A — Proceedings of the Civil Service Tribunal in 2006

By Mr Paul J. Mahoney, President of the Civil Service Tribunal

The year 2006 was the first full year of operation of the Civil Service Tribunal of the European Union.

During the year the Tribunal devoted a significant part of its time to the continuation of work on its draft Rules of Procedure, which began in the first months of its existence in 2005. The draft which resulted from the studies and consultation [1] conducted by the Tribunal was submitted, following a phase of collaboration with the Court of First Instance of the European Communities and by agreement with the Court of Justice of the European Communities, for approval to the Council of the European Union on 19 December 2006. Thus, the Tribunal should probably have its own Rules of Procedure available by the second half of 2007.

As regards the work of the Tribunal as a judicial body, it appears from the statistics that 148 actions were brought before it, which represents a slight decrease in volume compared with the number of actions brought in staff cases in 2005, when 164 actions were brought (151 before the Court of First Instance and 13 before the Tribunal between 12 and 31 December 2005). Since its creation, the Tribunal has had 161 cases brought directly before it, to which the 118 cases transferred from the Court of First Instance must be added. The Tribunal has thus had 279 cases brought before it since its creation.

Fifty-three cases were brought to a close in 2006, including two delivered by the full Tribunal. There was a fairly clear increase in the pace of adoption of decisions closing cases in the second half of the year as the written procedure was concluded in the cases transferred from the Court of First Instance. There was also a proportionately fairly high number of annulments, in that 10 judgments to that effect were delivered. Appeals against 10 decisions of the Tribunal were lodged before the Court of First Instance.

It should be pointed out that proceedings were stayed in a significant number of cases by orders adopted pursuant to the first subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, inter alia, pending the delivery of the decisions of the Court of First Instance in Case T-58/05 *Centeno Mediavilla and Others* v *Commission* and Case T-47/05 *Angé Serrano and Others* v *Commission* concerning classification/reclassification in grade following the entry into force of the new Staff Regulations of Officials of the European Communities. Thus, 68 orders staying proceedings were delivered by the Tribunal in 2006.

The first year of judicial activity of the Tribunal was also marked by its endeavours to comply with the Council's wish, expressed in the seventh recital in the preamble to its Decision 2004/752/EC, Euratom and repeated in Article 7(4) of Annex I to the Statute of the

[1] In the course of this preparatory work the Tribunal undertook consultations, in particular of representatives of the institutions, staff committees and unions. A meeting with the heads of administration was held for that purpose on 26 January 2006. It was followed, on 8 February 2006, by a meeting with the unions and professional organisations and their lawyers.

Court of Justice, that it should facilitate the amicable settlement of disputes at all stages of the procedure. For instance, in several cases, the judge-rapporteur put proposals for amicable settlement before the parties for consideration. Four disputes were brought to a close by orders striking the cases from the register and recording that the parties had reached an agreement, following an amicable settlement at the instigation of the Tribunal.

It would clearly be premature, at this stage, to attempt to assess the success of the practice of amicable settlement or to define the Tribunal's own decision-making practice. The account given below will be confined to a brief outline of the main decisions made by the Tribunal, looking in turn at certain general aspects of procedure (I), proceedings concerning the legality of measures (II), applications for interim relief (III) and, finally, applications for legal aid (IV).

I. *Procedural aspects*

In its first judgment, in *Falcione* v *Commission* [2], delivered by the full Tribunal on 26 April 2006, the Tribunal held that the costs regime applicable until the entry into force of its own Rules of Procedure would be that of the Court of First Instance, in order to guarantee for those subject to the law sufficient predictability in the application of the rules concerning the costs of proceedings, on the basis of the principle of the sound administration of justice.

Two decisions delivered on the basis of Article 8 of Annex I to the Statute of the Court of Justice should be highlighted. In *Marcuccio* v *Commission* [3], the Tribunal declined jurisdiction, pursuant to the second subparagraph of Article 8(3) of Annex I to the Statute of the Court of Justice, taking the view that the case had the same subject-matter as two cases before the Court of First Instance. By order in *Gualtieri* v *Commission* [4], the Tribunal held that a dispute between the Commission of the European Communities and a national expert on secondment does not constitute a dispute between the Community and its servants within the meaning of Article 236 EC. Accordingly, the Tribunal took the view that it did not have jurisdiction to hear the action and referred it to the Court of First Instance on the basis of Article 8(2) of Annex I to the Statute of the Court of Justice.

2 Judgment of the Tribunal of 26 April 2006 in Case F-16/05 *Falcione* v *Commission*, not yet published in the ECR.

3 Order of the Tribunal of 25 April 2006 in Case F-109/05 *Marcuccio* v *Commission*, not yet published in the ECR.

4 Order of the Tribunal of 9 October 2006 in Case F-53/06 *Gualtieri* v *Commission* (under appeal, Case T-413/06 P), not yet published in the ECR.

