The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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RENOUVEAU DEMOCRATIE CONSEIL

Edito

Dear readers,

In this new issue of *The Offici@l*, we look into the case law regarding consideration of the previous professional experience for the purposes of classification in grade.

Our Focus is dedicated to the "*GDPR for EUI's*" and the rights of access, rectification and erasure of the personal data pertaining to EU officials and agents affected by the processing.

Lastly, in the field of Belgian law, we provide some comments on the key elements of the new legislation on co-ownership, which is set to enter into force on January 1st, 2019.

We wish you a very pleasant reading!

The DALDEWOLF team

Case law

Consideration of the previous professional experience for the purposes of classification in grade

By its judgment of 16 October 2018, the General Court dismissed the action brought by a member of the contract staff employed by the DG for International Cooperation and Development, seeking annulment of the decision of the European Commission rejecting her request for a review of her classification in function group IV, grade 15, step 1. The contested decision was based on the failure of the Commission to take into account the applicant's previous professional experience which she had acquired as Managing Director of a Sudanese undertaking, before she took up her post. The rejection of the applicant's complaint by the AECE (Authority Empowered to Conclude Contracts) led her to bring the present action before the General Court.

In its judgment, the General Court essentially focuses on consideration of the previous professional experience for the purposes of the classification in grade of contract staff, and it examines the justification of the relevance of such experience. In that respect, the applicant relies on four pleas in law in support of her action.

With respect to the first plea, alleging manifest errors of assessment, the General Court recalls that professional experience should be taken into account for the purposes of recruitment of contract staff. In that regard, the institutions enjoy a broad discretion in terms of fixing the relevant criteria used to ascertain whether the previous professional experience of a contract staff may be taken into account for the purposes of their classification in grade (see, to that effect, *Fares v Commission*, F 6/09, para. 38). This broad discretion is however subject to limited judicial review. The judges are thus required to examine whether the exercise of its discretion by the institution is free of any manifest error of assessment (*Fares v Commission*, F 6/09, paras. 39 and 40). The burden of proof falls on the applicant, and the evidence "*must be sufficient to render the factual assessments accepted by the administration implausible*" (see, to that effect, *France v Commission*, T 257/07, para. 86), which was not the case here.

Regarding the second plea, alleging a breach of the obligation to state reasons, the General Court follows the line of reasoning of the AECE in justifying the rejection of the applicant's complaint. The judges therefore rely on consistent case law regarding the duty to state reasons for a decision adversely affecting a person. They recall that the reasons given for a decision are sufficient if that decision was adopted in a context which was known to the person concerned (*Commission v Marcuccio*, T-20/09 P, para. 68 and the case-law cited). The General Court concluded that there was no breach in the present case as the applicant should have known that the evidence put forward pertaining to her previous professional experience was insufficient, as she herself drafted the note motivating the relevance of this experience.

Neither has the General Court found a breach of the principles of equal treatment and non-discrimination with respect to the probative value of the testimonial pertaining to her previous professional experience. The judges reached this conclusion relying on the marital ties existing between the applicant and the author of the testimonial. In terms of burden of proof, the situation between spouses cannot be compared to that persons lacking family or marital ties, having regard to the risk of collusion which may exist between the persons of the first category.

Lastly, the General Court rejected the fourth plea alleging a breach of the principle of proportionality, since it follows from the examination of the first plea that the applicant had not proven to the requisite legal standard that she had acquired relevant previous professional experience.

In light of all the elements above, the General Court dismissed the action brought by the applicant in its entirety.

Focus

The « GDPR for EUI's » and the rights of access, rectification and erasure of the personal data pertaining to EU officials and agents affected by the processing

As pointed out in the last issue of *the Offici@l* (October 2018), the time has come for the Union institutions, bodies, offices and agencies (hereafter, "the institutions") to update their rules relating to the protection of personal data processed inside their walls. In that respect, compliance of Regulation No 45/2001 with the GDPR (General Data Protection Regulation) has now reached its final phase since the new Regulation (EU) 2018/1725 will enter into force early December.

With the adoption of this new Regulation, we take the opportunity to briefly recall the rights of EU officials and agents pertaining to the processing of their personal data. We here solely look into their rights of access, rectification and erasure of such data.

New Article 17 (Article 13 of current Regulation No 45/2001) covers the right of access to personal data. This right shall include the possibility for EU officials and agents concerned by the processing of their data to access such data detained by the institutions, as well as the right to obtain a free copy of the data undergoing processing. An EU official or agent could for example request access to documents concerning the inquiry into accusations of harassment (see for instance; where request for access has been considered irrelevant or denied, *CJ v ECDC*, T-370/15 P and *CN v Council*, F-84/12). Likewise, an official or agent on sick leave could request access to its medical file as part of a request for recognition of the occupational origin of its disease (*Commission and Strack v Strack and Commission*, T-197/11 P).

EU officials and agents also have a right to rectification of inaccurate personal data pursuant to new Article 18 (Article 14 of current Regulation No 45/2001), in the event an institution has taken an adverse decision founded on these inaccurate data.

New Article 19 (Article 16 of current Regulation No 45/2001) regards the right to obtain the erasure of personal data by the institution concerned. More commonly referred to as the "right to be forgotten", this right entails the possibility for EU officials and agents to obtain from the institution that their personal data be erased, for example where these data have been unlawfully collected and processed (see for instance, *Vinci v ECB*, F-130/07).

All things considered, this New Regulation does not inherently alter the content of the rights hereabove mentioned. It merely aligns its provisions with the GDPR. It notably recalls the obligation for the controller to inform EU officials and agents of these rights, as well as their right to lodge a complaint with the European Data Protection Supervisor where it appears the institution has infringed their rights under this Regulation.

Day to Day in Belgium

Reform of co-ownership in Belgian law

The legislation on co-ownership underwent a substantial reform as part of the *law of 18 June 2018 laying down various provisions on civil law and provisions to promote alternative forms of dispute resolution*. Title 6 of this omnibus law enshrines the amendments made with respect to co-ownership. We provide some comments on the key elements of the new legislation.

First and foremost, the purpose of this reform is to improve the flexibility and efficiency of the co-ownership association and its organs.

The lawmaker has improved flexibility by altering the qualified majority within the co-owners' general meeting, which drops from 3/4 to 2/3 of the votes. The objective is to improve the decision making process as well as to minimise potential deadlocks with respect to works undertaken on common parts of the building. Unanimity is replaced by a majority of 4/5 in situations where the building requires demolition or reconstruction due to insalubrity.

In case of deadlock, the lawmaker has provided for the intervention of a «provisional administrator» (usually an attorney), responsible for taking decisions in the place of the general meeting in certain strictly defined circumstances, for example when the poor state of the building requires it or in case of financial difficulties of the co-ownership.

The lawmaker has also provided for greater efficiency insofar as the lawmaker henceforth imposes on each co-owner a compulsory contribution to the reserve fund, intended for the payment of works related to wear of the common parts of the building.

A second key element of the reform is the introduction of the «payer decides» principle. The number of votes a co-owner has in the decision-making process will henceforth be proportional to his participation in the costs of the common parts of the co-ownership. Thus, a co-owner who does not participate in the costs of the common parts will lose the benefit of decision-making with respect to these parts of the building.

This reform also includes strengthened responsibilities of the co-owners and introduces a privilege in favor of the association of co-owners. The latter will become a preferred creditor in the event of default by one of the co-owners with respect to its share of the charges.

The legislator further specifies some provisions of the current legislation.

The reform on co-ownership, contained in Articles 577-2 and following of the Civil Code, is set to enter into force on January 1st, 2019.

Our team

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