The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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RENOUVEAU DEMOCRATIE CONSEIL

Edito

This new issue of *The Official* is the occasion to examine the recent and important judgment of the EU General Court regarding the breach of the rights of the defence and of the essential procedural requirements applicable to disciplinary proceedings.

Regarding private life, we would like to give some details on the new provisions on tax rebate on registration fees, applicable in the Brussels-capital region as from Januray 1st 2017.

We wish you a very pleasant reading,

The DALDEWOLF team

Focus

The rights of the complainant in the assessment of the request for assistance pursuant to Article 24 of the Staff Regulations

Pursuant to article 24 of the Staff Regulations, the EU institutions have a duty to provide assistance to officials who are subject of attacks or degrading treatment by third parties, such as slander or libel, on grounds of their quality and functions. It is established that the obligation of assistance extends to officials against attacks by a superior or a colleague, so as to protect them against moral harassment and other degrading treatment.

This right to protection of the complainant does not mean that he is granted the same procedural rights as the official who is subject of the complaint. If the complainant has certain rights, those latter remain, however, more limited than those of the official accused of harassment.

Firstly, when the reported facts are potentially serious, the Administration must take a temporary removal measure of the official who claims to be a victim as to protect him, even before any decision is taken to initiate an administrative inquiry.

Secondly, in order to determine the opportunity of initiating an Administrative inquiry, the Administration must cooperate with the complainant. This implies that he has the right to be heard by the Administration. Thus, the fact that the request for assistance is sufficiently substantiated by a prima facie evidence (mails, correspondence, etc.) is not an argument on which the Administration can rely to refuse to hear the complainant.

In that regard, in the case of Stéphane De Loecker /EEAS of 16 December 2015, the complainant contested the rejection decision of his request for assistance for moral harassment by his superior, without having been heard beforehand. The Civil Service Tribunal confirmed that an institution is obliged to hear the complainant in respect of the facts concerning him before taking any decision on the initiation of an administrative inquiry to assess the opportunity of opening an inquiry.

Thirdly, and contrary to the official accused of harassment, the complainant will not have a right of access to the minutes of the testimony during the administrative inquiry.

At the end of the administrative inquiry and according to the circumstances, the hierarchy must take definitive measures. In the event of public and personal defamation of an official, the institution must restore the reputation of the injured official, in particular by publishing a press release explicitly naming him. Otherwise, the Institution's responsibility may be incurred. The same shall apply if the request of assistance is rejected by the Administration or if it remains silent.

Case law

The violation of the rights of the defense and of the essential procedural requirements laid down by the rules applicable to disciplinary proceedings entails the illegality of the penalty

By a judgment of 14 February 2017 (T-270/16 P), the EU General Court annulled the judgment of the Civil Service Tribunal of the European Union of 18 March 2016 relating to the disciplinary proceedings of an official who had been the subject to a reprimand for having sent a note to one of his colleagues containing insulting remarks, of which he had also sent a copy to a dozen members of the higher hierarchy and the Commission management. In its judgment the Civil Service Tribunal had found, inter alia, that by failing to carry out an administrative inquiry including all aggravating and extenuating circumstances, and having drawn conclusions relating specifically to the applicant without having given him the opportunity to express his opinion, the Appointing Authority had failed to fulfill its obligations under the general implementing provisions concerning the conduct of administrative inquiries and disciplinary procedures of the Commission («GIP of 2004 «).

However, the Civil Service Tribunal had concluded, on the one hand, that the applicant's hearing before the adoption of the sanction had purged the absence of a hearing during the investigation phase. On the other hand, in view of the nature of the facts established on the basis of the other insults contained in the applicant's note and the seriousness of the breach of the statutory obligations arising therefrom, the Civil Service Tribunal had considered that nothing indicated that, in the absence of these irregularities, the procedure could have resulted in a different outcome. Therefore, the TFPEU had refused to annul the disciplinary measure and dismissed the appeal.

Firstly, the EU General Court observes that in addition to the irregularities noted by the Civil Service Tribunal, it should have raised on its own motion the absence of a decision to open an administrative inquiry as the violation of an essential formality. Secondly, as regards the obligation to hear the official, the General Court considers that the hearing provided for by the GIP of 2004 during the investigation phase is intended to enable him/her to express its views on the establishment of the facts, whereas the hearing provided for in Annex IX to the Staff Regulations during the disciplinary proceedings is intended to enable him/her to present its arguments before the adoption of any disciplinary sanction. Therefore a hearing during the disciplinary phase cannot purge the vice flowing from the absence of a hearing during the investigation phase.

Third, the General Court observes that where, as in the present case, the procedure established before a penalty is imposed gives the institution a wide margin of discretion as regards (i) the assessment of the gravity of the infringement, (ii) the advisability of initiating the proceedings, (iii) the opportunity of imposing a penalty at the end of the proceedings, and (iv) the determination of the penalty to be imposed, it cannot be excluded that the procedure could have resulted in a different outcome if it had been complied with.

In conclusion, the General Court finds that the penalty should be annulled as soon as the disciplinary proceedings against the applicant have been substantially flawed by infringements, so that it cannot be ruled out that it could have resulted in a different outcome if it had been respected and if the applicant had been heard.

Day to Day in Belgium

New provisions on tax rebate on registration fees in the Brussels-Capital region

As stated in our newsletter of November 2016, as from January 1st 2017, the tax rebate applicable on registration fees for residential real estate purchase in the Brussels-Capital region has increased from 60.000 euros (or 75.000 euros) to 175.000 euros.
This rule is provided in article 46 bis of the Belgian Code on registration, mortgage and court registry duties.
This tax rebate is capped to property under 500.000 euros bought by natural person for use as their primary place of residence.
The tax rebate is reserved for people who do not own a real property yet and commit themselves to establish their primary place of residence in this building for at least five years.

Our team

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