CONSEIL DE L'EUROPE
COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeal No. 535/2012 - Michel SEMERTZIDIS (II)
v. Governor of the Council of Europe Development Bank

The Administrative Tribunal, composed of:

Mr Giorgio MALINVERNI, Deputy Chair,
Mr Jean WALINE,
Mr Rocco Antonio CANGELOSI, Judges,

assisted by:

Mr Sergio SANSOTTA, Registrar,
Ms Eva HUBALKOVA, Deputy Registrar,

has delivered the following decision after due deliberation.

PROCEEDINGS

1. The appellant, Mr Michel Semertzidis, lodged his appeal on 10 October 2012. The appeal was registered on the same day under number 535/2012.

2. On 12 November 2012, the appellant's representative filed a supplementary memorial.

3. On 7 December 2012, the Governor forwarded his observations on the appeal.

4. The public hearing on this appeal was held in the Tribunal's hearing room in Strasbourg on 24 January 2013. The appellant was represented by Maître Patrick D. McKay, a barrister in Paris. The Governor was represented by Mr Roberto Buquicchio and Mr Tony Fernández Arias of the Bank's Legal Department.

5. After the hearing, the Tribunal asked the Governor for information about the conduct of the disciplinary proceedings. The Governor supplied a document containing the reply from

the Chair of the Disciplinary Board and stated that he agreed with its content. The appellant subsequently submitted his comments.

THE FACTS

I. CIRCUMSTANCES OF THE CASE

6. The appellant joined the Council of Europe Development Bank ("the CEB") in August 1996 as a permanent member of staff.

7. On 1 April 2007, he was appointed Head of the Treasury Department. He was placed on grade A5 until being downgraded to A4 following disciplinary proceedings which ended on 12 May 2011.

8. In December 2010, the CEB had been informed of a conflict-of-interest situation, the appellant having never reported to it that his wife worked for the company N., a major counterparty in the CEB's treasury activities. This situation led the Governor to initiate disciplinary proceedings against the appellant and to suspend him provisionally on full pay. Following these proceedings, the appellant was downgraded to grade A4 (ATCE, Appeal No 501/2011 - Semertzidis v. Governor, decision of 11 June 2012).

9. At the same time, further investigations were undertaken to determine whether there had been other breaches of the CEB's Code of Conduct and whether the CEB had suffered pecuniary damage as a result of any such breaches. According to the Governor, this was made clear to the appellant from the start of the first disciplinary proceedings. The Governor decided to mandate the company PricewaterhouseCoopers ("PwC") to conduct an investigation on the appellant in order to reveal "potential fraud" of all kinds, including issues of corruption and collusion.

10. According to the appellant, PwC conducted the investigation without ever contacting him and, on 24 November 2011, delivered its report to the Governor. PwC concluded from its extremely thorough investigation that the appellant was "also in a situation of incompatibility with Articles 7 and 11 of the CEB's Code of Conduct of 4 October 2001". He had been a partner and manager of the company M. between 2004 and 2006 and had also developed an iPhone application V. at the end of 2009. According to the appellant, PwC "wondered – since it had been mandated and paid by the Governor of the CEB for this purpose, namely to discover 'potential fraud' of all kinds, including issues of corruption and collusion – about the necessity [for the appellant] to declare these activities in order to obtain permission from the Governor to engage in them".

11. The PwC report, which, according to the appellant, found no fraud or corruption or collusion, was submitted to the Governor, who forwarded it to the CEB's Inspectorate General. However, the Governor did not send a copy to the appellant.

12. After, in his own words, "tricking" him by summoning him for an "investigation concerning securities placements at the Bank", the Inspectorate General saw fit at this stage to send the appellant, "as part of ongoing further enquiries", a copy of the PwC report together with a list of written questions which had absolutely nothing to do with any "investigation

concerning securities placements at the Bank" but concerned the company M., the iPhone application V., a Bloomberg subscription and use of the CEB's IT systems.

13. The CEB decided to give the appellant a hearing on 17 January 2012. He was interviewed by the acting Chief Compliance Officer and the acting Inspector General. The appellant partially answered the questions that were put to him. The report of this interview was not accepted by the appellant, who also turned down the possibility of having the interview recorded. The appellant asked, however, for the questions to be sent to him in writing together with a copy of the PwC report. The CEB sent him the questions in writing together with the PwC report.

14. On 6 February 2012, the appellant submitted written answers to the Inspectorate General's questions. The Inspectorate General neither gave the appellant a hearing nor undertook further investigations to verify and understand the information provided by him.

15. Having decided to initiate further disciplinary proceedings on the basis of these new facts, the Governor called the appellant to a meeting on 27 March 2012. On 2 April 2012, the Governor sent his report to the Chair of the Disciplinary Board. On 5 April 2012, the latter informed the appellant that the matter had been referred to him by the Governor and that the members of the Disciplinary Board were to be selected by drawing of lots.

