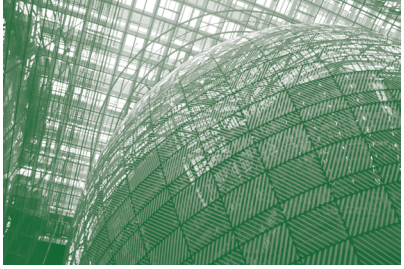

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DALDEWOLF

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EDITO

Dear readers,

September marks the start of the school year. The time has come for *the OFFICI@L* to resume its activities and meet again with its (hopefully) well-rested readers.

In this 52th issue, we comment the CASE LAW of the EU General Court pertaining to the consequences of sick leave spent elsewhere than at the place of employment, where no prior permission has been obtained in that respect from the Authority Empowered to Conclude Contracts of Employment (the "AECE").

Our FOCUS covers the content of the Administration's duty to provide assistance.

Lastly, under Belgian law, motor vehicles such as electric bikes, scooters and *hoverboards* (to name just a few) are now exempted from compulsory insurance for civil liability. We briefly explain the extent of this exemption.

Excellent reading to all!

The DALDEWOLF team

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CASE LAW

SICK LEAVE SPENT ELSEWHERE THAN AT THE PLACE OF EMPLOYMENT: NEED FOR PRIOR AUTHORISATION

The EU General Court focused on the obligation for an official or agent on sick leave to obtain prior authorisation from the AECE to spend his sick leave elsewhere than at the place of employment.

Case T-91/17 of 14 February 2019 involves an accredited parliamentary assistant assisting a Member of Parliament (M.E.P) (2014/2019 parliamentary term) who spent most of his sick leave elsewhere than at the place where he is employed (Brussels), without having obtained prior authorisation from the AECE of the European Parliament.

Therefore, the EU Parliament adopted two consecutive decisions in which it considered the two periods of this absence unfounded in light of Article 60 of the EU Staff Regulations. As a result, these periods of absence had to be deducted either from the applicant's annual leave or from his salary.

The Secretary-General of the Parliament having rejected a complaint lodged against these two decisions, the applicant subsequently challenged the rejection decision and brought the matter before the EU General Court.

The EU General Court firstly recalled the content of Article 60 of the EU Staff Regulations, which could be applied by analogy to the applicant. This provision expressly provides that an official who wishes to spend their sick leave elsewhere than at the place where they are employed shall obtain prior permission from their immediate superior. This is furthermore substantiated by the internal rules on absences on medical grounds.

In light of these provisions, the judges could only establish that the applicant spent most of his sick leave elsewhere than at the place of employment, without having obtained prior authorisation from the AECE, thereby infringing the aforementioned rules.

The EU General Court also observed that it appeared nothing prevented the applicant from obtaining prior permission from the AECE since before the beginning of his last period of leave, the Applicant had returned to Brussels and had requested permission to spend his sick leave elsewhere than at the place where the official is employed. In that regard the AECE had considered that this last period of absence could be regarded as an authorised absence.

The EU General Court did not otherwise pay attention to the fact that the applicant had a status of "whistleblower" or "witness" in the investigations, which would have led him to leave his place of employment abruptly. Indeed, the protection of whistleblowers and witnesses conferred by the EU Staff Regulations does not exempt the applicant from his other obligations pursuant to these same Regulations, notably the obligation to request prior permission from the AECE to spend his sick leave elsewhere than at the place where he is employed.

In these circumstances, the EU General Court dismissed the action lodged by the applicant.

FOCUS

Administration's duty to provide assistance

Pursuant to Article 24 of the EU Staff Regulations, EU officials may seek assistance of the Administration *"in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property"* where such threats or attacks (for example, harassment) have harmed an official by reason of his position or duties (EU General Court, 7 December 2017, *Missir Mamachi di Lusignano e.a. / Commission*, T-401/11 P-RENV-RX, pt. 106).

