DALDEWOLF

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EDITO

Dear Readers,

This month, our Focus section examines the topic of education allowances.

Our case law commentary delves into a recent General Court ruling, which annulled the dismissal of a temporary staff member. The Court found that the European Commission failed to provide evidence and refused to verify facts that were readily available.

Towards the end of this issue, you will find an in-depth analysis of Belgian law concerning planning violations, particularly in relation to property sales in the Brussels-Capital Region.

This newsletter is also yours, and we welcome any suggestions you may have for future issues. Don't hesitate to contact us by e-mail: theofficial@daldewolf.com

We hope you enjoy your reading!

The DALDEWOLF team

OUR TEAM

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FOCUS

BACK TO SCHOOL! ALL YOU NEED TO KNOW ABOUT THE EDUCATION ALLOWANCE

The education allowance, outlined in Article 3 of Annex VII to the Staff Regulations of Officials of the European Union, is designed to cover the educational expenses of dependent children of EU officials and staff. This includes various schooling costs such as tuition, enrolment fees, and transport.

Eligibility Criteria

To be eligible for the education allowance, certain criteria must be fulfilled:

- The child must be at least five years old and enrolled full-time in a fee-paying primary or secondary school or a higher education institution.
- The child must be classified as "dependent" under Article 2 of Annex VII of the Staff Regulations, meaning the official must already be receiving the dependent child allowance.
- The child must attend the educational institution regularly and full-time and actively follow the programme offered. Mere enrolment is insufficient to prove attendance (HD v Parliament, T-604/16).

Additionally, a traineeship conducted outside an educational establishment, even with the institution's approval or support, is considered regular full-time attendance only if it forms an integral part of the curriculum (Costacurta v Commission, T-34/89).

Amount of the Education Allowance

The education allowance is paid monthly and is based on the actual school fees incurred, with a ceiling of €329.72 (as of 01.01.2024) per dependent child per month. In specific cases, such as when the school is located more than 50 km from the official's place of employment, this ceiling may be doubled.

A lump sum allowance is granted for children under five or those not regularly attending an educational institution, which is lower than the standard ceiling.

In cases where parents are separated, the allowance is only granted if it is proven that the civil servant in question is responsible for the child's care. If such proof is lacking, the Administration may refuse the education and the dependent child allowances (BS v Parliament, T-593/18).

Duration of the Education Allowance

The entitlement to the education allowance begins at the start of the month the child starts primary education and ends at the close of the month when the child turns 26. However, if the child stops attending school regularly full-time during the academic year, entitlement to the allowance ends (HD v Parliament, T-604/16).

Vocational Training and Higher Education

The General Court recently clarified in Paraskevaidis v Council and Commission (Case T-698/21) that the vocational nature of a child's training does not affect their entitlement to the education allowance as long as an accredited institution provides the training. Thus, a child enrolled in full-time vocational training at a higher education establishment remains eligible for the allowance.

CASE LAW

THE GENERAL COURT ANNULS THE DECISION TO DISMISS A TEMPORARY AGENT

On 8 May 2024, the EU General Court handed down its judgment in the case of UF v Commission (T-24/23), concerning dismissal for breach of trust. The temporary agent in question, responsible for the close protection of Members of the Commission, including two Vice-Presidents, was dismissed following accusations of aggressive behaviour towards nurses during PCR tests carried out during the Covid-19 pandemic.

According to the nurses who performed the tests by inserting a swab into the claimant's nose, he behaved aggressively during two PCR tests. During these tests, the claimant allegedly struck the nurse's arm, asking him to stop the test, and moved his head continuously, preventing the test from running smoothly. The nurses therefore informed the claimant's superiors of this behaviour.

After hearing the nurses concerned, the Commission's Security Directorate decided to withdraw the weapon provided to the applicant for the performance of his duties and, secondly, his rights of access to the Commission's buildings. Finally, his contract was terminated for breach of trust.

The decision to terminate the contract was annulled by the EU General Court.

The EU General Court found that the Commission had not demonstrated that the applicant's conduct could be established 'objectively and independently of the content' of the evidence given by the nurses concerned. In fact, the Commission refused to hear the Vice-President of the Commission, who was present during the tests, despite the applicant's requests and despite the contradictions between the version of the facts provided by the nurses and that of the applicant. However, the Vice-President subsequently made a sworn statement to the effect that, in his opinion, the applicant had not behaved inappropriately during the tests in question.

