



The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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Edito

For the beginning of the year 2017, we propose to focus on the EU officials and agents' immunity from jurisdiction and on the rights and duties regarding the processing of personal data by the EU Institutions.

A recent judgment on the compensation paid by an official for the material losses incurred by the European Union also merits special attention. We wish you a pleasant reading,

The DALDEWOLF team

Case Law

Compensation paid by an official for the material losses incurred by the European Union

In its judgment HG / European Commission of 19 July 2016 (case F-149/15), the former EU Civil Service Tribunal applied article 22 of the Staff Regulations. Pursuant to this provision, an EU official or agent may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his part in the course of or in connection with the performance of his/her duties.

In the present case, a disciplinary sanction was adopted against an official because he and his family left vacant the official accommodation provided by its employer between 2008 and 2010, while he was seconded in the United States. Moreover, the official was ordered to make good the damage suffered by the Commission, which amounted to 108.596,35 euros.

In particular, the official challenged before the Civil Service Tribunal the amount claimed by the European Commission. Firstly, he considered that the amount of 108.596,35 euros was excessive, considering that the guidelines of the application of article 22 of the Staff Regulations set the reimbursement ceiling in case of gross negligence to an amount equivalent to one year's basic salary.

The judges rejected this interpretation and underlined that those guidelines do not exclude the possibility to exceed this ceiling in case of exceptional circumstances.

Secondly, the official argued that the five-year time limit provided by in article 85 of the Staff Regulations in case of recovery of sum overpaid by an Institution to an official should be applied.

However, the Tribunal stated that article 85 of the Staff Regulations did not apply in the present case because the said official did not receive any amounts from the Institution. The judges considered that it was actually the official's behavior that caused a financial damage to the Institution and consequently applied general rules for debt recovery provided by the EU financial regulation.

Pursuant to these rules, the five-year limitation period for debts of the Union towards third parties shall be interrupted by any act of an Institution or a Member State, notified to the third party and aiming at recovering the debt. In the present case, although the disputed facts dated back to 2008-2010, the Tribunal considered that the OLAF's decision to open an inquiry in 2012 interrupted the limitation period.

As a consequence, the application has been dismissed. However, the official appealed against this judgment before the EU General Court (pending case).

Focus

The application of national law to European officials: immunity from jurisdiction

Pursuant to article 11 of Protocol on Privileges and Immunities (hereafter PPI), European officials are immune from legal proceedings before national courts in respect of acts performed by them in their official capacity, including their words in spoken or written form.

Thus, national courts do not have jurisdiction to hear cases of breaches of professional obligations committed by a European official concerning acts related to the performance of his/her duties.

According to Article 17 of the PPI, immunity from jurisdiction is accorded to officials and other agents of the Union solely in the interests of the Union. Consequently, the immunity is functional, that is to say limited to the mission conferred on the EU: the official is subject to national law for private activities and relations with third parties, just like any other individual.

This will be the case, for example, in matters related to family law (divorce, alimony), debt payments, neighborhood disputes or criminal law. Since immunity from jurisdiction and privileges do not apply in the case of purely private disputes, the national courts may, for example, order a garnishment of the salary or pension of a European official or agent.

Besides, in accordance with Article 18 of the PPI, the European Union shall waive the immunity of the European official or agent whenever this is not contrary to the interests of the Union and shall cooperate with the national authorities in the execution of the national decision. Once the immunity is waived, the European official will no longer have any special protection and may be subjected to civil proceedings but also criminal proceedings on the national territory (*EUCST, plenary assembly, 13 January 2010*).

The Brussels Court of Appeal considered itself as competent to hear the case of a European official having revealed confidential information in the course of the performance of his duties. The Court of Appeal stated that, since the EU prohibits certain forms of conduct, internal law may sanction them as far as they are considered as offenses or crimes at national level. In fact, both the European treaties (article 339 TFEU) and the Belgian criminal law (article 458 of the criminal code) sanction an infringement of professional secrecy by European officials. According to the Court of Appeal, a European official may be prosecuted for the offence of breach of professional secrecy, in addition to potential disciplinary actions within the European Institution.

In brief...

On 10 January 2017, the Commission proposed a regulation which further develops the protection of personal data processed by the EU institutions and the free movement of such data.

Following the General Data Protection Regulation (2016/679/UE), this proposal for a new regulation aims at further developing and adapting the existing rules of Regulation 45/2001/CE on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, including private data of European officials or agents.

Thus, the purpose of this regulation proposal is to align, as far as possible, the data protection rules for Union institutions, bodies, offices and agencies with the data protection rules applicable to the Member States, while keeping some provisions of Regulation 45/2001. Indeed, article 68 of the regulation proposal recalls that EU officials and agents are allowed to lodge a complaint before the European Data Protection Supervisor if they consider the rules applicable to the processing of their personal data to have been breached, without lodging a prior administrative complaint. Moreover, article 69 of the regulation proposal maintains the possibility to adopt disciplinary sanctions against any official or agent who would not comply with the said regulation.

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