

A — Proceedings of the Civil Service Tribunal in 2007

By Mr Paul Mahoney, President of the Civil Service Tribunal

1. The year 2007 saw the entry into force of the Rules of Procedure of the European Union Civil Service Tribunal. The rules were published in the *Official Journal of the European Union* on 29 August 2007 ⁽¹⁾ and, pursuant to Article 121 thereof, entered into force on the first day of the third month following the date of their publication, that is to say, on 1 November 2007. On the same day, the Instructions to the Registrar of the European Union Civil Service Tribunal ⁽²⁾ came into force ⁽³⁾.

2. While the first year of the Tribunal's work was largely devoted to the establishment of its internal and external procedures, and in particular to the drafting of its Rules of Procedure, the figures for 2007 already reflect regular judicial activity.

In 2007, the Tribunal brought 150 cases to a close, and 157 new actions were lodged. There were thus almost equal numbers of cases lodged and cases brought to a close.

The number of actions brought this year (157) is slightly higher than last year's, which was 148.

The number of pending cases (235) remains relatively high, as a result, in particular, of the fact that the number of cases brought to a close during the first year of operation of the Tribunal (50) does not reflect its true capacity in terms of judgments. In addition, a large number of pending cases have been stayed pending 'pilot' judgments of the Court of First Instance ⁽⁴⁾ or decisions of the Court of Justice on appeal ⁽⁵⁾.

Some 44 % of cases were brought to a close by judgment and 56 % by order. The average duration of proceedings in cases brought to a close in 2007 is 16.9 months for judgments and 10.3 months for orders.

In 2007, appeals to the Court of First Instance were brought against 25 decisions of the Tribunal, which represents 32 % of the decisions subject to appeal delivered by the Tribunal and 19 % of the total number of cases brought to a close, apart from those unilaterally discontinued by one of the parties.

⁽¹⁾ OJ 2007 L 225, p. 1.

⁽²⁾ OJ 2007 L 249, p. 3.

⁽³⁾ In order to brief the institutions, on the one hand, and the trade union and professional organisations, on the other, regarding the new procedural instruments applicable to it, the Tribunal held two meetings with their representatives on 23 November and 7 December 2007, following on from the meetings begun in 2006.

⁽⁴⁾ About 20 cases have been stayed pending the decision of the Court of First Instance in Case T-47/05 *Angé Serrano and Others v Parliament*.

⁽⁵⁾ About 50 cases have been stayed pending the decision of the Court of Justice in Case C-443/07 P *Centeno Mediavilla and Others v Commission*.



3. The account given below will first describe the main innovations brought in by the Tribunal's Rules of Procedure (I). Next, an outline will be given of the most interesting new case-law of the year, looking in turn at proceedings concerning the legality of measures and actions for damages (II), applications for interim relief (III), and applications for legal aid (IV). Finally a preliminary assessment of the practice of amicable settlement will be made (V).

I. **Main innovations in the Rules of Procedure**

The Tribunal's intention was to preserve a uniform approach and practice for the three Community courts. However, certain innovations were introduced, in response to the decisions made by the Council, inter alia in Article 7 of the Annex to the Statute of the Court of Justice, added to that Statute by Council Decision 2004/752/EC, Euratom, of 2 November 2004, establishing the Civil Service Tribunal of the European Union (OJ L 333, p. 7), or in order to take account of the specific character of both the Tribunal and the litigation coming before it.

The chief innovations in the Rules of Procedure are based on three main ideas: the simplification of the procedure; the investigation, at every stage of the procedure, of the possibility of an amicable settlement of the dispute; responsibility for costs according to the rule that the 'loser pays'. In addition, a number of other new concepts warrant mention.

Simplification of the procedure

The written procedure is, as a rule, limited to a single exchange of written pleadings unless the Tribunal decides that a second exchange is necessary. The second exchange of pleadings may take place either of the Tribunal's own motion or on a reasoned application by the applicant. Where there has been a second exchange of pleadings, the Tribunal may, with the agreement of the parties, decide to proceed to judgment without a hearing.

