JUDGMENT OF THE COURT OF FIRST INSTANCE (Appeal Chamber)

23 May 2007 *

In Case T-223/06 P,

APPEAL against the order of the European Union Civil Service Tribunal (Second Chamber) of 13 July 2006 in Case F-102/05 *Eistrup* v *Parliament* [2006] ECR-SC I-A-1-89 and II-A-1-329, seeking to have that order set aside,

European Parliament, represented by H. von Hertzen and L. Knudsen, acting as Agents,

applicant,

the other party to the proceedings being

Ole Eistrup, official of the European Parliament, residing in Knebel (Denmark), represented by S. Hjelmborg and M. Honoré, lawyers,

applicant at first instance,

* Language of the case: Danish.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Appeal Chamber),

composed of B. Vesterdorf, President, M. Jaeger, J. Pirrung, M. Vilaras and H. Legal, Judges,

Registrar: E. Coulon,

gives the following

Judgment

1 By its appeal lodged pursuant to Article 9 of the Annex to the Statute of the Court of Justice, the Parliament seeks to have set aside the order of the European Union Civil Service Tribunal of 13 July 2006 in Case F-102/05 *Eistrup* v *Parliament* [2006] ECR-SC I-A-1-89 and II-A-1-329 ('the order under appeal'), by which the Civil Service Tribunal rejected the plea of inadmissibility which the Parliament had raised in respect of a breach of the first subparagraph of Article 43(1) of the Rules of Procedure of the Court of First Instance, applicable mutatis mutandis to the Civil Service Tribunal according to Article 3(4) of Council Decision 2004/752/EC, Euratom of 2 November 2004 establishing the European Union Civil Service Tribunal (OJ 2004 L 333, p. 7), on the ground that the application initiating proceedings, instead of being signed by hand by the lawyer of the applicant at first instance, bore a stamp reproducing that lawyer's signature.

The procedure at first instance

2 By an action brought initially before the Court of First Instance on 20 October 2005, Mr Eistrup sought, first, annulment of the decision of 13 December 2004 by which the Parliament had fixed the amount of compensation which he claimed was inadequate, to be paid to him on account of his belated reinstatement after leave on personal grounds and annulment of the decision of 12 July 2005 dismissing his complaint against the decision of 13 December 2004 and, secondly, an order requiring the Parliament to compensate him for the damage suffered.

3 After finding that the application bore a stamp reproducing the signature of Mr Eistrup's lawyer, by letter of 25 October 2005 the Registry of the Court of First Instance invited that lawyer to submit observations as to whether the first subparagraph of Article 43(1) of the Rules of Procedure had been complied with, according to which '[t]he original of every pleading must be signed by the party's agent or lawyer'.

4 Mr Eistrup's lawyer replied on 5 November 2005, confirming that he was indeed the person whose signature was appended to the application. He added that, as in Danish law, this method of signature should be accepted.

5 Thereafter, the Registry of the Court of First Instance served the application initiating proceedings on the Parliament together with a copy of the reply mentioned above.

6 By separate document lodged on 15 December 2005, the Parliament raised a plea of inadmissibility pursuant to Article 114(1) of the Rules of Procedure. The applicant submitted his observations on that plea on 10 April 2006.

7 By order of 15 December 2005 the Court of First Instance referred the present case to the Civil Service Tribunal pursuant to Article 3(3) of Decision 2004/752. The action was registered at the Registry of the Tribunal under number F-102/05.

8 On 16 June 2006 Mr Eistrup's lawyer, at the request of the Civil Service Tribunal, sent the Registry of the Tribunal a version of the application signed in his own hand.

9 In those circumstances, by the order under appeal the Civil Service Tribunal rejected the plea of inadmissibility raised by the Parliament.

The order under appeal

10 After pointing out that in the order of 24 February 2000 in Case T-37/98 *FTA and Others* v *Council* [2000] ECR II-373 ('the *FTA* order'), paragraph 26, the Court of First Instance had interpreted the first subparagraph of Article 43(1) of its Rules of Procedure as requiring a handwritten signature from the applicant's lawyer, the Civil Service Tribunal accepted that use by Mr Eistrup's lawyer of a stamp reproducing his signature amounted to an irregularity. However, according to the Civil Service Tribunal, such an irregularity, established at the stage of lodging the application, could not lead to the inadmissibility of the action in the light of the circumstances of the case (paragraphs 22 to 24 of the order under appeal).

