A — Proceedings of the Civil Service Tribunal in 2009

By Mr Paul Mahoney, President of the Civil Service Tribunal

1. The judicial statistics of the Civil Service Tribunal for 2008 had shown that, for the first time in 10 years, the number of actions brought had dropped markedly compared with the previous year. The number of actions brought in 2009 (113) shows that the phenomenon observed was not an isolated one. The reversal in the trend of growth in staff case litigation seems to have been confirmed. As in the previous year, we can speculate that the rule that the unsuccessful party is to pay the costs, which came into force with the Rules of Procedure of the Tribunal on 1 November 2007, might have played a part in the development noted.

This year the number of cases brought to a close was clearly more than in the two previous years. That is due in large part to the fact that, in the wake of the judgment of the Court of Justice of 22 December 2008 in Case C-443/07 P *Centeno Mediavilla and Others* v *Commission*, the Civil Service Tribunal was able to bring to a close 32 cases with a connection to that 'test' case. There are, however, currently 18 connected cases still pending.

As, in 2009, for the first time since the creation of the Civil Service Tribunal, the number of completed cases (155) was significantly higher than the number brought (113), there has been a discernible improvement as regards the accumulation of cases. The number of pending cases is now only 175, whereas it was 217 at the end of 2008.

The average duration of proceedings was 15.1 months, which represents a clear reduction of the average duration of proceedings compared with the previous year, when it was 17 months.

Although the Civil Service Tribunal is naturally pleased to be able to report such satisfactory judicial statistics, the exceptional nature of the circumstances which made it possible to achieve such figures must be emphasised, and it must be pointed out that, while the number of completed cases is very much higher than that of cases brought in 2009, that is in large part a result of the abovementioned judgment in *Centeno Mediavilla and Others* v *Commission*. In that respect, the figures for 2007 and 2008, which show a balance between the number of completed cases and the number of cases brought, are definitely a better reflection of the true capacity of the Civil Service Tribunal to produce judgments.

2. During this year the Civil Service Tribunal has continued to endeavour to answer the legislature's appeal for the facilitation, at every stage of the procedure, of the amicable settlement of disputes. However, it proved possible to bring only two cases to a close following an amicable settlement at the instigation of the bench hearing the action. The Civil Service Tribunal takes the view that this rather unsatisfactory figure is in large part attributable to the often reluctant attitude of the parties, and the institutions in particular, although in many instances, the case was suitable for amicable settlement and there was a genuine chance of reaching such a settlement. The various benches hearing the actions received the impression, in some cases, that the institutions would only have been prepared to conclude an amicable settlement if they had been convinced that they had committed a wrongful act. However, other, not strictly legal, factors, such as equity, may be taken into consideration to justify the conclusion of an amicable settlement.

3. Appeals were brought before the General Court against 31 decisions of the Civil Service Tribunal, which corresponds to 32.98% of the decisions subject to appeal delivered by the Tribunal and 32.29% of the total number of cases brought to a close, leaving aside the instances of unilateral

discontinuance by one of the parties ([1]). Ten decisions of the Civil Service Tribunal were set aside by the General Court.

4. As regards the composition of the Civil Service Tribunal, 2009 saw the arrival of a new Judge, Mrs M.-I. Rofes i Pujol, following the resignation of the President of the Second Chamber, Mr H. Kanninen, as a result of his appointment as a Judge in the General Court. On 7 October 2009, Mr H. Tagaras was elected President of the Second Chamber.

5. Also on 7 October 2009, the Civil Service Tribunal decided to alter the criteria for assigning cases to chambers, so as to make them less specialised.

6. The account given below will describe the most significant decisions of the Civil Service Tribunal as regards procedure, merits, the question of costs and, finally, proceedings for interim relief. As there are no significant new developments as regards legal aid, the section usually devoted to this question has been omitted.

I. Procedural aspects

Jurisdiction of the Civil Service Tribunal

In Case F-64/09 *Labate* v *Commission* (order of 29 September 2009) an action for failure to act was brought before the Civil Service Tribunal on the basis of Article 232 EC by a 'person to whom [the] Staff Regulations [of officials of the European Communities ("the Staff Regulations")] apply' within the meaning of Article 91 of those regulations, who was in dispute, not with the Commission as a Community institution, but with the appointing authority within the Commission, that is to say, with the Commission as employer. The Civil Service Tribunal held that the question whether the applicant was entitled to bring an action for failure to act on the basis of Article 232 EC was to be examined only by the court having jurisdiction to rule on actions for failure to act brought by individuals, namely the Court of First Instance (hereafter in this section 'the General Court'). The Civil Service Tribunal therefore referred the case to that court on the basis of Article 8(2) of the Annex to the Statute of the Court of Justice.

