The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

Contact theofficial@daldewolf.com - Web www.daldewolf.com - Month jan. 2016

RENOUVEAU DEMOCRATIE CONSEIL

Edito

As the new year starts, The Official's team would like to present its comments regarding the important reform of the European Court of Justice's Statute, which will results in the abolition of the EU Civil service Tribunal by the end of 2016.

We wish you a pleasant reading,

The DALDEWOLF team

Focus

Brief remarks on the abolition of the EU Civil Service Tribunal as from September 2016

By regulation 2015/422/EU dated December 16th 2015, the EU Council and the European Parliament have endorsed the reform of the European Union Court of Justice's Statute.

Given the increasing volume of cases filed before the EU General Court and the unreasonable increase of the length of procedures, it has been decided that the number of judges of the EU General Court will gradually be increased between 2016 and 2019, from 28 to 56.

Such reform impacts the management of the cases reviewed by the EU Civil Service Tribunal. Indeed, starting from September 2016, the EU Civil Service Tribunal, set up in 2005, will be abolished and its competences and resources will be transferred to the EU General Court.

The EU civil service's disputes will therefore be again under jurisdiction of the EU General Court.

The reform questions the coming management of the disputes related to EU civil service law since the Civil Service Tribunal has developed some welcomed procedural specificities, such as the possibility for the Judge-Rapporteur to propose to settle amicably the dispute.

In any case, the return of disputes related to EU civil service law under the General Court's jurisdiction raises questions. Would this not be the occasion to reflect upon a more flexible way to resolve the disputes between EU officials or agents and the Institutions?

The setting up of a *sui generis* joint Court, based on equal representation of the staff members and the administration and presided by a very qualified lawyer (judge or attorney at law for example), would have clear benefits. Indeed, it would encourage a more flexible and quicker settlement of disputes, in a less technical manner but more humanely and above all, a less costly procedure for both the officials or agents and the Institution. Furthermore, within such an Institution, the conciliation practice could be extended and formalized. Probably a missed opportunity …

Case law

Infringement of the obligation to adjudicate an application for recognition of the occupational origin of a disease within a reasonable time

On December 17th 2015, the EU Civil Service Tribunal ordered the European Commission to compensate for the non-material damage suffered by a former civil servant to the amount of EUR 7000 for failing to comply with its obligation to adjudicate within a reasonable time, since the total length of the procedure leading to the recognition of the occupational origin of her disease lasted nearly 8 years (F-134/14).

As a preliminary remark, the Civil Service Tribunal recalls that the obligation to conduct administrative procedures within a reasonable time is a general principle of EU law which is set forth, as an element of the right to good administration, in Article 41(1) of the Charter of Fundamental Rights of the European Union. In this respect, the Civil Service Tribunal notes that the Institution is responsible for the speed at which the doctors, whom it appoints, work as well as the speed of the medical committee mandated to issue findings regarding the occupational origin of a civil servant's disease.

Suffering from a total permanent invalidity, the applicant introduced an application for recognition of the occupational origin of her disease on the 11th of July 2005 which, following a medical examination which took place in February 2006, was rejected by a decision dated 26 January 2007. On the 7th of May 2007, the Commission withdrew that decision as insufficiently motivated; a new decision was adopted on the 20th of June 2007. In this context, the Civil Service Tribunal held, firstly, that even though the applicant medical record might have been considered voluminous and the appreciations of her medical condition might have been complex, a duration of 8 months to establish a 7-page report cannot be deemed reasonable. Furthermore, following the withdrawal of the decision of the 26th of January 2007, it is only on the 20th of June 2007 that the applicant received a new draft of the decision contemplating the rejection of her application for recognition of the occupational origin of her disease. The Civil Service Tribunal points out that, by doing so, the preparation of the draft took 16 months in the absence of special justifying circumstances.

Secondly, the Civil Service Tribunal criticises the Commission for having replied to the request of the applicant of 17th July 2007 to consult a medical committee, only on the 5th of October 2007, when the Commission invited the doctor appointed by the applicant to make contact with the doctor appointed by the Institution. Next, the Civil Service Tribunal notes that a subsequent period of almost 4 months elapsed before the Commission acknowledged the disagreement between the two doctors. Finally, the Civil Service Tribunal remarks that the Commission, while wishing to receive the medical committee's final report within 6 months, contacted its members for the first time 6 months later to recall them the terms of their mandate, and only sent to them three reminders over a period of more than 2 years, before the committee held its first meeting.

As a consequence, finding that the Institution failed to comply with its obligation to adjudicate within a reasonable time, the Civil Service Tribunal concludes to a misconduct on the part of the Institution resulting from the medical committee's behavior. Furthermore, according to the Civil Service Tribunal, the feeling of injustice and distress caused by the fact that an individual is required to undergo an administrative procedure, and then judicial proceedings, in order to have his rights recognized constitutes harm that can be inferred from the mere fact that the administration acted unlawfully. Therefore, the Commission is condemned to pay the applicant EUR 7000 as a compensation for the non-material damage she suffered.

Day to day in Belgium

On the way to a Digital Single Market

European consumers, particularly those who travel frequently, familiar with the single currency and the free movement of persons and services, find difficult to understand the absence of cross-border portability of online content services in the internal market.

Last October, the Commission announced the gradual end of the Community roaming charges for calls, texts and going online (data download). From April 30 2016, roaming charges will be capped before disappearing on June 15 2017.

Delivering on its Digital Single Market strategy, the Commission went a step further by publishing on December 9 2015 a proposal for a Regulation notably aiming at allowing Europeans to travel with their online content.

The cross-border portability is designed to allow European citizens to be able to carry content legally bought online or by subscription in their home countries (films, TV series, music, books …). For example, a Belgian user of Netflix or Deezer, temporarily in France, would have access to the French online content.

Since it is a proposal for a Regulation, once adopted it will be directly applicable in all 28 EU Member States. This will be interesting to watch.

Our team

The Offici@l

European Union law: Thierry Bontinck, Anaïs Guillerme (avocats) and Sabrina Cherif (élève-avocate).
Belgian law: Csilla Haringova, Yaël Spiegl, Sarah Honincks (avocats).