prevent future Parliaments from legislating to the contrary.

II THE EEC AND BRITISH SOVEREIGNTY

10. If we have correctly identified the two major aspects of sovereignty than we are now in a position to consider how they will be affected by British accession to the Community. The first stage is to consider the Community as it will be upon enlargement putting on one side the prospective implications of any future development or "deepening" of the Community.

External Sovereignty

11. Membership of the Communities will involve us in extensive limitations upon our freedom of action. In many respects these are essentially the result of a contractual arrangement, not dissimilar in kind from other international contractual arrangements which we have e.g. in the GATT: those constitute restraints upon the exercise of sovereign powers as a result of an act entered into by virtue of our sovereign status, and they do not amount to a restriction of that status. But it is not correct to regard the European Community Treaties as involving solely matters of a legal significance equivalent to that of other existing treaties. For example, in matters within the Community field (see Annex) we shall be accepting an external legislature which regards itself as having direct powers of legislating with effect within the United Kingdom, even in derogation of United Kingdom statutes, and as having in certain fields exclusive legislative competence, so that our own legislature has none; in matters in which the Community has already adopted a common policy, we shall be accepting that the Commission will jointly represent the Member States, who to that extent will have their individual international negotiating powers limited; and we shall in various fields be accepting a wide degree of coordination of our policy with that of the rest of the Community. All of this we shall be accepting "for an unlimited period", with no provision for withdrawal. But at the same time France or Italy for example as members of the Communities, have not come to be regarded internationally as less than sovereign states. This is particularly so since, despite the appearance of permanence of membership it is commonly recognised that the member states do still have the ultimate political option of renouncing membership cannot and that the Community cannot at this stage impose its will against the firm opposition of a major member.

In other words in practice and in the final analysis it remains to date a cooperative venture of independent equal sovereign units and not some supranational and overriding authority. Membership would mean an increasing range of subjects on which Britain's policy was concerted with the remainder of the Community and also that in negotiations with the rest of the world on matters forming the subject of common Community policies, there would be joint representation by the Commission. The Community being exclusive in character and membership also means in practice giving up some of our important links with the remainder of the world (Commonwealth Preference for example). But overall it is clear that membership of the Community in its present form would involve only limited diminution of external sovereignty in practice. If it is right to say that the question of the retention of the international status of a sovereign State is a matter of assessing in each case the degree to which a State's external independence, equality and capacity to conduct its own international relations are restricted, we could nevertheless fairly conclude that although the implications for our freedom of independent action are considerable no substantial impairment of our international status would follow immediately upon our membership of the European Communities. The loss of external sovereignty will however increase as the Community develops, according to the intention of the preamble to the Treaty of Rome "to establish the foundations of an even closer union among the European peoples". We deal with the implications for sovereignty of such dynamic development below in paragraphs 17 to 22.

Internal Sovereignty

12. The implications of membership for Parliamentary sovereignty and for the legal system which is closely related to it, are more immediate.

(i) By accepting the Community Treaties we shall have to adapt the whole range of subsidiary law which has been made by the Communities. Not only this but we shall be making provision in advance for the unquestioned direct application (i.e. without any further participation by Parliament) of Community laws not yet made (even though Ministers would have a part, through membership of the Council, in the making of some of these laws). Community law operates only in the fields covered by the Treaties, viz, customs duties; agriculture; free movement of labour; services and capital; transport; monopolies and restrictive practices; state aid for industry; and the regulation of the coal and steel and nuclear energy industries. Outside this considerable range there would remain unchanged by far the greater part of our domestic law (see Annex).

