



(this flyer was published before EPSU CJ was established)

30 December 2003

## With the creation of a European Civil Service Tribunal: Officials and Companies will finally be equal!

The Commission has anticipated the entry into force of the Treaty of Nice, by submitting to the Council a proposal for a decision setting up a *European Civil Service Tribunal*.

The Commission based this proposal on the future Article 225a TEC (later to become Article 257 TFEU), but omitted to *consult* the organisations representing the staff beforehand. Only after sending it to the Council and in response to furious protests by the organisations representing the staff did it concede, on 17 December 2003, a consultation on an *administrative* level.

### All the rights under the Staff Regulations are in the firing line

While the creation of a court exclusively devoted to disputes affecting the European civil service is, in itself, justified, it has offered an opportunity to restrict the *right of access to justice* by introducing obstacles of a financial nature.

By replacing the rule applicable to legal proceedings introduced by officials, according to which "*in proceedings between the Communities and their servants the institutions shall bear their own costs*", by the general rule under which "*the unsuccessful party shall be ordered to pay the costs*", it is treating the members of staff of the institutions in the same way as a company, when it comes to settling the legal costs!

This type of rule had been used until now *in the Rules of Procedure* of the Court of Justice and the Court of First Instance respectively. However, the Commission is attempting to settle this "sensitive" point quickly at the political level, in the actual *Decision* establishing the Civil Service Tribunal.

### Neoliberal arguments

To justify its actions, the Commission is using the entire neoliberal ideological armoury:

- the fees of the lawyer representing the institution are a burden on the *budget* of the Communities, even if the applicant loses his/her case;
- "this exceptional arrangement, *introduced in the 'fifties*, seems difficult to justify"; this "anomalous privilege" is said to be outdated and obsolete;
- other parties involved in disputes with regard to patents or trademarks (which, of course, are companies) are said to receive "*unequal treatment*" in comparison with officials, whom the Commission also stigmatises from the *moral* viewpoint: "people do not take responsibility for their own actions".

### The Commission must accept its political responsibilities

It is incomprehensible that the Commission is embarking on adventures which are disrupting the social dialogue and jeopardising peaceful labour relations which took so much effort to achieve. This is not a

demand about money; it relates to the *right of access to justice*. And before the law, equality between the parties cannot be fictitious; that is why specific arrangements were introduced concerning the costs of proceedings, to make up for, albeit only partly, the inequality that exists *de facto* between parties subject to the jurisdiction of the courts.

### **Reducing the volume of complaints and the cost of administration of justice?**

- **Yes**, by setting up or by strengthening, where they already exist:
  - effective mediation for the early settlement of conflicts;
  - a simple, fast procedure seeking a settlement before proceedings are brought.
- **No**, if it means exercise of the right of access to justice being prevented by prohibitive cost; it is the weakest and most vulnerable, *not the least "responsible"*, who will be affected by this deterrent measure.

The Commission pointed out that on the basis of the principle of "equality" between workers and companies, the costs payable would be the *actual* costs generated by each case. This depends on the situation prevailing at the time, i.e. the workload of the Legal Service, which will decide whether or not to hire a lawyer: yet another element of "equality", this time between applicant officials.

Respect for all the rights provided for in the Staff Regulations is not possible without the guarantee of the right of access to justice. In whose interest would it be if the labour relations climate were to deteriorate?