



The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

Dal & Veldekens

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Edito

By this last issue of The Offici@l, we are concluding our study regarding action for damages, focusing on the compensation for damage caused by a third party or another official and suffered by reason of their position or duties. We will also have a look on consumers' rights regarding distance and off-premises' contracts.

We wish you a pleasant reading,

Dal&Veldekens' team

Focus

Compensation for damages caused by a third-party or another official

Pursuant to article 24 of the Staff regulations, the European Union compensates jointly and severally the officials or agents for damage suffered by reason of their position or duties, in so far as the officials have been unable to obtain compensation from the persons who did cause it.

This is a "non-fault" or "strict" liability regime, which differs from the ordinary law regime of EU liability in the context of the Civil Service, which requires an official who seeks to obtain compensation from the EU to show that he has suffered damage as a consequence of a wrongful conduct on the part of an institution.

An application for compensation based on article 24 of the Staff Regulations is therefore subject to the prior exhaustion of national remedies, provided that such national remedies guarantee an effective protection of individuals and may result in the compensation of the alleged damage suffered.

Moreover, the officials or agents concerned shall demonstrate that they suffered damage by reason of their positions or duties.

In this regard, it has been held that the mere fact that a child was admitted to a crèche because one of his parents was a member of the European Union Civil Service, and was there the victim of extremely serious assaults, does not support the conclusion that the link, for the purposes of Article 24 of the Staff Regulations, between the acts of the third parties concerned and the parent's position as an official is established.

In the same vein, the Tribunal has considered that a family cannot rely on Article 24 of the Staff Regulations to request the Commission to pay jointly and severally compensation for the damage suffered by an official and his family who were the target of a common criminal.

An action for compensation based on article 24 of the Staff Regulations must therefore seek to demonstrate that the perpetrators of crimes or offences knew the victim's position as an official of the European Union or of the nature of his duties.

Case law

Breach of the reasonable time principle: compensation for the moral damage

In the case *Albert Nardone/European Commission* of 2 October 2013, the European Union Civil Servant Tribunal has ruled on the application of the due process time principle in the framework of a professional disease recognition procedure (case. F-111/12).

The applicant entered to the European Commission service in 1970 as a locksmith, worked until his resignation in 1981 in a premise imposing, as observed by the Commission medical advisor, "deplorable sanitary conditions". Suffering from multiple health disorders since 1971, Mr Nardone lodged a request in 1994 aiming the recognition of the professional origin of his disease. After several medical opinions and multiple administrative procedures, the applicant introduced before the Civil Servant Tribunal an action for the annulment of the 8 October 2011 decision by which the Commission grants him a 4.000 Euros compensation for the moral prejudice caused by the administrative delays equivalent to 43 months.

Firstly, the Tribunal recalls that the obligation to rule in a reasonable period within the meaning of Article 6 of the European Convention on Human Rights only applies to «tribunals», but that keeping a reasonable time in the conduct of administrative procedures per se constitute a general principle of Union law. Furthermore, if the violation of this principle does not justify the annulment of a decision, it can nonetheless result in damages for a prejudice superior to the one already compensated by the Commission.

Secondly, the Tribunal points out that the complexity of professional diseases recognition cases must be taken into account and that only the delay imputable to the Commission could be evaluated for such a claim. In this case, the total duration of the procedure has been fixed to 17 years and 7 months. On that basis, the Tribunal assesses each phase of the administrative procedure in order to determine whether the reasonable period has exceeded the 43 months taken on by the Commission as a base of calculation of the 4.000 Euros compensation.

Having identified numerous periods of procedures before several medical commissions before which the case has been brought successively, and on which the applicant couldn't have any control, the Tribunal considers that a total of a 95 months delay should have been taken into account in the appreciation of the claim for compensation presented by the applicant. Therefore, it sentenced the Commission to pay the applicant the default interests on the lump sum paid to him in 2011, in addition to the payment of a 3.000 Euros additional compensation for moral damage suffered.

In brief...

The EU official anonymity request in proceedings before the Civil Servant Tribunal

In order to avoid deterring EU officials from filing an application before the EU Civil Service Tribunal by extraneous considerations, Article 48 of the Civil Servant Tribunal procedure rules allows the officials to request for anonymity.

In this view, the applicant who wants his name or confidential information not being mentioned in the framework of the proceedings and in the publications related to the case, can lodge an anonymity request before the Tribunal. Such a request will be accepted if there are legitimate personal or professional reasons for that anonymity.

Day to day in Belgium

The Right of Withdrawal in the Economic Law Code (1/3)

In some events, the Economic Law Code grants the consumers the right of withdrawal when they have purchased a product or a service at a distance or off-premises. The same right is granted to them when they order a service from a licensed professional (lawyer, pharmacist, real estate agent, etc.).

The Economic Law Code

The Belgian legislation acquired a new tool: the Economic Law Code which aims at gathering in a single instrument various legislations on business, such as the general obligations imposed on enterprises, competition law, market practices and consumer protection, distribution law, intellectual property law, etc.

Before the Economic Law Code (the "ELC") was adopted, the market practices and consumer protection were governed by the Act of 6 April 2010. The Act of 6 April 2010 was inserted in Book VI ELC which implemented the 2011/83/UE directive of 25 October 2011 on consumer rights at the same time.

A Book XIV was also adopted regarding the consumer protection towards professionals. The Book XIV ELC consists of nothing more than the mere reproduction of the Act of 6 April 2010 provisions (Book VI ELC now), subject to some legal changes made in order to meet the professionals' specific nature.

First, we have to note that Books VI and XIV ELC only concern the consumers. "Consumer" means "any natural person who is acting for purposes which are outside his trade, business, craft or profession" (art. 1.1, 2° ELC).

Therefore, the provisions of Books VI and XIV are only applicable:

- when a natural person is involved, which excludes companies, associations and public institutions,
- when such a natural person is acting for personal purposes.

How to apply both Books VI and XIV? The provisions of Book XIV ELC only apply to the "characteristic performance" of professionals. The provisions of Books VI ELC therefore apply to "non characteristic performance" of professionals, i.e. other than the intellectual performance which is characteristic from his/her profession. Any cumulative application of Books VI and XIV ELC is prohibited. Book XIV will therefore only apply when Book VI will not, provided that the concerned act falls under a licensed profession or not.

For example, when a pharmacist sells drugs, he or she performs a "characteristic" act which falls under Book XIV ELC. On the other hand, when such a pharmacist sells sun cream, he or she does not perform a characteristic act which then falls under Book VI ELC. The same applies to lawyers when, for example, they act as the managing agent of an association of co-owners.

This distinction has an important impact on the action for an injunction provided by the ELC. Such action shall be brought before the president of the tribunal of first instance when Book XIV ELC is applicable, whereas the president of the commercial tribunal will be competent when Book VI applies.

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