16. On 19 April 2012, a record of the Disciplinary Board meeting was drawn up and made available to the appellant, who was on sick leave at the time. The record of the meeting shows that 15 members of the Disciplinary Board were drawn by lot in the presence of the Secretary of the Board. The appellant was provided with a copy of the Governor's report.

17. On 24 April 2012, through his lawyer, the appellant challenged the procedure for appointing the 15 members of the Disciplinary Board on the grounds that the procedure followed by the Disciplinary Board was not consistent with Articles 55 and 55 bis of the Staff Regulations and that, since this was a "reopening" of existing proceedings, as provided for under Article 12 of Appendix X to the Staff Regulations, which had already resulted in a penalty of downgrading, the members of the Disciplinary Board should be the same as those who had heard the appellant's case and given an opinion on it on 27 April 2011 in the first disciplinary proceedings. In the appellant's view, the PwC report was merely the continuation of the same, original disciplinary proceedings. In his letter, the appellant's counsel argued as follows:

> "(…) It is a fact that the record of the Disciplinary Board meeting of 19 April 2012 mentions – in addition to the 'reserve list' of members, for which no provision is made in the Staff Regulations – eight different members, making it impossible for Mr Semertzidis to know the exact composition of the Board, which is limited to four members and its Chair.
>
> It is clear, therefore, that the Disciplinary Board is not lawfully constituted and that, for this reason, Mr Semertzidis is unable to avail himself of his right to make objection once to any member of the Board within five days of its formation.

> We also consider that the presence of a Secretary of the Disciplinary Board (…) is not provided for under the regulations, the Chair of the Disciplinary Board being responsible for providing secretariat services.
>
> In consequence of the foregoing, Mr Semertzidis, who has been unable to exercise the rights provided for under the Staff Regulations, asks you to rectify all these shortcomings and, subject to the following considerations, to draw lots again to select the four members who, with you, will form the Disciplinary Board.
>
> (…)
>
> Lastly, it is clear from the Governor's report that the current disciplinary proceedings were "reopened" by the Governor on his own initiative on the basis of new evidence (Article 12, Appendix X to the Staff Regulations).
>
> Since this is a reopening of proceedings under Article 12 of Appendix X to the Staff Regulations, it goes without saying that the Disciplinary Board required to take a new decision is precisely the one which was formed at the time with the following members (…), which delivered an opinion on 27 April 2011.
>
> (…)."

18. On 11 May 2012, the Chair of the Disciplinary Board dismissed the appellant's claims and summoned him to a hearing to be held on 15 June 2012. In his letter of 11 May 2012, he wrote, *inter alia*:

> "I have taken due note of the fact that Mr Semertzidis is on sick leave. However, that does not constitute grounds for inadmissibility since he voluntarily attended the meeting, organised in consultation with him, to participate in the drawing of lots. I can only welcome his co-operation.
>
> Regarding the procedural questions you wish to raise, I can confirm that the drawing of lots was conducted in strict compliance with the regulations.
>
> As regards firstly the members drawn by lot, we reminded Mr Semertzidis that the idea was to form a reserve list in order to avoid holding further meetings for this purpose: there are no rules against this practice provided each drawing of lots is conducted in the proper way. This was indeed the case in this instance, with, moreover, your client's express agreement. He was reminded on this occasion that the order of the drawing of lots would be scrupulously respected to avoid misunderstandings and ensure that any possibility of 'choosing' the members from among those drawn by lot was fully ruled out: the first person drawn by lot on each of the four lists is therefore the titular member, as in a drawing of lots where no reserve list is drawn up; that is therefore the member to whom the staff member may object; Mr Semertzidis was fully informed of this and, indeed, he availed himself of his right by objecting to one of the staff members drawn in first place; the next staff member to be drawn thus becomes the member in respect of the list in question in the event of an objection or withdrawal. I would remind you that the rules are quite clear: your client can object to any member drawn in first place on each list, and the members in question may also ask to be excused from serving provided they have legitimate grounds; thereafter, in the event of a fresh

drawing of lots following an objection or withdrawal, only the members concerned may ask to be excused. If it transpires that a member drawn by lot is involved in the acts of which the staff member is accused, the Chair of the Disciplinary Board may also draw attention to this fact.

(…)

Regarding the presence of a Secretary, quite apart from the fact that this was already the case in the earlier proceedings without your client raising the slightest objection, I can only refer you to the relevant rules, which, as you point out, do indeed state that secretariat services are to be provided by the Chair of the Disciplinary Board. Being responsible for providing secretariat services and ensuring that the proper procedure is followed, I accordingly have the power to decide to arrange for the assistance a person of my choice to perform these duties without in any way infringing the regulations. Indeed, this has been the case with all the successive Chairs of the Disciplinary Board since its inception. (…)