No need to adjudicate

In Case F-11/05 RENV *Chassagne* v *Commission* (order of 18 November 2009) the Civil Service Tribunal was faced with a situation in which an applicant, who had not formally discontinued the proceedings within the meaning of Article 74 of the Rules of Procedure, had clearly manifested his intention not to pursue his claims. The Civil Service Tribunal, having heard the parties, held that it was incumbent upon it, in the interests of the sound administration of justice and in the light of the persistent failure of the applicant to act, to find of its own motion, pursuant to Article 75 of the Rules of Procedure, that the action had become devoid of purpose and that there was no need to adjudicate ([2]).

([1]) The relation between appealed decisions and cases brought to a close, not including cases unilaterally discontinued by one of the parties, may be considered a better reflection of the 'rate of challenge' of the decisions of the Civil Service Tribunal than the relation between appealed decisions and decisions subject to appeal, given that a certain number of cases is brought to a close by amicable settlement each year.

([2]) See, to that effect, the order of 22 October 2009 in Case F-10/08 *Aayhan* v *Parliament*.

Conditions for admissibility

1. *Definition of act adversely affecting an official*

In Joined Cases F-5/05 and F-7/05* *Violetti and Others and Schmit* v *Commission* (judgment of 28 April 2009, under appeal to the General Court) ([3]), the Civil Service Tribunal, faced with the question whether the decision by the Director of the European Anti-Fraud Office (OLAF) to forward to the judicial authorities of the Member State concerned the information obtained during internal investigations into matters liable to result in criminal proceedings against an official constitutes an act adversely affecting that official within the meaning of Article 90a of the Staff Regulations, answered that question in the affirmative. The Civil Service Tribunal found inter alia that that decision cannot be regarded as a merely intermediate or preparatory decision if Article 90a of the Staff Regulations, according to which any person to whom the Staff Regulations apply may submit to the Director of OLAF a complaint within the meaning of Article 90(2) against an act adversely affecting him in connection with investigations by OLAF, is not to be deprived of all effect. The Civil Service Tribunal also held that it is difficult to conceive that such decisions should be denied the status of 'act adversely affecting [an official]', especially given that the Community legislature itself has foreseen the need to make OLAF's internal investigations subject to strict procedural safeguards and, in particular, to make the most significant acts which OLAF adopts in the course of such investigations subject to observance of the fundamental principle of the rights of the defence, which includes, inter alia, the right to be heard.

2. *Time limits*

In the judgment of 6 May 2009 in Case F-137/07 *Sergio and Others* v *Commission*, the point was made that, where it is clear that a complaint was lodged by a lawyer on behalf of officials or other staff, the administration is entitled to take the view that the lawyer is the proper addressee of the decision taken in response to that complaint. In the absence of indications to the contrary received by the administration before service of its reply, service on the lawyer is equivalent to service on the officials or other staff he represents and thus causes the time limit of three months for bringing an action laid down in Article 91(2) of the Staff Regulations to begin running.

In the order of 8 July 2009 in Case F-62/08 *Sevenier* v *Commission* (under appeal to the General Court), it was recalled, regarding the calculation of the time limits for the pre-litigation procedure, that, in the absence of specific rules concerning the time limits covered by Article 90 in the Staff Regulations themselves, reference must be made to Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ, English Special Edition, 1971(II), p. 354).

Moreover, that order made clear that the third indent of Article 91(3) of the Staff Regulations, according to which 'where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh', cannot be applicable to the stage of the request before the lodging of the complaint. That specific provision, which relates to the rules for calculating periods for filing appeals, must be interpreted literally and strictly. It follows that the express rejection of a request after an implied decision rejecting that same request cannot enable the official concerned to

([3]) The judgments marked with an asterisk have been translated into all the official languages of the European Union except Irish.

continue the pre-litigation procedure by opening for him a new period for lodging a complaint, as that decision is in the nature of a purely confirmatory measure.