(ii) Community law is required to take precedence over domestic law: i.e. if a Community law conflicts with a statute, it is the statute which has to give way. This is something not implied in other commitments which we have entered into in the past. Previous treaties have imposed on us obligations which have required us to legislate in order to fulfill the international obligations set out in the treaty, but any discrepancy between our legislation and the treaty obligations has been solely a question of a possible breach of those international obligations the conflicting statute has still undoubtedly been the law to be applied in this country. But the community system requires that such Community Law as applies directly as law in this country should by virtue of its own legal force as law in this country prevail over conflicting national legislation. The Law Officers have, however, concluded that while the European Community will uphold the supremacy of Community Law in its application within the United Kingdom, our Courts, if faced with a statute intended by Parliament to override Community Law, are most unlikely in the immediately foreseeable future to be restrained from giving effect to the statute.

(iii) The power of the European Court to consider the extent to which a UK statute is compatible with Community Law will indirectly involve an innovation for us, as the European Court's decisions will be binding on our courts which might then have to rule on the validity or applicability of the United Kingdom statute.

(iv) The Law Officers have emphasised that in accepting Community Law in this country we shall need to make it effective as part of a new and separate legal order, distinct from, but co-existing side by side with, the law of the United Kingdom. They have referred to the basic European Communities Treaty provisions as amounting "in effect to a new body of 'Federal' statute law".

III POLITICAL REALITY AND POPULAR CONCERN

13. The account given sets out the technical case. In lay terms we may say that if Britain joined the Community there would be many implications for both external and internal (particularly parliamentary) sovereignty. Some of these would be wholly novel, and the general effect particularly in the longer term would be of more pervasive and wide-ranging change than with any earlier commitments. Largely this is because the Community treaties when drawn up were seen as arrangements not merely for collaboration but for positive integration of large parts of the economic and social life of the Member States. As a result the conventional theoretical line dividing internal from external affairs has become blurred, a process which as we have seen is already advancing with the development of transnational economic activity.

14. But public and political concern over "loss of sovereignty" cannot be allayed simply by setting out these technical considerations. In the public debate advocates of entry deny that sovereignty will be lost or transferred and argue that account should be taken "of the effective ability of Britain's national institutions to protect and advance the interests, domestic and external, of the British people". They imply that sovereignty as defined above should be disregarded - considering it to have been eroded past usefulness by GATT, NATO etc and the powerlessness of the medium sized state acting alone. Although this approach rides roughshod over "sovereignty" in its technical sense it has the merit that in addressing the political rather than the legal reality it comes nearer to the sources of active public concern.

15. These public concerns clearly include:

(i) National Identity

We are all deeply conscious through tradition, upbringing and education of the distinctive fact of being British. Given our island position and long territorial and national integrity, the traditional relative freedom from comprehensive foreign, especially European, alliances and entanglements, this national consciousness may well be stronger than that of most nations.

When "sovereignty" is called into question in the debate about entry to the Community, people may feel that it is this "Britishness" that is at stake. Hence Mr Rippon's pointed question "are the French any less French?" for their membership. There is another, less attractive, aspect of this national pride. This is the large measure of dislike and mistrust of foreigners that persists in Britain. Nancy Mitford's Uncle Matthew was not alone in considering that: "Abroad is hell and foreigners are fiends".

(ii) Change

However it is presented, entry to the Community will mean major change. It is natural and inevitable that this should be disliked and resisted by many. Even though the "loss of sovereignty" may be limited to fairly precise areas of Government and Parliamentary powers and be without significance for the lives of most of the country, still the phrase conjures up a spectre of major and uncontrollable change and of adjustments that will have to be made which are deeply disturbing. "Loss of Sovereignty" may be a euphemism for fear of change and of the unknown.

(iii) Remoteness of the Bureaucracy

It is generally acknowledged that in modern industrialised society the impersonal and remote workings of the Government bureaucracy are a source of major anxiety and mistrust. The operations of democracy seem increasingly fitted to control the all-embracing regulatory activities of the Civil Service. In entry to the Community we may seem to be opting for a system in which bureaucracy will be more remote (as well as largely foreign) and will operate in ways many of which are already determined and which are deeply strange to us. This bureaucracy is by common consent more powerful than compared with the democratic systems of the Community than is ideal. Yet the way to remedy this balance without reducing the Community to a mere standing association for negotiation between national Ministers is by strengthening the Community's democratic processes which in turn means more change and more "loss of sovereignty".

