

A — Activity of the Civil Service Tribunal in 2005

By the President, Mr Paul J. Mahoney

In 2005 a new court was added to the court structure of the European Union. By decision of 2 November 2004 ⁽¹⁾, the Council established the European Union Civil Service Tribunal, exercising its power, under the Treaty of Nice, to create judicial panels attached to the Court of First Instance in order to exercise, in certain specific areas, the judicial competence laid down in the second paragraph of Article 220 and Article 225a of the Treaty.

The Civil Service Tribunal, which has jurisdiction in any dispute between the Community and its servants under Article 236 EC, came into being principally as a result of the saturation of the role of the Court of First Instance — whose jurisdiction has grown over the years — and the impact that has had on the effectiveness of judicial review in the Community legal order. With the creation of the Civil Service Tribunal, the Court of First Instance will be relieved of a considerable volume of litigation which currently represents about a quarter of the cases lodged each year.

The procedure for the appointment of the judges of the Civil Service Tribunal differs from that followed in the Court of Justice and the Court of First Instance in that the judges of the Civil Service Tribunal are appointed by the Council by unanimous decision, after consultation of a committee of seven independent persons, which gives its 'opinion on the candidates' suitability to perform the duties of judge' and appends to the opinion a list of candidates containing the names of at least twice as many candidates as there are judges to be appointed (fourth paragraph of Article 225a EC and Article 3(3) and (4) of Annex I to the Statute of the Court of Justice) ⁽²⁾. The Council is also required to 'ensure a balanced composition of the Tribunal on as broad a geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented' (Article 3(1) of Annex I to the Statute of the Court of Justice).

The judges are appointed for a period of six years and may be reappointed. Any vacancy is to be filled by the appointment of a new judge for a period of six years (Article 2(2) and (3) of Annex I to the Statute of the Court of Justice).

By decision of 22 July 2005 (2005/577/EC, Euratom), the Council appointed the seven judges who took their oath at the formal sitting of the Court of Justice on 5 October 2005.

By decision of 6 October 2005, the Civil Service Tribunal appointed Mr Paul Mahoney first President of the Tribunal for a period of three years. On the same date the procedure for the recruitment of the Registrar was commenced. By decision of 9 November

⁽¹⁾ Council Decision 2004/752/EC, Euratom, of 2 November 2004 (OJ L 333, 9.11.2004, p. 7).

⁽²⁾ By Decision 2005/45/EC, Euratom, of 18 January 2005 (OJ L 21, 25.1.2005, p. 13), the Council established the operating rules of the committee.

2005, the Tribunal appointed Mrs Waltraud Hakenberg Registrar of the Civil Service Tribunal and she took her oath at the formal sitting held on 30 November 2005.

Jurisdiction was transferred on 12 December 2005, following publication in the *Official Journal of the European Union* of the Decision of the President of the Court of Justice recording that the European Union Civil Service Tribunal had been constituted in accordance with law ⁽³⁾. As provided for by Article 3(3) of Decision 2004/752/EC, Euratom, the President of the Court of First Instance then ordered the transfer of the cases in which the written procedure had not yet been completed, that is to say, 117 cases.

According to Article 3(4) of Council Decision 2004/752/EC, Euratom, until the entry into force of its rules of procedure, the European Union Civil Service Tribunal is to apply *mutatis mutandis* the Rules of Procedure of the Court of First Instance.

The period between the swearing of the oath by the judges of the Civil Service Tribunal and the actual transfer of cases was used to examine those rules in detail with a view to adapting them to the specific needs of the Civil Service Tribunal and the provisions of Annex I of the Statute of the Court of Justice.

The Tribunal also gave considerable thought to its working methods and, in particular, to the constitution and composition of its Chambers, and assignment of the Judges to Chambers. Thus, in accordance with Article 4(2) to (4) of Annex I of the Statute of the Court of Justice, and Article 10 of the Rules of Procedure of the Court of First Instance, the Tribunal appointed Mr Horstpeter Kreppel and Mr Sean Van Raepenbusch Presidents of Chamber. The Tribunal decided to sit in three Chambers, the first and second composed of three judges and the third of five. The third Chamber may also sit with three judges; its President is the President of the Tribunal ⁽⁴⁾.

The Tribunal is drafting its Rules of Procedure which have to take account of the specific features of litigation in staff cases. Certain basic principles have already been set out in Article 7 of Annex I to the Statute of the Court of Justice. For instance, according to Article 7(3), the written stage of the procedure is to comprise only one exchange of pleadings, unless the Tribunal decides that a second exchange of written pleadings is necessary. Where there is such second exchange, it is provided that the Tribunal may, with the agreement of the parties, decide to proceed to judgment without an oral procedure. According to Article 7(4), at all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement. That means that a procedural framework must be set up to meet the wish thus expressed by the Council.

The rules on costs in the Civil Service Tribunal are different from those in force in the Court of Justice and the Court of First Instance in that, under Article 7(5) of Annex I to the Statute of the Court of Justice, subject to the specific provisions of the Rules of

⁽³⁾ OJ L 325, 12.12.2005, p. 1.

⁽⁴⁾ See OJ Notice in OJ C 322, 17.12.2005, p. 16.

Procedure which have yet to be decided, the unsuccessful party is to be ordered to pay the costs should the court so decide.

The Tribunal should be in a position to submit draft Rules of Procedure to the Court of Justice early in 2006.

Although its official address is that of the Court of Justice, the Civil Service Tribunal is housed in the Allegro Building, 35A avenue J. F. Kennedy, in Luxembourg. The Tribunal has its own court room.