11 In that respect, the Civil Service Tribunal considered, in paragraph 25 of the order under appeal, that the explanations provided by Mr Eistrup's lawyer in reply to the letter of the Registry of the Court of First Instance, dated 25 October 2005, did not

leave any doubt as to the fact that that lawyer was indeed the signatory of the application. In that context, the Civil Service Tribunal referred to Case T-34/02 *Le Levant 001 and Others* v *Commission* [2006] ECR II-267, paragraph 56, in relation to the authority granted under Article 44(5)(b) of the Rules of Procedure by the representative of a legal person to a lawyer for the purposes of lodging an application, an authority which had been signed using a stamp.

12 In paragraph 26 of the order under appeal, the Civil Service Tribunal pointed out that, further to the explanations of Mr Eistrup's lawyer, the Registry of the Court of First Instance had served the application initiating proceedings on the Parliament. It then added, in paragraph 27, that it had received from Mr Eistrup a version of the application initiating proceedings signed by hand by his lawyer.

13 In paragraph 28 of the order under appeal, the Civil Service Tribunal found that the Parliament had in turn failed to mention any evidence showing infringement of the rights of the defence in the event that the application was declared admissible in the light of the requirements in the first subparagraph of Article 43(1) of the Rules of Procedure.

14 The Civil Service Tribunal concluded that, in the light of the circumstances of the case, to declare the action inadmissible, for failure to comply with such a procedural formality, which does not have any substantial effect on the administration of justice, would be liable to have a disproportionate adverse effect on Mr Eistrup's fundamental right of access to a court or tribunal, particularly at first instance (paragraph 29 of the order under appeal).

15 The Parliament was notified of the order under appeal on 17 July 2006.

The appeal

Procedure

16 By document lodged at the Registry of the Court of First Instance on 23 August 2006, the Parliament brought the present appeal.

17 Article 146 of the Rules of Procedure provides that, after the submission of pleadings, the Court of First Instance, acting on a report from the Judge-Rapporteur and after hearing the parties, may decide to rule on the appeal without an oral procedure unless one of the parties submits an application setting out the reasons for which he wishes to be heard. The application is to be submitted within a period of one month from notification to the party of the closure of the written procedure.

18 In his response lodged on 10 November 2006, Mr Eistrup asked the Court to arrange a hearing 'in the light of the decisive nature of the formality at issue for [him] and his action against the Parliament'.

19 That request must be rejected, first, as being made too early in the light of the provisions of Article 146 of the Rules of Procedure and, secondly, as failing to set out the clear and specific reasons for which Mr Eistrup wished to be heard.

20 By document of 6 December 2006, the Parliament, pursuant to Article 143 of the Rules of Procedure, requested permission to lodge a reply. By decision of 13 December 2006, that request was refused. On the same day, the written procedure was closed.

21 Acting on a report from the Judge-Rapporteur, the Court of First Instance (Appeal Chamber) held that no application for a hearing to be arranged had been submitted by the parties within the period of one month from notification of the closure of the written procedure and decided to give a ruling without an oral procedure, pursuant to Article 146 of the Rules of Procedure.

The forms of order sought

22 The Parliament claims that the Court should:

— set aside the order under appeal;

— itself give a ruling in the case by upholding the plea of inadmissibility;

— dismiss the action as inadmissible;

— give a ruling as to costs in accordance with the relevant rules.

23 Mr Eistrup contends that the Court should:

— dismiss the appeal;

— in the alternative, refer the case back to the Civil Service Tribunal;

— order the Parliament to pay the costs.

Arguments of the parties

24 In support of its appeal, the Parliament puts forward a single plea alleging breach of Community law by the Civil Service Tribunal. That plea falls into two parts, infringement of the first subparagraph of Article 43(1) of the Rules of Procedure and infringement of the principle of legal certainty, respectively.

25 By the first part of its plea, the Parliament takes the view that the Civil Service Tribunal erred in law by failing to declare the action brought by Mr Eistrup inadmissible for breach of the first subparagraph of Article 43(1) of the Rules of Procedure, even though Mr Eistrup's lawyer failed to append his signature by hand to the application initiating proceedings.