(iv) National Power

As explained in paragraph 6 above, questions of power and influence have a close popular connection with ideas of sovereignty. The British have long been accustomed to the belief that we play a major part in ordering the affairs of the world and that in ordering our own affairs we are beholden to none. Much of this is mere illusion. As a middle power we can proceed only by treaty, alliance and compromise. So we are dependent on others both for the effective defence of the United Kingdom and also for the commercial and international financial conditions which govern our own economy. But this fact though intellectually conceded, is not widely or deeply understood; instinctive attitudes derive from a period of greater British power. Joining the Community does strike at these attitudes: it is a further large step away from what is thought to be unfettered national freedom and a public acknowledgement of our reduced national power; moreover, joining the Community institutionalises in a single, permanent coalition the necessary process of accommodation and alliance over large areas of policy, domestic as well as external. Even though these areas may be less immediately relevant to survival than defence, as covered by NATO, the form of the Community structure and the intentions explicit in the preamble to the Treaty of Rome emphasise the merging of national interests.

16. We do not suggest that these issues of public concern have any necessary connection with the technical meaning of sovereignty, but the debate hitherto has been conducted on two levels. On the one level there have been legal arguments defining the implications for external and Parliamentary Sovereignty of accession, implications which are important but have been found politically acceptable. On the other level we believe that argument about loss of sovereignty couched in more general terms has elicited a strong response because of the anxieties about national identity, power and change outlined above.

IV THE FUTURE DEVELOPMENT OF THE COMMUNITY

17. The account presented of the implications for sovereignty of membership has up to this point dealt with the Community as a static institution. Its effective role now centres upon, though it is not limited to, the Common Agricultural Policy and the Common Commercial Policy based on but now going beyond the Common External Tariff. The Council of Ministers continues to be dominated by tradeoffs between national interests and the principle of majority voting has been side-tracked. The European Parliament exercises little control over the processes of the Community while the Commission though committed to the "deepening" of the Community is hamstrung by the difficulty of reaching agreement on major policy in the Council of Ministers

18. That the Community within its present limitations should present little challenge to national sovereignty is perhaps inevitable; but it will be in the British interest after accession to encourage the development of the Community toward an effectively harmonised economic, fiscal and monetary system and a fairly closely

coordinated and consistent foreign and defence policy. This sort of grouping would bring major politico/economic advantages but would take many years to develop and to win political acceptance. If it came to do so then essential aspects of sovereignty both internal and external would indeed increasingly be transferred to the Community itself.

19. If such a development took place, then over a wide range of subjects (trade, aid, monetary affairs and most technological questions) Community policies toward the outside world would be common or closely harmonised. Although diplomatic representation would remain country by country its national role would be much diminished since the instructions to representatives would have been coordinated among member states. By the end of the century with effective defence and political harmonisation the erosion of the international role of the member states could be almost complete. This is a far distant prospect; but as members of the Community our major interests may lie in its progressive development since it is only when the Western Europe of which we shall be a part can realise its full potential as a political as well as economic unit that we shall derive full benefits from membership.

20. Such positive development of the functions of the Community could probably only take place with concomitant development of the institutions of the Community. It is hard to envisage the necessary decisions being taken under the present organisation of the Community; more effective decision-making at Community level would either require majority voting on an increasing range of issues in the Council or stronger pressures to reach quick decisions by consensus. In either case the role of the Commission would become more important as the Community became responsible for the regulation of wider areas of the internal affairs of the member states and this would in turn increase the need to strengthen the democratic institutions of the Community, including perhaps a directly elected Parliament. In that event the development of a prestigious and effective directly elected Community Parliament would clearly mean the consequential weakening of the British Parliament as well as the erosion of "parliamentary sovereignty".