The fact that there is generally only one exchange of pleadings explains why the Rules of Procedure of the Tribunal are stricter regarding the statement of the pleas in law and arguments in the application, since that statement cannot be 'brief' contrary to what is required, generally, by the first paragraph of Article 21 of the Statute of the Court of Justice. That provision cannot deprive of all effective meaning the equal-ranking Article 7(3) of the Annex to that Statute, which lays down the principle of a single exchange of pleadings.

Moreover, the existence of only one exchange of pleadings explains the reduction of the time limit for lodging an application for leave to intervene: that limit is now four weeks from the date of publication in the *Official Journal of the European Union* of the notice concerning the application.

It is also the reason for the decision not to introduce an expedited procedure, a feature of which, in the Rules of Procedure of the Court of First Instance, is that, in addition to the fact that the case is given priority, the written stage of the procedure is limited to a single exchange of pleadings.



It was with the intention of expediting the written procedure that the Tribunal laid down the provision that any plea of inadmissibility by separate document, which, in practice, where a decision is reserved for the final judgment, may be liable to prolong the procedure, must be lodged within a month of service of the application, rather than within the two months allowed for the lodging of the defence.

Finally, the Tribunal, in an endeavour to ensure the proper conduct of the pre-litigation procedure and be in a position to detect as early as possible any possible problems over admissibility, introduced a provision according to which the production, where appropriate, of the complaint and the decision responding to it is now the responsibility of the applicant.

Amicable settlement

The Rules of Procedure of the Tribunal devote a chapter to amicable settlement, separate from that concerning measures of organisation of the procedure, thus suggesting that this procedure is distinct from normal judicial procedure.

The decision to seek an amicable settlement is a matter for the formation of the court which may instruct the judge-rapporteur to seek such a settlement.

Particular provisions govern the question of discontinuance following an agreement between the parties, whether before the Tribunal or out of court. In the first case, the terms of the agreement may be recorded in minutes which constitute an official record. The case is then removed from the register by reasoned order of the President of the formation of the court in which, on application by the principal parties, the terms of the agreement are recorded. In both cases, an order is made as to costs in accordance with the agreement between the parties or, failing such agreement, at the discretion of the Tribunal.

Finally, the rules provide that no opinion expressed, suggestion made, proposal put forward, concession made or document drawn up for the purposes of the amicable settlement may be relied on as evidence by the Tribunal or the parties in the contentious proceedings. If an attempt at amicable settlement is to have the greatest possible chance of succeeding, it is necessary to guarantee the parties freedom of speech in order to facilitate negotiations between them, without allowing the opinions expressed or the concessions made to be used against them in the event of failure.

Costs

Previously, under Article 88 of the Rules of Procedure of the Court of First Instance, in proceedings between the Communities and their servants an unsuccessful party had to bear only his own costs and not those of the institution, except where he unreasonably or vexatiously caused it to incur costs or where the circumstances were exceptional.

Article 7(5) of the Annex to the Statute of the Court of Justice provides that, subject to the specific provisions of the Rules of Procedure, the unsuccessful party is to be ordered to pay



the costs if they have been applied for in the successful party's pleadings. In that connection, Article 87(2) of the Rules of Procedure provides that, if equity so requires, the Tribunal may decide that an unsuccessful party is to pay only part of the costs or even that he is not to be ordered to pay any.

Article 94(a) of the Rules of Procedure of the Tribunal provides that where a party has caused the Tribunal to incur avoidable costs, in particular where the action is an abuse of process, that party may be ordered to pay them but the amount of that refund may not exceed EUR 2 000. This allows the Tribunal, in exceptional cases, to make an applicant who unreasonably burdens the court, for example by repeated actions on insubstantial grounds, pay part of the costs which it causes the court to incur. This option is consistent with the Council's intention, given specific form by the application of the 'loser pays' rule to all unsuccessful parties before the Tribunal, to limit the number of unjustified actions in the interests of the sound administration of justice.