II. *Proceedings concerning the legality of measures*

A. Admissibility of actions brought under Articles 236 EC and 152 EA

1. Measures against which an action may be brought

In its order in *Lebedef and Others* v *Commission* [5], the Tribunal made clear that the detailed arrangements for using the data-processing tools of the administration as regards the language of the operating system and the software in personal computers are internal organisational measures of a service and cannot adversely affect an official within the meaning of Articles 90(2) and 91(1) of the Staff Regulations.

2. Time limit for bringing an action

In its judgment in *Grünheid* v *Commission* [6], the Tribunal, in declaring admissible an action against a decision of final classification in grade, rejected a plea of inadmissibility alleging that the complaint made under Article 90(2) of the Staff Regulations was lodged more than three months after the existence of the decision came to the knowledge of the applicant through a monthly salary slip. In that connection, the Tribunal held that, although notification of the monthly salary statement has the effect of setting time running for the purpose of the time limit for proceedings against an administrative decision where the scope of such a decision is clearly apparent from the statement, the same is not true of a decision by which the appointing authority makes the definitive classification of a newly recruited official, the scope of which exceeds by far the establishment of strictly pecuniary rights which it is the purpose of a salary statement to specify for a given period. In the absence of written notification, giving reasons, of the definitive decision regarding classification, in accordance with Article 25 of the Staff Regulations, requiring the official concerned to lodge a complaint at the latest within three months of receipt of the first salary statement in which that classification was apparent would deprive of all meaning the second paragaph of Article 25 and the second and third paragraphs of Article 26 of the Staff Regulations, the purpose of which is precisely to allow officials to take effective cognisance of decisions concerning, inter alia, their administrative position and to assert the rights guaranteed by those regulations.

By its judgment in *Combescot* v *Commission* [7], the Tribunal held that an explicit decision rejecting a complaint, adopted within the time limit of four months of the lodging of the complaint, but not notified before expiry of the time limit for bringing an action, cannot preclude, under the second subparagraph of Article 90(2) of the Staff Regulations, an

5 Order of the Tribunal of 14 June 2006 in Case F-34/05 *Lebedef and Others* v *Commission*, not yet published in the ECR.

6 Judgment of the Tribunal of 28 June 2006 in Case F-101/05 *Grünheid* v *Commission*, not yet published in the ECR.

7 Judgment of the Tribunal of 19 October 2006 in Case F-114/05 *Combescot* v *Commission* (under appeal, Case T-414/06 P), not yet published in the ECR.

implied decision rejecting the complaint. If it were the case that the adoption of an explicit decision rejecting a complaint within the time limit of four months of the lodging of the complaint precluded an implied decision even where it was not notified to the official concerned within that time limit, that official could not bring an action for annulment under the first sentence of the second indent of Article 91(3) of the Staff Regulations. Such a result would run counter to the purpose of that provision, which is intended to guarantee the judicial protection of officials in the event of inertia or silence on the part of the administration. Thus a decision rejecting a complaint which is adopted but not notified cannot constitute a 'reply' within the meaning of the second subparagraph of Article 90(2) of the Staff Regulations.

In its order in *Schmit* v *Commission* [8], having first outlined the case-law according to which, for the purposes of calculating the time limit for lodging a complaint against an act adversely affecting an official, Article 90 of the Staff Regulations must be interpreted as meaning that the complaint is 'lodged' when it is received by the institution, the Tribunal pointed out that, although the fact that an administration places a stamp on a document sent to it to register it does not amount to recording a definite date of lodging of the document, it is none the less a means, consistent with good administrative practice, of establishing a presumption, subject to proof to the contrary, that that document arrived on the date indicated. In the event of a dispute, it is for the official to adduce any evidence, such as an acknowledgement of receipt or advice of delivery of a letter sent by recorded delivery, liable to rebut the presumption created by the registration stamp, and thus establish that the complaint was actually lodged on a different date.

B. Merits

By way of introduction, attention should be drawn to the variety of questions which were brought before the Tribunal. For instance, it has considered, inter alia, the consequences of the transition to the euro on the pension rights of officials where they transferred rights acquired in a national pension scheme to the Community scheme [9], the conditions under which certain officials may, under Article 9(2) of Annex VIII to the Staff Regulations, take early retirement with no reduction of their pension [10], a case of compulsory sick leave for psychiatric reasons for a Commission official [11], several cases concerning the recognition of the occupational nature of a disease [12] and the financial provisions of the convention

8 Order of the Tribunal of 15 May 2006 in Case F-3/05 *Schmit* v *Commission*, not yet published in the ECR.

9 Judgment of the Tribunal of 14 November 2006 in Case F-100/05 *Chatziioannidou* v *Commission*, not yet published in the ECR.

10 Judgment of the Tribunal of 12 September 2006 in Case F-86/05 *De Soeten* v *Council*, not yet published in the ECR.

11 Judgment of the Tribunal of 13 December 2006 in Case F-17/05 *De Brito Sequeira Carvalho* v *Commission*, not yet published in the ECR.

