



The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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Editorial

April is the appraisal period for EU officials and agents. On that occasion, "The Offici@l" team proposes you to focus on the Reports Committee's involvement in the annual appraisal exercise.

We wish you a pleasant reading,

The DALDEWOLF team

Focus

Annual staff report: The Reports Committee's involvement

The annual staff review is the occasion to recall the Reports Committee's role within this procedure.

The Reports Committee is a joint committee composed equally by members appointed by the Appointing Authority of the Institutions and by the Staff Committee. It is a preliminary review procedure at the assessed official's disposal when no agreement has been found between the official and the reporting officers.

The official can ask the AA for the Reports Committee's intervention. In this case, the Committee has to deliver an opinion within two months of the referral. In this respect, the Committee can organize any hearing that may be deemed necessary and order the provision of any written documents considered as relevant.

In principle, the Reports Committee's opinion is communicated to the official being assessed and to the second reporting officer, automatically or at the request of the reportee. Such communication is important to protect the official's rights of the defense. Indeed, the official must have been given the opportunity to make his views on facts or complaints regarding its ability, efficiency or conduct, all the more when the Committee's opinion contradicts positively the views of other parties which form the basis of the administration's opinion.

The Reports Committee's opinion is not mandatory: the second reporting officer is not bound by it. However, as recently recalled by the EU General Court, the appraisal report must state specific reasons where the assessor intends not to follow the recommendations of the Reports Committee and where the Committee's opinion mentions special circumstances likely to cast doubt on the validity or proper foundation of the original assessment.

Case Law

Disciplinary proceedings: obligation to seek evidence for and against the person concerned

On March 18th 2016, the EU Civil Service Tribunal rejected the claim brought by an official against the decision of the European Commission imposing a disciplinary penalty on him consisting in a reprimand (F-23/15).

In the context of a procedure initiated by the Commission and disputed by the applicant, regarding the recovery of disputed debts, the applicant sent a note, on July 20th 2012, to another official containing insulting statements, and forwarded it to a dozen members of the top hierarchy and management of the Commission. On January 15th 2013, the Investigation and Disciplinary Office of the Commission ("IDOC") established an analytical note addressed to the Appointing Authority with as its object "the inappropriate language containing insulting statements" used in the note of July 20th 2012 and concluded that the applicant's behavior was likely to amount to a violation of article 12 of the Staff Regulations. Later on, the investigators communicated the analytical note to the applicant and summoned him to an audition, which took place on May 2nd 2013. Following the disciplinary report made by IDOC concluding to the violation of article 12 of the Staff Regulations, the Appointing Authority informed the applicant of its decision to open a disciplinary procedure without consultation of the Disciplinary Board in accordance with article 11 of Annex IX to the Staff Regulations. Once the applicant was heard by the Appointing Authority, by decision of April 15th 2014, it imposed a disciplinary penalty on him consisting in a reprimand.

Examining, firstly, the issue of the obligation to conduct an administrative inquiry before the opening disciplinary proceedings, the Tribunal notes that the Commission's Decision of April 28th 2004 on general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings ("GIP 2004") requires that such inquiry is led by IDOC or by OLAF.

Secondly, the Tribunal observes that if Annex IX to the Staff Relations on disciplinary proceedings does not provide that such inquiry should include all aggravating and extenuating circumstances, the internal GIP of the Commission, conferring additional rights to officials, impose such requirement. These GIP also require that the person subject to an administrative inquiry should be provided with the opportunity to present its observations on the facts and that such observations should be taken into account in the investigation report. In the present case, the Tribunal holds that by not seeking evidence for and against the applicant and by drawing conclusions regarding the applicant's behaviour without granting him with the possibility to present his comments and, therefore, without taking into account such comments in the analytical note of January 15th 2013, the Commission violated these GIP.

Nonetheless, examining whether in the absence of such irregularity the procedure could have resulted in the adoption of a different decision, from which would flow the annulment of the disciplinary penalty, the Tribunal concludes that considering the nature of the facts, established on the sole basis of the note of July 20th 2012, as well as the gravity of the breach of the statutory obligations, there is no element in the file which indicates that even if the Appointing Authority had respected the procedural requirements laid down in the GIP 2004, it could have closed the case without imposing any disciplinary penalty on the official. Therefore, the Tribunal rules that the disciplinary penalty of the applicant cannot be annulled on that ground and rejects his claim.

In brief...

Sick leave control procedure: the role of the arbitrating doctor

In case of disagreement between the doctor treating an official and the Institution's examining doctor, regarding the justification of a sick leave, the official or agent concerned is entitled to request that the matter is referred to an independent doctor, acting as an arbitrator, for an opinion.

This procedure, provided for in article 59 of the Staff Regulations, allows for a new examination of the official by a doctor external to the Institution. This doctor may definitely confirm or reverse the conclusion of the Institution's medical officer and, as a result, will decide whether the sick leave is justified or not.

The name of the arbitrating doctor shall be agreed upon by the official's doctor and the Institution's examining doctor who are not bound by the list of independent doctors established by the Institution. In case of disagreement regarding the appointment of the arbitrating doctor, the administration will use the list of arbitrating doctors drawn-up by the Appointing Authority and the Staff Committee.

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