26 As regards the Civil Service Tribunal's reference to *Le Levant 001 and Others* v *Commission*, the Parliament points out that that judgment concerned Article 44(5)(b) of the Rules of Procedure and not the first subparagraph of Article 43(1). However, while non-compliance with Article 44(5)(b) may be cured under Article 44(6), there is no provision for putting in order applications which fail to comply with the first subparagraph of Article 43(1) relating to the requirement for the originals of pleadings to be signed by the party's lawyer. The judgment referred to is therefore not relevant in the present case.

27 To the extent that the Civil Service Tribunal finds in paragraph 25 of the order under appeal that 'the applicant's lawyer is indeed the signatory of the application', a finding which implies that the lawyer was indeed the signatory of the application since he himself had appended the stamp bearing his signature to the original of the application, the Parliament is unsure of the point of using a stamp instead of signing the application by hand if the person concerned is present. In any event, it is impossible at the present time to establish with certainty whether the lawyer, at the time of sending the application, did in fact endorse the wording of the application.

28 By the second part of its plea, the Parliament alleges that the Civil Service Tribunal infringed the principle of legal certainty in failing to comply with the provisions of the Rules of Procedure relating to the admissibility of the action. There is no provision of Community law which restricts the right to rely on a breach of the Rules of Procedure to only those cases in which that breach infringed the rights of the defence. The requirement of a signature is a condition of admissibility in the same way as compliance with procedural time-limits, so that the Civil Service Tribunal was wrong to rely on the principles of proportionality and access to justice in order to avoid application of the first subparagraph of Article 43(1) of the Rules of Procedure.

29 Mr Eistrup replies that neither the Rules of Procedure of the Court of First Instance nor the related texts explain what is meant by 'signature'. In addition, neither the *FTA* order nor any other court decision provides a clear definition of that concept and even less so in respect of that of 'handwritten signature'. Moreover, in certain legal systems such as the Danish legal system, the use of a stamp is commonly accepted for procedural documents. In any event, a pardonable mistake was made in the present case such that the action should not have been declared inadmissible.

30 In that regard, Mr Eistrup contends, first, that Article 43(1) of the Rules of Procedure does not in any way make clear whether the signature on an application has to comply with certain formal requirements. He goes on to argue that, according to the Practice Directions to parties (OJ 2002 L 87, p. 48) (Section I 2), in the case of

transmission by electronic mail, the Court of First Instance does not accept a facsimile signature 'generated by computer'. Conversely, the wording does not preclude transmission of a facsimile signature appended manually. As regards Article 6(3) of the Instructions to the Registrar of the Court of First Instance of 3 March 1994 (OJ 1994 L 78, p. 32), last amended on 5 June 2002 (OJ 2002 L 160, p. 1), according to which the Registrar can accept only documents bearing the original signature of the lawyer or agent of the party concerned, Mr Eistrup takes the view that that provision does not give any clear idea of what is meant by 'signature' or by 'original' signature.

31 According to Mr Eistrup, the purpose of a handwritten signature should be analysed. This is intended to guarantee the authenticity, completeness and unquestionable nature of the text contained in the signed document and, in particular, to reassure the recipient that the signature has been appended by a particular individual, namely the signatory. Mr Eistrup concludes that the use of a stamp must be regarded, at least in Denmark, as satisfying those conditions and, therefore, as equivalent to a signature written by hand with a ball point or ink pen. Furthermore, the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) also considers a facsimile signature to be an acceptable means of signing (Case T-6/05 *DEF-TEC Defense Technology* v *OHIM — Defense Technology (FIRST DEFENSE AEROSOL PEPPER PROJECTOR)* [2006] ECR II-2671, paragraph 3).

32 As regards the risk of such a stamp being used improperly, Danish law has solved this problem by requiring the person whose facsimile signature is appended to prove that an abuse was committed in a particular case, so that a signature appended by means of a stamp is presumed to be authentic. In other words, the person whose facsimile signature is appended bears the risk arising from the use of a stamp. Furthermore, the risk that a signature may be forged does not concern merely the use of stamps but also signature by means of a ball point pen.