Consequently, the EU General Court held that the Administration had wrongly refused to verify the facts in the light of the evidence, which was nevertheless available, and that, consequently, the existence of the conduct of which the applicant was accused had not been established.

However, no compensation was awarded to the claimant for the non-material damage suffered because, in the EU General Court's view, the claimant failed to demonstrate the existence of non-material damage that could not be fully compensated for by annulling the dismissal decision.

BELGIAN LAW

PLANNING TO BUY A PROPERTY IN BRUSSELS? BEWARE OF PLANNING INFRINGEMENTS!

Planning breaches mainly concern work carried out without planning permission in violation of urbanistic regulations. These may include extensions, division into several dwellings, alterations to the facade, converting an attic into a dwelling, or changing the use of a garage into a kitchen. Most of the time, these planning breaches come to light during a planning inspection (by an agent, a drone, etc.), after a complaint from a neighbour or when a property is sold.

Town planning offences :

The most common are dividing a single-family home into multiple dwellings, converting an attic or creating dormer windows. The creation of a terrace, on the other hand, which is an external change to a property, not only requires authorisation, but it is well known that terraces that infringe articles 675 to 680 bis of the Civil Code, which govern "views onto one's neighbour's property", are rarely respected. These terraces therefore need to be regularised from an urban planning point of view and brought into line with the relevant legal requirements.

Planning permission

Article 1, paragraph 2 of the Brussels Regional Urbanistic Regulations (RRUB), the regional urbanistic regulations applicable in the Brussels-Capital Region, is very clear on one point: building or converting a building requires a permit.
Under article 98, paragraph 1, of the Brussels Town and Country Planning Code, planning permission is required if you wish to :

- make alterations to an existing building, with the exception of conservation and maintenance work; alteration means the internal or external modification of a building, structure or installation, in particular by adding or removing a room or roof, changing the appearance of the building or using other materials, even if this work does not change the volume of the existing building;
- demolish a building ;
- rebuild ;
- change the use of all or part of a property, even if this change does not require any works.

Exemptions :

Only a few exceptions, clearly defined in the *Decree of the Government of the Brussels-Capital Region determining the acts and works exempt from planning permission, from the opinion of the delegated official, the municipality or the Royal Commission for Monuments and Sites, or from the intervention of an architect*, are exempt from this permit requirement. These include, for example, work to fit out and convert the interior of a flat (the installation or removal of interior equipment such as sanitary, electrical, heating, insulation, ventilation or telecommunications equipment, etc.), which does not involve any departure from a land-use plan and does not result in any change to the built volume or the architectural appearance of the building. (Article 9 of this Decree).

Protection for the vendor and the purchaser :

Knowing whether a building is affected by a planning breach is not always obvious. When selling a building, this question will frequently arise. Clauses designed to protect the buyer and/or seller in the event of a planning violation are common.

- **Protecting the seller: clause exempting the seller from the warranty for hidden defects and town planning offences**

Under article 1641 of the Civil Code, the seller is obliged to guarantee the purchaser against hidden defects. The existence of a planning breach may constitute a hidden defect.
This clause can only be invoked if the seller is acting in good faith, i.e. if he had no knowledge of it.

- **Protecting the purchaser: clause guaranteeing the conformity of the property with urban law**

To be included in the deeds of sale or the offer to purchase, this guarantee consists of the seller stating that, to the best of his knowledge, the property sold is free from any urbanistic law infringements. This guarantee may relate either to work carried out by the seller or to all work, regardless of who carried it out. This means that the buyer of a property that is in breach will have no difficulty in obtaining compensation for his loss (including the costs of rectifying the situation) on the basis of this clause.

This clause also precludes the application of the clause exempting the seller from the warranty for hidden defects. In the event of the sale of a property that is in breach of urbanistic regulations, the seller may not attempt to demonstrate good faith in order to be exempted from his guarantee, when he has at the same time guaranteed the property's urbanistic regulations compliance.
As a seller, it is therefore advisable to check that your property is in order before embarking on a property sale; you can find out about this from your - municipality. All you need to do is consult the land registry, which lists all the building permits granted to your property.

Adjustments :

The majority of urbanistic planning breaches can be regularised. You can consult Regularis for Brussels and Wallonia and Vlaanderen for Flanders for all the information you need.