Proceedings before the Community courts

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The rules of procedure before the Community courts are the product of several texts: the founding Treaties and the Protocol on the Statute of the Court of Justice adopted in Nice, as subsequently amended; the three Rules of Procedure, for the Court of Justice, supplemented by additional rules, and for the Court of First Instance and the Civil Service Tribunal; lastly, the Instructions to the Registrar, drawn up by each of the courts for the running of its Registry, and the practical directions to parties and other texts (for instance, the information note on references from national courts for a preliminary ruling) drawn up by the three courts, each as far as it is concerned, in order to secure the proper conduct of proceedings.

Some rules of procedure apply, in a general way, to both usual and exceptional (summary or appeal) proceedings. In particular this concerns rules on the representation of parties, the language of proceedings, costs and legal aid. In the main these rules are identical for all three courts.

It should also be pointed out that cases brought before Community courts are tried using the adversarial system: all statements of case or written observations produced by one of the parties must be made available to the other.

Representation of parties

Under Article 19 of the Statute of the Court of Justice, which also applies to proceedings before the Court of First Instance and the Civil Service Tribunal, it is compulsory for parties to be represented. This obligation is valid for both procedural documents and pleadings.

Member States and Community institutions are represented by an agent appointed for each case, the agent having the option of being assisted by an adviser or a lawyer authorised to practise before a court of a Member State. Other parties must be represented by a lawyer authorised to practise before a court of a Member State or, in some cases, by university teachers being nationals of a Member State whose law accords them a right of audience.

In the preliminary ruling procedure, Article 104(2) of the Rules of Procedure limits the obligation to be represented by a lawyer, indicating that the Court takes account of the rules of procedure of the national court or tribunal which made the reference. This may enable parties to be tried directly or to resort to a representative who is not a lawyer, for instance a trade union delegate in certain proceedings related to labour law, if this is possible in national courts.

The three rules of procedure define, in identical terms, the rights and obligations of agents, advisers and lawyers.

Language of proceedings

Provisions on the language of court proceedings are contained in the Rules of Procedure, in a chapter on *Languages* (Articles 29 to 31 of the Rules of Procedure of the Court, Articles 35 to 37 of the Rules of Procedure of the Court of First Instance, also applicable to the Civil Service Tribunal in compliance with Article 29 of its Rules of Procedure).

The language of a case is determined in respect of each action brought before one of the Community Courts. It must be one of the 23 official languages of the European Union.

In *direct actions*, applicants may choose the language of the case. They are bound neither by their own nationality nor by that of their lawyer. There are, however, exceptions to this rule. When the defendant is a Member State or a natural or legal person having the nationality of a Member State, the language of the case is the official language or one of the official languages of that State.

For *preliminary rulings*, the language of the case is that of the national court requesting a ruling by the Court of Justice. For *appeals*, the language of the case is that of the decision by the Court of First Instance or the Civil Service Tribunal concerned by the appeal.

Once the language of the case has been decided, it must be used throughout the proceedings, both in statements of case and in pleadings. This choice is not only binding on the parties, but also on any interveners once their intervention has been allowed. A number of exceptions are nevertheless possible: Member States are entitled to use their own official language when intervening in a case before the Court or when taking part in preliminary reference proceedings.

Costs of proceedings and legal aid

Proceedings before the Community courts are, in principle, free of charge, in the sense that no taxes or other fees are due to the court (Article 72 of the Rules of Procedure of the Court, Article 90 of the Rules of Procedure of the Court of First Instance, and Article 94 of the Rules of Procedure of the Civil Service Tribunal).

However, disputes give rise to fees (the fees of the lawyer entitled to plead before a court in a Member State and required to represent the parties) which may be recovered through the payment of *costs*. A ruling on costs is included in the decision or order ending proceedings. The rules on costs are set forth in the Rules of Procedure (Articles 69 to 75 of the Rules of Procedure of the Court, Articles 87 to 93 of the Rules of Procedure of the Court of First Instance, and Articles 86 to 94 of the Rules of Procedure of the Civil Service Tribunal).