33 In that context, Mr Eistrup points out that the Parliament did not at any point dispute that his lawyer had been authorised to represent him, that the lawyer had in fact written the application or that he had appended the facsimile signature.

34 Secondly, Mr Eistrup objects to the Parliament's argument that *Le Levant 001 and Others* v *Commission* cannot be relied on because it concerned a document whose defects, unlike in the present case, could be cured pursuant to Article 44(6) of the Rules of Procedure. He points out that, in that judgment, far from considering putting in order to be necessary, the Court took the view that Article 44(5) of the Rules of Procedure had not been infringed, since the signature, appended by means of a stamp on the authority granted to the lawyer by his clients, was entirely valid. That judgment is relevant to the present case, since it is clear from the express wording of Article 7(3) of the Instructions to the Registrar that the documents to be produced under Article 44(5)(a) and (b) of the Rules of Procedure must include the authority granted to the lawyer, 'signed' by a representative of the legal person concerned. In order to be valid, such an authority should therefore comply with the condition relating to signature. However, the Court accepted use of a stamp in *Le Levant 001 and Others* v *Commission.*

35 As regards the *FTA* order, Mr Eistrup asserts that the decisive question raised in the case was whether a person other than the applicants' lawyer could validly sign the application on his behalf, and not how such a signature should be appended to the application. It is therefore obiter dictum when the Court interpreted Article 43(1) of the Rules of Procedure as requiring a 'handwritten signature'. In addition, by refraining from explaining what was meant by 'handwritten signature', the Court did not rule on whether the use of a stamp could be regarded as a valid means of signature.

36 Mr Eistrup claims, thirdly, that the use of a stamp must be considered, at least in Denmark, a valid handwritten signature which is equivalent to a signature written in pen. Such is the case, inter alia, when procedural documents are produced before the Danish courts.

37 Fourthly, he submits that in any event the use of the stamp by his lawyer must be considered to be a pardonable error. In that respect, he relies on the following:

— neither the concept of 'signature' nor that of an 'original' signature has been clearly defined in Community law;

— the Practice Directions to parties preclude only facsimile signatures generated by computer;

— according to Community case-law, procedural documents can be signed by means of a stamp where there is no doubt that the author endorses the content and has a valid authority;

— there has been no doubt as to the identity of the author of the application in the present case;

— the use of a stamp reproducing a signature is accepted in Denmark;

— the classification of the present action as inadmissible is an extremely serious action.

Findings of the Court

38 By its appeal, the Parliament alleges that the Civil Service Tribunal erred in law in the application of the first subparagraph of Article 43(1) of the Rules of Procedure, as interpreted in the light of the principle of legal certainty.

39 According to that procedural provision, '[t]he original of every pleading must be signed by the [relevant] party's agent or lawyer'.

40 That provision must be interpreted as requiring the original of the application initiating proceedings to be signed by hand by the lawyer instructed by the applicant (the *FTA* order, paragraphs 23, 26 and 27). It is that interpretation which is adopted in the Instructions to the Registrar of the Court of First Instance which, in Article 6(3) thereof, instruct the Registrar to accept only documents bearing 'the original signature of the ... lawyer'.

41 The Civil Service Tribunal was therefore correct in holding, in paragraphs 24 and 25 of the order under appeal, that the use by Mr Eistrup's lawyer of a stamp reproducing his signature, when lodging the application, was irregular, given that signature by means of that stamp did not constitute a directly-appended signature, as is required under the first subparagraph of Article 43(1) of the Rules of Procedure. In fact, even though the stamp in question reproduced the form of the lawyer's signature, the fact remains that that method of signing was indirect in nature and the application did not bear the lawyer's original signature.

42 None of the arguments advanced by Mr Eistrup is such as to invalidate that finding.

43 Therefore, it is necessary to reject as ineffective, first, the argument that Mr Eistrup seeks to derive from *Le Levant 001 and Others* v *Commission* to the effect that that judgment, in accepting the facsimile signature appended to the authority granted to a lawyer for the purpose of lodging an application, under Article 44(5)(b) of the Rules of Procedure, defined the term 'signature' for the purposes of Article 7(3) of the Instructions to the Registrar, and that that definition is also relevant to the present case (see paragraph 34 above).

