The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

Contact theofficial@daldewolf.com - Web www.daldewolf.com - May 2017

Edito

Dear readers,

There has been a lot of legal news in May: a judgment from the Court of Justice of the European Union regarding tax exemption of EU official has notably been published. We take this occasion to review this subject. The issue of the amounts withheld on the remuneration of a contractual agent suspended under disciplinary procedure will also be discussed here.

We wish you a very pleasant reading,

The DALDEWOLF team

Focus

EU officials and national taxes

Pursuant to article 12 of the Protocol on Privileges and Immunities, EU officials and agents are exempted from national taxes on salaries, wages and emoluments paid by the Union.

Such exemption covers any kind of salaries (allowances, compensations, etc), even paid after the EU official's has left service.

In the case *Bourgès-Maunoury and Heintz* of 5 July 2012 (case C-558/10), the Court of Justice of the European Union (CJEU) ruled that the Member State of residence of an EU official cannot take account of the income, including the pensions and allowances on termination of service, paid by the European Union to its officials in calculating the cap on a tax such as the wealth tax.

Very recently, in the case *Lobkowicz* of 10 May 2017 (case C-690/15), the CJEU considered that the provisions of the Protocol on the Privileges and Immunities of EU officials preclude that income from real estate received in a Member State by an official of the European Union who has his or her domicile for tax purposes in that Member State is subject to contributions and social levies that are allocated for the funding of the social security scheme of that same Member State. In this case, the contributions concerned were the CSG / CRDS, levied on income from real estate by France. The Court rules that such national tax was inconsistent with EU law, as it would impose some EU officials to contribute to a national social security scheme in addition to the joint social security scheme of the EU institutions.

However, the tax exemption does not cover any income.

For example, in the case *Kristoffersen* of 25 May 1993 (case C-263/91), the CJEU stated the Member State where the EU official had his domicile for tax purposes can levy income tax on the basis of the rental value of the home which is owned by him/her, even in another Member State, as such rental value is not an exempted income according to the Protocol.

Finally, in the judgment *Pazdziej* of 21 May 2015 (case C-349/14), the CJEU underlined that article 12 of the Protocol only covers national taxes of a similar nature to those levied by the Union on the same sources of income. Thus, it is compatible with EU law a national tax, such as the French residence tax, which takes into consideration salaries, wages and emoluments paid by the Union to its officials in order to determine the upper limit of the liability established with respect to a residence tax levied for the benefit of local communities, with a view to the possible granting of relief from that tax.

Case law

Former contractual agent suspended: the Commission has to reimburse the amounts withheld

By a judgment of 26 April 2017 (T-569/16), the EU General Court condemned the European Commission to reimburse the amounts withheld on the remuneration of a former contractual agent who had been sanctioned to a reprimand; the Commission thought that this penalty was not reflecting the seriousness of the failure but that was the only one possible due to the termination of the applicant's contract.

The applicant, who had been first hired as a local agent and then as a contractual agent for a 3-year period has been subject to an internal inquiry from OLAF on grounds of suspicion of passive corruption and has been placed in pre-trial detention by the Belgian judicial authorities. During that time, the AECC of the Commission started disciplinary proceedings against the applicant and, with a decision of 14 December 2006, suspended him for an undefined period of time. This decision also stated that 800 euros would be withheld from his remuneration for a 6-month period, in accordance with article 24 (1) of Annex IX of the Staff Regulations. The applicant was then sentenced to 12-month of imprisonment on probation and fined 3000 euros.

By a decision of 18 February 2015, the AECC sanctioned the applicant to a reprimand, in accordance with article 9 (1) (b) of Annex IX of the Staff Regulations. Following this decision, the applicant requested the reimbursement of the amounts withheld on his remuneration as provided for by article 24 (4) of Annex IX of the Staff Regulations.

The Commission denied both the request and the complaint of the applicant, saying that the penalty of a reprimand was not proportionate to the seriousness of the charges against him and that it only resulted from the impossibility to impose a more serious one because of the absence of any remaining employment relationship or pension or allocation paid by the institution. Besides, the Commission was considering that the reimbursement of the amounts withheld which would be consequent to a literal interpretation of article 24 (4) of Annex IX of the Staff Regulations would go against the purpose of this provision.

The EU General Court finds that under article 24 (4) of Annex IX of the Staff Regulations, only the penalty adopted allows to determine whether or not the amounts withheld should be reimbursed, without any influence from the degree of seriousness of the failures complained of.

The EU General Court then rejects the Commission's argument that there is a loophole in article 24 (4) of Annex IX of the Staff Regulations that has to be addressed with regards to former officials or agents who do not benefit from a pension or allocation or who benefit from one with an amount too low for the Commission to adopt disciplinary penalties with financial consequences. Indeed, the EU General Court finds that even if this allegation was founded, the judge could not interpret this provision in spite of its clear and accurate wording and unnecessarily restrict its scope.

Therefore, the EU General Court condemns the Commission to reimburse to the applicant the amounts withheld on his remuneration pursuant to the decision of 14 December 2006.

In brief...

Opinion of the CJUE's Advocate General regarding the services provided by UBER

Upon decision from a Spanish Court to refer preliminary question, the Court of Justice of the EU must rule on the classification the electronic platform Uber, the on-line transport service, under European Union law.

The Advocate General considers that the UBER platform cannot benefit from the principle of freedom to provide services as 'information society services'. Indeed, unlike other services such as the air ticket purchase service on intermediate platforms, UBER could not be considered as a mere intermediary between drivers and passengers. In this respect, the activity of the drivers using the UBER platform cannot exist without it. Besides, it is undoubtedly the transport service (and therefore the service not provided by electronic means) which constitutes the main service.

Therefore, according to the Advocate General, although UBER is an innovative concept using new information technology, it does not exempt it from the national transport rules of the Member States, which are free to regulate UBER's activity and impose the possession of licenses and approvals on these drivers in the same way as ordinary taxis in order to be able to practice.

Our team

The Offici@l

European Union law Thierry Bontinck, Anaïs Guillerme and Marie Forgeois (avocats).
Belgian law Kévin Munungu, Yaël Spiegl, Sarah Honincks, Olivier Bertin (avocats).

This newsletter is published in collaboration with Renouveau&Démocratie.