3. Material new fact

In the order of 11 June 2009 in Case F-81/08 *Ketselidou* v *Commission*, it was recalled that a finding by a judgment of a Community court that an administrative decision of general application infringed the Staff Regulations could not constitute, for officials who have failed to avail themselves in time of the remedies available under the Staff Regulations, a new fact justifying the submission of a request for re-examination of the individual decisions relating to them by the appointing authority. By that ruling, the Civil Service Tribunal followed a line of settled case-law of the Court of Justice and the General Court.

II. Merits

General principles

1. Lack of authority of the author of a measure

In the judgment of 30 November 2009 in Case F-80/08* *Wenig* v *Commission* it was made clear that, although there is no written provision to that effect, respect for the principle of legal certainty requires that decisions concerning the exercise of powers conferred by the Staff Regulations on the appointing authority and by the conditions of employment of other servants of the European Communities ('CEOS') on the authority authorised to conclude contracts should be the subject of appropriate publicity under detailed rules and procedures which it is for the administration to determine. In the absence of appropriate publicity, such a decision cannot be relied on against an official who is the subject of an individual decision adopted on the basis of it. A plea alleging the lack of authority of the author of such an individual decision must, accordingly, be upheld and that decision set aside.

2. Possibility of reliance on directives

In its judgments of 30 April 2009 in Case F-65/07* *Aayhan and Others* v *Parliament* and of 4 June 2009 in Joined Cases F-134/07 and F-8/08 *Adjemian and Others* v *Commission*, the latter judgment being under appeal to the General Court, the Civil Service Tribunal stated that directives, which are addressed to the Member States and not to the Community institutions, cannot be treated, as such, as imposing any obligations on the institutions in their relations with their staff. However, that consideration does not in itself totally preclude a directive being relied upon in relations between institutions and their officials or servants. The provisions of a directive may, in the first place, be indirectly applicable to an institution if they constitute the expression of a general principle of Community law that it must then apply as such. In that regard, the Civil Service Tribunal held, inter alia, that, although it is viewed as a major element in the protection of workers, stable employment does not constitute a general principle of law in the light of which the lawfulness of a measure adopted by an institution may be assessed. Secondly, a directive may also be binding on an institution where the latter, within the scope of its organisational autonomy and within the limits of the Staff Regulations, has sought to carry out a specific obligation laid down by a directive or in the specific instance where an internal measure of general application itself expressly refers to measures laid down by the Community legislature pursuant to the Treaties (see, in that connection, Article 1e(2) of the Staff Regulations, which provides that officials are to be 'accorded working conditions complying with appropriate health and safety standards at least equivalent

to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties'). Thirdly, the institutions, in accordance with their duty to cooperate in good faith which follows from Article 10 EC, must, as far as possible, in order to guarantee a consistent interpretation of Community law, take into account, in their conduct as employers, legislative provisions adopted at Community level.

3. Limits of the administration's discretion

While the Civil Service Tribunal is careful not to substitute its own analysis for that of the administration, particularly in areas in which the administration has a wide discretion under the rules, it none the less saw fit to censure certain decisions vitiated by manifest errors of assessment. The Civil Service Tribunal set aside a decision to dismiss (judgment of 7 July 2009 in Case F-54/08 *Bernard* v *Europol*) and a refusal to promote (judgment of 17 February 2009 in Case F-51/08 *Stols* v *Council*, under appeal to the General Court). The Civil Service Tribunal also recalled that where the administration decides to attach internal rules to the exercise of its discretion, such rules are binding and confer authority on the court to exercise a closer review (see, as regards 'appraisal rules' to be observed by the reporting officers of an institution, the judgment of 17 February 2009 in Case F-38/08 *Liotti* v *Commission*, under appeal to the General Court). In any event, the administration may not disregard the general principles of law (see, as regards an assessment held to be contrary to the principle of equal treatment, the judgment of 11 February 2009 in Case F-7/08 *Schönberger* v *Parliament*).

4. Interpretation of Community law

In its judgment of 29 September 2009 in Joined Cases F-69/07 and F-60/08* *O* v *Commission* the Civil Service Tribunal had to rule on the lawfulness of a decision by which the Commission had deferred medical cover for the applicant, as provided for by the first paragraph of Article 100 of the CEOS ([4]). The Civil Service Tribunal, having recalled that, in interpreting a provision of Community law, it is necessary to consider not only its wording but also the context in which it occurs, the objects of the rules of which it is part and the provisions of Community law as a whole, interpreted Article 100 of the CEOS in the light of the requirements flowing from freedom of movement for workers, enshrined in Article 39 EC. In order to respond to the defendant's argument that, in invoking, in particular, Article 39 EC, on which the applicant did not rely in her pleadings, the Tribunal was reviewing of its own motion the lawfulness of an administrative act of the authority authorised to conclude contracts in relation to a plea alleging infringement of a provision of the Treaty, the Civil Service Tribunal held that, in defining the legal framework within which a provision of secondary law must be interpreted, the Community judicature does not rule on the lawfulness of that provision by reference to higher rules of law, including those of the Treaty, but seeks the interpretation of the provision at issue which makes its application as compatible as possible with primary law and as consistent as possible with the legal framework within which it falls.

