The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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RENOUVEAU DEMOCRATIE CONSEIL

Edito

Dear readers,

We are delighted to start with you a new academic year, and this September is rich in legal news! On this occasion, it is relevant to recall key principles regarding family allowances and the rule of non-cumulation with other allowances. We also propose to comment on an interesting judgment of the EU General Court about the notion of occupational disease.

As regards private life, we propose a short overview of the new Belgian law that clarifies certain aspects of the General Regulation on Data Protection adopted at European level.

We wish you a very pleasant reading,

The DALDEWOLF team

Focus

Family allowances under the Staff Regulations and allowances "of like nature paid from other sources": distinguishing criterion

Pursuant to Article 67(1) of the Staff Regulations, the concept of «family allowances" comprises three different types of benefits: (i) the household allowance, (ii) the dependent child allowance and (iii) the education allowance. The granting of each of these allowances is made conditional upon a number of conditions, set out in Articles 1 to 3 of Annex VII to the Statute.

In its second paragraph, Article 67 moreover provides for a rule against overlapping, which reads: "officials in receipt of family allowances specified in this Article shall declare allowances *of like nature* paid from other sources". This rule intends to prevent a couple from receiving family allowances twice in respect of the same children (CJEU, 13 October 1977, *Deboeck v Commission*, C-106/76, § 16).

Pursuant to constant case law, the decisive criterion in classifying allowances as "of like nature" is the "*aim* pursued by the allowances in question" (CST, 13 February 2007, *Guarneri v Commission*, F 62/06, § 42). Hence, this requires to compare both types of perceived benefits in order to determine whether they have the same purpose or a similar one.

If this is the case, the rule against overlapping will apply, meaning the benefits from another source will be deducted from the allowances under the Staff Regulations. By way of illustration, it follows from the case law that the education allowance under the Staff Regulations and national scholarships are «of like nature» within the meaning of the rule against overlapping (CST, 5 June 2012, *Giannakouris v Commission*, F-83/10, § 32). The same applies to disability assistance payments from a fund, which have a similar aim to the double dependent child allowance under the Staff Regulations (EU General Court, 25 January 2006, *Weißenfels v Parliament*, T-33/04, § 54).

If the benefits in question are not «of like nature» with respect to the aim they each pursue, there is no need to proceed with the deduction provided for in Article 67(2) of the Staff Regulations. For example, in the case *Pavan v Parliament*, the General Court found that the household allowance under the Staff Regulations and the household grant paid from another source did not pursue the same aim (EU General Court of 11 June 1996, T-147/95, § 44 and 46). Therefore, the latter could not be considered «of like nature» within the meaning of the rule against overlapping.

In any case, it is for the administration of the European Union rather than the national administrations to determine whether or not the allowances declared by officials are of like nature (EU General Court, 6 March 1996, *Schelbeck v Parliament*, T-141/95, § 39).

Case law

Recognition of the occupational origin of the invalidity and concept of occupational disease
Case supported by R&D

By its judgment of 12 July 2018, the EU General Court annulled the decision of the Council refusing to recognise the applicant's invalidity as arising from an occupational disease within the meaning of Article 78(5) of the Staff Regulations (*RI v. Council, case T-9/17*). The applicant suffers from Carpal Tunnel Syndrome, complicated by algoneurodystrophy.

Along with the recognition of the occupational disease under Article 73 of the Staff Regulations, the Appointing Authority concluded that the applicant had a total permanent invalidity preventing her from performing her duties within the meaning of Article 78. However, the Appointing Authority refused to recognise the occupational origin of the invalidity. This decision was disputed by the applicant, with support of 'Renouveau & Démocratie' staff union.

Since the Appointing Authority established that the applicant was suffering from total permanent invalidity and confirmed the applicant's retirement on that account, the main question raised in this judgment is not so much the existence of the invalidity - which is acknowledged - but the occupational origin of the invalidity.