You also refer to the report referring the matter to the Disciplinary Board and argue that this is in fact a reopening of proceedings, which means that the composition of the Disciplinary Board should be the same as in the earlier proceedings against your client. However, as you note in your letter, the report mentions new facts, distinct from those previously assessed by the Board. Article 12 of Appendix X to the Staff Regulations of the CEB allows the Governor to reopen the disciplinary proceedings in a given case and it is true that, in that eventuality, the composition of the Board must necessarily be the same as that indicated in the initial opinion. However, this applies to a review by the Board of its own opinion when an unforeseeable and decisive new circumstance has arisen since it delivered its opinion or when decisive facts or evidence of which it was not, and could not be, aware are adduced. (…) This cannot be interpreted as prohibiting the Governor from starting fresh disciplinary proceedings where the staff member concerned has committed, before or after the Disciplinary Board's opinion, acts other than those already considered by the Board which might constitute one or more infringements of the provisions of the Staff Regulations. In this latter eventuality, the Governor may, if he so wishes, submit a report on these new, different facts, in which case a Disciplinary Board must be formed in a new composition in accordance with the provisions of Article 55 of the Staff Regulations. This being the case in this instance – the impugned acts being different from those already considered and not meeting the above requirements for a reopening of proceedings – I took the decision to form a new Disciplinary Board. (…)"

19. In a letter dated 1 June 2012, the Chair of the Disciplinary Board noted that the appellant's representative had not produced any written observations in defence of his client and asked him to let him have any observations in reply by 8 June 2012, given that the hearing was scheduled for 15 June 2012.

20. On 6 June 2012, the appellant's counsel reported on the appellant's state of health as certified by a psychiatrist and said that it had been impossible for his lawyer to speak with him and that it was pointless for his lawyer to appear before the Disciplinary Board without

having been able to communicate with his client. He reiterated that the procedure for appointing the members of the Disciplinary Board had not been complied with and that, for these two reasons, the appellant could not defend himself properly.

21. On 7 June 2012, the Disciplinary Board confirmed the terms of its letter of 11 May 2012, maintaining the hearing scheduled for 15 June 2012.

22. On 13 June 2012, the appellant's counsel confirmed the terms of his letter of 6 June 2012, stressing, on the one hand, that his client's state of health, of which the CEB was well aware, prevented him from communicating with his lawyer and, on the other, that, given the Disciplinary Board's curiously intransigent position, it was impossible to defend the appellant's basic rights. In his email to the Chair of the Disciplinary Board, he made the following observations:

> "(…) I confirm that, owing to Mr Semertzidis' deplorable state of health, I am in no position to meet him or speak with him, let alone defend him.
>
> I therefore consider that, in your capacity as Chair of the Disciplinary Board, you are flouting the most elementary defence rights of Mr Semertzidis, whom you have clearly lured into a procedural trap without any safeguards.
>
> Contrary to what you claim, my client has been prevented from making any serious response to the one-sided investigation commissioned by the CEB, in which PwC has sought exclusively to gather incriminating evidence against Mr Semertzidis, sometimes in breach of his privacy.
>
> In any event, I wish to remind you that I am also unable to submit the claims of my client, who is in a deplorable state of health, and to present the documents he intended to produce.
>
> May I also remind you that we consider that the Disciplinary Board was unlawfully constituted, in breach of my client's rights.
>
> Lastly, I confirm (…) that Mr Semertzidis' presence at your Disciplinary Board meeting on 15 June is, as things stand, totally out of the question, for legitimate health reasons.
>
> For the same reasons, it is pointless for me to attend your Disciplinary Board meeting, being unable to prepare a useful defence for my client and to produce the evidence needed to counter a sham disciplinary process, while the means employed by the CEB are totally excessive and disproportionate.
>
> (…)."

23. On 5 July 2012, having held its hearing on 15 June 2012, the Disciplinary Board delivered its opinion (according to the Governor, the date of 5 April 2012 appearing on the last page of the Disciplinary Board's opinion is simply a typing error), which was sent to the appellant's representative and also to the appellant himself in an email in which he was invited to attend a meeting and informed that he could send a representative in his place. The Disciplinary Board noted in particular:

"1. ON THE FACTS RELATED TO COMPANY 'M.'

(…)

29. The Board notes from the outset that Mr Semertzidis denies neither the setting up of the company M. with Mr Z. nor his business relations with the latter, who acts for major trading counterparts of the CEB. (…) Mr Semertzidis defended himself by presenting the setting up of this company as a hobby connected with his passion for cigars and by specifying that this company had no commercial or other activities of any kind and, after being set up on 6 February 2004, was wound up on 6 July 2005. (…)

30. The Disciplinary Board notes, however, that, in his observations of 6 February 2012, Mr Semertzidis confirmed that he had been a partner in this Geneva-based company called M., whose activity 'was to purchase 'rare' cigars in an organised fashion with a view to selling them and conducting tastings in cigar clubs' of which he was a member. (…)

31. In the Board's view, it is firstly unquestionable that permission should have been requested from the CEB authorities for an activity of this kind. In not requesting such permission, Mr Semertzidis failed to comply with the rules in force within the CEB, namely Article 7 of the Code of Conduct applicable at the time of the facts and Article 32 of the Staff Regulations, which constitutes misconduct.