Other noteworthy innovations

The concern for continuity in the operation of the court, the conduct of the procedure and the preparation of cases did not stand in the way of a certain number of innovations, in particular as regards:

- staying proceedings — the sound administration of justice may now justify a stay of proceedings, once the parties have been heard;
- related cases — the excessively strict requirement that cases have 'the same subject matter' in order to be joined has been abolished;
- clarification of the arrangements for measures of organisation of the procedure and measures of inquiry respectively — the former are addressed to the parties, or more specifically to their representatives, and the latter relate either to third parties or to the parties themselves;
- referral of a case from a chamber of three judges to the full court or a chamber of five judges — this no longer requires that the parties be consulted as the right of the parties to a fair hearing is already ensured by the transfer of the case to a court made up of a higher number of judges;
- intervention — the Rules of Procedure introduce the possibility of the President of the formation of the court inviting a third party with an interest in the resolution of the dispute to intervene;
- orders, the arrangements for which are clarified under the same heading as that for judgments.



II. Proceedings concerning the legality of measures and actions for damages

Procedural aspects

1. Dismissal by order

The Tribunal had occasion to interpret Article 111 of the Rules of Procedure of the Court of First Instance, applicable to the Tribunal *mutatis mutandis*, according to which, where it is clear that that Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, it may, by reasoned order, and without taking further steps in the proceedings, give a decision on the action.

The Tribunal held, *inter alia*, that this provision should apply not only to those cases where the breach of the rules on admissibility is so obvious and blatant that no serious argument can be put forward in favour of admissibility, but also to those cases where, on reading the court file, the formation of the court is entirely convinced of the inadmissibility of the application, in particular because it breaches the requirements established by settled case-law, and takes the view that the holding of a hearing would not be liable to furnish any new evidence whatsoever in that regard (orders of 27 March 2007 in Case [F-87/06 Manté v Council](#); of 20 April 2007 in Case [F-13/07 L v EMEA](#); and of 20 June 2007 in Case [F-51/06 Tesoka v FEACVT](#)).

In addition, the Tribunal made clear that the final situation covered by that provision includes all actions manifestly bound to fail for reasons connected with the substance of the case (order of 26 September 2007 in Case [F-129/06 Salvador Roldán v Commission](#)).

In the above cases, the Tribunal pointed out that the dismissal of the action by reasoned order not only contributes to the economy of the procedure but also spares the parties the costs involved in holding a hearing.

2. Request

In its judgment of 17 April in Joined Cases [F-44/06](#) and [F-94/06 C and F v Commission](#), the Tribunal established the procedural implications of Article 233 EC and the case-law according to which, where a judgment annuls a measure, the administration is under a duty to act and take the measures to implement a final judgment without any requirement being imposed on the official to that end. The Tribunal held that where compensation is sought for an unreasonable delay in implementation of or the absence of any measures to implement a judgment, the lawfulness of the pre-litigation procedure cannot be made subject to the submission of a request by the official under Article 90(1) of the Staff Regulations of Officials of the European Communities ('Staff Regulations').



3. *Act adversely affecting an official*

In its order of 24 May 2007 in Joined Cases [F-27/06](#) and [F-75/06](#) *Lofaro v Commission* the Tribunal made clear that an end of probation report which the administration used as a basis for dismissing a member of staff constitutes only a preparatory measure for the decision to dismiss and, therefore, does not adversely affect the person concerned within the meaning of Article 90(2) of the Staff Regulations.

4. *Time limits*

The case-law to the effect that the adoption of a new rule constitutes a new substantial fact, which also affects officials not falling within its field of application if that rule entails unjustified inequalities of treatment between the latter and the persons benefiting from the new rule, was applied in Case [F-92/05](#) *Genette v Commission* (judgment of 16 January 2007) as regards the combined effects of the new Staff Regulations and the 2003 Belgian law amending the conditions for the transfer of pension rights acquired in Belgium to the Community scheme.

In its judgment of 1 February 2007 in Case [F-125/05](#) *Tsarnavas v Commission* the Tribunal recalled the case-law according to which officials or other members of staff must submit their financial claims to the institution within a reasonable time after the point in time when they became aware of the situation they complain of. The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties. Account should also be taken of the point of comparison offered by the period of limitation of five years laid down by Article 46 of the Statute of the Court of Justice in matters arising from non-contractual liability.

