

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

TRIBUNAL ADMINISTRATIF

ADMINISTRATIVE TRIBUNAL

Appeal No. 501/2011 (Michel SEMERTZIDIS
v. Governor of the Council of Europe Development Bank)

The Administrative Tribunal, composed of:

Mr Georg RESS, Deputy Chair,
Mr Angelo CLARIZIA,
Mr Hans G. KNITEL, Judges

assisted by:

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

has delivered the following decision after due deliberation.

PROCEDURE

1. The appellant, Michel Semertzidis, lodged his appeal on 26 July 2011. On 27 July 2011 the appeal was registered under No. 501/2011.
2. On 7 September 2011 the appellant submitted a supplementary memorial.
3. On 15 September 2011 the Governor submitted his memorial in reply. The appellant submitted his observations in reply on 11 February 2012.
4. The public hearing in this case took place in the Tribunal's hearing room in Strasbourg on 20 March 2012. The appellant was represented by Maître Jean-Pierre Cuny, lawyer practising at the Versailles bar, while the Governor was represented by Maître Jean-Michel de Forges, lawyer practising at the Paris bar.

THE FACTS

I. THE FACTS OF THE CASE

5. The appellant has Greek and French nationality and was born in 1966. He is a permanent staff member of the Council of Europe Development Bank (hereinafter "the CEB") in Paris.

6. The appellant took up employment with the Council of Europe Development Bank in August 1996 as a permanent official on the basis of a 2-year fixed-term contract, which was renewed once for the same period of time. On 7 March 2000, the appellant received an indefinite-term contract. On 22 March 2006 he was appointed Head of the Treasury Department and was placed on grade 5 on 1 April 2007.

7. In 2003 the appellant married Mrs L. M., who since 2009 has held the post of senior manager in company N. as a broker responsible for the purchase and sale of securities in the CEB's portfolio. According to the report referring the matter to the Disciplinary Board, security transactions with the CEB accounted for 73.96% of total transactions in 2009 and 28.83% in 2010.

8. On 25 January 2011, the Governor referred the matter to the Disciplinary Board under Article 2, paragraph 2 of Appendix X ("Regulations on disciplinary proceedings") to the CEB's Staff Regulations. He considered that the appellant was in a conflict-of-interest situation arising from the fact that his wife was employed by company N., to which the CEB's Treasury Department, headed by the appellant, had frequent recourse for the purchase and sale of securities in the CEB's portfolio. The Governor criticised his failure to declare that situation. He stated his intention to impose on the appellant one of the sanctions provided for in Article 54, paragraph 2c, 2d and 2e of the Staff Regulations, viz relegation in step, downgrading or removal from post.

9. The Disciplinary Board examined the facts of the case, heard the appellant and received statements from witnesses. On 27 April 2011 it submitted its report, noting in particular that:

“33. Mr Semertzidis refers to his career in the CEB, to his recruitment on 16 August 1996 and to his appointment as Head of the Treasury Department on 22 March 2006 (...).

34. He considers that he cannot be criticised for not having declared his wife's situation in [N.] because there was no applicable procedure and no form or arrangement available in the CEB for declaring a potential conflict of interest. On this point he refers to the declaration system put in place by the Council of Europe. He adds that the Front Office staff at the CEB have never had this question brought to their notice and have not received any explanations or training with respect to it. In his opinion, under labour law it is the role of the Compliance Officer to put in place such training and to arrange for reporting by means of declaration forms.

35. Furthermore, Mr Semertzidis considers that he never concealed his marital status or the professional situation of the woman who had been his wife for six years when the CEB first had recourse to the services of [N.]. He considers that it was already common knowledge that she worked in finance, without there being any need to make a declaration, given the availability of information on the internet or, where [N.] was concerned, in its publicity material.

(...)

47. (...) every member of staff of a financial institution has a duty to report on his own initiative, even in the absence of a specific text or specific forms or training, a conflict-of-interest situation encountered in the framework of his duties.

48. In his capacity as Head of the Treasury Department, Mr Semertzidis could not have been unaware of the Code of Conduct, or at the very least of a deontological obligation of this nature.