If a party is wholly or partly unable to meet the costs of proceedings, the Rules of Procedure provide for *legal aid*. A party may at any time apply for legal aid. If the application is lodged prior to proceedings, the interested party may submit the application in person, without needing to be represented by a lawyer. To qualify for legal aid, applicants must provide evidence of their need of assistance and demonstrate that there is manifestly cause of action (Article 76 of the Rules of Procedure of the Court: see also the provisions for *legal aid* in the Rules of Procedure of the Court of First Instance (Articles 94 to 97) and of the Civil Service Tribunal (Articles 95 to 98)).

Before the Court, legal aid is not restricted to direct appeals. It may also be granted to a party in a preliminary procedure (second subparagraph of Article 104(6) of the Rules of Procedure).

Proceedings before the Court of Justice

Proceedings before the Court of Justice generally consist of two stages: a written stage and an oral stage (Article 20 of the Statute of the Court). In certain cases the oral stage may be omitted.

The following outlines the sequence of proceedings for a direct action, a reference for a preliminary ruling and an appeal, without taking into consideration special proceedings and exceptional review procedures covered by the third title of the Rules of Procedure of the Court.

Direct actions

Written proceedings begin with the submission of an application, addressed to the Registrar. After it has been entered at the Court Registry, a notice is published in the *Official Journal of the European Union (OJEU)*, indicating the date of registration of the application, the names and addresses of the parties, the subject-matter of the dispute, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments. The aim of the notice is to inform third parties that an action has been lodged and to enable them, if appropriate, to submit an application to intervene in support of the form of order sought by one of the parties.

The application is served on the defendant, who lodges a defence within one month after service on him of the application. The application initiating the proceedings and the defence may be supplemented by a reply from the applicant and by a rejoinder from the defendant.

As soon as the application has been lodged, the President of the Court appoints the Judge-Rapporteur; the First Advocate General assigns the case to an Advocate General.

At the end of the written proceedings the Judge-Rapporteur submits a preliminary report to the general meeting of the Court. He outlines the substance of the case, including proposals regarding a possible preparatory inquiry, the formation to which the case should be assigned, the need for a hearing or indeed the possibility of dispensing with an Opinion of the Advocate General.

The Court decides, after hearing the Advocate General, what action to take upon the recommendations of the Judge-Rapporteur and refers the case to the appropriate formation of the Court.

The Court may decide to open a preparatory inquiry and the formation determining the case may, if it does not undertake it itself, assign it to the Judge-Rapporteur.

The inquiry proceedings require the personal appearance of the parties, a request for information and production of documents, witness testimony, the commissioning of an expert's report and inspection of the matter or place in question (Article 45(2) of the Rules of Procedure).

Where the oral procedure is opened without an inquiry, the President of the formation determining the case fixes the opening date. The Judge-Rapporteur sums up, in a report at the hearing, the facts of the case and the arguments put forward by the parties, and if appropriate those of the interveners. This report is made public in the language of the case at the time of the hearing.

Under certain conditions, if none of the parties lodges an application indicating why he hopes to be heard, the Court may decide not to proceed to the oral stage (Article 44a of the Rules of Procedure).

The oral procedure consists of the hearing by the Court of agents, advisers and lawyers and of the submissions of the Advocate General as well as the hearing, if any, of witnesses and experts. Where it considers that the case raises no new point of law, the Court may decide, after hearing the Advocate General, that the case shall be determined without a submission from the Advocate General (final paragraph of Article 20 of the Statute of the Court).

The hearing in court is public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons. The President directs the proceedings and is responsible for the proper conduct of the hearing. Pleadings are lodged in the language of the case, with simultaneous interpretation.

During the hearing, the representatives of the parties are only assigned a limited amount of time in which to state their case. Questions may be raised by the Judges and the Advocate General.

The Advocate General delivers his opinion at a special hearing, generally restricting himself to reading the proposals reached at the end on his reasoning, on the understanding that the Judges may consult the full text.

Following the opinion of the Advocate General, the President declares the oral procedure closed. The Registrar draws up minutes of every hearing.

