



The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

Dal & Veldekens

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Edito

Before summer break, the Offici@l's team proposes you to focus on the recent case law regarding expatriation allowance and conditions related to the usual residence, but also on the new Belgian rules on amicable settlement of disputes in family matters.

We wish you very nice holidays,

Dal&Veldekens' team

Case Law

Expatriation allowance and conditions related to the usual residence

On June 18th 2015, the EU Civil Service Tribunal annulled a Commission's decision refusing to grant the applicant official the expatriation allowance she asked for pursuant to article 4, Annex VII of the Staff Regulation.

The applicant, with Romanian citizenship, entered to the Commission's service as a contract agent on August 15th 2013. On October 3rd 2013, the Commission's Authority Responsible for Concluding Contracts of Employment (ARCC) refused to grant the applicant the expatriation allowance. The official decided to institute the case before the Tribunal following the rejection of her complaint, considering she had her effective residence in Belgium since January 2008 as she worked then studied there during a reference period between February 16th 2008 and February 15th 2013.

The official argues the Commission had ignored the fact that she never had the intention to establish herself in Belgium but claims she did not arrive there in 2008 in order to establish the permanent center of her interests, but to follow an internship. This absence of intention would be established by the fact that she interrupted the working situation which followed her internship in order to pursue her studies. The Tribunal recalls that the granting of an expatriation allowance aims at compensating for the particular charges and disadvantages resulting from entering to the service of the Union's institutions for the officials who have to move their residence from their country to the one of their assignment. The usual residence of an official is the place where has been fixed, with the purpose of conferring it a stable nature, the permanent or usual center of his/her interests. Furthermore, the Tribunal outlines that the concerned agent loses the benefit of an expatriation allowance only if he/she had his/her usual residence or principal professional activity in the country of assignment during the integrality of the reference period.

Firstly, the Tribunal rejects the applicant's arguments based on the intentional element of her residence in Belgium, considering that the notion of usual residence cannot be based mainly on its intentional nature. Secondly, it specifies that a period of studies followed by a time of activity in the same country can create a presumption that the concerned official has the will to settle his/her usual residence there. Nevertheless, the Tribunal observes that the applicant's working time was based on short term contracts and, after her studying time in Belgium, came back in Romania. Lastly, she completed an internship in Luxembourg from 1st March and 17th June 2011, and then lived in a precarious way in Gent before returning to Romania. Under such circumstances, the applicant has been absent from her assignment country for an uninterrupted period of nine months during the reference period.

Therefore, the Tribunal considered the applicant submitted the sufficient elements to demonstrate that she did not have her usual residence for the whole reference period on Belgian territory, annulled the litigious decision and condemn the Commission to bear the applicant's costs.

Focus

Disciplinary proceeding and penal procedure

According to article 25 Annex IX of the Staff Regulations, when an Union official is under a disciplinary proceeding and at the same time "is prosecuted for those same acts, a final decision shall be taken only after a final judgment has been handed down by the court hearing the case". Therefore, it is considered that "the criminal law has precedence over the disciplinary law", which implies that the Disciplinary Board and the AIPN will be bound by the factual conclusions made by the criminal judge, and the disciplinary procedure cannot be terminated before a final decision is rendered by the judge.

Such a procedural suspension allows not to affect the concerned official's position and at the same time allows the Disciplinary Board to take into consideration all the factual findings of the criminal judge and to take advantage of its large power of investigation. However, the conditions for its implementation are rather strict.

Firstly, it is up to the official to demonstrate that the penal prosecutions have been engaged in order to obtain the suspension. Then, the jurisprudence specified that if such prosecutions block the Disciplinary Board's decision-making power they do not prevent it from continuing its work, regardless of the complexity of the case is or the number of documents to collect or of testimonies to hear. The suspension is exclusively reserved to officials and agents who are subject to criminal investigations and is not applicable when the concerned official initiated the proceedings.

Moreover, the suspension of the decision-making power is mandatory even when the penal procedure is exceptionally long and last for several years (in case of appeal or cassation proceedings)

Lastly, once the judge has rendered his decision, the Disciplinary Board and the AIPN are bound by the factual conclusions of the judge, but remains free to assess if facts that have been assessed by a criminal jurisdiction constitute or not a failure to comply with the obligations laid down in the Staff Regulations.

Day to day in Belgium

The amicable settlement of disputes in family matters

Since September 1st 2014, alternative dispute settlement in family matters has been promoted.

Articles 731 and 1253ter/1 of Judicial Code require judges and clerks to inform the parties of the possibility of mediation, conciliation and other amicable settlement of conflicts as soon as a request is filed before the Family Court. In addition, settlement chambers have been set up within Family Courts and can be seized by the parties themselves or at any time of the procedure by the judge who has to rule on the case.

If a request of conciliation is filed by the parties, after conciliation the conciliation judge establishes a record of conciliation or non-conciliation, without having the possibility to send the case to the Court. However, if the chamber is seized while judicial proceedings have already been initiated and some points are still unresolved after conciliation, the case is sent back to the judge seized of the litigation.

It is important to note that the conciliation judge cannot rule on the case and that the parties or the judge may end the conciliation at any time. Finally, in order to allow the parties to have a first contact with a mediator, some family courts organise mediation panels. In Brussels, mediation panels are held every Monday and Wednesday on the first floor of the Family Court. Last but not least, it is important to underline that both mediation and conciliation are strictly confidential.

In brief...

New procedural rules adopted by the General Court

On 1st July 2015, new Rules of Procedure and new implementing measures intended to improve the conduct of proceedings before the General Court will enter into force. The new text now makes a clear distinction between the direct action, the actions in the field of intellectual property and the appeals against decisions of the Civil Service Tribunal in order to strengthen the Court's capacity to handle cases within a reasonable timeframe.

The Fifth Title of the Rules of Procedure is substantially developed. The content and the compulsory statements of the request for appeal have been specified, new powers have been vested in the Court regarding the organization of the written pleadings brought before it. The possibility for the judge to rule without an oral part of the procedure in appeal proceedings even when a party has requested it, as well as additional rules regarding the cross-appeal have been introduced. At the same time, new Practice Rules for the Implementation of the Rules of Procedure of the General Court have been adopted by the Court and the legal aid form was adapted to the new rules.

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