49. It is true that the CEB has not suffered material loss (...) and the declaration would not have prevented the continuance of transactions with [N.].

50. The fact remains that transactions carried out on behalf of the CEB must be above reproach, in order not to damage its image and credibility. (...). It is the responsibility of the CEB authorities, not Mr Semertzidis, to assess the situation, in order to decide whether or not it constitutes a conflict of interest and to take the appropriate action. This presupposes that the information be first provided by Mr Semertzidis, and it was not so

provided.

51. In conclusion, the Disciplinary Board is of the opinion that Mr Semertzidis, who has a duty to show exemplary behaviour as Head of the Treasury Department, was guilty of misconduct justifying the imposition of a disciplinary sanction.

52. With regard to the sanction, the Board attaches importance to the measure of suspension (albeit ordered with full maintenance of salary) which has applied to Mr Semertzidis since January 2011. Although such a measure cannot be classed as a “disciplinary sanction”, it is likely to entail major consequences for his reputation in the CEB, and even outside.

53. However, the offence is established and the Board considers that a reprimand would constitute an inadequate sanction having regard to its seriousness, while downgrading would seem disproportionate in view of the circumstances of the case, particularly in the absence of material loss and proven detriment to the image of the CEB. It follows that (...) relegation in step would constitute a proportionate sanction.”

10. However, not having accepted the recommendation of the Disciplinary Board, the Governor informed the appellant by letter dated 12 May 2011 that he had decided to downgrade him to grade A4/7 as a disciplinary measure, with effect from 1 June 2011. He gave the following reasons for his decision:

“Considering that Mr Semertzidis performs the duties of Head of the Treasury Department within the CEB’s Financial Directorate; that Mrs [L.M.], the wife of Mr Semertzidis, was recruited in January 2009 by the stockbroking company [N.] as senior manager and assigned to that company’s front office; that from 28 January 2009 onwards the Treasury Department of the CEB had recourse to the services of company [N.] for securities transactions, in particular short-term operations; (...)

Considering that the Bank’s management was informed only by chance, and not until December 2010, about Mrs [L.M.]’s professional situation; that it was immediately apparent that this situation was such as to be classed as a conflict of interest within the meaning of the Bank’s Code of Conduct; that, in accordance with that Code of Conduct, Mr Semertzidis ought to have informed the Bank’s competent authorities, and in the first place his hierarchical superiors, of that situation in January or at the latest February 2009; that it is established that neither on that date nor at a later date did he inform them of the situation by any means whatever;

Considering that, as the Disciplinary Board has pointed out, the obligation to declare a conflict of interest, whether actual or potential, is part of the behaviour which the Bank is entitled to expect from its staff, and more especially from a staff member carrying out or supervising financial operations on the Bank’s behalf; that this obligation applied to Mr Semertzidis not only because it is laid down in the 2001 Code of Conduct but also because it is among the deontological obligations which apply, even in the absence of any text, to the staff of all financial institutions; that the offence committed by Mr Semertzidis, consisting in the failure to declare an actual or potential conflict-of-interest situation, is thus established;

Considering that the fact, pointed out by the Disciplinary Board, that the conflict-of-interest situation concerning Mr Semertzidis would have had no repercussions on either the image or the credibility of the CEB or its financial results if it was established, cannot be regarded as an extenuating circumstance; that the same is true of the consideration that Mr Semertzidis at no time intervened personally in relations between the CEB and company [N.]; that, on the other hand, the length of time during which he failed to report the situation and the singular nature of his defence, arguing alleged uncertainty of the rules and procedure for declaring a conflict of interest to the CEB, can only be regarded as aggravating circumstances.”

11. On 30 May 2011 the appellant submitted to the Governor an administrative complaint seeking the annulment of his decision. He argued in particular that:

“(…) this decision breaches, firstly, the general principle of law that every organisation must respect the necessary proportionality between the offence committed and the sanction imposed. (...)