44 In that regard, it is sufficient to note that Article 44(5)(b) of the Rules of Procedure requires only 'proof that the authority granted to the applicant's lawyer has been properly conferred'. Such proof does not necessarily have to consist of a document bearing the handwritten signature of the authorising party. Even though Article 7(3) of the Instructions to the Registrar requires an 'authority ... signed by a representative of [the] legal person', that provision cannot be construed as amending Article 44(5)(b) of the Rules of Procedure — which, moreover, cannot be amended by Instructions to the Registrar — but must rather be understood as referring to the most normal form of presentation for such an authority without, none the less, precluding any other possibility of proving that the authority was properly conferred. On the other hand, the wording of the first subparagraph of Article 43(1) of the Rules of Procedure precludes acceptance of an unsigned application, even if proof is furnished that the application has been approved, other than by the appending of a handwritten signature, by the lawyer or agent in whose name it is lodged.

45 Secondly, in the light of the formal requirement laid down in the first subparagraph of Article 43(1) of the Rules of Procedure, reliance on *FIRST DEFENSE AEROSOL PEPPER PROJECTOR*, which refers to an internal OHIM decision authorising use of a facsimile of the signature of the officials responsible at OHIM for the purposes of a decision, communication or notice from them, is ineffective in the present context. Generally, the fact that the use of faxes, telex, telegrams or electronic mail is accepted in areas which are not subject to stricter formal conditions, such as communications in the field of Community trade marks (Rules 55 and 79 to 82 of

Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1), is irrelevant.

46 Thirdly, the same is true of the argument that it is appropriate to infer, a contrario, from Section I 2 of the Practice Directions to parties that the Court accepts, in the case of transmission by electronic mail, facsimile signatures appended manually (see paragraph 30 above). In fact, the direction in question concerns only the use of the technical means of communication referred to as such in Article 43(6) of the Rules of Procedure. Consequently, it is irrelevant for the purposes of interpreting the first subparagraph of Article 43(1).

47 The Civil Service Tribunal held, however, that in the light of the circumstances of the case the failure of Mr Eistrup's lawyer to comply with the first subparagraph of Article 43(1) of the Rules of Procedure could not lead to the inadmissibility of the action. It therefore held that the requirement of a handwritten signature need not be applied if the circumstances of the case so require.

48 In that regard, it should be recalled that the absence of a handwritten signature on the application by a lawyer entitled to sign is not among the formal irregularities that are capable of being cured in accordance with the second paragraph of Article 21 of the Statute of the Court of Justice, Article 44(6) of the Rules of Procedure of the Court of First Instance and Article 6(1), (4) and (5) of the Instructions to the Registrar of the Court of First Instance.

49 In addition, although Article 43(6) of the Rules of Proecedure, following the amendments to those rules adopted on 6 December 2000 (OJ 2000 L 322, p. 4), permits the use of faxes and electronic mail, the validity of a communication by those electronic means is subject to the condition that 'the signed original of the

pleading' in question be lodged at the Registry of the Court no later than 10 days thereafter. In addition, although Article 43(7), following the amendments to the Rules of Procedure adopted on 12 October 2005 (OJ 2005 L 298, p. 1), authorises the Court to determine, by decision to be published in the *Official Journal of the European Union*, the criteria for a procedural document sent to the Registry by electronic means to be 'deemed to be the original of that document', the fact remains that such a decision has not yet been taken.

50 It follows that, as the law relating to procedures before the Community courts stands at present, the signature, appended by the lawyer in his own hand, on the original of the application initiating proceedings constitutes the sole means of ensuring that responsibility for the execution and content of that procedural document is assumed by a person entitled to represent the applicant before the Community courts (see, to that effect, the *FTA* order, paragraphs 25 and 26).

51 The requirement of a handwritten signature for the purposes of the first subparagraph of Article 43(1) of the Rules of Procedure is thus designed, for reasons of legal certainty, to ensure the authenticity of the application and to eliminate the risk that that document is not in fact the work of the author authorised for that purpose. That requirement must therefore be regarded as an essential procedural rule and be applied strictly, so that failure to comply with it leads to the inadmissibility of the action.