The Court may after hearing the Advocate General order the reopening of the oral procedure (Article 61 of the Rules of Procedure). The conditions for reopening are linked to the existence of new elements.

Once the oral procedure is closed, the case is adjourned for deliberations. The deliberations of the Court are and remain secret.

The Court gives its decision in the form of a judgment. The reasons for the judgment are stated and the judgment is signed by the President, the Judges who took part in the deliberations and the Registrar. The judgment is delivered in public, once the parties have been summoned. It enters into force on the same day it is pronounced.

In certain cases (where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible), the Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action (Article 92(1) of the Rules of Procedure).

The conclusions reached by the majority of the Judges determine the decision of the Court and any divergent views are not reported.

Judgments and the Opinions of the Advocate Generals are published in *Reports of Cases before the Court of Justice and the Court of First Instance* (only selected items have been published since 1 May 2004). Furthermore, the judgments and conclusions are available, as they stood at the time of the verdict, on the Court's website: http://curia.europa.eu/jcms/jcms/Jo1_6308/.

The judgments and rulings which are not published in *Reports of Cases* may be consulted on the Court's website in the language of the case and the language of deliberation (generally French).

Expedited procedure

Under Article 62a of the Rules of Procedure of the Court (which came into force on 1 February 2001): 'On application by the applicant or the defendant, the President may *exceptionally* decide, on the basis of a recommendation by the Judge-Rapporteur and after hearing the other party and the Advocate General, that a case is to be determined pursuant to an expedited procedure derogating from the provisions of these Rules, where *the particular urgency of the case* requires the Court to give its ruling with the minimum of delay' [our italics]. The request must be made by a separate document lodged at the same time as the initial application initiating the proceedings or the defence.

Once it has been decided to adjudicate under an expedited procedure, the President fixes a date for the hearing, which is immediately communicated to the parties. A reply and a rejoinder may only be submitted if the President considers this necessary. The parties may supplement their arguments and offer further evidence in the course of the oral procedure.

The Court gives a decision, after 'hearing' the Advocate General (the Advocate General does not submit his Opinion but is heard in closed session by the formation determining the case, and may submit his conclusions in writing).

This procedure has only been applied on a very few occasions, once as part of an action for annulment (judgment of 13 July 2004, *Commission v Council (Stability and Growth Pact)*, C-27/04, ECR I-6649) and once in an appeal procedure (judgment of 24 July 2003, *Commission v Artegodan and Others*, C-39/03 P, ECR I-7885).

Preliminary rulings

The procedure for preliminary rulings includes some unusual features, mainly because it is a non-contentious procedure. It is an instrument of cooperation between national courts and the Court of Justice, its aim being to achieve uniform interpretation of Community law in all Member States. It is characterised by 'the absence of parties, in the proper sense of the word' (judgment of 27 March 1963, *Da Costa en Schaake*, joined cases 28 to 30-62, ECR 31).

Furthermore, in recent years, given the constant increase in the number of references for preliminary rulings

and the considerable increase in the length of proceedings, the Court has changed its Rules of Procedure several times in order to address such litigation more swiftly and efficiently. In particular, the changes allow the preliminary procedure to be adapted to suit the complexity and urgency of a case. At present, four types of procedure may be used for preliminary rulings.

The ordinary preliminary ruling procedure

As set forth in Article 23 of the Statute of the Court, the decision of the court or tribunal of a Member State which suspends its proceedings and refers to the Court questions related to the interpretation or the validity of a provision of Community law is notified to the Court by the court or tribunal making the reference. The decision, after being translated into all the official languages of the Union (if the decision is too long, translation may be restricted to just a summary of the decision, cf. Article 104(1) of the Rules of Procedure), is then notified by the Registrar of the Court to the parties before the judge, to the Member States and to the Commission, as well as to the Council and/or the European Parliament, or to the European Central Bank, if the act the validity or interpretation of which is in dispute originates from one of these institutions. A notice is published in the *OJEU*, indicating in particular the parties involved and the content of the questions.