In particular, in the last introductory paragraph of your decision you leave doubt hanging over the question whether, on the one hand, the conflict-of-interest situation had no effect either on the image or credibility of the CEB or on its financial results, and on the other hand, whether I intervened personally in relations between the

CEB and company [N.]. Yet you have nothing on which to base the grave doubts you express, and indeed you even have an obligation to refrain from making allegations whose seriousness and lack of foundation grossly breach the presumption of innocence recognised by the international courts (...)

(...) You refer to (...) the nature of the arguments which I adduced before the Disciplinary Board. In particular, you consider that my argument concerning the uncertainty of the rules and arrangements for declaring interests constituted an aggravating circumstance. (...) Thus you infringe (...) the rights of the defence, since you use the arguments employed by a staff member as evidence against him (...). The rights of the defence are breached (...) when the chosen line of argument is used against him and sanctioned in order to aggravate the disciplinary sanction imposed on him.

Lastly, your decision also infringes the duty to give reasons (...)

(...) the reasons given in the contested decision as justifying the difference between your assessment and that of the Disciplinary Board are not only inadequate but also misleading. Indeed, the Board was careful not to refer to the lack of any effect on the image of the CEB and its financial results as being “an extenuating circumstance”, contrary to what you appear to claim.

For what it is worth, I would emphasise the much greater severity of the sanction you impose on me (downgrading), compared with relegation in step as recommended by the Disciplinary Board. In fact, downgrading as a sanction constitutes a backward step in my professional status and adversely affects my future career and my pension rights. So the difference in gravity between the [proposed] sanction and the one you impose on me requires that you give more precise reasons, free of the defects I have set out above (...)

12. On 24 June 2011 the Governor rejected the appellant’s administrative complaint on the following grounds:

“(...) it is for the disciplinary authority to assess the proportionality between the gravity of an offence and the severity of the sanction chosen.

(...) my decision of 12 May 2011 states precisely and fully the reasons why my assessment was different from that of the Disciplinary Board.

(...) I did not distort the sense of the Disciplinary Board’s opinion. I merely pointed out, on the one hand, that the Board considered that the conflict-of-interest situation found was without effect on the Bank’s image, credibility and financial results, although at the time when it gave its opinion, it had no such knowledge, and on the other hand that, in view of the nature of your alleged offence, that consideration is without consequences for its seriousness (...)

(...) the fact that you refrained from any kind of declaration on your wife’s professional activities constitutes a very serious dereliction of your professional obligations; (...)

(...) In my view, the Disciplinary Board’s proposal was unsuited to the nature and seriousness of the offence committed (...)

(...) and, consequently, to reject your administrative complaint.”

II. THE RELEVANT LAW

Staff Regulations of the Council of Europe Development Bank

13. Article 54, on disciplinary measures, stipulates that:

“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.”

14. Article 56 - “Disciplinary proceedings” - reads 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.”

15. Article 57 - “Suspension”- stipulates that:

- “1. In a case of serious misconduct liable to entail a disciplinary measure as referred to in Article 54, paragraph 2.c, 2.d and 2.e, the Governor may, after hearing the Chair of the Disciplinary Board, suspend the presumed author of the misconduct.
2. The decision that a staff member be suspended shall specify whether he is to continue to receive his remuneration during the period of suspension or what part thereof is to be withheld; the part withheld shall not be more than half the staff member’s basic salary.
3. A final decision on the staff member’s administrative situation shall be taken within four months of the date when the decision to suspend him came into force.
4. If, on the expiry of the time-limit prescribed in paragraph 3, no decision has been taken on the case or if none of the disciplinary measures mentioned in Article 54, paragraph 2.c, 2.d and 2.e has been ordered, the staff member shall be entitled to reimbursement of the amount of remuneration withheld.”

Appendix X to the Staff Regulations: Regulations on disciplinary proceedings

16. Article 2 stipulates that:

- “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 of the Staff Regulations, 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.”

17. Article 8 reads 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 or her decision within one month; he shall first hear the staff member concerned.”