21. The process outlined is an exceedingly long-term one, and depends upon the continuing progressive development of the Community. For a very long time - almost certainly until the end of the century - the major member states would retain the practical "last resort" political possibility of succession (albeit in probable breach of international obligations and with increasingly damaging economic consequences for the defector). So long as the member state's participation is subject to national scrutiny and can in practice be withdrawn, it may be said that the nation's status as an equal and independent state in the international community will be unaffected. Parliament's power will likewise survive; if Britain can in practice renounce the Treaty then the Community laws which are applied automatically within the member states are seen to depend upon the continuing (and pre-eminent) acquiescence of Parliament which may in the last resort be withdrawn.

22. Even with the most dramatic development of the Community the major member states can hardly lose the "last resort" ability to withdraw in much less than three decades. The Community's development could produce before then a period in which the political practicability of withdrawal was doubtful. If the point should ever be reached at which inability to renounce the Treaty (and with it the degeneration of the national institutions which could opt for such a policy) was clear, then sovereignty, external, parliamentary and practical would indeed be diminished.

V. CONCLUSIONS AND IMPLICATIONS

23. We have examined the two main aspects of sovereignty: external and parliamentary sovereignty will be limited, while in the case of parliamentary sovereignty it will be real and novel but not likely to damage British interests. There are in addition major aspects of public concern which are evoked by reference to sovereignty though that is not what they are about - national identity, opposition to change, mistrust of bureaucracy and a belief that Britain standing alone should control its destiny. These may be at the source of much anxiety about and instinctive opposition to British entry. Finally we have argued that in the longest term the progressive development of the Community could indeed mean the weakening of the member states' independence of action and in the last resort of their national institutions and their sovereignty.

24. If it is accepted, there are a number of implications to be drawn from this analysis:-

(i) although public concern is not over technical sovereignty itself but over more generally national traditions it is real and important and can be evoked by reference to sovereignty. Before entry it is important to deal squarely with the anxieties about British power and influence (masquerading under the term sovereignty) by presenting the choice between the effect of entry and on Britain's power and influence in a rapidly changing world. After entry there would be a major responsibility on HMG and on all political parties not to exacerbate public concern by attributing unpopular measures or unfavourable economic developments to the remote and unmanageable workings of the Community. This counsel of perfection may be the more difficult to achieve because these same unpopular measures may sometimes be made more acceptable if they are put in a Community context, and this technique may offer a way to avoid the more sterile forms of inter-governmental bargaining. But the difference between on the one hand explaining policy in terms of general and Community-wide interest and, on the other, blaming membership for national problems is real and important.

(ii) the transfer of major executive responsibilities to the bureaucratic Commission in Brussels will exacerbate popular feeling of alienation from government. To counter this feeling, strengthened local and regional democratic processes within the member states and effective Community regional economic and social policies will be essential.

(iii) Parliamentary sovereignty will be affected as we have seen. But the need for Parliament to play an increasing (if perhaps more specialised) role may develop. Firstly, although a European Parliament might in the longest term become an effective, directly elected democratic check upon the bureaucracy, this will not be for a long time, and certainly not in the decade to come. In the interval, to minimise the loss of democratic control it will be important that the British Parliamentarians should play an effective role both through the British membership in the European Parliament and through the processes of the British Parliament itself. Few if any of the Parliaments of the Six make the most of their role in either respect. It would be clearly in the interest of the UK that British parliamentarians should acquire a position of influence in the European Parliament against the day when it assumes effective powers.

(iv) The process of consultation between the Commission, Government experts and the European Parliament is complex. The issues dealt with are neither "foreign affairs" nor wholly domestic to the member states. The form of the consultations is such that they can hardly be watched over by the House of Commons as a whole - despite the flexibility of Question Time. The result in the present member states is that Community affairs are largely the prerogative of the executive to be endorsed after the event by the elected representative body as though in foreign affairs. To meet this new problem the creation of a Select Committee on Community Affairs or some quite new parliamentary device might be considered.