12 See, inter alia, judgment of the Tribunal of 12 July 2006 in Case F-18/05 *D* v *Commission* (under appeal, Case T-262/06 P), not yet published in the ECR.

establishing the working conditions and financial rules for conference interpeter staff [13]. It is also worthy of note that a case concerning payment for overtime for a category A member of staff was assigned to the full Tribunal but was brought to a close by removal from the register following an agreement reached by the parties [14]. The Tribunal also heard cases contesting the lawfulness of decisions terminating the contracts of temporary agents [15], of decisions of competition selection boards refusing to admit candidates to the written tests [16] or refusing to place a candidate on a reserve list [17], of decisions taken in the course of appointment procedures [18], of career development reports [19], and of decisions not to promote [20]. In that connection, two judgments of the Tribunal are of particular interest.

By its judgment in *Landgren* v *ETF* [21], delivered by the full Tribunal, the Tribunal held that unilateral termination of a contract of employment for an indefinite period as a member of the temporary staff is not merely subject to observance of the notice requirement provided for by Article 47(2) of the Conditions of Employment, but must also contain a statement of reasons. To ensure sufficient protection against unjustified dismissals, particularly in the case of a contract for an indefinite period or where the contract is for a fixed period and dismissal occurs before it expires, it is important, first, to enable the persons concerned to verify whether their legitimate interests have been respected or prejudiced and to assess whether they should bring the matter before a court and, second, to enable the court to conduct its review, which implies the acknowledgement of the existence of an obligation to state reasons incumbent on the competent authority. Acknowledgement of such an obligation does not preclude the vesting of a wide disretion in the competent authority as regards dismissal and, therefore, the limitation of review by the Community court to verifying that there was no manifest error or misuse of powers. In this case, the decision to dismiss was annulled because it was vitiated by a manifest error of assessment.

13 Judgment of the Tribunal of 14 December 2006 in Case F-10/06 *André* v *Commission*, not yet published in the ECR.

14 Order of the Tribunal of 13 July 2006 in Case F-9/05 *Lacombe* v *Council*, not yet published in the ECR.

15 See, inter alia, judgments of the Tribunal of 26 October 2006 in Case F-1/05 *Landgren* v *ETF* (under appeal, Case T-404/06 P), not yet published in the ECR, and of 14 December 2006 in Case F-88/05 *Kubanski* v *Commission*, not yet published in the ECR.

16 Judgment of the Tribunal of 15 June 2006 in Case F-25/05 *Mc Sweeney and Armstrong* v *Commission*, not yet published in the ECR.

17 Judgment of the Tribunal of 13 December 2006 in Case F-22/05 *Neophytou* v *Commission*, not yet published in the ECR.

18 Judgment of the Tribunal of 14 December 2006 in Case F-122/05 *Economidis* v *Commission*, not yet published in the ECR.

19 See, inter alia, judgment of the Tribunal of 14 December 2006 in Case F-74/05 *Caldarone* v *Commission*, not yet published in the ECR.

20 See, for example, judgment of the Tribunal of 30 November 2006 in Case F-77/05 *Balabanis and Le Dour* v *Commission*, not yet published in the ECR.

21 Judgment in *Landgren* v *ETF*, cited above.

In its judgment in *Economidis* v *Commission* [22], the Tribunal held, on the subject of the recruitment of a Head of Unit in grade AD 9/AD 12, that the Commission decision regarding middle management staff, insofar as it allows the level of the post to be filled to be fixed following a comparative review of candidatures and thus affects the required objectivity of the procedure, was unlawful.

III. *Applications for interim relief*

Two applications for interim relief were made in 2006. In *Bianchi* v *ETF* [23], the application was dismissed on the ground that there was no urgency, whereas the application in *Dálnoky* v *Commission* [24] was dismissed because the main action was prima facie clearly inadmissible.

IV. *Applications for legal aid*

The President of the Tribunal ruled on three applications for legal aid during 2006, which were all made before an action was brought, as provided for by the first subparagraph of Article 95(1) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis*. Those applications were not granted [25].

22 Judgment in *Economidis* v *Commission*, cited above.

23 Order of the President of the Tribunal of 31 May 2006 in Case F-38/06 *R Bianchi* v *ETF*, not yet published in the ECR.

24 Order of the President of the Tribunal of 14 December 2006 in Case F-120/06 *R Dálnoky* v *Commission*, not yet published in the ECR.

25 Order of the President of the Tribunal of 27 September 2006 in Case F-90/06 *AJ Nolan* v *Commission*, not yet published in the ECR. Order of the President of the Tribunal of 1 December 2006 in Case F-101/06 *AJ Atanasov* v *Commission*. Order of the President of the Tribunal of 11 December 2006 in Case F-128/06 *AJ Noworyta* v *Parliament*, not yet published in the ECR.