The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF Contact theofficial@daldewolf.com - Web www.daldewolf.com - Month june 2016

RENOUVEAU DEMOCRATIE CONSEIL

Edito

Dear readers,

This new issue of The Offici@l is the occasion to examine the last news regarding the abolition of the EU Civil Service Tribunal and the recent clarifications regarding the obligation of the Administration to state reasons in social security matters made by the Civil Service Tribunal. Regarding private life, we will focus on the legal rules applicable to mobile telephone relay antennas.
Finally, we kindly invite you to attend our major conference regarding the Brexit's consequences on the British nationals working as agents and officials of the EU Institutions, which will take place at the Council of the European Union on September 15th, 2016.

We wish you very nice holidays,

DALDEWOLF team

En brief...

Dissolution of the CST: preservation of the amicable settlement procedure

The regulation on the transfer of jurisdiction at first instance to the General Court in disputes between the EU and its servants has been adopted by the European Parliament on June 9th 2016. The regulation will probably be adopted shortly by the EU Council, since a provisional agreement has already been between Parliament and Council on final act. The regulation will apply from September 1st, 2016.

The discussions between the EP and the Council involved especially the introduction of a new article in the Statute of the Court which would enable the General Court to examine, at all stages of the procedure, the possibilities of amicable settlement of disputes between EU officials or agents and the Institutions.

To date, the General Court's rules of procedure do not expressly mention the amicable settlement option, contrary to the procedural rules of the CST. Fortunately, this practice will be integrated (for the Civil service dispute only).

Focus / Case-law

Obligation of the Administration to state reasons in social security matters

EU officials and other agents are covered against the risk of sickness under article 72 of the Staff Regulations, as well as against the risk of accident and of occupational disease, pursuant to article 73 of the Staff Regulations.

It should be recalled that pursuant to article 72, the standard reimbursement rate is 80%. This rate is increased to 85 % for certain services such as consultations and visits, surgical operations, or hospitalization, and in case of serious illness, it is increased to 100%. Nonetheless, expenses relating to treatments considered to be non-functional or unnecessary are not reimbursed, even in case of serious illness. The body in charge of handling the reimbursement of medical expenses is the settlements office of the Joint Sickness Insurance Scheme of the institutions of the European Union ('JSIS'), after consulting the medical officer and/or the Medical Council. In the event of a complaint, the Appointing Authority shall ask the opinion of the Management Committee of the JSIS.

In case of a disagreement concerning a refusal of reimbursement of medical expenses, the Institution concerned shall prove that the medical officer or the Medical Council have conducted a specific and thorough examination of the situation presented to it, in conformity with the duty of care owed by the administration to its civil servants.

Regarding, firstly, serious illness, in the event of a refusal to extend the sickness cover and to apply a 100% reimbursement rate of medical expenses linked to the sickness, the decision shall lay out in a clear and understandable manner the assessment and the analysis of the four criteria used to determine the existence of a serious illness, i.e. shortened life expectancy, illness which is likely to be drawn-out, the need for aggressive diagnostic and/or therapeutic procedures, and the presence or risk of a serious handicap. In addition, the opinions which underpin the decision ought to have been adopted on the basis of a specific and thorough examination of the state of health of the person concerned and taking into account in a comprehensive manner the four interdependent criteria.

recognition of the illness of an official's son as "serious" as well as the refusal to reimburse the medical expenses linked to it at a 100% rate, shall be annulled insofar as the decision did not explain why the JSIS, whose opinion was that the child's condition "was perfectly stable", had considered that the 4 criteria were satisfied during 2009-2013, but were no longer fulfilled from January 1st 2014. The Tribunal stated that such decision was manifestly flawed and contradictory since the evolution of the child's illness was not favourable. It should be noted that the Tribunal emphasized the fact that in this case it was important to take into account the article 24 §2 of the EU Charter of Fundamental Rights which provides that: "In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration".

In the recent GW / Commission case (judgement of May 25th 2016, F-111/15), the medical officer of the settlements office issued a negative opinion on the reimbursement of the costs concerning 3 invoices regarding several treatments and hospitalization, as non-functional and non-medically justified, which were incurred by an official's ex-partner suffering from cancer in a clinic abroad. The negative decision that followed was due to the fact that the medical officer notably considered that he was bound by a previous opinion of the Medical Council rendered 3 years before the treatments at issue. The Tribunal annulled the decision of non-reimbursement on the ground that the medical officer had not conducted a specific and thorough examination of the functional or non-functional nature of the treatments and hospitalization.

