



The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

Contact theofficial@daldewolf.com - Web www.daldewolf.com - January 2018

Edito

Dear readers,

Some updates regarding your financial rights as officials or agents: firstly, we propose to study the recent judgment of the EU General Court regarding family allowances.

We also publish the second part of our study on the financial liability of the European Union towards its officials and agents.

We wish you a very pleasant reading.

The DALDEWOLF team

FOCUS

The financial liability of the European Union towards the officials and agents (2/2)

In the previous issue, we have learnt that the European Union can be ordered to compensate damages to its officials or agents, when founded to be the author or co-author of the damage suffered by them, or when the latter suffered damages by reason of their position or duties.

We will examine here the second hypothesis.

When an official or an agent suffers or has suffered damages as a result of a third party behavior, by reason of their position or duties, he can request a financial compensation of the European Union, pursuant to Article 24 (2) of the EU Staff Regulations.

However, this possibility is subject to several conditions.

On the one hand, the official must not be responsible for the event giving rise to the damage and the suffered damages must be linked to their position or duties. Therefore, acts of harassment committed by an official against one of his/her colleagues, because of previous conflicting private relationships, are not linked to the position or duties of the official (see T-254/02).

On the other hand, the official must prove that he has been unsuccessful to obtain compensation from the person who did cause the damages through national remedies. Indeed, the EU General Court stated, several times, that the admissibility of the claim for compensation, brought by an official pursuant to Article 24 of the EU Staff Regulations, is conditional on the exhaustion of national remedies, provided that such national remedies ensure an effective means of protection for the individuals concerned and the possibility to compensate the damage alleged (see for example case T 59/92).

Finally, the official must also prove that the conduct on the part of the perpetrator of the damage is unlawful, the actual occurrence of the harm alleged and the existence of a causal connection between the unlawful conduct and the damage.

Case Law

Family allowance and refusal to grant the status of “dependent child” to the official’s granddaughter

By a judgment of 16 January 2018 (T-231/17), the EU General Court rejected the appeal filed by an official against a decision of the Council of the European Union refusing to recognize that his granddaughter was a “dependent child”.

In this case, a German court ordered the applicant to pay to his granddaughter, on the basis of the German Civil Code, a child support allowance of 240 euros on a monthly basis. The applicant therefore wanted his granddaughter to be recognized as a dependent child in order to benefit from a family allowance on the basis of the provisions of the Staff Regulations.

Article 2 §2 and 4 of Annex VII of the Staff Regulations sets out three hypothesis where someone can be recognized as a staff member’s dependent, thus enabling him or her to benefit from an allowance:

- the legitimate, natural or adopted (or in the process of being adopted) child of an official, or of his spouse, who is actually being maintained by the official;
- any child whom the official has a responsibility to maintain under a judicial decision based on a Member State’s legislation on the protection of minors;
- exceptionally, and by reasoned decision of the Appointing Authority, any person whom the official has a legal responsibility to maintain and whose maintenance involves heavy expenditure.

As the third hypothesis was not applicable (lack of heavy expenditures), the applicant intended to avail himself of the second hypothesis provided for in Article 2 §2, third subparagraph, of Annex VII of the Staff Regulations, on the ground that he had a child support obligation towards his granddaughter, resulting from a court decision and based on a Member State’s legislation on the protection of minors.

The Appointing Authority rejected the claim, considering that the German child support obligation did not necessarily require a court decision in order to be implemented.

The applicant challenged the decision before the EU General Court alleging, inter alia, an error of law, an error of assessment, and misinterpretation of Article 2 §2, third subparagraph of Annex VII of the Staff Regulations.

The General Court underlines the necessity to distinguish two concepts of maintenance obligations under Article 2 §2 and 4 of Annex VII of the Staff Regulations: one results from a court decision and the other is legal.

The legal obligation results from a source of law that is beyond the stakeholders’ control. In the applicant’s case, the child support obligation towards his granddaughter pre-exists any court decision which simply states, as a declaratory judgement, the existence of such legal obligation and its quantum.

Therefore, this obligation does not result from a judicial decision within the meaning of Article 2 §2, third subparagraph of Annex VII of the Staff Regulations. The judges also note that this provision covers very specific situations, such as judicial decision to foster children whose parents are temporarily unable to take care of them.

Consequently, the judges reject the appeal, considering that the Appointing Authority was entitled to consider that the applicant’s granddaughter was not a “dependent child” within the meaning of Article 2 §2, third subparagraph of Annex VII of the Staff Regulations.

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This newsletter is published in collaboration with Renouveau&Démocratie.

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