According to the order of 25 April 2007 in Case [F-59/06](#) *Kerstens v Commission*, where the record of consultations of the Sysper 2 system shows that an applicant has opened the file containing the act of which he was notified electronically, the applicant must be considered to have had effective knowledge of the content of that act, which causes the time limit for lodging a complaint against it to begin to run.

Merits

In this report it is impossible to give an exhaustive account of the case-law of the Tribunal for 2007. Mention will therefore be made only of the year's most significant new developments, as regards, first, the general principles of Community civil service law and, second, the interpretation of the main new provisions of the Staff Regulations, which will be considered in the order of the headings of those regulations.



1. *General principles of Community civil service law*

(a) **Duty to have regard for the welfare of officials**

In Case [F-23/05 *Giraudy v Commission*](#) (judgment of 2 May 2007), the Tribunal had to deal with questions relating to the reconciliation of the serenity and proper conduct of an investigation of the European Anti-Fraud Office ('OLAF'), the right of the public to be informed and the protection of the presumption of innocence, of the integrity and of the professional reputation of an official reassigned in the interest of the service. In this case, the Tribunal ordered the Commission to pay compensation for the non-material harm suffered by the applicant, consisting in damage to his honour and professional reputation, because of breaches of the duty to have regard for his welfare in circumstances where he was reassigned following the opening of an investigation by OLAF. The Tribunal found that the Commission did not strike a proper balance between the interests of the applicant and those of the institution in giving extensive publicity, on the opening of OLAF's investigation, to the reassignment of the applicant, thus suggesting that he was personally implicated in the possible irregularities in question, without any publicity being given, by the Commission itself, to the final report by OLAF, which exonerated the applicant as regards the allegations which led to the opening of the investigation. The position taken by the Commission's spokesman, expressing his sympathy and that of the institution for the applicant, was not comparable, either in the manner or impact of its presentation, to the publicity which had been given to the applicant's reassignment on the opening of the investigation. The Tribunal held that, by not reducing to the strict minimum the damage done to the applicant by the opening of the investigation, the Commission infringed its duty to have regard for the welfare of its officials and servants and committed a wrongful act in the performance of its duties which was such as to give rise to its liability.

(b) **Duty to provide assistance**

In Cases [F-115/05 *Vienne and Others v Parliament*](#) (judgment of 16 January 2007) and [F-3/06 *Frankin and Others v Commission*](#) (judgment of 16 January 2007), the Tribunal had before it actions for annulment of decisions of the Parliament and the Commission rejecting requests for assistance made under Article 24 of the Staff Regulations by some 650 officials and members of the temporary staff, who, before the entry into force of the new Belgian legislation, had already arranged for their pension rights acquired with Belgian pension providers to be taken into account in the Community scheme, and asked the Parliament and the Commission for assistance in securing a recalculation under the rules of the new law of their pension rights acquired in Belgium. In its judgment in *Vienne and Others v Parliament*, the Tribunal made clear that the obligation to provide assistance is not subject to the condition that the acts constituting the reason for the request for assistance should be declared unlawful beforehand by a decision in legal proceedings. Such a condition would run counter to the very purpose of the request for assistance in those cases, which often occur, where the request is made precisely in order to obtain, in judicial proceedings with the support of the institution, a declaration that such acts are unlawful. However, those acts must still be 'reasonably capable of being construed as prejudicial to the rights of officials'. Since the applicants were not in a position to provide 'at least some evidence



that they were victims of discrimination because of the acts of third parties', the Parliament was entitled to take the view that they had suffered no prejudice to their rights under the Staff Regulations such as to warrant the assistance of the institution.

(c) Protection of legitimate expectations

By its judgment of 1 March 2007 in Case [F-84/05 *Neirinck v Commission*](#) the Tribunal held that the fact that a head of a department had meetings with a candidate for a post as a member of the temporary staff to discuss the possibility of employing that person in his team and had expressed a wish to employ that person does not demonstrate the existence of a promise to recruit. Accordingly, the Tribunal held that the candidate for the post could not claim that the administration had created a legitimate expectation in his mind that he would be recruited.