Code of Conduct of the Council of Europe Development Bank applicable to the Governor, Vice-Governors, staff members and to contractual collaborators or service providers (adopted on 27 November 2009)

18. Article 7 deals with conflicts of interest and provides that:

“The CEB’s Appointed Officials, staff members and occasional contractual collaborators must avoid any situation involving an actual or apparent conflict of interest, that is to say any situation in which private or external interests can influence or reasonably be perceived as influencing the impartial and objective exercise of their functions.

The CEB’s Appointed Officials, staff members and occasional contractual collaborators should not exercise any activity, whether paid or otherwise, liable to give rise to a conflict of interest or the appearance of conflict of interest. They are required to be attentive to any conflict of interest or the appearance of conflict of interest and to take the necessary measures to avoid it.

Any CEB Appointed Official, staff member and occasional contractual collaborator who find themselves in a situation that is liable to result in a conflict or the appearance of a conflict between their interests and those of the Bank shall bring the matter to the attention of the CCO who will report thereon to the Governor. Declarations made by the Governor and Vice-Governors shall be sent to the Governing Board and to the CCO.

Any conflict of interest or appearance of conflict of interest concerning a candidate either to a staff member position, or to a contract for occasional collaboration or to an elected position at the CEB must be solved prior to any engagement.

The CEB’s Appointed Officials, staff members and occasional contractual collaborators shall discharge their official duties in such a way as to preserve their personal integrity and that of the CEB.”

THE LAW

19. The appellant complains that the Governor has imposed too severe a sanction on him in relation to the seriousness of the professional misconduct committed.

20. For his part, the Governor requests the Tribunal to dismiss the appeal.

I. SUBMISSIONS OF THE PARTIES

A. The severity of the sanction and respect for the principle of proportionality

21. The appellant states that he has demonstrated his good faith and acted in the interests of the CEB and took no account, in choosing company N. as broker, of the fact that his wife was their employee. He recognises that he was guilty of misconduct in failing to formally declare his wife’s position. However, he never concealed his marital situation from the CEB.

22. In his opinion, the Governor’s decision to downgrade him omits all reference to his past service and does not mention his professional qualifications or his competence. Furthermore, it took no account of certain elements in his favour. In fact, although he observed that the conflict-of-interest situation had no repercussions either on the image or credibility of the CEB or on its financial results, he did not regard that fact as an extenuating circumstance. Similarly, he took no account of the Disciplinary Board’s finding that the appellant never intervened personally in relations between the CEB and N.

23. The appellant compares his situation to that of the appellant in the case of *X v. Secretary General* (ATCE no. 248/1998, decision of 20 May 1999); X was sanctioned by relegation in step because, as an official of the European Pharmacopoeia, he had expressed an opinion on an order for “reference substances” from a firm where his wife was an employee and had not reported the fact. Unlike the situation in that case, the appellant’s wife is merely an employee of company N. and it is not apparent from the file that the transactions between the CEB and that company might have served its financial or other interests. Moreover, the appellant merely omitted to declare his wife’s position to his superiors. In fact, Ms E., the market operator, knew that the appellant’s wife worked for N. and did not see that as a problem, especially as everyone knows everyone else in the world of finance.

24. Similarly, Mr M., financial director and the appellant’s superior, had known his wife since 2003 and was familiar with her career, including her recruitment by N. Moreover, he testified before the Disciplinary Board that “the offer from [N.] exactly met the CEB’s expectations”, adding that “such being the case, in his view, the declaration concerning the [appellant’s] wife would in any event have not made it impossible to go on working with [N.]. According to the appellant, “it was already public knowledge that his wife worked in finance”.

25. The appellant observes lastly that he has already suffered a sanction. As the Disciplinary Board noted, he had been suspended - albeit with full maintenance of salary - and this was “likely to entail major consequences for his reputation in the CEB, and even outside”. However, the Governor did not take that fact into consideration.

26. For his part, the Governor maintains that the disciplinary authority enjoys discretionary power in deciding on the sanction, provided it does not commit a manifest error in matching the sanction to the seriousness of the misconduct. In the instant case, even if his judgment was different from that of the Disciplinary Board, it is not vitiated by a manifest error of judgment.