The reference for a preliminary ruling is also notified to the States, other than the Member States, which are parties to the Agreement on the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement, and sometimes to third States (Article 23(3) and (4) of the Statute of the Court).

Within two months of this notification, the parties in the case, the Member States, the Community institutions and the other parties concerned by Article 23 of the Statute are entitled to submit written observations to the Court. Such submissions are translated into the language of the case and into French, the working language of the Court, and notified to all those to whom the notification of the decision making the reference was addressed.

The preliminary ruling procedure also includes an oral stage. However, as for direct appeals, the Court may dispense with a hearing, if none of the parties lodges an application indicating in his written observations the reasons for which he wishes to be heard (Article 104(4) of the Rules of Procedure). Similarly the general meeting of the Court may decide that the case shall be determined without conclusions.

In addition, the Court may request clarification from the national court once the Advocate General has been heard (Article 104(5) of the Rules of Procedure). It may also ask the parties in the case, the States and the institutions to answer written questions or supply information.

The national court in question is notified of the Court’s judgment by the Registrar.

It should be noted that, for preliminary rulings, the Court does not rule on costs. It is up to the national court to decide as to the costs, as provided for by national law (first subparagraph of Article 104(6) of the Rules of Procedure). However, Community institutions and States which have lodged written and/or oral observations always bear their own costs.

The simplified preliminary ruling procedure (or decision by reasoned order)

Article 104(3) of the Rules of Procedure provides for a simplified preliminary ruling procedure (or decision by reasoned order). This provision was introduced in 1991 and first applied in 1998. The current version, which has been in force since 1 October 2005, provides that:

‘Where a question referred to the Court for a preliminary ruling is identical to a question on which the Court has already ruled, or where the answer to such a question may be clearly deduced from existing case-law, the Court may, after hearing the Advocate General, at any time give its decision by reasoned order in which

reference is made to its previous judgment or to the relevant case-law.'

The Court may also give its decision by reasoned order, after informing the court or tribunal which referred the question to it, hearing any observations submitted by the interested parties and after hearing the Advocate General, 'where the answer to the question referred to the Court for a preliminary ruling admits of no reasonable doubt'.

With the simplified procedure there is generally no hearing, nor does the Advocate General present his Opinion; there is simply the written phase provided for in Article 23 of the Statute of the Court (translation of the decision making the reference and notification of interested parties). The Court uses this simplified procedure quite frequently.

The Court may also give its decision by reasoned order, pursuant to Articles 92(1) and 103(1) of the Rules of Procedure, where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible.

The expedited preliminary ruling procedure

Provision has also been made for an expedited procedure for preliminary rulings. It is governed by Article 104a, which was added to the Rules of Procedure and came into effect on 1 July 2000:

'At the request of the national court, the President may *exceptionally* decide, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, to apply an accelerated procedure derogating from the provisions of these Rules to a reference for a preliminary ruling, where the circumstances referred to establish that a ruling on the question put to the Court is a matter of *exceptional urgency*.' [Our italics.]

In this case the President immediately fixes the date for the hearing, which is notified to the parties in the case and to the other interested parties when the decision making the reference is served.

The President sets a time limit (no less than 15 days) for statements of case or written observations to be lodged. The President may also request the parties and other interested persons to restrict their observations to the essential points of law raised by the question referred.

In all cases there is a hearing. The Court makes its ruling after 'hearing' the Advocate General. For the first case in which the expedited procedure for a preliminary ruling was used, see the judgment of 12 July 2001, *Jippes and Others*, C-189/01, ECR I-5689; for the two most recent cases, see the judgments of 17 July 2008, *Kozłowski*, C-66/08, ECR I-6041, and of 25 July 2008, *Metock and Others*, C-127/08, ECR I-6241.

It should be noted that the expedited procedure for preliminary rulings comprises the same steps as the standard procedure and that it is only used in exceptional cases. In addition to the shorter time limit imposed on the parties, the proceedings are streamlined by giving priority over other pending cases, at every stage of the process, to the reference for a preliminary ruling in question.