2. Careers of officials

(a) Recruitment

(i) New career structure

In its judgment of 28 June 2007 in Case [F-21/06 *Da Silva v Commission*](#) the Tribunal annulled a decision grading the applicant, who had been appointed Director following a recruitment procedure under Article 29(2) of the Staff Regulations and classified in the same grade as he had held previously, but in a lower step. According to the Tribunal, since such an appointment constitutes an advance in an official's career, it cannot result in his demotion in grade or step and, consequently, in a decrease in his salary, without there being a breach of the principle that every official has the right to reasonable career prospects within his institution.

In its judgment of 5 July 2007 in Case [F-93/06 *Dethomas v Commission*](#), the Tribunal, having noted that Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ 2004 L 124, p. 1) contains no transitional provision affecting the validity of the third paragraph of Article 32 of the Staff Regulations as of 1 May 2004, held that, following the entry into force of those regulations, in the absence of any transitional provision, that article remained fully applicable to the grading in step of any member of the temporary staff who is appointed an official in the grade he previously held.

Also of interest is the judgment of 8 November 2007 in Case [F-125/06 *Deffaa v Commission*](#), which illustrates the technical difficulties of interpreting the new provisions of the Staff Regulations as regards the relationship between the second paragraph of Article 44 of the Staff Regulations and Article 7(4) of Annex XIII to those regulations, concerning a 'management premium' which is granted where the duties of head of unit, director or director-general are performed.



(ii) Competitions

The Tribunal had to rule in a number of cases concerning competitions, including, in particular, Case [F-121/05 De Meerleer v Commission](#) (judgment of 14 June 2007). The Tribunal made clear in that judgment that the power of a competition selection board to re-examine its decisions is not comparable to the power of review of the appointing authority in the context of a complaint or of the Community courts in court proceedings, and that, therefore, an applicant has a separate and real interest in having his request for re-examination considered by the selection board, even if he has been able to lodge a complaint and bring an action before the court against that initial decision of the selection board. Also in that judgment, the Tribunal considered whether the candidates were able to have effective knowledge of the initial decision of the selection board through the system for consultation of their electronic EPSO file, so as to be able to submit a request for re-examination of the decision of the selection board within the period prescribed.

(iii) Medical examination

In its judgment of 13 December 2007 in Case [F-95/05 N v Commission](#), the Tribunal made clear that candidates for recruitment in a non-member country cannot be deprived of the proper procedure for a medical examination as laid down in Article 33 of the Staff Regulations.

(b) Status under the Staff Regulations

In its judgment of 13 December 2007 in Joined Cases [F-51/05](#) and [F-18/06 Duyster v Commission](#), concerning the establishment of the conditions for parental leave, the Tribunal referred to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4) in order to interpret Article 42a of the Staff Regulations. On the basis of the case-law of the Court, the Tribunal made clear that, where the appointing authority makes a decision on a request for annulment or interruption of parental leave, its discretion is reduced where the person granted parental leave establishes that events occurring after the grant of leave incontestably make it impossible for him to care for the child under the conditions originally foreseen. This may be the case, in particular, where the official suffers from a disease the gravity or characteristics of which prevent such care. In this case, as those conditions were not established, the action was dismissed.

(c) Reports — Promotion

This year again the litigation concerning the reporting procedure and promotion was fairly plentiful.

In its judgment of 22 November 2007 in Case [F-67/05 Michail v Commission](#), the Tribunal, having observed that the applicant, although in active employment within the meaning of Article 36 of the Staff Regulations, was not given, during the reference period, any task which could be the subject of an appraisal, held that the Commission was wrong to



have given him a merit mark and, on that ground, annulled the career development report of the person concerned.

In its judgment of 13 December 2007 in Case [F-42/06 Sundholm v Commission](#), the Tribunal annulled the career development report of an official on the ground that the Commission did not, in the period covered by the report, allocate to the person concerned any objectives or criteria for appraisal and failed, when assessing his merits, to take that fact into consideration.