(v) It will be recognised that the more the Community considered is developed as an effective wide-ranging and democratically controlled organisation the more Parliamentary sovereignty will be eroded and the less important external state sovereignty will become. The ability and the ultimate political right in the last resort to withdraw will remain for a very considerable time though it may come to have mainly theoretical significance. In that last resort the ultimate sovereignty of the State will surly remain unchallenged for this century at least. Meanwhile it will continue to be important to stress the potential gains in real international influence (albeit indirect) through participation in the Community's policies and to contrast this with the highly formal and technical nature of the "sovereignty" that will be eroded.

25. The conclusions and implications we have drawn are highly political said may be judged beyond the competence of the FCO to advise. Nevertheless the impact of entry upon sovereignty is closely related to the blurring of distinctions between domestic political and foreign affairs, to the relatively greater political responsibility of the bureaucracy of the Community and the lack of effective democratic control.

26. To play an effective part in the Community, British Members of the Commission and their staffs and British officials as negotiators will necessarily assume more political roles than is traditional in the UK. The Community, if we are to benefit to the full, will develop wider powers and coordinate and manage policy over wider areas of public business. To control and supervise this process it will be necessary to strengthen the democratic organisation of the Community with consequent decline of the primacy and prestige of the national parliaments.

The task will not be to arrest the process, since to do so would be to put considerations of formal sovereignty before effective influence and power, but to adapt the institutions and policies both in the UK and in Brussels to meet and reduce the real and substantial public anxieties over national identity and alienation from government, for fear of change and loss of control over their fate which are aroused by talk of the "loss of sovereignty."

4. EU Law is behind the breakup of the UK into Regions

Although they have been presented as 'home-grown' initiatives (e.g. John Prescott's 30 year dream), the devolved governments in Scotland, Wales and Northern Ireland, the London assembly and now the English regional assemblies have all come about as a result of EU law.

The government's White Paper on the regions of England, "Your Region, Your Choice - Revitalising the English Regions", is simply carrying out EU requirements and is one of the biggest attempts yet to push EU policy anonymously so as not to risk the public anger that would undoubtedly result if its EU origins were known.

Article 198 of the Maastricht treaty (<http://europa.eu.int/en/record/mt/title2.html>) provided the basis of the EU's regionalisation policy. It introduced the Committee of the Regions and specified how representatives from each region across the EU would sit on that committee.

The geographical layout of the regions was defined by Eurostat maps often referred to as 'NUTS' ("Nomenclature Des Unités Territoriales Statistiques").

http://europa.eu.int/comm/eurostat/ramon/nuts/overview_maps_en.cfm?list=nuts. The individual member countries are NUTS 0 regions and the next subdivision describes the NUTS 1 regions. (which are the UK regions). These maps were produced in March 1999.

The EU already exerts indirect control of the UK regions via funding ('he who pays the piper calls the tune' – it was by making funding region based that the EU forced John Major to set up the first regional bodies). Regulation 1260/1999 'Structural Funds'

(http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999R1260&model=guichett) details this process.

Direct control will come through Regulations aimed directly at the Regions. The EU parliamentary report

<http://www.europarl.eu.int/meetdocs/committees/afco/20020326/443686en.pdf> illustrates how the EU will exercise direct control of the regions.

*"the basic treaty can recognise the existence and role of the 'partner regions of the Union'. In each country, the list of regions concerned would be determined by the national government, **which would notify Brussels**: the list would probably cover regions with legislative powers but it would be up to each government to designate those regions that it regarded as 'partners of the Union'. **Regions so designated would enjoy certain rights, linked to their involvement in Community policies**: representation in the Committee of the Regions (where not all regions with legislative powers sit at the moment); right to be consulted by the Commission when it is preparing legislation falling within their jurisdiction; possibility of bringing actions directly in the Court of Justice on competence disputes concerning them."*

The voters in England will be given the illusion of having choice in this process by being asked whether they want their region to have an elected assembly. They won't be asked whether they want the EU Regions in the first place as the EU gives our government no choice in that. The word 'England', by the way, does not appear on the NUTS maps. It is a geographical unit that is of no use to the EU – that is why you do not hear talk of an English Parliament.