The medical officer's obligation to conduct a specific and thorough examination is also imposed by article 73 of the Staff Regulations relating to the benefits provided in case of occupational diseases and accidents, depending on the level of permanent invalidity as total or partial. In practical terms, the fixation of the degree if invalidity is adopted by the Appointing Authority after the communication to the official of the draft decision, together with the conclusions of the medical officer(s) designated by the Institution. The official wishing to challenge the draft decision can request that the matter is referred to the medical commission composed of 3 doctors appointed respectively by the official, by the Appointing Authority and upon common agreement of the 2 other doctors.

Regarding, secondly, the refusal to reimburse, even in case of sickness, certain expenses considered as unnecessary or as non-functional, the medical officer and the Medical Council must forge their opinions on the basis of the scientific literature, if necessary after consulting specialists or experts in the medical field in question. The assessment of the functional or non-functional nature of a treatment or hospitalization being a medical issue, the medical bodies of the JSIS cannot ignore the effective state of health of the concerned person. Indeed, the non-functional nature of a treatment shall also be deduced from of a specific and thorough examination of the state of health of the person concerned.

In two recent judgements, the EU Civil Service Tribunal insisted on the necessity for the Institutions to respect these principles.

Indeed, in a judgement of April 28th 2016 (FY/Council of the European Union, F-76/15), the Tribunal ruled that the refusal to extend the

In a judgement of May 12th 2016 (Christian Guittet/Commission, F-92/15), the Tribunal recalled that the medical commission is bound by an obligation to state reasons. A former official challenged the partial permanent invalidity rate set by the medical commission regarding his hearing loss caused by an accident. Indeed, while doctor B. proposed to set the invalidity rate between 47 and 48%, doctor J. and professor C. estimated this rate at 15%. The Tribunal ruled that, in its final report, the commission did not explain the articulation between the total hearing impairment diagnosed in the absence of hearing devices and the auditory assessment when such devices are used, while the fixation of the invalidity rate resulted from this very reasoning. In addition, this rate was used to calculate the indemnity granted to the official because of the permanent damage to his ability to work. Therefore, the Tribunal annulled the decision on the ground that the medical commission had failed to comply with its duty to state reasons since it did enable the official to establish an understandable link between the medical findings of the report and the conclusions it reached.

Day to day in Belgium

Regulation on mobile phone antennas in Brussels: what are the protections?

Since the rise of mobile phones in Belgium, the implantation of mobile telephone antennas is subject to several regulations. These regulations aim, in particular, at finding an adequate balance between the need for operators to provide a better cover of territory and the need to ensure a healthy environment for citizens, particularly for nearby residents of relay antennas.

In Brussels, the applicable legislation is the ordinance on environmental protection against the possible harmful effects and nuisances caused by non-ionizing radiation (*M.B.*, 14 March 2007), recently amended by the Brussels ordinance of 3 April 2014 (*M.B.*, 30 April 2014). This ordinance provides, firstly, that in all publicly accessible areas, the power density of non-ionizing radiation can never exceed the standard of 0.096 W/m for a 900 MHz reference frequency (article 3). Secondly, the operators of facilities that produce or transmit non-ionizing radiation must communicate to the Brussels-Capital Region and the municipalities in which their facilities are located the characteristics of such facilities: for example, the intensity of the radiation produced the type of installation, the emission frequencies, etc. (article 4). Finally, the Brussels ordinance specifies criminal and administrative penalties for operators who do not meet these requirements (articles 9 and 10).

On the other hand, when a telephone operator wants to build a new relay antenna in Brussels, it must, in principle, obtain a planning permit (to build - article 98, §1, 1° of the Brussels land-use Code), and an environmental permit (to operate - article 48 and following articles of the ordinance on environmental permits). Both the planning permission and the environmental permit are administrative acts which can be contested before the Council of State by any person (article 14 of the consolidated laws on the Council of State). In order to do so, the person must demonstrate that: 1) he/she has a direct and certain interest in bringing the proceeding (for individuals, the riparian quality is taken into consideration); 2) and the permit contains an illegality (for example, if it does not respect a substantial form). He/she must also exhaust the remedies within the administration against the permit.

Our team

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