



# The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

Dal & Veldekens

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## Edito

This last issue of « The Offici@l » 2014 is the occasion to focus on actions for compensation against European Institutions' decisions or behavior. In this regard, we will study the recent Civil Service Tribunal's case law and the pre-litigation phase which apply to this judicial remedy.

The whole team wishes you all the best for 2015.

*Dal&Veldekens' team*

## Focus

### The compensatory remedy - Pre-litigation phase

Besides the action for annulment, the compensatory remedy remains a remedy that European officials cannot overlook.

As in the case of an action for annulment, the admissibility of a compensatory remedy is subject to the proper course of the prior administrative procedure provided by Articles 90 and 91 of the Staff Regulations.

Thus, in order to implement the responsibility of the Institutions, there are two separate pre-litigation procedures depending on the source of the alleged damage:

- If the damage resulted from an act whose annulment is continued (act adversely affecting the official's interests) the pre-litigation procedure begins at the stage of the complaint (Article 90 § 2 of the Staff Regulations)
- If the damage resulted from a behavior of the administration (errors and omissions) lacking of decisional character: the pre-litigation procedure begins with a request (Article 90 § 1 of the Staff Regulations)

For example, regarding the pre-litigation procedure applicable to a claim for compensation for damage resulting from a decision to open disciplinary proceedings can be separate:

- When initiated disciplinary proceedings are terminated by a decision adversely affecting the official's interests, the civil servant can only invoke the illegality of the decision taken to initiate the disciplinary proceedings in support of a challenge brought directly against the adverse decision adopted at the end of the procedure (i.e. a complaint against the decision of the appointing authority imposing a disciplinary action)
- When the administration takes a final decision without following the disciplinary procedure, this decision does not adversely affect the official's interests. The civil servant, to obtain compensation for the damage resulting from a decision to open disciplinary proceedings, must first observe the two-stage pre-litigation procedure provided for in Article 90 of the Staff Regulations (request + claim).

## In brief...

### Right to deletion of data in the disciplinary record

Article 27 of Annex IX of the Staff Regulations provides that a civil servant against whom a disciplinary penalty other than removal from post has been ordered may, after three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure.

However, this is not an absolute right since the appointing authority retains a certain degree of discretion in this regard.

## Case law

### Duty of care

In the case *McCoy v / Committee of the Regions* of 18 November 2014, the European Union Civil Service Tribunal has ruled on the duty of care (case F-156/12).

The applicant was suffering from anxiety, depression and showed symptoms of post-traumatic stress because, following to a serious conflict between him and his superiors within the Committee of the Regions, about what he considered as irregularities in the financial management of the Institution. The latter was put on sick leave, then compulsory retirement disability. His application for recognition of occupational disease was rejected by the Invalidity Committee.

In 2011 and 2012, the applicant submitted, on the one hand, an action for annulment against the decision to reject his application for recognition of occupational disease, for which he succeeded because of a lack of motivation (case F-86/11) and, on the other hand, a compensatory remedy, because he thought that the amount awarded under Article 73 of the Staff Regulations on the risks of occupational disease was insufficient.

For additional compensation, the applicant had to show that the Committee of the Regions had committed acts that incur liability. As such, the Tribunal recalls that the duty of care implies that the administration takes into account not only the interest of the service, but also that of the civil servant. In addition, the obligations of the administration are substantially enhanced when it is established that the physical or mental health of a civil servant suffered. In such cases, the administration should consider the request with an open mind.

The Tribunal notes that the Committee of the Regions has not shown it had taken into account the difficulties the applicant experienced because of the Institution's behavior. In particular, in May 2004, when the applicant requested to know the exact nature of what he was accused, the Secretary General did not answer him, leaving him in a state of uncertainty, waiting and incomprehension. In addition, in February 2005, the applicant noted that his office was locked, that he had not been given the key and that he had not been informed of this change. When asked about the incident at the hearing, the Committee of the Regions could not explain itself.

The Tribunal therefore held that the Committee of the Regions has breached its duty of care, which incurred its liability, and sentenced it to pay compensation for the non-material loss suffered by the applicant the sum of 20,000 Euros.

## Day to day in Belgium

### Rent indexation

Once a year, at the anniversary date of the entry into force of the contract, the landlord has the possibility to index the rent. This rent indexation must be specified in the contract. Otherwise, the landlord would not be able to adjust the rent.

The rent is calculated in accordance with the following formula: (basic rent x new index) / basic index. The basic rent being the one fixed in the contract, excluding costs and charges, while the new index is the health index of the month preceding the anniversary date of the contract and the basic index is the index of the month preceding the month of the conclusion of the contract.

To index the rent, the landlord has to comply with certain formal requirements. The indexation is applied upon request in writing of the landlord to the tenant and can only apply back to three months before the request.

It should be noted, lastly, that if the tenant refuses to pay the indexation, the landlord has one year to take legal action against his tenant.

## Our team

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