32. Secondly, the Board notes that, by setting up and jointly managing company M. with Mr Z., Mr Semertzidis certainly had a 'personal interest' which, under Article 6 of the 2011 Code of Conduct, might have constituted a conflict or at least been perceived as such. In addition to the question of conflict of interests, which is also dealt with in Article 7 of the 2010 Code of Conduct, the past or present links between Mr Semertzidis and Mr Z. as partners and co-managers in company M. might also have fallen within the scope of Article 11 of the 2001 Code of Conduct, which deals with the appearance of vulnerability to the influence of others.

33. In the Board's opinion, the appearance both of a conflict of interests and of undue vulnerability to the influence of others is heightened by the failure to request permission and, generally, to make any declaration concerning company M. to the CEB authorities. As Head of the Treasury Department, Mr Semertzidis could not have been unaware of the Code of Conduct or, at the very least, of an ethical obligation to report this situation. While emphasising that it has no jurisdiction to take account of facts that have already given rise to a disciplinary penalty, the Board can only observe that it emerges from the PwC investigation that, in 2009 and 2010, the CEB's two main brokers for the Bank's financial transactions conducted under the supervision of Mr Semertzidis were precisely, on the one hand, N., the company which employed Mr Z., his former partner in company M., as its representative to the CEB (…).

34. Once again, therefore, the behaviour of Mr Semertzidis constitutes misconduct.

2. ON THE FACTS RELATED TO THE APPLICATION ‘V.’

35. Alleging non-compliance with Articles 3, 6 and 7 of the Code of Conduct of 4 October 2001, 7 and 8 of the Code of Conduct applicable since 1 January 2010 and Articles 25 and 32 of the Staff Regulations, the Governor criticises the defendant for having, in parallel to his duties as Head of the CEB’s Treasury Department, developed, marketed and regularly updated a financial analysis application for iPhone and iPad called ‘V.’.

36. In his written observations of 6 February 2012, Mr Semertzidis confirms the facts, referring to a spare-time ‘hobby’ connected with his passion for computers and new technology and pointing out that he is a ‘doctor of computer science’.

37. As with the allegations of misconduct related to the company M., the Board notes that the design and management of the application ‘V.’ should have been declared and that permission should have been sought. Not only the object of the activity and its direct and close link with the activities of the CEB and Mr Semertzidis’ duties, but also the fact that he did not deny that the application ‘V.’ was sold and not made available free of charge to Internet users, show that the provisions of the Code of Conduct and Staff Regulations dealing respectively with remunerated activities and occupational activities, whether remunerated or not, were unquestionably applicable in the instant case. It follows that Mr Semertzidis committed a fault by not complying with these obligations.

3. ON THE FACTS RELATED TO THE SIGNING OF CONTRACTS WITH BLOOMBERG

38. The Governor criticises the defendant for having signed contracts with Bloomberg on 4 March 2008 and 19 August 2008 for the provision of real-time financial data (…), thus committing the CEB legally and financially, whereas it is clear from the CEB’s rules and the lists of signatures that he was not empowered to do so.

39. The Board notes from the outset that, in his written observations of 6 February 2012, while stating that he has always dealt with subscriptions and that information about financial markets is important to him in the exercise of his duties, Mr Semertzidis does not contest the fact that he was not empowered to sign the disputed subscription contracts himself.

40. The Board therefore finds that Mr Semertzidis committed a fault in this respect.

4. ON THE FACTS RELATED TO USE OF THE CEB’S IT FACILITIES

41. The Governor criticises the defendant for having automatically redirected emails received on his work inbox at the CEB to three personal email addresses. (…)

42. (…) It (…) seems [to the Board] that it is legitimate, to say the least, to question the usefulness and appropriateness of this operation, given that there were other means available to Mr Semertzidis for consulting his work emails from outside the Bank (…). (…). In any event, his position as Head of the CEB’s

> Treasury Department at the time of the facts should have led him to show the utmost vigilance in protecting the data communicated to him and the overall security of the CEB's IT system. Plainly, this was not the case. (…)
>
> (…)
>
> 45. The Board refers to its above findings (…).
>
> (…)
>
> 47. (…) in the Board's opinion, such faults constitute infringements not only of the relevant provisions of the Code of Conduct and the Staff Regulations, but also of the ethical conduct one is entitled to expect from a CEB staff member, and especially from a staff member conducting or supervising financial transactions on the Bank's behalf in his capacity as Head of the Treasury Department. Indeed, the Board considers that all staff members of a financial institution have a duty to report, on their own initiative, even where there are no specific rules, forms or training for this purpose, any conflict-of-interest situation encountered in the course of their duties; this applies *a fortiori* where the staff member in question holds a managerial position of this kind.
>
> 48. Admittedly, the CEB has not suffered any pecuniary damage and there is no evidence that its reputation has been harmed by the actions of Mr Semertzidis. Nevertheless, the conduct of a head of department at the CEB must be beyond reproach, particularly where acts such as those found in the instant case relate to the duties performed by the individual concerned within the CEB.
>
> (…)
>
> 50. In conclusion, the Disciplinary Board considers, given the circumstances of the case, that Mr Semertzidis has committed particularly serious faults, which justifies the imposition of a disciplinary penalty commensurate with their gravity."