27. The Governor submits that, at the time when the Disciplinary Board gave its opinion, it was impossible to know whether the conflict-of-interest situation did or did not have an effect on the image, credibility or financial results of the CEB, as the file did not enable such a judgment to be made. Furthermore, as an international development bank, the CEB must subject the whole of its staff to specific professional obligations. The CEB’s Code of Conduct reflects these requirements, and the strictest observance of them by all staff is a fundamental condition for the success of the CEB’s securities issues on financial markets in order to finance the social projects it decides to support. The fact that no negative impact was identified in no way affects the basic question: the CEB can in no circumstances take the risk of permitting a member of its staff to breach the code of conduct which applies to them all, particularly where conflicts of interest are concerned.

28. The Governor adds that he took account of the level and nature of the duties performed by the appellant as Head of the Treasury Department, which directly relate to the CEB’s financial operations. He regarded “the duration of the appellant’s failure to act” as an aggravating circumstance. The conflict-of-interest situation had existed for almost two years when the CEB management was informed of it. During that period, the appellant never informed his superiors about his wife’s professional situation. The Governor also regarded it as an aggravating circumstance that the appellant hid behind his alleged uncertainty about the rules and procedures for declaring conflicts of interest in the CEB. By reason of his qualifications, his career and the nature of his duties, he could not claim ignorance of the fact that the rules of financial operators in a bank forbid conflicts of interest and entail an obligation to declare any actual or potential conflict of interest. So, the appellant was free to choose his line of defence before the Disciplinary Board, but the Governor had to take account of his bad faith, his grade and his professional duties.

29. In conclusion, downgrading was not “disproportionate” to the seriousness of the offence, having regard to the objective and subjective circumstances in which it was committed.

B. The reasons given

30. The appellant argues that the Governor did not follow the recommendation of the Disciplinary Board, which explicitly considered that downgrading was disproportionate, but did not state his reasons for departing from it. In his opinion, the reasons given by the Governor to justify a more severe disciplinary sanction than that recommended by the Disciplinary Board are fallacious and insufficient.

31. For his part, the Governor maintains that he did comply with his obligation to explain the reasons for his not following the recommendation of the Disciplinary Board. In his opinion it was impossible to know whether the conflict-of-interest situation had had a negative impact on the CEB. Moreover, even if no negative impact was established, that did not constitute grounds for an extenuating circumstance, since it was not envisaged that the appellant would be blamed for any negative impact on the CEB’s image or results. The Governor also considered as aggravating circumstances the duration of the appellant’s failure to declare the situation and the fact that he claimed to be unsure of the rules and procedure for declaring conflicts of interest.

32. Regarding any negative impact on the CEB’s results or image, the Governor did not accuse the appellant of having had professional contacts with his wife. It was necessary to take as a basis known facts, not facts unknown to them such as the effect of the appellant’s behaviour on the CEB’s results or image, or the possible existence of professional relations with his wife.

C. The rights of the defence

33. The appellant alleges a breach of his defence rights due to the fact that one feature of his defence, namely the claim that he was unsure about the rules and procedures for declaring conflicts of interest in the CEB, was treated by the Governor as an aggravating circumstance. In other words, the Governor imposed a more severe sanction than that recommended by the Disciplinary Board in the light of, and on the basis of, legal arguments developed by the appellant himself. In fact, he appears to be criticising him for having blamed his failure to declare his wife’s situation in N. on the lack of any procedure and forms or arrangements at the CEB for declaring a potential conflict of interest.

34. The Governor, for his part, maintains that the appellant has at no time had his defence possibilities restricted. However, his absolute freedom to choose his own arguments does not preclude the Governor from taking his bad faith into account. The Governor could not have imagined that the appellant would go so far as to deny his efforts to instil a sense of professional ethics in the staff. The appellant has not provided the Disciplinary Board with any evidence that the CEB staff have not been the target of awareness campaigns run by the Compliance Officer. Yet the very existence of those campaigns is sufficient to demonstrate the appellant’s bad faith, and consequently the possibility of the Governor’s taking it into account as part of the circumstances in which the misconduct was committed.