The urgent preliminary ruling procedure

A recent change in the Rules of Procedure, which came into force on 1 March 2008 (Article 104b), provides for an urgent procedure for references for preliminary rulings which raise one or more questions in the areas covered by Title VI of the EU Treaty (police and judicial cooperation in criminal matters) or Title IV of Part Three of the EC Treaty (visas, asylum, immigration and other policies relating to the free movement of persons, including judicial cooperation in civil matters).

The urgent procedure is restricted to sensitive matters, and more specifically to references for a preliminary ruling which require a swift response from the Court due to the urgency of settling the case before the

national court (for example, cases of kidnapping of minors or of people in detention). It differs from the expedited procedure in that it is designed not only to speed up the procedure, but above all to limit the steps involved and to reduce the number of participants.

In principle, this procedure is used at the request of the national court or tribunal or, exceptionally, of the Court's own motion. The national court or tribunal must set out not only the matters of fact and law which establish the urgency but must also, in so far as possible, indicate the answer it proposes to the questions referred.

Contrary to the rules applicable to the normal procedure, the decision by the national court to apply to the Court and the decision as to whether or not to deal with the reference for a preliminary ruling under the urgent procedure are not notified to all the Member States, but only to the one from which the reference is made, to the parties in the case and to the Commission, and if appropriate to the Council and the European Parliament, if one of their acts is at issue. Only the agents mentioned above are authorised to lodge written observations, with a short time limit (generally no less than 10 working days) fixed by the Chamber (urgent references for a preliminary ruling are heard by Chambers of five judges, specially appointed for this purpose for a one-year period).

Although the other Member States cannot take part in the written procedure, they are kept informed of its progress. The reference for a preliminary ruling under the urgent procedure is communicated to them immediately and subsequently notified, accompanied by a translation, where appropriate in summary form. Written observations are also communicated to them. This information enables them to prepare their participation in the hearing, if necessary.

To achieve the necessary gain in time, most of the procedural documents are transmitted by electronic means (Article 104b(6) of the Rules of Procedure).

For urgent cases the written procedure is substantially reduced in comparison with the normal procedure, but 'in cases of extreme urgency' the Chamber may decide to omit the written part of the procedure (Article 104b(4) of the Rules of Procedure).

A hearing is always held. The designated Chamber rules after 'hearing' the Advocate General (whose position may be expressed in writing, in which case it is published in the *Reports of Cases*). For the first cases of reference for a preliminary ruling under the urgent procedure, see the judgments of 11 July 2008, *Rinau*, C-195/08 PPU, ECR I-5271, of 12 August 2008, *Santesteban Goicoechea*, C-296/08 PPU, ECR I-6307, and of 1 December 2008, *Leymann and Pustovarov*, C-388/08 PPU (*not yet published*).

Appeals

The procedure for appeals against the decisions of the Court of First Instance is governed by Articles 56 to 61 of the Statute of the Court and by Articles 110 to 123 of the Rules of Procedure of the Court. The procedure differs in several respects from the direct action procedure.

An appeal is made by lodging an application at the Registry of the Court of Justice or of the Court of First Instance, within two months of notification of the relevant decision. Applications lodged at the Registry of the Court of First Instance are transmitted to the Court of Justice, with the papers in the case at first instance.

Any party to the proceedings before the Court of First Instance may lodge a response within two months after service on him of notice of the appeal.

There is no established right of reply and rejoinder. A reply may only be filed with the express authorisation of the President of the Court, on application made by the appellant. If a reply is authorised, the appellant may submit a rejoinder (Article 117(1) of the Rules of Procedure; for a cross-appeal, see Article 117(2)).

Where the appeal is, in whole or in part, 'clearly inadmissible or clearly unfounded', the Court may by

reasoned order dismiss the appeal in whole or in part (Article 119 of the Rules of Procedure).

The Court may decide to dispense with the oral part of the procedure unless one of the parties submits an application setting out the reasons for which he wishes to be heard (Article 120 of the Rules of Procedure).

Pursuant to Article 62a of the Rules of Procedure, an application for an expedited procedure may be lodged in the case of an appeal (for its first application, see the judgment of 24 July 2003, *Commission v Artegodan and Others*, C-39/03 P, ECR I-7885).