([4]) That article provides that, where the medical examination made before a member of the contract staff is engaged shows that he is suffering from sickness or invalidity, the authority referred to in the first paragraph of Article 6 may, in so far as risks arising from such sickness or invalidity are concerned, decide to grant him guaranteed benefits in respect of invalidity or death only after a period of five years from the date of his entering the service of the institution.

5. Principle of performance of contracts in good faith

In the judgment of 2 July 2009 in Case F-19/08 *Bennett and Others* v *OHIM*, it was made clear that the employment relationship between an institution and its staff, even if it derives from a contract, is governed by the CEOS, in conjunction with the Staff Regulations, and is thus governed by public law. However, the fact that staff are subject to rules of Community administrative law does not preclude the institution's being required, in implementing certain clauses of an employee's contract which supplement those rules, to respect the principle of performance in good faith of contracts, which is a principle common to the laws of the great majority of the Member States. In this case the Civil Service Tribunal found that the defendant had breached the principle of the performance in good faith of contracts, and ordered it to make good the non-material damage caused to the applicants as a result of their being misled as to their real prospects of career advancement.

6. Giving effect to a judgment setting aside a measure

In the judgment of 5 May 2009 in Case F-27/08 *Simões Dos Santos* v *OHIM* (under appeal to the General Court), it was made clear that the implementation of a decision of a court setting aside a measure for lack of a proper legal basis cannot systematically justify the administration's taking a measure with retroactive effect to remedy an initial illegality. Such retroactivity is consistent with the principle of legal certainty only in exceptional cases, where the objective to be attained requires it and where the legitimate expectations of the persons concerned are duly respected.

In that case, having found that the implementation of judgments annulling measures presented particular difficulties, in so far as no alternative implementing measure to those adopted by the defendant, which were held to have disregarded the force of res judicata and the principle of the non-retroactivity of measures, appeared a priori free of difficulties, the Civil Service Tribunal held that the award, of its own motion, of damages constituted the form of compensation which best met the interests of the applicant and the requirements of the service, and that it also allowed the judgments annulling measures to be given proper effect.

Rights and obligations of officials

In its judgment of 7 July 2009 in Case F-39/08* *Lebedef* v *Commission*, under appeal to the General Court, the Civil Service Tribunal, having recalled that staff representation is of vital importance for the proper functioning of the Community institutions and, accordingly, for the fulfilment of their tasks, none the less pointed out that the system, which specifically provides for the grant of secondment to certain staff representatives, implies that, in the case of officials or servants not on secondment, participation in staff representation activities should be occasional and, calculated on a six monthly or quarterly basis, cover a relatively limited percentage of working time. In this case, the application to the Civil Service Tribunal was from a staff representative who was seconded at the rate of 50%, who devoted none of his working time to the service to which he was assigned and who contested the decision of the appointing authority to deduct several days' leave from his annual leave entitlement. The Civil Service Tribunal dismissed the action, observing that the person concerned had neither requested permission nor, at the very least, informed his service in advance that he would be absent.

Careers of officials

1. Competitions

In the judgment in *Bennett and Others* v *OHIM*, the Civil Service Tribunal, having recalled that it follows from the case-law that the interest of the service may justify requiring of a candidate in a competition specific linguistic knowledge in certain languages of the Union, pointed out that, in the context of the internal running of the institutions, a system of full linguistic pluralism would give rise to great difficulties of management and would be economically onerous. Accordingly, the smooth running of the institutions and bodies of the Union, particularly where the body concerned has limited resources, may objectively justify a limited choice of languages of internal communication, and thus of the languages of the tests of a competition.

