



Edito

Dear readers,

In this new issue, we propose to explain the differences in terms of rights and guarantees that derive from your marital status with your spouse (married or registered partners). Such distinction is important and a presentation will be given soon on this subject, with R&D.

Furthermore, an interesting judgment has been released regarding the time-limit applicable to file a request for payment of the expatriation allowance in case of error committed by the administration.

We also continue our analysis of the important reform of residential lease in Belgium.

We wish you a very pleasant reading.

The DALDEWOLF team

Case law

A request for a retroactive payment of the expatriation allowance due by the Administration may be submitted at any time

In a judgment of 27 February 2018 (T-338/16 P), the EU General Court allowed the appeal brought by an official of the European Commission, against a decision of the Civil Service Tribunal which has considered inadmissible his request to obtain the retroactive payment of the expatriation allowance which he was entitled to between 2007 and 2009.

In this case, the applicant figured, in 2014, that he did not receive the expatriation allowance he has been entitled to since 2007 because of his posting in Democratic Republic of Congo and in Mali. The PMO has however decided that the applicant was not entitled to retroactive payment of this allowance, inter alia because the time limits to challenge his salary slips before the Administration had expired. The Commission still agreed to pay him ex gratia a compensation for the period 2009 to 2014, but not for the period 2007 to 2009.

The official had brought an action for annulment against the refusal decision of the EU Commission in order to obtain the retroactive payment of the allowance for the period 2007 to 2009.

In first instance, the Civil Service Tribunal rejected the application. Although it recognized that, by not paying the expatriation allowance, the Commission committed an administrative fault caused by the negligent conduct of its services, it declared the application inadmissible. Firstly, the judges noted that the communication of salary slips did not have the effect to trigger the time limit for internal remedies and appeals, because they did not clearly reveal the decision to deprive him of the expatriation allowance. However, they found that the applicant should have met a reasonable time of five years, from the date the harmful event occurred, to lodge a complaint pursuant to Article 90 §1 of the Staff Regulations. In the present case, the applicant has lodged a complaint before the Administration six years and four months after the communication of the first salary slips in which the expatriation allowance missed.

On appeal, the EU General Court annulled the judgement of the Civil Service Tribunal, as it considered that the Tribunal had committed an error in law when it required the observance of a reasonable period to lodge the payment request by the official. The judges have indeed stated that the observance of a reasonable period is only required, where the relevant texts are silent, if the principles of legal certainty and protection of legitimate expectations prevent the EU Institutions and legal entities and individuals from acting without time limit. In the present case, the judges found that the request of the applicant does not in any way amend the acquired legal situation governing his relationship with the Commission or the ordinary implementation of the budget. Quite the contrary, it aims to allow the Administration to act in accordance with the budgetary and financial commitments which it had already made. Indeed, it was not contested that the expatriation allowance had been due since 2007.

Accordingly, the Civil Service Tribunal could not oppose a time limit to the official to reject the retroactive payment of the expatriation allowance due by the Commission. The EU General Court annulled thus the first judgement, judged the application admissible then allowed the application by annulling the decision of the Commission.

Focus

Spouse of an EU official: guarantees varying according to marital status

Many EU officials and agents may be surprised, but the Staff Regulations do not always provide for the same rights and guarantees for civil servants and their married spouses or civil servants and their non-marital partners.

In accordance with Article 1d of the Staff Regulations, non-marital partnerships (legal cohabitation in Belgium, PACS in France, « geregistreerd partnerschap » in Netherlands, etc.) are not always treated in the same way as marriage.

In addition to the classic conditions (proof of partnership by an official document, no multiple marriages or partnerships, no family relationship between the partners), it is only when the couple does not have access to civil marriage in a Member State that the non-marital partner is treated as a married civil servant. The Staff Regulations actually mainly refers to couples of the same sexes, who do not have access to marriage in all Member States.

This distinction is important because many rights derive from the marital status of the official in couple.

For example, an official registered in a non-marital partnership may not be entitled to the household allowance if he or she has the legal possibility to marry in a Member State.

Similarly, a surviving spouse of a deceased EU official can receive a survivor's pension from the European Union only if the couple were married under civil law or if he or she demonstrates that they did not had access to civil marriage in a Member State.

Until now, the Court of Justice of the European Union strictly applies this concept, arguing that it does not have jurisdiction to extend the legal interpretation of the terms used in the Staff Regulations to include situations of cohabitation and "concubinage" in the concept of «marriage».

It should be noted, however, that certain rights in terms of leave and social security are granted to all EU officials and agents registered under a non-marital partnership and their spouses, without having to demonstrate that the couple does not have access to civil marriage in a Member state.

R&D and DALDEWOLF will soon organize a conference on this subject.

Day to Day in Belgium

The reform of residential lease: follow-up

As mentioned in the January edition of *The Official*, new rules applicable to residential leases, resulting from an regional ordinance of 27 July 2017 (hereinafter the «Ordinance»), entered into force on 1 January 2018 in the Brussels-Capital Region.

These new rules, inserted in the existing Brussels Housing Code (hereinafter the «BHC»), replace within the 19 municipalities of Brussels the «federal» law of 20 February 1991 on principal residence leases (the "Law").

The Ordinance has a much broader scope than that of the Law which only applied to lease agreements allocated to the principal (or "main") residence of the lessee (schematically, the principal residence lease agreement aims at protecting the family home, the one that is used as the main residence of the family and in which the lessee is intended to establish his domicile).

The Ordinance applies to all residential leases, that is to say all leases that relate to a dwelling (with the exception of tourist accommodation). The Ordinance is divided into two parts: the first part consists of general provisions that are applicable to all residential lease agreements (provisions concerning pre-contractual information, maintenance and renovation, rent, costs, transfer of lease, sub-lease, termination, etc.), while the second part consists of specific provisions applicable to the different types of residential lease agreements considered by the Brussel's lawmaker (principal residence of the lessee, student lease, co-housing agreements, the so-called «intergenerational» housing agreements, etc.).

The Ordinance is mandatory unless otherwise specified in which case conventional exceptions are possible. We will examine in the next issue of *The Official* the main innovations brought by these general provisions.

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