52 As regards the fact of appending on the application initiating proceedings a stamp reproducing the signature of the lawyer instructed by the applicant, the fact remains that that indirect and mechanical way of 'signing' does not by itself support the finding that it is necessarily the lawyer himself who signed the procedural document in question.

53 In relation to the Civil Service Tribunal's finding in paragraph 25 of the order under appeal that the explanations provided by Mr Eistrup's lawyer did not leave any doubt as to the fact that that lawyer was indeed the signatory of the application, it should

be pointed out that an application vitiated by a substantial defect at the time when it was lodged cannot be put in order by a mere declaration subsequent to and separate from the procedural document proper, since the absence of a handwritten signature is not among the formal irregularities capable of being cured in the course of the proceedings (see paragraph 48 above). Furthermore, such a declaration is by itself also not sufficient to validate electronic mails or faxes where they have not been followed by 'the signed original of the pleading'.

54 It must be added that, even though Mr Eistrup confirmed that his lawyer had personally signed the application by means of a stamp reproducing his signature (paragraph 20 of the order under appeal), it can only be stated that the way of signing the application is a purely internal matter for the firm of the lawyer in question and is not usually open to scrutiny either by the other party to the proceedings or by the court. It is therefore not a circumstance which is objectively capable of providing unqualified assurance that responsibility for the execution and content of the application has been assumed by Mr Eistrup's lawyer.

55 This conclusion is not contradicted by the judgment in Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraphs 114 to 119. In that judgment, when called upon to rule on the value of the statements made by the lawyer of one of the applicants designed to justify the power of attorney which that applicant had given him, the Court of Justice held that those statements, made by a member of the bar of one of the Member States, who was subject as such to a code of professional conduct, were sufficient, in the particular circumstances of the case, to establish that the applicant was qualified to instruct lawyers. The particularity of that case, however, was that the applicant was an organisation lacking legal personality, which prompted the Court of Justice to point out that its Statute, its Rules of Procedure and the Rules of Procedure of the Court of First Instance had not been devised with a view to the commencement of an action by such an organisation. According to the Court of Justice, in that exceptional situation, excessive formalism had to be avoided and thus the applicant organisation had to be permitted to demonstrate, by any available evidence, that it was entitled to instruct lawyers.

56 By contrast, there is no such exceptional situation in the present case, since the requirement of a handwritten signature, as an essential procedural rule (see paragraph 51 above), is specifically laid down in the first subparagraph of Article 43(1) of the Rules of Procedure of the Court of First Instance, as interpreted by the case-law cited above.

57 That finding is also not invalidated by Case T-158/99 *Thermenhotel Stoiser Franz and Others* v *Commission* [2004] ECR II-1, paragraphs 42 to 45, since in that case the application in fact bore the handwritten signature of the applicant's lawyer and the Court was in a position to establish the authenticity of that signature by comparing it with other signatures of that lawyer, that is, on the basis of objective evidence and not in the light of a statement by the lawyer subsequent to and separate from the written pleadings in question.

58 In the light of the foregoing, the absence of a handwritten signature also cannot be considered to be cured as a result of the fact that, first, Mr Eistrup's application had been served on the defendant at first instance and, secondly, the Civil Service Tribunal had received from Mr Eistrup a version of the application initiating proceedings signed by hand by his lawyer (paragraph 27 of the order under appeal). An action clearly does not become admissible merely by being served on the other party. As regards the fact that Mr Eistrup sent a new application, it suffices to point out that that document was not lodged at the Civil Service Tribunal until 16 June 2006. As the Parliament correctly pointed out, the document was lodged after expiry of the time-limit for bringing an action.

59 Finally, it should be recalled that the Civil Service Tribunal considered that the Parliament had not shown that there would be an infringement of the rights of the defence if the application were declared admissible, while a declaration of the inadmissibility of the action, for failure to comply with a procedural formality

without any substantial effect on the administration of justice, would disproportionately infringe the fundamental right of access to a court or tribunal (paragraphs 28 and 29 of the order under appeal). In that regard, it should be pointed out that the requirement of a handwritten signature for the purposes of the first subparagraph of Article 43(1) of the Rules of Procedure constitutes an essential procedural rule (see paragraph 51 above). Breach of an essential procedural requirement leads to the inadmissibility of the action (see to that effect Case T-101/92 *Stagakis* v *Parliament* [1993] ECR II-63, paragraph 8), without there being any need to consider the effects of such a breach or, in particular, to establish whether the absence of a handwritten signature on the application resulted in harm to the other party (see, to that effect, Case C-286/95 P *Commission* v *ICI* [2000] ECR I-2341, paragraphs 42 and 52).