In Case F-99/08* *Di Prospero* v *Commission*, leading to the judgment of 17 November 2009, the Civil Service Tribunal had before it a plea of illegality, in the light of the first paragraph of Article 27 of the Staff Regulations, which provides that '[r]ecruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis …', of a clause in a notice of open competition which provided that the tests of several open competitions might be held at the same time and that, accordingly, candidates could apply for only one of those competitions. The Civil Service Tribunal held that that clause was incompatible with the above provision of the Staff Regulations and consequently annulled the decision of the European Personnel Selection Office (EPSO) rejecting the candidature of the applicant for one of the two open competitions for which she had applied.

2. Appointment procedures

The Civil Service Tribunal has had to rule in three actions by applicants contesting decisions rejecting their canditature for the vacant post of head of the Commission representation in Athens. By three judgments of 2 April 2009 in Case F-128/07* *Menidiatis* v *Commission*, Case F-143/07 *Yannoussis* v *Commission* and Case F-129/07 *Kremlis* v *Commission*, the Civil Service Tribunal upheld the plea of the applicants alleging the illegality of the use of the secondment procedure provided for by the second indent of Article 37, first paragraph, (a), of the Staff Regulations and annulled the contested decisions. In particular, it held that the 'sensitive political nature' of the duties carried out by the heads of representation of the Commission is not in itself such as to justify recourse to secondment of an official. Such an interpretation of the second indent of Article 37, first paragraph, (a), of the Staff Regulations would amount to allowing secondment to assist the relevant Commissioners of all officials carrying out 'sensitive political' duties within the institution which are normally the responsibility of senior management and would thus undermine the very structure of the European civil service as established in Article 35 of the Staff Regulations, thereby calling into question in particular the clarity of hierarchical relations.

In the judgment of 6 May 2009 in Case F-39/07* *Campos Valls* v *Council* it was made clear that the qualifications required by a notice of vacancy cannot be interpreted independently of the job description in that notice.

Emoluments and social security benefits of officials

In Case F-115/07 *Balieu-Steinmetz and Noworyta* v *Parliament*, leading to the judgment of 28 April 2009, the applicants, who were telephone switchboard operators, had referred to the Civil Service Tribunal the decision of the Parliament not to pay them a fixed allowance for overtime. The applicants put forward a plea alleging breach of the principle of equal treatment, maintaining that

their colleagues who took up their duties before 1 May 2004 continued to receive the allowance. The Parliament, in its defence, relied on case-law according to which a person cannot rely on an unlawful act committed in favour of a third party, and on the fact that the payment of the fixed allowance to the applicants' colleagues was unlawful. The Civil Service Tribunal observed that it is true that a person cannot rely on an unlawful act committed in favour of a third party, but none the less found that, in this case, the Parliament had not been able to establish to a sufficient legal standard that the payment of the fixed allowance to the colleagues of the applicants had no legal basis. The Civil Service Tribunal accordingly annulled the contested decisions. Working conditions on the telephone switchboard of the Parliament were also the subject of the judgment of 18 May 2009 in Case F-66/08 *De Smedt and Others* v *Parliament*, essentially concerning the notion of 'shift-work' within the meaning of Article 56a of the Staff Regulations.

Disciplinary rules

In the judgment in *Wenig* v *Commission*, the point was made that judicial review of the merits of a measure of suspension can only be very limited given the provisional nature of such a measure. Thus, the Tribunal must confine itself to verifying that the allegations of a serious wrongful act are sufficiently plausible and that they are not manifestly without foundation. The Civil Service Tribunal took the view that this was so in this case.

Conditions of employment of other servants

1. Recruitment of contract staff

In its judgment of 29 September 2009 in Joined Cases F-20/08, F-34/08 and F-75/08* *Aparicio and Others* v *Commission*, the Civil Service Tribunal, called upon to rule on a plea of illegality of a verbal and numerical test set for the recruitment of contract staff, found that the Commission and EPSO, each exercising their authority, did not, in this case, exceed the limits of their wide discretion by setting a verbal and numerical reasoning test, making it eliminatory in nature and imposing it on staff already in post.

2. Decision of the Commission of 28 April 2004 on the maximum duration of the use of non-permanent staff in the Commission's services

In the judgment of 29 January 2009 in Case F-98/07 *Petrilli* v *Commission*, under appeal to the General Court, it was stated that an institution cannot, without breaching the first paragraph of Article 88 of the CEOS, restrict generally and impersonally, inter alia by means of general implementing provisions or an internal decision of general application, the maximum possible period of employment of contract staff as determined by the legislature itself. The institutions have no power to derogate from an express rule in the Staff Regulations or the CEOS by means of an implementing provision, unless they are expressly authorised to do so. In this case, the Civil Service Tribunal found that the Commission decision limiting the total duration of the work done by a member of the contract staff to six years unlawfully restricted the scope of the first paragraph of Article 88 of the CEOS which allows the appointing authority to conclude and renew the contracts of auxiliary contract staff for a maximum of three years. It took as its basis, on that point, the fact that a member of the auxiliary contract staff may have been previously employed in another capacity for a certain period, thus reducing, though the effect of the contested decision, the time for which it is normally permitted to employ him to less than three years.