In its judgments of 22 November 2007 in Case [F-109/06 Dittert v Commission](#) and in Case [F-110/06 Carpi Badia v Commission](#), the Tribunal annulled the refusal to promote the applicants as the promotion procedure was vitiated by a procedural defect. Because of a computer problem, the applicants' names had been omitted from the list which the director-general used for the award of priority points in the directorate-general, with the result that no points were awarded to them.

3. *Working conditions*

In its judgment of 16 January 2007 in Case [F-119/05 Gesner v OHIM](#), the Tribunal annulled the rejection by the authority empowered to conclude contracts of a request by a member of the temporary staff for the appointment of an Invalidation Committee in order to be covered by the provisions on the risk of invalidity, on the ground that the authority was wrong to argue that the applicant's sick leave did not total at least 12 months over a three-year period as required by Article 59(4) of the Staff Regulations. The Tribunal stated that that provision has as its aim not to establish a condition of a prior period of sick leave which officials and other servants who request the appointment of an Invalidation Committee must observe, but to determine the conditions for the exercise of the discretion available to the appointing authority or the authority empowered to conclude contracts where the latter, in the absence of a request by the official or member of the temporary staff, examine of their own motion whether it is appropriate to open such a procedure.

In its judgment of 22 May 2007 in Case [F-99/06 López Teruel v OHIM](#), the Tribunal set out in detail the new medical arbitration procedure described in the fifth to eighth subparagraphs of Article 59(1) of the Staff Regulations, under which an official on sick leave may dispute the results of the medical examination arranged by the institution where the finding of that examination is that his absence is unjustified.

4. *Emoluments and social benefits of officials*

(a) Remuneration and repayment of expenses

In its judgment of 16 January 2007 in Case [F-126/05 Borbély v Commission](#), the Tribunal rejected the Commission's argument that, since the amendment of Article 5(1) of Annex VII to the Staff Regulations in the reform of 2004, residence within the meaning of that provision could no longer be regarded as equivalent to the official's centre of interests, as



defined in settled case-law. The term 'residence' must therefore always be construed as referring to the centre of interests of the official or servant concerned.

In Case [F-43/05 Chassagne v Commission](#) (judgment of 23 January 2007), the Tribunal dismissed a plea of the illegality of Article 8 of Annex VII to the new Staff Regulations. The Tribunal made clear that the lump sum payment of travel expenses from the place of employment to the official's place of origin did not disregard the purpose of that article, which is to allow an official to travel, at least once a year, to his place of origin, in order to preserve family, social and cultural ties, or exceed the limits of the wide discretion of the Community legislature in that regard.

(b) Social security

In *Roodhuijzen v Commission* (judgment of 27 November 2007 in Case [F-122/06](#)), the Tribunal decided that a cohabitation agreement entered into in the Netherlands before a notary between an official and his partner entitled the latter to be covered, pursuant to Article 72 of the Staff Regulations and Article 12 of the Joint Rules, by the Sickness Insurance Scheme of the European Communities.

(c) Pensions

(i) Rate of contribution

In Case [F-105/05 Wils v Parliament](#) (judgment of 11 July 2007), the Tribunal, sitting in full court, dismissed an action which challenged, by means of a plea of illegality, the new arrangements for the calculation of the rate of contribution of officials to the pension scheme laid down by Annex XII to the Staff Regulations. The Tribunal first dismissed the plea that the Annex was adopted in breach of the tripartite consultation procedure for staff relations set up by the Council Decision of 23 June 1981. The Tribunal went on to hold that the decision of the legislature to define, in Article 10(2) of Annex XII to the Staff Regulations, the actuarial rate as the average of the real average interest rates for the 12 years preceding the current year was not such as to affect the validity of the actuarial method defined by Annex XII to the Staff Regulations or to compromise the objective of actuarial balance of the Community pension scheme, and that the period of 12 years chosen is neither manifestly erroneous nor manifestly inappropriate. Accordingly, even though it was apparent from the court file that the reference period for the calculation of the actuarial rate had been the subject of political negotiations and had therefore been fixed at 12 years to take account of budgetary considerations, the applicant could not claim that the choice of that period was vitiated by a misuse of powers. Finally, the applicant submitted that Annex XII to the Staff Regulations had breached the expectations which officials legitimately had of observance of the rule in Article 83(2) of both the old and the new Staff Regulations limiting the contribution of officials to one third of the financing of the pension scheme. According to the applicant, Annex XII to the Staff Regulations took no account of the surplus of contributions made by officials up to 30 April 2004. The Tribunal held that it was not in a position to assess whether the applicant's allegations on that point were well founded since, in the absence of any actuarial study of the Community