24. On 17 July 2012, the Governor sent a letter to the appellant's lawyer by email asking him to attend a meeting on 25 July 2012 because, having, by his own account, not been notified, he had not attended the meeting with the Governor scheduled for 17 July 2012.

25. On 19 July 2012, the appellant's counsel told the Governor that no one had been aware of the meeting convened for 17 July 2012 and that all efforts had been made to contact the appellant about the meeting on 25 July 2012. The same day, the appellant's counsel informed the Governor that, for serious medical reasons, it was impossible for his client to attend that meeting, and asked for a postponement.

26. On 26 July 2012, the Governor, acting on the Disciplinary Board's recommendation, decided to dismiss the appellant as from 1 August 2012. His decision was forwarded to the applicant and his lawyer on the same day. That dismissal is the subject of the present appeal, the appellant's administrative complaint against the dismissal decision having been rejected by the Governor on 4 September 2012.

27. On 10 October 2012, the appellant lodged this appeal.

RELEVANT LAW

Staff Regulations of the Council of Europe Development Bank

28. Article 54, concerning disciplinary measures, provides as follows:

"1. Any failure by staff members to comply with their obligations under the Staff Regulations, and other regulations, whether intentionally or through negligence on their part, may lead to the institution of disciplinary proceedings and possibly disciplinary action.

2. Disciplinary measures shall take one of the following forms:

a. written warning;

b. reprimand;

c. relegation in step;

d. downgrading;

e. removal from post.

3. A single offence shall not give rise to more than one disciplinary measure."

29. Article 55, concerning the Disciplinary Board, reads as follows:

"1. A Disciplinary Board shall be set up, consisting of a Chair and four members. The Chair shall arrange for secretarial assistance.

2. The Secretary General shall each year appoint the Chair of the Disciplinary Board, this office being incompatible with membership of the Joint Committee. The Secretary General shall also draw up a list containing, if possible, the names of two staff members from each grade in each category mentioned in Article 4. The Staff Committee shall at the same time transmit a like list to the Secretary General.

3. Within five days of receipt of a report initiating disciplinary proceedings, the Chair of the Disciplinary Board shall, in the presence of the staff member concerned, draw lots from among the names in the above-mentioned lists to decide which four members shall constitute the Disciplinary Board, two being drawn from each list.

4. Members of the Disciplinary Board shall not be of a lower grade than that of the staff member whose case the Board is to consider.

5. The Chair shall inform each member of the composition of the Board.

6. Within five days of the formation of the Disciplinary Board, the staff member in question may make objection once to any of its members other than the Chair.

7. Within the same period any member of the Disciplinary Board may ask to be excused from serving, provided he or she has legitimate grounds.

8. The Chair of the Disciplinary Board shall, by drawing lots, fill any vacancies.

9. The Chair and members of the Disciplinary Board shall be completely independent in the performance of their duties. The proceedings of the Board shall be secret."

30. Article 55 bis reads as follows:

"1. When dealing with cases referred by the Governor of the Council of Europe Development Bank, the Disciplinary Board shall include two members of the Bank's staff.
2. To this end, the Governor shall draw up a list containing, if possible, the names of two staff members from each grade in each category mentioned in Article 4 of the Regulations. The Bank Staff Committee shall at the same time transmit a like list to the Governor.
3. Within five days of receipt of a report initiating disciplinary proceedings, the Chair of the Disciplinary Board shall, in the presence of the staff member concerned, draw lots from among the names in the lists drawn up by the Secretary General, the Governor, the Council of Europe Staff Committee and the Bank Staff Committee to decide which four members shall constitute the Disciplinary Board, one being drawn from each list.
4. Unless otherwise specified in the foregoing 3 paragraphs of Article 55bis, the provisions of Article 55 shall apply."

31. Article 56, concerning disciplinary proceedings, is worded as follows:
"1. Disciplinary proceedings shall be instituted by the Governor after a hearing of the staff member concerned.
2. Disciplinary measures shall be ordered by the Governor after completion of the disciplinary proceedings provided for in Appendix X to these Regulations."

Appendix X to the Staff Regulations: Regulations on disciplinary proceedings

32. Article 2 provides as follows:
"1. No warning or reprimand shall be ordered by the Governor before hearing the staff member concerned.
2. If the misconduct of which the staff member is accused may warrant one of the disciplinary measures provided for in Article 54, paragraph 2.c, d and e, the Governor shall lay before the Disciplinary Board a report clearly specifying the reprehensible acts and the circumstances in which they were allegedly committed.
3. The said report shall be transmitted to the Chair of the Disciplinary Board, who shall bring it to the knowledge of the Board members and of the staff member."