The Court may find the appeal well founded or unfounded. If the appeal is well founded, the Court of Justice quashes the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment (Article 61 of the Statute of the Court).

Proceedings before the Court of First Instance

Pursuant to Article 53 of the Statute of the Court, proceedings before the Court of First Instance are governed by Title III of the Statute (relating to Procedure), with 'further and more detailed provisions as may be necessary' set forth in its Rules of Procedure.

Proceedings before the Court of First Instance are similar to those before the Court of Justice, but with certain particularities, due to the nature of the disputes heard by this Court, which involve greater factual complexity than those that fall within the remit of the Court of Justice.

Measures of organisation governing proceedings

One of the particular features of proceedings before the Court of First Instance is its measures of organisation. Much as the Court, it may adopt measures of inquiry (detailed in Article 65 of its Rules of Procedure), but it may also adopt, at any stage of the procedure, 'measures of organisation of procedure' (not expressly provided for in the Rules of Procedure of the Court of Justice).

The purpose of such measures is 'to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions', and in particular to: ensure efficient conduct of the written and oral procedure and facilitate the taking of evidence; determine the points on which the parties must present further argument or which call for measures of inquiry; clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them; and facilitate the amicable settlement of proceedings (Article 64(1) and (2) of the Rules of Procedure).

In particular such measures may consist of: putting questions to the parties; inviting the parties to make written or oral submissions on certain aspects of the proceedings; asking the parties or third parties for information or particulars; asking for documents or any papers relating to the case to be produced; and summoning the parties' agents or the parties in person to meetings (Article 64(3) of the Rules of Procedure).

The Court of First Instance often adopts measures of organisation of procedure.

Replies and rejoinders

The Court of First Instance may decide that it is not necessary to file replies and rejoinders because the documents before it are sufficiently comprehensive to enable the parties to elaborate their pleas and arguments in the course of the oral procedure. However, the Court of First Instance may authorise the parties to supplement the documents if the applicant presents a reasoned request to that effect within two weeks from the notification of that decision (Article 47(1) of the Rules of Procedure). It should be noted that, before the Court of Justice, parties can always file replies and rejoinders, except for an appeal.

Similarly, in proceedings related to intellectual property rights, interveners must lodge a reasoned

application to the President for express authorisation to submit replies and rejoinders (Article 135(2) of the Rules of Procedure).

In the case of an appeal against the decisions of the Civil Service Tribunal, proceedings before the Court of First Instance (basically identical to appeal proceedings before the Court of Justice against a decision of the Court of First Instance) only consist of a single exchange of responses, unless the President decides otherwise at the request of the appellant (Article 143(1) of the Rules of Procedure).

The oral procedure

The oral procedure is particularly important before the Court of First Instance. During hearings, pleadings are fairly brief, followed by very precise questions raised by the judges. In some cases the Court may consider it preferable to start oral proceedings with the bench questioning the representatives of the parties.

Under the Rules of Procedure, the Court of First Instance may not rule on an action without an oral procedure, except in cases related to intellectual property (Article 135a of the Rules of Procedure in force since 1 September 2008) or in appeal proceedings (Article 146 of the Rules of Procedure), unless one of the parties submits an application setting out the reasons for which he wishes to be heard.

But, in the same way as the Court of Justice, the Court of First Instance may, without taking further steps in the proceedings, give a decision on the action, by reasoned order, where it is clear that the Court has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or 'manifestly lacking any foundation in law' (Article 111 of the Rules of Procedure).

Expedited procedures

Since 1 February 2001, in the same way as the Court of Justice, the Court of First Instance may, on application by one of the parties, decide to adjudicate under an expedited procedure, 'having regard to the particular urgency and the circumstances of the case' (Article 76a of the Rules of Procedure).

If the Court allows the application, written proceedings usually consist of the application and the lodging of the defence. A second exchange of pleadings is only possible 'if the Court of First Instance, by way of measures of organisation of procedure adopted in accordance with Article 64, so allows' (second subparagraph of Article 76a(2) of the Rules of Procedure).