pension scheme before 1998, the amount of the contribution by officials required to ensure the actuarial balance of the scheme was not known before that date.

(ii) Transfer of pension rights

In *Genette v Commission*, presented by the Commission as a 'pilot' case, the Tribunal ruled on a matter affecting those officials, of whom there were many, who had transferred pension rights previously acquired with pension providers in Belgium to the Community scheme. The applicant sought the recalculation of rights already transferred to take account of the more favourable arrangements for transfer introduced by a Belgian law of 2003. The Commission had refused to withdraw its decisions relating to the applicant's pension rights transferred to the Community scheme on the ground that such withdrawal would be illegal in the absence of provisions of Community law expressly authorising it. The Tribunal held that that ground was vitiated by an error of law. The Tribunal took the view that the general conditions identified by the case-law of the Court for the withdrawal of an individual decision creating rights did not preclude the withdrawal of such a decision, even if lawful, provided that the withdrawal was requested by the beneficiary of that decision and that its withdrawal did not harm the rights of third parties.

In two cases, Cases [F-76/06](#) and [F-77/06](#) *Tsirimokos v Parliament* and *Colovea v Parliament* (judgments of 13 November 2007), the Tribunal made clear that it follows from both a literal and a systematic interpretation of Article 4(b) of Annex IVa to the Staff Regulations that the years of service obtained following a transfer of pension rights to the pension scheme are not covered by that article. Consequently, the Tribunal dismissed the applications made by the applicants for the annulment of the decisions refusing to take account, in the calculation of the salary paid for their part-time work in preparation for retirement, of the years of service obtained following a transfer of pension rights acquired in national schemes.

(iii) Correction coefficients

In its judgment of 19 June 2007 in Case [F-54/06](#) *Davis and Others v Council*, the Tribunal took the view that the new pensions system, abolishing correction coefficients in respect of pension rights acquired as of 1 May 2004 and amending pension rights acquired before that date, so that correction coefficients are now calculated according to the cost of living in the Member State of residence of the pensioner rather than according to the cost of living in the capital of the Member State of the place of employment of the official, does not breach the principles of equal treatment and non-discrimination or the principles of freedom of movement and freedom of establishment.

5. Disciplinary measures

In its judgment of 8 November 2007 in Case [F-40/05](#) *Andreasen v Commission*, the Tribunal applied the new Staff Regulations as regards, in particular, the verification of the seriousness of the events resulting in the removal of an official from his post. Article 10 of Annex IX to the Staff Regulations provides that the disciplinary penalties imposed are to be commensurate with the seriousness of the misconduct, and sets out the criteria of which



the appointing authority must take account in particular in determining the penalty. Within that legal framework, the Tribunal assessed the arguments of the applicant concerning the alleged violation of the principle of the proportionality of the penalty. The Tribunal also ruled on the temporal application of the provisions of Annex IX to the Staff Regulations concerning the establishment and organisation of the Disciplinary Board which entered into force during the course of the disciplinary procedure.

6. *Conditions of employment of other servants of the European Communities*

In its judgment of 4 October 2007 in Case [F-32/06](#) *de la Cruz and Others v European Agency for Safety and Health at Work*, the Tribunal upheld the claim of applicants, former members of the local staff, contesting their classification as members of the contract staff in function group II, in the light of the tasks they actually performed.