33. Article 5 reads as follows:
"1. The staff member concerned shall have not less than fifteen days from the date of receipt initiating disciplinary proceedings to prepare his defence.
2. When staff members appear before the Disciplinary Board they shall have the right to submit written or oral observations, to call witnesses and to be assisted in their defence by a person of their own choice."

34. Article 8 provides as follows:

"1. After consideration of the documents submitted and having regard to any statements made orally or in writing by the staff member concerned and by witnesses, and also to the results of any enquiry undertaken, the Disciplinary Board shall, by majority vote, deliver an opinion, stating its grounds, on the disciplinary measure appropriate to the facts complained of, and transmit the opinion to the Governor and to the staff member concerned within one month of

the date on which the matter was referred to the Board. The time-limit shall be three months where an enquiry has been held on the instructions of the Disciplinary Board.
2. The Governor shall take his decision within one month; he shall first hear the staff member concerned."

35. Article 10 reads as follows:
"1. The Chair shall be responsible for the minutes of the meetings of the Disciplinary Board.
2. Witnesses shall sign the minute recording their deposition.
3. The opinion stating grounds provided for in Article 8 shall be signed by all members of the Disciplinary Board."

36. According to Article 12:
"Where there are new facts supported by relevant evidence, disciplinary proceedings may be reopened by the Governor on his own initiative or on application by the staff member concerned."

THE LAW

37. The appellant seeks the annulment of the Governor's dismissal decision of 26 July 2012. At the same time, he alleges that there were irregularities in the proceedings before the Disciplinary Board, that he was unable to defend himself properly because of serious health issues, and that he suffered harassment from the Governor, who, in dismissing him, violated the principle of proportionality insofar as the CEB had not suffered any damage and the alleged offences were not such as to justify his dismissal.

38. For his part, the Governor asks the Tribunal to dismiss the appeal.

I. THE PARTIES' SUBMISSIONS

39. The appellant maintains that the Disciplinary Board was unlawfully constituted. In this connection, he refers to the large number of members drawn by lot, to the lack of any possibility of making an objection within five days once the four members had been drawn by lot, and the presence of the Disciplinary Board's secretary, which is not provided for in the rules, which, in his view, constitutes a violation of Articles 55 and 55 bis of the Staff Regulations. He also notes that he was never able to defend himself properly before the Disciplinary Board and present his arguments. He further alleges that the Disciplinary Board delivered its opinion on 5 April 2012, in other words on the same day that it received the report from the Governor referring the matter to it.

40. The appellant also submits that the Disciplinary Board's opinion was only signed by two members (Ms B. and Mr F.) and that, in the case of the other two members, namely Ms M. and Ms A., it was signed "*pour ordre*" ("per pro"). Clearly, therefore, these two members did not sign the opinion. The appellant argues that this is inconsistent with Article 10, paragraph 3, of Appendix X to the Staff Regulations, which requires all members of the Disciplinary Board to sign the opinion.

41. Commenting on the answers given by the Governor to the questions put to him by the Tribunal after the hearing (see paragraph 5 above and paragraphs 47-50 below), the appellant notes that the Governor acknowledged that the opinion had not been signed by all the members of the Disciplinary Board. He stresses that there are no rules permitting "per pro" signatures, but that this was merely a practice adopted when members of the Disciplinary Board were unavailable to sign. He also notes that the Governor did not explain why two members of the Board had been unable to sign the opinion personally. He adds that Article 10, paragraph 3, of the Appendix states clearly that the reasoned opinion provided for in Article 8 must be signed by all members of the Disciplinary Board and allows for no exceptions.

42. With regard to the charges against him, the appellant submits that the contracts with Bloomberg were signed on 4 March 2008 and 18 August 2009 respectively, i.e. three years before his dismissal, and had never given rise to the slightest criticism from the CEB. Furthermore, they were directly related to the appellant's duties and responsibilities at the time.

43. Regarding the fact that he used Microsoft Outlook to redirect his work emails to private email addresses, the appellant notes that this facilitated his work because he could consult his emails at any time under very good conditions, and he stresses that, in any event, this never caused the CEB any prejudice.

44. The appellant adds that the reputation of the CEB and its staff in the eyes of investors, market players and stakeholders was never affected.

45. For his part, the Governor maintains that the investigation conducted by PwC was in full compliance with the applicable rules. The PwC report testifies to the professionalism of this outside partner. Regarding the investigation conducted by the CEB itself, the Governor notes that the appellant was indeed given a hearing in the course of this procedure, on 17 January 2012, once this was made possible by his return from sick leave. The appellant had also been interviewed by the Governor on 27 March 2012 before the matter was referred to the Disciplinary Board.

46. With regard to the proceedings before the Disciplinary Board, the Governor submits that the Board was formed in the proper way and that the adversarial nature of the proceedings was maintained throughout. Where the date of the opinion is concerned, the Governor stresses that this is clearly a typing error; as for the argument relating to "per pro" signatures by CEB staff members, that is a routine procedure, the reason for which is obvious, given the geographical distance between them.

