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NEWSLETTER
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Staff Matters

Legal news service of Union Syndicale

This is the first edition of a new service to you: "**Staff Matters**"

Union Syndicale will keep you regularly informed about latest developments in EU case law on staff matters and other useful legal news relevant for staff.

It will treat subjects like e.g. your rights in promotion, invalidity, entitlements and benefits, pension, the duty of care, holidays, insurance, damage claims, filing complaints and procedural questions as well as deadline observance. This is to increase your knowledge and capacity to defend your rights appropriately.

The special feature of this new format is that you are invited to send us your proposals for subjects to treat or any legal question that might be of interest for staff, may it be on EU staff regulations in general or related to your posting in a certain country. We keep confidentiality about any such proposal and introduce it in the newsletter anonymously. Simply send your proposals and questions to this address: StaffMatters@unionsyndicale.eu

The first edition will focus on the ***right to be heard***. We hope you enjoy it and look forward to receiving your feedback in order to further improve our services for you.

The decision to terminate the contract of a staff member had to be annulled because of an infringement of the right to be heard

Case T-566/16, Josefsson / European Parliament of 17 May 2018

In Brief:

The rights of the defence constitute a fundamental principle of EU law. The person concerned must be given the opportunity, before the drawing up of a decision adversely affecting him, to make his views effectively known as to the truth and relevance of the facts and circumstances on which that decision was

based. The right to be heard implies that the person concerned must have the possibility of influencing the decision-making process at issue.

Facts:

The applicant was engaged by a political Group of the European Parliament as a member of temporary staff for an indefinite period. Following the elections of 2014, the Secretariat of the Group was reorganised and the Group terminated the applicant's contract, claiming that the dismissal was due to the **reorganisation** of the Group's Secretariat which was necessary as a result of the Parliamentary elections and because of a new division of tasks and new competences of staff.

Court decision:

The Court annulled the decision to terminate the contract and ordered Parliament to pay the cost of the proceeding.

Reasoning

The infringement of the right to be heard must be decisive for the outcome of the administrative decision: i.e. had it not been for that irregularity, the outcome would have been different. The Court applied this concept widely: it could not be ruled out that if the applicant had been properly heard he would indeed have been able to influence the decision-making process in question.

Comments

The present Case is in line with the standing case-law on the infringement of the right to be heard and other *rights of the defence*. In Case Meyrl the dismissal was not only motivated by a reorganisation of a Parliamentary Group, but also based on behavioural reasons. The Court (T-699/16 P) considered a proper hearing on only one of the two reasons to be enough during the dismissal procedure. Originally, the Civil Service Tribunal had decided differently in first instance of that case (F-147/15, Meyrl): it had ruled that a proper hearing on both motivations brought forward by the employing authority was required.

Practically, it is important to know that an employing authority might introduce other reasons for dismissal after a hearing on one reason for dismissal has taken place. In our view a hearing will only fulfil its purpose if it relates to a specific motivation of the decision which is to be taken. In other words, a reason for dismissal legally cannot be taken into account if a hearing specifically on that reason has not taken place.

Counterarguments of the administration in the proceedings:

A counter-argument of the Parliament in Josefsson was that the applicant had allegedly been heard, because he was invited to the presentation of the new organigram before being confronted with the termination of his employment. This presentation was however not considered by the Court to be an appropriate hearing of the individual, also taking into account that his dismissal was at stake. Further, even had he guessed that the meeting was about dismissal, the period available to him to prepare for a pre-dismissal interview was insufficient to be able to conclude that conditions had been created enabling him to effectively make known his views during that meeting. It can thus be noted that the Court considers one day of preparation to be insufficient for a pre-dismissal interview.

Secondly, the employing authority may not plead internal difficulties in its decision-making processes, including difficulties relating to opposition on the part of individuals, in order to justify failure to comply with legal obligations, cf. Case C-297/08, Commission/Italy, para. 83; Case F-137/14, GV/EEAS, para. 77.

Thirdly, the court does not accept the argument that, in case the applicant had been properly heard, the employing authority would have taken the same decision anyway. This would let the general legal principle of the right to be heard run idle and take away its essential content. It cannot not be ruled out that if the applicant had been properly heard he would have been able to influence the decision-making process, cf. Case F-55/14, EE/Commission, para. 40; Case F-137/14, GV/EEAS, para. 78/79.

As a general comment, the rights of the defence are of high importance in EU administrative law [1]. Case law traditionally derives them from general principles of law, they have the status of fundamental rights. Some of these rights are stipulated in Article 41(2) of the Charter of Fundamental Rights. Also in other areas of EU law like public procurement, competition law, etc., the infringement of the right to be heard often is the reason for the annulment of EU administrative decisions.

Further, violations of the right to be heard can have financial consequences and justify compensation for material or non-material damage caused. We will come back on this subject in another newsletter.

N.B.: The dispute in Case Josefsson started with a reorganisation of the applicant's workplace. Bear in mind that there is, in principle, no need to hear a staff member in cases of mere reassignment or internal reorganisation of services (cf. Case T-597/16, OW/EASA of 7 June 2018)

[1] For further reading see *O. Mader*, Verteidigungsrechte (Nomos) ISBN 3-8329-1828-0