The Administration's duty to provide assistance relates both to officials and their family members. The same duty applies to former officials in circumstances in which a request for assistance had been duly submitted to the AECE at a time when the official concerned was carrying out his duties within the institution (EU General Court, 13 July 2018, *Curto / Parliament*, T-275/17, pts. 57, 58).

However, the duty to provide assistance is concerned with the defense of (former) officials and their family members against acts of third parties – including other officials – and not against acts of the institutions themselves (EU General Court, 12 July 2011, *Commission / Q*, T-80/09 P, pt. 66). It has notably been decided that an official cannot rely on the wording of Article 24 as a remedy in case of a decision of dismissal (EU Civil Service Tribunal, 24 February 2010, *Menghi / ENISA*, F-2/09, pts. 128-131). An official can only rely on an infringement of this provision where the Administration rejected a request for assistance or failed to provide a staff member with assistance on its own initiative.

The request for assistance generally originates from the official himself. It is up to the Administration to promptly reply to the official's request, depending in the specific circumstances. In that respect, it has been held that a delay of the Administration in taking action is such as to incur its liability. This was for example the case where the Administration did not promptly respond to a request for assistance which an official had sought on account of a defamatory statement or an attack on his integrity and professional reputation (EU Civil Service Tribunal, 11 May 2010, *Nanopoulos / Commission*, F-30/08, pts. 139-141).

For the Administration to provide assistance on the basis of Article 24, it is sufficient that the official *"provide[s] at least some evidence of the reality of attacks of which he claims to have been the victim"* (EU Civil Service Tribunal, 16 December 2015, *De Loecker / SEAE*, F-34/15, pts. 41, 48).

For the remainder, the Administration enjoys wide discretion regarding the choice of measures and methods to take in the context of a request for assistance (as recently recalled in the judgment of the EU General Court, 13 July 2018, *Curto / Parliament*, T-275/17, pts. 74, 75). The Administration is thus entitled to take all appropriate (preventive) measures. It can for example decide on the opening of an administrative inquiry or take all necessary measures in order to protect the official – such as provisional transfer of an official who has been a victim of harassment (EU General Court, 6 February 2015, *BQ / Court of Auditors*, T-7/14 P, pts. 33, 34, 37, 49).

Lastly, in certain exceptional circumstances, the Administration is required to provide specific assistance on its own initiative (EU Civil Service Tribunal, 20 July 2011, *Gozi / Commission*, F-116/10, pt.13).

DAY-TO-DAY IN BELGIUM

Electric bikes, scooters, hoverboards and other are exempted from compulsory insurance

The law of 2 May 2019 containing various provisions in the economic field, which was published in the *Moniteur Belge* on 22 May, provides for an exemption from compulsory insurance for civil liability for motor vehicles such as electric bikes, scooters and *hoverboards* provided their speed limit does not exceed 25 km/h.

This exemption regime is now incorporated in the law of 21 November 1989, which until recently required compulsory insurance for civil liability for all motor vehicles whatever their speed limit. Under the former regime, the notion of "motor vehicle" notably included vehicles such as electric bikes and scooters, electric wheelchairs and *hoverboards* (characterised by the absence of handlebars).

These vehicles are now exempted from compulsory insurance provided their speed limit does not exceed 25 km/h.

However, class A-mopeds are not covered by this exemption despite the fact that their speed limit does not exceed 25 km/h. These vehicles thus remain subject to compulsory insurance.

In the event of an accident between an exempted vehicle and a "more vulnerable road-user" referred to in article 29*bis* of the law of 21 November 1989 (for example, a pedestrian), this more vulnerable road-user will typically turn to the civil liability insurer (family or private civil liability) of the driver of the exempted vehicle. However, in the absence of such insurance coverage, the more vulnerable road-user can now rely on the intervention of the Belgian Common Guarantee Fund (FCGB).

The exemption regime entered into force on the 1st of June 2019.