Cases on which the Court of First Instance has decided to adjudicate under an expedited procedure are given priority (Article 76a(1) of the Rules of Procedure).

The Court of First Instance uses an expedited procedure much more often than the Court of Justice, in particular in disputes on concentrations between undertakings, but also in other fields (see the judgment of 4 December 2008, *People's Mojahedin Organisation of Iran v Council*, T-284/08, with a view to combating terrorism).

Cases referred back to the Court of First Instance after being set aside by the Court

The procedure for these sensitive cases is covered by Articles 117 to 121 of the Rules of Procedure.

Where the Court of Justice sets aside a decision of the Court of First Instance and refers the case back to that Court, the latter is seised of the case by the judgment so referring it.

There are three options for a case referred back to the Court of First Instance. Where the Court of Justice sets aside a decision of a Chamber, the President of the Court of First Instance may assign the case to another Chamber composed of the same number of Judges. If the decision was delivered by the Court of First Instance sitting in plenary session or by the Grand Chamber, the case is assigned to that Court or that Chamber as the case may be. Lastly, where the Court of Justice sets aside a decision delivered by a single

Judge, the President of the Court of First Instance assigns the case to a Chamber composed of three Judges of which that Judge is not a member (Article 118 of the Rules of Procedure).

Furthermore, if, when the judgment referring the case back to the Court of First Instance is delivered, the written procedure before the Court of First Instance has been completed, the procedure comprises a simpler written stage, consisting of an exchange of 'statements of written observations' between parties. If on the other hand the written procedure has not been completed, the procedure resumes at the stage which it had reached, by means of measures of organisation of procedure adopted by the Court of First Instance (Article 119 of the Rules of Procedure).

Regarding costs, it should be noted that the Court of First Instance decides on the costs relating to the proceedings instituted before it and to the proceedings on the appeal before the Court of Justice (Article 121 of the Rules of Procedure).

Appeals

The Court of First Instance is competent to hear appeals lodged against decisions by the Civil Service Tribunal following the procedure set forth in Articles 9 to 13 of Annex I of the Statute of the Court of Justice, and in greater detail in Articles 137 to 149 of the Rules of Procedure of the Court of First Instance.

An ad hoc chamber is appointed to hear appeals, consisting of three judges, namely the President of the Court of First Instance and, on a rota system, two Presidents of Chamber, with the possibility of referring the case to a larger formation comprising five judges.

Proceedings before the Civil Service Tribunal

The procedure before the Civil Service Tribunal is in its main points the same as that before the other Community courts, as it is also governed by Title III of the Statute of the Court of Justice (except for the provisions for preliminary rulings). However, the Civil Service Tribunal has made some changes to its Rules of Procedure to speed up and render more flexible its handling of the disputes falling within its competence.

The main changes, set forth in the Council decision establishing the Civil Service Tribunal (Article 7(3) to (5) of Annex I of the Statute of the Court of Justice), concern more streamlined proceedings, and the amicable settlement of disputes and costs.

Streamlined proceedings

In cases heard by the Civil Service Tribunal the written procedure is, in principle, restricted to only one exchange of written pleadings (presentation of the application and statement of defence), unless the Tribunal decides, of its own motion or at the request of the applicant, that a second exchange of pleadings is needed (Article 41 of the Rules of Procedure of the Civil Service Tribunal).

An oral hearing is normally held. However, 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 (Article 48 of the Rules of Procedure of the Civil Service Tribunal).

The ordinary procedure is fairly short and straightforward so the Civil Service Tribunal has not provided for an expedited procedure, as provided for in Article 62a of the Rules of Procedure of the Court of Justice and Article 76a of the Rules of Procedure of the Court of First Instance.

Amicable settlement of disputes

The Civil Service Tribunal may 'at all stages of the procedure, including the time when the application is filed' examine the possibility of an amicable settlement of the dispute and adopt appropriate measures with a view to facilitating such settlement (Article 7(4) of Annex I of the Statute of the Court of Justice and

Article 68 of the Rules of Procedure of the Civil Service Tribunal).