III. THE TRIBUNAL'S ASSESSMENT

A. The severity of the sanction and respect for the principle of proportionality

35. The Tribunal observes, firstly, that every member of staff, whatever his place in the hierarchy, is responsible for the performance of the tasks entrusted to him and may be guilty of misconduct in the course of his duties. The only appropriate response to misconduct at social, managerial and legal level is a sanction imposed following disciplinary proceedings.

36. The Tribunal goes on to observe that a conflict of interest, which may lead to professional misconduct, reflects a situation in which a staff member has, in his private life, interests which could influence the manner in which he discharges the duties and responsibilities entrusted to him by his employer. The personal interest may be direct or indirect, and it may relate to the staff member only or to members of his family. Such interest may be professional, economic, financial or political in nature. For a conflict of interest to constitute professional misconduct, the situation need not necessarily be one in which a personal interest is shown to influence the behaviour of the person performing professional duties. In common with the Governor, the Tribunal accepts that the existence of a conflict of interest need not always cause material or other prejudice. In fact, it may well be a potential conflict, where no conflict proper exists. However, a change of situation could bring about a real conflict.

37. Article 7 of the CEB Code of Conduct describes a conflict-of-interest situation in very clear terms. The text of Article 54 of the CEB Staff Regulations indicates that any failure by staff members to comply with their obligations, even through negligence, may lead to the institution of disciplinary proceedings and to a disciplinary sanction.

38. The Tribunal observes that the appellant does not deny that his behaviour constituted "failure...to comply with...obligations" within the meaning of that provision. He questions the proportionality of the sanction imposed on him by the Governor. The Tribunal points out in this connection that the severity of a sanction imposed on a staff member who has been guilty of professional misconduct must be warranted by the seriousness of that misconduct.

39. That being said, professional misconduct does not in itself justify the decision of the disciplinary authority: the attendant circumstances also play an important part. The disciplinary authority attaches as much importance to the facts of the offence as to the circumstances. Some circumstances will favour the staff member, while others will exacerbate the improper character of his action. So it is possible that a particular circumstance may operate both in favour of the staff member and to his detriment. It all depends on the position in the hierarchy, the time for which he has worked for the organisation, and the nature of the professional misconduct committed. The higher the staff member is in the hierarchy, the more severe, and exemplary, the sanction inflicted will be.

40. The Tribunal observes that the Governor, in his capacity as the authority vested with disciplinary powers, enjoys discretionary power to assess the severity of the sanction, subject only to the condition that the measure chosen must not be manifestly disproportionate to the offence committed. In the present case he did not endorse the opinion of the Disciplinary Board and recommended a more severe sanction, having taken into consideration the particular facts of the case, including the appellant's professional position in the CEB hierarchy.

41. The Tribunal observes that the appellant had occupied the post of Head of the Treasury Department in the CEB since March 2006. Thus, he had performed one of the most senior functions

in the organisation for some years. The Tribunal stresses that the CEB is an international financial institution which must foster its image through the exemplary behaviour of its staff in the performance of their duties and so reinforce the confidence which it must constantly inspire in all its interlocutors, and in public opinion generally. According to the Tribunal, it emerges quite clearly from the introductory paragraphs of the Governor's decision of 12 May 2011 that the Governor bore these factors in mind. It is therefore unimportant, and even irrelevant, that the appellant's situation and that of his wife were informally known about. Deontological principles require that the appellant act in a formal, official manner.

The appellant having referred to the decision handed down by the Tribunal on 20 May 1999 in the case of *X v. Secretary General* (ATCE appeal no. 248/1998), the Tribunal emphasises that since 1999 the situation has greatly changed; the Tribunal arrives at this finding having regard, in particular, to the problems that have arisen in the meantime in the world of international banking.

