The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

Dal&Veldekens

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RENOUVEAU DEMOCRATIE CONSEIL

Edito

This last issue of The Offici@l is the occasion to pursue our study regarding action for damages, which constitutes a legal remedy opened to EU officials and agents in order to request their employer for compensation for material or non-material damages suffered.

We hope you enjoy reading,

Dal&Veldekens' team

Focus

Action for damages: compensation for moral damages

Within the framework of an action for damages, an official or an agent can request a financial compensation for the non-material harm suffered.

However, the conviction of an EU Institution to provide for a financial compensation regarding moral damages is never automatic. Pursuant to a constant case law, "*the annulment of an administrative act challenged by an official constitutes appropriate reparation for any non-material harm which he may have suffered, and the claim for damages serves no purpose*".

Three main exceptions apply to this principle, on the basis of which the EU Civil Service Tribunal could require an EU Institution to pay for moral damages:

- where the illegal decision includes an assessment of the official's skills or behavior which could hurt his/her feelings (for example, the annual assessment reports) ;
- where the illegality committed was particularly serious (for example, the abusive length of disciplinary proceedings) ;
- where the annulment of an act has no practical effect and cannot in itself constitute an appropriate and sufficient reparation for any non material damage caused by the act annulled. For example, an EU Institution has been ordered to pay to a person the sum of EUR 20 000 for the non-material harm suffered due to an illegal opinion finding her unfit for employment within the EU Institutions. The Tribunal considered that the information relating to the applicant's health, which was unlawfully brought to the Institution's attention, could give rise to doubts, making an objective analysis of her state of health by that institution's medical service difficult, and that it was, in any event, unlikely that the institution would contemplate recruiting the applicant, with whom it has never had an employment relationship, as a member of its contract staff.

In brief...

The freedom of speech of the official

Although they are bound by professional secrecy, European official nevertheless benefits from a certain freedom of speech guaranteed by the article 17 a of the Staff Regulations. Being not absolute, this freedom remains framed by the "the principles of loyalty and impartiality" that officials are required to follow.

Therefore, the official who intends to publish or cause to be published a text, whatever its form, relating to the activity of the Union's institutions, will have to inform in advance the Appointing Authority he works for. If that one deems and succeeds to prove that the publication in question is likely to seriously harm the interests of the Union, it shall inform the official of its decision writing within 30 working days of the request. If no decision is notified within the specified period, the Appointing Authority shall be deemed as having no objection.

Case law

Dismissal of the official in probationary period

In the case DH / European Parliament of 6 November 2014, the European Union Civil Service Tribunal has ruled on the principles applicable during the probationary period of a future servant of the Union (case F-4/14).

The applicant, who was successful in the general EPSO competition organized for the recruitment of AST 3 assistants, accepted an employment offer proposed by the Parliament. However, he was dismissed at the end of his probationary period.

The applicant requested for the annulment of the dismissal decision. He argued that the Appointing Authority had failed to fulfill its duty of care and its duty of good administration, since it did not made him able to accomplish its probation in normal conditions and to demonstrate his skills by assigning him tasks which were not matching his profile.

The Civil Service Tribunal firstly recalls that the probationary period is aimed at assessing the aptitudes and behavior of a probationary official. Although it cannot be assimilated to a training duration, it aims nevertheless the goal at permitting the official to prove its competences.

However, the judges stress that a dismissal decision at the end of a probationary period is a decision of non-appointment which has to be distinguished, by nature, from the dismissal decision of a person having definitively appointed as a European Union official. Whereas this case imposes a careful examination of the motivations putting an end to an established working relation, the appointment of an official during its probationary period requires a more global inspection regarding the existence or not of a collection of positive and/or negative elements revealed during the probationary period permitting to appraise whether the appointment of an official is or not in the interest of the service. The Tribunal's control of the legality of this decision has to be limited to the manifest error of assessment.

In this case, the Tribunal observes the absence of manifest error of assessment since the evaluation reports clearly indicate repeated failures of the claimant regarding his diligence, his communication and the quality of his performances and these were discussed with the appellant.

The Civil Service Tribunal considers that, despite the recognized psychological weakness of the appellant, the case law related to the reinforced duty of care regarding the dismissal of an appointed official suffering from medical difficulties cannot apply in this case. Indeed, the present case does not constitute a classic dismissal decision but a non-appointment decision. The General Court therefore rejects the claims of the appellant.

Day to day in Belgium

Neighborhood annoyances

According to the Belgian *Cour de cassation*, a building owner which, by any fact, omission or behavior, upsets the balance between ownerships by imposing to an adjoining property owner a disturbance which exceeds the common neighborhood annoyances must pay a fair and adequate compensation in order to restore the balance.

This could be, for instance, sound, smell, humidity or dust annoyances but also aesthetic prejudice, lack of sunshine, etc.

The judge dealing with the case will order measures to reduce or suppress the disturbance (insulation, cutting down a tree, banning certain types of activities between certain hours, etc.) but will rarely grant a financial compensation.

Nonetheless, before bringing a legal action, we strongly recommend to favor dialogue with your neighbor by informing him that he is causing you a disturbance. Bringing legal action should be reserved as a last resort if you fail to reach an amicable solution.

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