47. However, in reply to the questions put to him by the Tribunal after the hearing about the conduct of the disciplinary proceedings (see paragraph 5 above), the Governor admitted that it was the Chair of the Disciplinary Board himself who had signed "per pro" on behalf of the two CEB staff members sitting as members of the Disciplinary Board (Ms M. and Ms A.). Referring to Articles 10-3, 8 and 55 of the Staff Regulations and to Article 9 of Appendix X, the Governor argues that all these regulations assign responsibility to the Chair for conducting disciplinary proceedings and ensuring that the proper procedures are followed. The Staff Regulations also stipulate a number of formalities to be complied with. However, in view of the specific nature of the tasks performed by Council of Europe and CEB staff, disciplinary

proceedings invariably come up against the problem of the unavailability of one or more members of the Disciplinary Board, mainly for reasons related to missions and travel. Accordingly, while means of communication exist and function perfectly, physical absence is inevitable. When the discussions on the text of the reasoned opinion are concluded with the adoption of the final version, the expiry of the time-limit of one or three months is generally imminent and this regularly coincides with a member's absence. Moreover, in the case of the CEB, the rules on membership are such that two members out of four are CEB staff members based in Paris, the others (including the Chair) being based in Strasbourg.

48. Since, however, the reasoned opinion provided for in Article 8 of Appendix X has to be transmitted within three months if an enquiry is held, it has been a long-standing practice of the Disciplinary Board, where a member is unavailable before expiry of the time-limit, to authorise the Chair, as the person responsible for ensuring proper procedures are followed, to sign the opinion on his or her behalf. The Governor acknowledges that this delegation of signing authority is not expressly provided for in the rules, but in addition to being a long-standing practice, it meets the aim pursued by the regulations on discipline and, in the Governor's opinion, is perfectly legal.

49. In general, the Chair of the Disciplinary Board has always favoured an interpretation of the regulations consistent with the principles laid down by the European Court of Human Rights in its case-law on the fairness of proceedings, and in particular on the rights of the defence and respect for the adversarial principle. According to the Governor, these rules have guided and shaped the Disciplinary Board's practice with regard to "per pro" signatures, which are the subject of the questions asked by the Tribunal in this instance. In this connection, he submits that the regulations, on the one hand, do not require opinions to be signed personally by members on pain of nullity and, on the other, do not rule out a form of delegation of signing authority. Article 10, paragraph 3, of Appendix X is not only silent on this point but also must necessarily be read in the light of Article 8 of the Appendix, to which it refers: the purpose of the signatures is to authenticate the participation of the members referred to in Articles 55 and 55 bis and, hence, to guarantee the validity of the opinion transmitted to the parties. Signature by the Chair on a Board member's behalf meets that purpose, all the more so in that it is attended by a number of guarantees.

50. According to the Governor, this form of delegation of signing authority is simply an internal organisational measure which calls into question neither the division of responsibilities within the Disciplinary Board nor the actual participation of the members concerned in the Board's proceedings and the discharge of its responsibilities. Such a practice is possible within the Disciplinary Board in order to preserve the confidentiality of its proceedings and can only be employed once the final text of the opinion has been agreed and adopted. This is also necessarily an occasional and limited practice as it is only employed where a member is "physically" unavailable to sign the opinion, to ensure that it is transmitted to the parties within the prescribed time-limit. The Governor stresses that the express agreement of the absent member is required and the Chair always takes care to obtain that agreement in advance. Otherwise he does not sign. Lastly, this form of delegation protects the parties by certifying the authenticity of the reasoned opinion transmitted to them, which is the purpose of Articles 8 and 10, paragraph 3, of Appendix X.

51. In reply to the appellant's argument that the Governor took the decision to dismiss him while being aware of his state of health, the Governor notes that although the Staff

Regulations contain no provisions on this subject, he considered the circumstances of the case before taking the measure complained of. He categorically rejects the accusation of harassment made by the appellant's lawyer.

52. As to the severity of the penalty and the principle of proportionality, the Governor submits that the appellant disputes neither the acts giving rise to the penalty nor their reprehensible nature. Neither does he dispute the seriousness of the faults relating to the company M. and the software application V. He merely questions the seriousness of the faults relating to the signing of contracts without authorisation and improper use of the CEB's IT resources. The seriousness of the charges against the appellant and certain aggravating circumstances, in particular the risks to the reputation of the CEB and his reprehensible conduct, served as the basis for the decision to dismiss him.

53. The Governor submits that this decision takes into account the nature of the post held by the appellant, which adds significantly to the seriousness of the misconduct. Account must also be taken of the risks to the reputation of the CEB and its staff and of the particularly serious faults committed by the appellant. In fact, independently of the seriousness of each reprehensible act, the large number of them demonstrates an attitude of disregard for ethical obligations and duties, which is all the more intolerable in that it comes from a staff member in charge of the CEB's treasury transactions.