42. In the light of these considerations, the Tribunal dismisses this ground of appeal.

B. The reasons given

43. The Tribunal notes that Article 6, paragraph 1 of the European Convention on Human Rights requires courts to give reasons for their decisions, but this cannot be taken to mean that a detailed response is required to every argument. The scope of this requirement may vary depending on the nature of the decision. Accordingly, the question as to whether a tribunal has failed in its obligation to give reasons under Article 6, paragraph 1 can only be addressed in the light of the particular circumstances of the case (see *Gorou v. Greece (no. 2)*, [GC], no. 12686/03, paragraph 37, 20 March 2009). The Tribunal considers that these principles apply likewise to decisions handed down by disciplinary or administrative tribunals (see the judgment in *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, paragraph 48, series A no. 43, in which the European Court of Human Rights found that a disciplinary procedure at the end of which the right to continue to exercise a profession is called into question comes within the scope of Article 6 of the Convention).

44. It consequently considers that it is the wording of the body of the text, ie the decision which the staff member is challenging, which constitutes the very basis of the reasons why the facts lead to the imposition of a disciplinary sanction. That being said, the reasons given must be clear: the authority ordering the disciplinary sanction must state precisely what facts are held against the staff member concerned. The latter must be able to know the reasons for the sanction by simply reading the decision.

45. The Tribunal is of the opinion that the above-mentioned requirements have been satisfied in the present case. In fact, the core of the appellant's complaint lies in the alleged lack of proportion between the sanction imposed by the Governor and the professional misconduct committed.

46. As has already been observed, the Disciplinary Board is an advisory body (see paragraphs 17 and 40 above) whose opinions are not binding on the Governor. The latter was therefore required to state the reasons why he sanctioned the appellant by way of downgrading but did not have to explain why he judged the recommendation of the Disciplinary Board insufficient or even inappropriate in the instant case.

47. The Tribunal is of the opinion that the charges against the appellant on which the Governor based his decision are quite clear from a reading of all the introductory paragraphs of his decision of 12 May 2011. It is true that more details of his refusal to accept the extenuating circumstances referred to by the Disciplinary Board would have been desirable. However, that defect does not

detract from the reasons on which the Governor based his decision, for which precise reasons were given.

48. Consequently, the Tribunal dismisses this ground of appeal.

C. The rights of the defence

49. The Tribunal points out that disciplinary proceedings are attended by certain guarantees. The disciplinary authority must respect the adversarial principle and the rights of the defence, which require that the staff member charged with an offence should be able, at the various stages in the disciplinary proceedings, to present his own version of the facts and his defence arguments, with the assistance of counsel of his own choosing. In fact, the staff member himself, as well as his counsel, must be informed of the charges against the staff member and the entire file containing all documents relevant to the disciplinary proceedings must be communicated to them.

50. The Tribunal observes that the disciplinary proceedings in the instant case suffered from no procedural defect, nor does the appellant appear to complain of this. In reality, he complains that the Governor used his own defence arguments as an aggravating circumstance, viz. a particular feature of his defence whereby he relies on an alleged uncertainty in respect of the rules and procedures for declaring conflicts of interests in the CEB.

51. The Tribunal observes that the Disciplinary Board found, before the Governor took his decision, that the appellant was bound to be aware of the Code of Conduct and of the deontological obligation to report on his own initiative, a conflict-of-interest situation encountered in the framework of his duties. Accordingly, the Disciplinary Board rejected the argument of the appellant, who considered that the conflict-of-interest situation had been declared *de facto*.

52. According to the Tribunal, the Governor merely assessed the facts of the case and the appellant's arguments differently and concluded that the appellant's misconduct was far more serious. It is true that the way in which the Governor worded this introductory paragraph in his decision may be thought inappropriate. However, that does not mean that the appellant's arguments are well founded.

53. Consequently, the Tribunal dismisses this ground of appeal.

54. In conclusion, the appeal must be dismissed.

For these reasons,

The Administrative Tribunal

Dismisses the appeal;

Decides that each party shall bear its own costs.

Delivered in Strasbourg on 11 June 2012, the French text being authentic.

Registrar of the
Administrative Tribunal

Deputy Chair of the
Administrative Tribunal

S. SANSOTTA

G. RESS