Firstly, the General Court recalls its well-established case law regarding the differences between Articles 73 and 78 of the Staff Regulations as regards the permanent invalidity scheme. Pursuant to such case-law, recognition of the occupational origin of the disease under Article 73 does not automatically imply recognition of the occupational origin of the invalidity of the official in question (see the judgment of the General Court of 27 June 2000, *Plug v Commission*, T 47/97, point 74, and the judgment of the Civil Service Tribunal of 14 September 2011, *Hecq v Commission*, F 47/10, point 74). It further states that although neither of these two provisions define the concept of "occupational disease", and in spite of the peculiarities of each scheme, such concept must be defined and understood in the same manner. Consequently, and pursuant to Article 3(1) of the Common Rules, a disease is deemed an "occupational disease" where it is contained in the European schedule of occupational diseases. If this is the case, the official in question must then prove that he was exposed, in the course of his duties, to the risk of contracting that disease.

Subsequently, the judges start to examine whether the Invalidity Committee relied on a misinterpretation of the concept of an occupational disease. In that regard, the Committee had concluded that the Carpal Tunnel Syndrome affecting the applicant cannot be recognized as an occupational disease under Article 78(5). However, before reaching this conclusion, the Invalidity Committee (i) did not take into account the fact that this disease is contained in the European schedule of occupational diseases, and (ii) did not consider whether the applicant had been exposed - even potentially - in the course of her duties, to the risk of contracting that disease. For these reasons, the General Court considers that the Invalidity Committee failed to respect the scope of the statutory provisions and thus relied on a misinterpretation of the concept of an occupational disease.

The Committee's failure especially had an impact on the assessment of the existence of algoneurodystrophy on the part of the applicant, as the Invalidity Committee refrained from considering whether the algoneurodystrophy had developed following the treatment of the Carpal Tunnel Syndrome.

Lastly, the judges also welcome the applicant's second plea, alleging a failure to fulfil the obligation to provide a statement of reasons. They consider that the Invalidity Committee insufficiently stated the reasons for its opinions in the case at hand, as it did not sufficiently elaborate on what grounds it proposed to differ from the opinion of the Medical Committee to which reference has been made under Article 73 and which recognised the occupational nature of the applicant's disease.

Therefore, and in light of all the above circumstances, the General Court annulled the contested decision.

Day to Day in Belgium

Protection of personal data: Implementation of the GDPR in Belgium

On 5 September, the law of 30 July 2018 on the protection of individuals with regard to the processing of personal data was published in the *Moniteur belge*. This law repeals the law of 8 December 1992 and implements the General Data Protection Regulation (hereinafter «GDPR»), which entered into force on 25 May 2018.

Although the GDPR is directly applicable and does not in this sense require any transposition into national legal orders, this does not however prevent Member States from laying down further specific provisions, by means of implementing measures - as Belgium did.

Besides the impact of the GDPR on private companies, that same regulation has also brought about quite a revolution for European individuals - and Internet users - falling under the scope of the regulation, which is particularly wide. Without going into detail on the various amendments introduced by the GDPR, we take a brief look at several specific provisions introduced in the Belgian law.

Article 7 of the Belgian law clarifies a point with respect to the processing of personal data where the data subject is a child. According to this provision, below 13 years of age - i.e. the threshold of the "digital majority" for information society services - the processing requires the consent of the child's «legal representative», usually a parent.

Article 8 of the law provides some exceptions to the general prohibition for the processing of special categories of personal data which are particularly sensitive. It lists various cases in which the processing is necessary for reasons pertaining to an essential public interest.

Article 9 further provides for a set of additional guarantees relating to the processing of genetic, biometric or data concerning health, including the different categories of persons who can access this type of data.

Article 10 still lists the categories of persons (for example, lawyers) who may, by way of exception, process personal data relating to criminal convictions and offenses or related security measures.

Finally, Articles 11 to 17 concern restrictions to the rights of individuals, notably in the case of a criminal investigation.

This is only a glimpse of several specific provisions introduced in Belgian law, which altogether accounts for more than 280 provisions!

Our team

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