3. Members of the contract staff for auxiliary tasks

In the judgment in *Adjemian and Others* v *Commission*, it was held that each post for a member of the contract staff for auxiliary tasks must meet temporary or intermittent needs. In an administration with a large workforce, it is inevitable that such needs will recur, inter alia as a result of the unavailability of officials, increases in workload in particular circumstances or the need for each Directorate-General to have recourse occasionally to persons with specific qualifications or knowledge. Such circumstances constitute objective reasons justifying both the fixed duration of auxiliary staff contracts and their renewal as the need arises.

4. Session auxiliaries of the European Parliament

In its judgment in *Aayhan and Others* v *Parliament*, the Civil Service Tribunal, interpreting Article 78 of the CEOS in the light of the framework agreement on fixed-term work, concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, held that the Parliament's intermittent needs for large numbers of additional staff only for the duration of its sessions constitute 'objective reasons' within the meaning of clause 5(1)(a) of the framework agreement justifying the use of successive fixed-term employment contracts for auxiliary staff, renewed when each new parliamentary session is held, as provided for by Article 78 of the CEOS until 1 January 2007. Although such needs were foreseeable, the additional activity was none the less not sustained and permanent.

III. Costs

1. Taxation of costs

In its order of 10 November 2009 in Case F-14/08 DEP *X* v *Parliament*, the Civil Service Tribunal upheld the applicant's application for an order that the defendant pay default interest on the costs to be reimbursed from the date of delivery of the order on taxation of costs, the applicable rate of interest being calculated on the basis of the rates set by the European Central Bank for principal refinancing operations, applicable during the period concerned, plus two points, provided that it does not exceed that claimed by the applicant.

2. Tribunal's costs

In its order of 7 October 2009 in Case F-3/08 *Marcuccio* v *Commission*, the Civil Service Tribunal applied for the first time Article 94 of its Rules of Procedure, under which, where a party has caused the Tribunal to incur avoidable costs, in particular where the action is manifestly an abuse of process, the Tribunal may order that party to refund them in whole or in part, but the amount of that refund may not exceed EUR 2 000.

It is to be noted that, in Case F-86/08 *Voslamber* v *Commission*, which led to the judgment of 30 November 2009, the defendant institution had put before the Civil Service Tribunal claims that the applicant should be ordered to reimburse a part of the Tribunal's costs pursuant to Article 94 of the Rules of Procedure. It declared those claims inadmissible, pointing out that the option available under that provision was a specific power of the Tribunal.

IV. Interim proceedings

The only order for interim proceedings made by the President of the Civil Service Tribunal in 2009 (order of 18 December 2009 in Case F-92/09 R *U* v *Parliament*) is worth noting in that, by that order the judge hearing the application for interim relief, for the first time, ordered the suspension of the operation of a decision of an institution. In this case, the applicant had been dismissed, on conclusion of the procedure provided for by Article 51 of the Staff Regulations for dealing with incompetence, and sought the suspension of the operation of the decision dismissing her. As regards the condition relating to urgency, the President of the Civil Service Tribunal found that the applicant did not have sufficient means to meet the expenses necessary to ensure that her basic needs were met until a ruling was made on the principal claim. The applicant had been refused unemployment benefits by the national authorities in her country of residence and, moreover, it was unlikely that the applicant would be able to find a new job very soon in view of the difficult personality she appeared to have. As regards the condition relating to the prima facie case, the President of the Civil Service Tribunal found that it appeared at first sight that the defendant institution did not undertake all the efforts required by its duty to have regard for the welfare of the applicant to dispel the uncertainty as to a possible link between the professional difficulties of the person concerned and her mental health. Finally, as regards the balancing of the interests involved, the President of the Civil Service Tribunal found that, even if the reinstatement of the applicant was liable to be damaging to the organisation of the Parliament's services, it was for that institution to consider the possibility of requiring her to take leave under Article 59(5) of the Staff Regulations.