54. The Governor concludes by asking the Administrative Tribunal to declare this appeal ill-founded.

II. THE TRIBUNAL'S ASSESSMENT

55. The Tribunal notes first of all that the conduct of disciplinary proceedings against a staff member of an international organisation is a complex and, at the same time, sensitive matter. The institution of such proceedings is a very delicate moment in the staff member's career and can have a significant impact on the management of his or her working life. It is essential, therefore, that the organisation's disciplinary body, in this case the Disciplinary Board, conduct the proceedings in a transparent and irreproachable manner. This requirement applies in particular to the application and interpretation of rules of procedure. In this connection, the Tribunal considers that only a strict interpretation of these rules can guarantee the transparency of the disciplinary proceedings and protect the staff member from all arbitrariness.

56. In the instant case, the Tribunal observes, as does the appellant, that the terms of the provisions of Appendix X to the Staff Regulations, and specifically Articles 8 and 10, are unambiguous and leave no scope for any broad interpretation or, even less, any exception. It has taken note of the Governor's arguments and of the explanations which he provided (paragraph 5 above), after requesting information on this subject from the Disciplinary Board, in order to justify the Disciplinary Board's long-standing practice of having its opinions signed "per pro" when some of its members are absent.

However, the Tribunal does not consider these arguments to be convincing and regards them rather as an attempt to explain a mere practice whose repetition does not in this instance confer on it the status of a customary rule. Furthermore, the Tribunal wishes to stress that this

issue has never come before it. Being seized of it for the first time in this appeal, it emphasises that, however common it might be, this practice cannot prevail over the clear and unambiguous text of Article 8 of Appendix X. Moreover, neither the Governor nor the Disciplinary Board indicated why the two members of the Disciplinary Board were unavailable to sign the opinion in person. No indication is provided in the Disciplinary Board's opinion either.

57. In the light of the foregoing, the Tribunal, bearing in mind that disciplinary proceedings demand strict compliance with the law, and with rules of procedure in particular, finds that the proceedings before the Disciplinary Board in the instant case were vitiated by a serious irregularity. In finding this irregularity, the Tribunal is not being excessively formalistic, because it directly and substantially affects the lawfulness of the procedure followed before the Governor and, in particular, the penalty imposed on the appellant, namely his dismissal, which must therefore be annulled.

58. Having reached this conclusion, the Tribunal deems it unnecessary to rule on the appellant's other grounds of defence. However, it is perplexed at the Disciplinary Board's practice of immediately drawing by lots the names of the staff members to sit on the Board and the names of possible substitutes rather than drawing the names of the Board members and, only subsequently, the names of the substitutes when, and above all if, the need for substitutes arises. Here too, the practice adopted seems intended to avoid any undue formalism which would encumber the procedure, but this practice is contrary to the regulations governing the procedure. Above all, it reduces the right of objection available to the appellant at each drawing of lots.

59. Furthermore, with regard to the appellant's ground of defence based on the date of the Disciplinary Board's decision, the Tribunal notes that this was indeed clearly a typing error, which, as such, does not affect the lawfulness of the act.

60. Lastly, the appellant claims the sum of 250 000 euros in damages for the harm he suffered as a result of the act complained of and the Governor's reprehensible attitude towards him.

Under Article 60, paragraph 2, last sentence, of the Staff Regulations as applicable to the Bank, the Tribunal can "order the Bank to pay to the appellant compensation for damage resulting from the act complained of".

The Tribunal first observes that, where pecuniary damage is concerned, this will be redressed, in accordance with the Tribunal's case law, through the execution of this decision annulling the dismissal decision.

As regards non-pecuniary damage, the Tribunal has said that an appellant should not merely claim compensation but also substantiate and quantify his claim (ATCE, Appeal No 455/2008 - Musiałkowski v. Secretary General, decision of 30 October 2009, paragraph 52, and, more recently, Appeal No 521/2011- R. V. (II) v. Governor, decision of 26 September 2012, paragraph 83). In this case, the appellant has supplied no material to substantiate his claim. However that may be, the Tribunal points out that it has only ruled on whether the proper procedure was followed. The finding that this was not the case constitutes sufficient redress for the non-pecuniary damage suffered by the appellant.

61. The appellant, who had recourse to a lawyer's services, has claimed 15 000 euros by way of costs and expenses. The Tribunal considers it reasonable for the Governor to reimburse the sum of 7 500 euros under this head (Article 11, paragraph 2, of the Tribunal's Statute – Appendix XI to the Staff Regulations).

III. CONCLUSION

62. The appeal is well-founded and the contested decision must be annulled. The appellant is also entitled to the reimbursement of 7 500 euros in respect of costs and expenses.

For these reasons,

The Administrative Tribunal:

Declares the appeal well-founded and annuls the contested decision;

Orders the Governor to pay the appellant the sum of 7 500 euros by way of costs and expenses.

Adopted by the Tribunal in Strasbourg on 12 April 2013 and delivered in writing in accordance with Rule 35, paragraph 1, of the Tribunal's Rules of Procedure on 19 April 2013, the French text being authentic.

The Registrar of the Administrative Tribunal	The Deputy Chair of the Administrative Tribunal
S. SANSOTTA	G. MALINVERNI