60 It follows that the fact of appending, on an application initiating proceedings, a stamp reproducing the signature of the lawyer instructed by the applicant leads to the inadmissibility of the action, and does so irrespective of the circumstances such as those taken into account in the order under appeal.

61 It follows from the foregoing that the Civil Service Tribunal erred in law in holding that the procedural irregularity established could not lead to the inadmissibility of the action in the light of the circumstances of the case.

62 None the less, if the grounds of a decision at first instance reveal an infringement of Community law but the operative part appears well founded on other legal grounds the appeal must be dismissed (Case C-30/91 P *Lestelle* v *Commission* [1992] ECR I-3755, paragraph 28; see also, to that effect, Case C-294/95 P *Ojha* v *Commission* [1996] ECR I-5863, paragraph 52).

63 In the present case, Mr Eistrup relies on the pardonable nature of the error which was made.

64 In that regard, it should be observed that a pardonable error could have the effect not of making the application vitiated by the absence of a handwritten signature admissible, but of preventing the time-limit for bringing an action from running against the interested party, so that the properly signed version of the application, lodged at the Registry of the Civil Service Tribunal on 16 June 2006, would not be considered to be out of time.

65 It suffices to point out, however, that Mr Eistrup neither mentioned any exceptional circumstances which prevented his lawyer from appending his handwritten signature to the application nor established that his lawyer, by using a signature stamp, had displayed all the diligence required of a normally well-informed person (see, to that effect, Joined Cases T-33/89 and T-74/89 *Blackman* v *Parliament* [1993] ECR II-249, paragraph 34, and order in Case T-63/96 *Fichtner* v *Commission* [1997] ECR-SC I-A-189 and II-563, paragraph 25). Consultation of the relevant texts, in particular Article 6(3) of the Instructions to the Registrar and the *FTA* order, should have led him, as a conscientious and prudent professional, to sign the application by hand.

66 It follows that the concept of pardonable error cannot be usefully relied on in the present case.

67 Consequently, the order under appeal must be set aside.

The plea of inadmissibility

68 In accordance with Article 13(1) of the Annex to the Statute of the Court of Justice, if the appeal is well founded, the Court of First Instance may, where the decision of the Civil Service Tribunal is quashed, itself give judgment in the matter, where the state of the proceedings so permits. Such is the case here.

69 It follows from paragraphs 38 to 67 above that the plea of inadmissibility raised before the Civil Service Tribunal by the Parliament must be upheld. Accordingly, Mr Eistrup's action must be dismissed as inadmissible.

Costs

70 Pursuant to the first paragraph of Article 148 of the Rules of Procedure, where the appeal is well founded and the Court itself gives judgment in the case, the Court is to make a decision as to costs.

71 Under the first subparagraph of Article 87(2) of the same Rules, which apply to the procedure on appeal pursuant to Article 144 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

72 Nevertheless, Article 88 of those Rules, applicable to appeals brought by the institutions, under Article 144 and the second paragraph of Article 148 thereof, provides that in proceedings between the Communities and their servants the institutions, as a rule, are to bear their own costs.

73 Accordingly, each party shall bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Appeal Chamber)

hereby:

1. **Sets aside the order of the European Union Civil Service Tribunal of 13 July 2006 in Case F-102/05 *Eistrup* v *Parliament* (not yet published in the ECR);**

2. **Dismisses the action brought by Mr Eistrup before the Civil Service Tribunal in Case F-102/05 as inadmissible;**

3. **Orders each party to bear its own costs relating to both the proceedings at first instance and the appeal.**

Vesterdorf Jaeger Pirrung

Vilaras Legal

Delivered in open court in Luxembourg on 23 May 2007.

E. Coulon B. Vesterdorf

Registrar President