Costs

The Tribunal has repeatedly applied Article 87(3) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis*, to rule either, under the first subparagraph of that provision, that costs should be shared between the parties where the circumstances are exceptional (judgment of 7 November 2007 in Case [F-57/06](#) *Hinderyckx v Council* and order of 14 December 2007 in Case [F-131/06](#) *Steinmetz v Commission*) or, under the second subparagraph, to order a successful party to pay part of the costs incurred by the opposite party which it considers to have been unreasonably or vexatiously caused (judgments of 9 October 2007 in Case [F-85/06](#) *Bellantone v Court of Auditors*, and in *Duysterv Commission*), and even where an action was held to be manifestly inadmissible (order of 27 March 2007 in Case [F-87/06](#) *Manté v Council*).

III. *Applications for interim measures*

Four applications for interim measures were brought in 2007, which were rejected because of the lack of urgency of the measures sought, which are required by settled case-law to be taken and produce their effects before a decision is reached in the main action, in order to avoid serious and irreparable harm to the applicant's interests (orders of the President of the Tribunal of 1 February 2007 in Case [F-142/06 R](#) *Bligny v Commission*, of 13 March 2007 in Case [F-1/07 R](#) *Chassagne v Commission*, of 10 September 2007 in Case [F-83/07 R](#) *Zangerl-Posselt v Commission* and of 21 November 2007 in Case [F-98/07 R](#) *Petrilli v Commission*).

In *Chassagne v Commission* and *Petrilli v Commission*, the President of the Tribunal recalled the settled case-law of the Court of Justice and Court of First Instance according to which purely financial damage cannot, in principle, be regarded as irreparable, or even difficult to repair, because financial compensation can be made for it subsequently.

In *Bligny v Commission* and *Zangerl-Posselt v Commission*, the President of the Tribunal recalled the settled case-law of the Court of Justice and the Court of First Instance according



to which continuing with the tests in an open competition is not liable to cause irreparable damage to a candidate who has been disadvantaged by an irregularity in the competition. Where, in an open competition for the purpose of constituting a reserve for future recruitment, a test is annulled, an applicant's rights will be adequately protected if the board and the appointing authority reconsider their decisions and seek a just solution in his case.

IV. Applications for legal aid

Seventeen orders ruling on applications for legal aid were made in 2007. Only three applications could be granted, the remainder being rejected either because the proposed action was manifestly inadmissible or manifestly unfounded or because the applicant was not or did not prove that he was, because of his financial situation, wholly or partly unable to meet the costs involved in legal assistance and representation by a lawyer in proceedings.

V. Preliminary assessment of the practice of amicable settlement

The Tribunal has endeavoured, in its judicial practice, to answer the legislature's appeal for the facilitation, at every stage of the procedure, of the amicable settlement of disputes. Thus, on the basis of Article 7(4) of the Annex to the Statute of the Court of Justice and of Article 64(2)(d) of the Rules of Procedure of the Court of First Instance, applicable *mutatis mutandis* to the Tribunal pending the entry into force of its own Rules of Procedure, the Tribunal made several attempts at amicable settlement. Fourteen cases were able to be brought to a close following an amicable settlement, seven of them following intervention by the Tribunal, most often at an informal meeting organised by the judge-rapporteur or at the hearing. Clearly the trend in these figures over time will be affected by the efforts which the Tribunal will make in the search for an amicable settlement of disputes and the degree of openness shown by the parties' representatives in that regard.

Even though it is neither possible nor desirable to draw up an exhaustive list of the circumstances which will foster an amicable settlement of differences, the Tribunal has identified a number of categories of dispute which would be suitable for amicable settlement.

These are primarily actions whose real solution cannot be found in a legal ruling as such, which would not put an end to the dispute or the conflict giving rise to the proceedings, which is often of a personal nature. In this type of case, priority must be given to the search for a fairer or more human solution than a legal analysis would yield. That obviously requires that the dispute should raise no question of general interest for other officials. In the same vein, cases where publicity would not be fully justified and where a judgment would not make any clear contribution to the law (for example in cases of psychological or sexual harassment, or of reassignment of an official because of a conflict between that official and his superiors) might also be suitable for an amicable settlement. Duplicate cases, following a 'pilot' judgment, which could be given the same solution as in that judgment, could also be included here.

