



The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

Dal & Veldekens

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Edito

The new issue of « The Offici@l » is the occasion to start, from a civil servant law perspective, a study regarding the EU Official's personal and medical file. Regarding the Belgian law, we will focus on the obligations of the lessor and the tenant to maintenance and repair of the leased property.

Recent EU Civil service Tribunal's case law and discussions regarding the future of this specific Court are also addressed.

We hope you enjoy reading.

Dal&Veldekens team

Focus

Personal and official medical files: functions and procedures of access

Decisive for the rest of your career, the creation and maintenance of your personal file is an obligation stemming from the Appointing Authority (AA) meaning for the agent a series of individual rights to which he is entitled.

The personal file pursues three strategic objectives. Firstly, it is to ensure the official's rights of defense by preventing that decisions affecting his administrative status and career are not based on improperly classified documents in his personal file, therefore not enforceable, while providing opportunity for the agent to challenge a document improperly classified in the personal file when it affects his situation. Secondly, its role is to secure the right to equal treatment and ensure the principle of non-discrimination based on religion or belief, sexual orientation, political or any other opinion. Finally, the personal file ensures transparency and legal certainty by ensuring acknowledgement by the agent of the administration's position regarding its competence and progress but also by creating a positive obligation for the appointing authority to take consideration on an objective basis, if disciplinary action, of the scope and nature of the offenses committed by the agent.

In accordance with Article 26 of the Staff Regulations, the acknowledgement and access to the elements in the personal file is guaranteed to the agent or its beneficiaries, even after cessation of functions, once a decision affecting them has been taken.

Although it fulfills the exact same purpose, the personal file differs in content and nature of its protection from the medical files. Though the medical files as well create an obligation of access to all relevant official documents, in particular for the recognition of the occupational origin of a disease (Article 73 of the Staff Regulations), they are nevertheless extensively protected by medical confidentiality (within the limits of judicial review of the Court in case of dispute).

In this logic of guaranteeing medical confidentiality, the agent is thus provided with an indirect access to his/her medical documents, through the intervention of a trusted doctor, appointed by the official. The Regulations thus reconciles the rights of the agents or his beneficiaries with the necessities of medical confidentiality.

In short...

Reform of the ECJ: what future for the European Union Civil Service Tribunal

To solve the issue of the accumulation of pending cases and increased time of judgment, which expose the EU to convictions for excessive delay, the ECJ submitted to the Council its proposals to double the number of judges of the European General Court (EGC) by 2019. The proposal would involve the disappearance of the European Union Civil Service Tribunal and the integration of its judges in the EGC. The EGC would then recover its position to hear as a trial judge dealing with issues of European civil service and the ECJ would recover its jurisdiction to hear appeals in this matter. The plenary session of the Civil Service Tribunal has given a favorable opinion on this proposal, contrary to that of the EGC. The outcome of the proposal remains uncertain and under discussion, particularly with regard to its costs.

Case law

Right to be heard by the Disciplinary Board

After being disciplinary sanctioned for having repeatedly broadcasted charges through emails against a specifically named person, bringing as consequence the discredit to the professional reputation of the latter, the applicant has been subject to a new disciplinary procedure for similar offenses.

The applicant sought annulment of the decision of the Appointing Authority, taken after the disciplinary investigation and imposing, as a disciplinary sanction, a deduction of one-third of the net monthly amount of his pension for a period of two years, and sought compensation for damages.

In the present case, the applicant complained, in particular, that the Disciplinary Board reached an opinion without a previous hearing. This is thus an opportunity for the Civil Service Tribunal to confirm a fundamental principle for disciplinary action pursuant to Article 41 of the Charter of Fundamental Rights of the European Union, according to which everyone is entitled to be heard before any individual measure adversely affecting his situation is being taken against him.

The Tribunal points out, firstly, that the administration is not obliged to indefinitely postpone the date of the hearings in the context of disciplinary proceedings until the person is able to participate to the hearing, since the disciplinary procedure cannot be delayed without any justification. In this present case, the applicant had requested the postponement of the hearing on the basis of a medical certificate. His request was rejected and he could not participate in the hearing before the Disciplinary Board nor produce any text review.

The Tribunal notes, however, that compliance with the adversarial nature of the disciplinary proceedings as part of an investigation requires the accused official or his counsel to be given an opportunity to attend the hearing of witnesses and ask them questions that seem useful for his defense.

However, in this case, the Disciplinary Board neither introduced any procedure to check the veracity of medical justifications advanced by the applicant for his absence at the hearing, nor took any measure enabling the applicant to attend hearing of the witness, including deciding to postpone, at least once, that hearing to a new relevant date.

Noting that the applicant had not been able to be present on the day of his hearing before the Disciplinary Board, the decision taken against him is canceled on that basis.

The Third Chamber of the Civil Service Tribunal (Case F 107/13 - Brito Sequeira Carvalho c. Commission).

Day to day in Belgium

Obligations of the lessor and the tenant to maintenance and repair of the leased property

The lessor is required to maintain the property so that it could serve for the purpose for which it had been leased. Therefore, throughout the term of the lease, the lessor is required to carry out all necessary repairs to keep the property in a good state: major repairs, heavy maintenance, repairs due to force majeure or dilapidation.

The tenant must carry out repairs linked to the lease and small repairs. There are repairs related to the use of the property or routine maintenance. For instance: repairing glass panes, maintaining of the garden in good condition, replacing broken tiles, etc.

Those rules linked to the distribution of reparations between lessor and tenant have to be considered as being of a mandatory nature since the 18th of May 2007. For contracts that have been entered into beyond that date, the tenant could thus invoke the nullity of a provision which imposes him maintenance or repair works heavier than those related to the use of the property.

However, if it turns out that the work to be done is due to the fault or negligence of the tenant, this latter will, in any case, be required to repair the property.

Our team

European Union law Thierry Bontinck, Anaïs Guillerme (avocats).
Belgian law Arnaud Gillard, Csilla Haringova (avocats).

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