The formation to which the case has been assigned may decide to seek the amicable settlement of a dispute and instruct the Judge-Rapporteur to take the necessary measures.

Where the parties come to an agreement putting an end to the dispute, this may be recorded in minutes signed by the President or the Judge-Rapporteur and by the Registrar. This document constitutes an official record. The case is then removed from the register by reasoned order of the President of the formation of the Court, with reference to the agreement between the two parties (Article 69(1) of the Rules of Procedure of the Civil Service Tribunal).

Obviously the parties may reach an agreement settling the dispute out of court, in which case, much as for proceedings before the Court of Justice and the Court of First Instance, the President orders the case to be removed from the register (Article 69(2) of the Rules of Procedure of the Civil Service Tribunal).

Costs

The Council decision establishing the Civil Service Tribunal stipulates that, for this court and subject to the specific provisions of its Rules of Procedure, 'the unsuccessful party shall be ordered to pay the costs should the court so decide' (Article 7(5) of Annex I of the Statute of the Court of Justice). This rule is confirmed by Article 87(1) of the Rules of Procedure of the Civil Service Tribunal.

This brings the rules on costs in civil service disputes into line with the general 'loser pays' rule, which applies to all disputes heard by Community courts. It should be noted that under the Rules of Procedure of the Court of Justice and of the Court of First Instance civil servants enjoyed more favourable conditions. Even if their plea was unsuccessful they only had to pay their own costs in the first instance (apart from exceptional cases), defendant institutions being in principle required to pay their own costs.

Furthermore, there are exceptions to the 'loser pays' rule. '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 87(2) of the Rules of Procedure of the Civil Service Tribunal).

The organisation of relations between Community courts

The Community judicial system, which shares out competence between three courts — the Court of Justice, the Court of First Instance and the Civil Service Tribunal — required rules to be established, on the one hand to correct mistakes in the lodging of applications or the submission of pleadings, and on the other to enable one or other of the courts to suspend proceedings in the event of a connection between two cases, or if appropriate to decline jurisdiction.

Transmission of cases in the event of mistakes and referrals

The first and second subparagraphs of Article 54 of the Statute of the Court of Justice stipulate:

'Where an application or other procedural document addressed to the Court of First Instance is lodged by mistake with the Registrar of the Court of Justice, it shall be transmitted immediately by that Registrar to the Registrar of the Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.'

Article 8(1) and (2) of Annex I of the Statute of the Court of Justice sets forth the same rules for the transmission and referral of cases from the Civil Service Tribunal to the Court of First Instance or the Court of Justice, and vice versa.

Stay of proceedings — Declining of jurisdiction

The third and fourth subparagraphs of Article 54 of the Statute of the Court of Justice stipulate:

‘Where the Court of Justice and the Court of First Instance are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the Court of First Instance may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment or, where the action is one brought pursuant to Article 230 of the EC Treaty or pursuant to Article 146 of the EAEC Treaty, may decline jurisdiction so as to allow the Court of Justice to rule on such actions. In the same circumstances, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the Court of First Instance shall continue.

Where a Member State and an institution of the Communities are challenging the same act, the Court of First Instance shall decline jurisdiction so that the Court of Justice may rule on those applications.’

For details of how this provision works, see Article 82a of the Rules of Procedure of the Court of Justice and Articles 77 to 80 of the Rules of Procedure of the Court of First Instance.

For the rules on staying proceedings and declining jurisdiction in the Civil Service Tribunal, see Article 8(3) of Annex I of the Statute of the Court of Justice:

‘Where the Civil Service Tribunal and the Court of First Instance are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, the Civil Service Tribunal, after hearing the parties, may stay the proceedings until the judgment of the Court of First Instance has been delivered.

Where the Civil Service Tribunal and the Court of First Instance are seised of cases in which the same relief is sought, the Civil Service Tribunal shall decline jurisdiction so that the Court of First Instance may act on those cases.’

For details of how this provision is implemented, see Articles 71 to 73 of the Rules of Procedure of the Civil Service Tribunal.