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APA Contract – informant / whistleblower
– duty of assistance and protection –
burden of proof – non-renewal of contract
– compensation of non-material harm

**Informants have a right of
“balanced and effective
protection” against any form of
retaliation**

Case T-793/22, TU / European Parliament
of 11 September 2024

*You can continue to send us your
suggestions for new subjects or your
questions and comments :*
StaffMatters@unionsyndicale.eu



Staff Matters

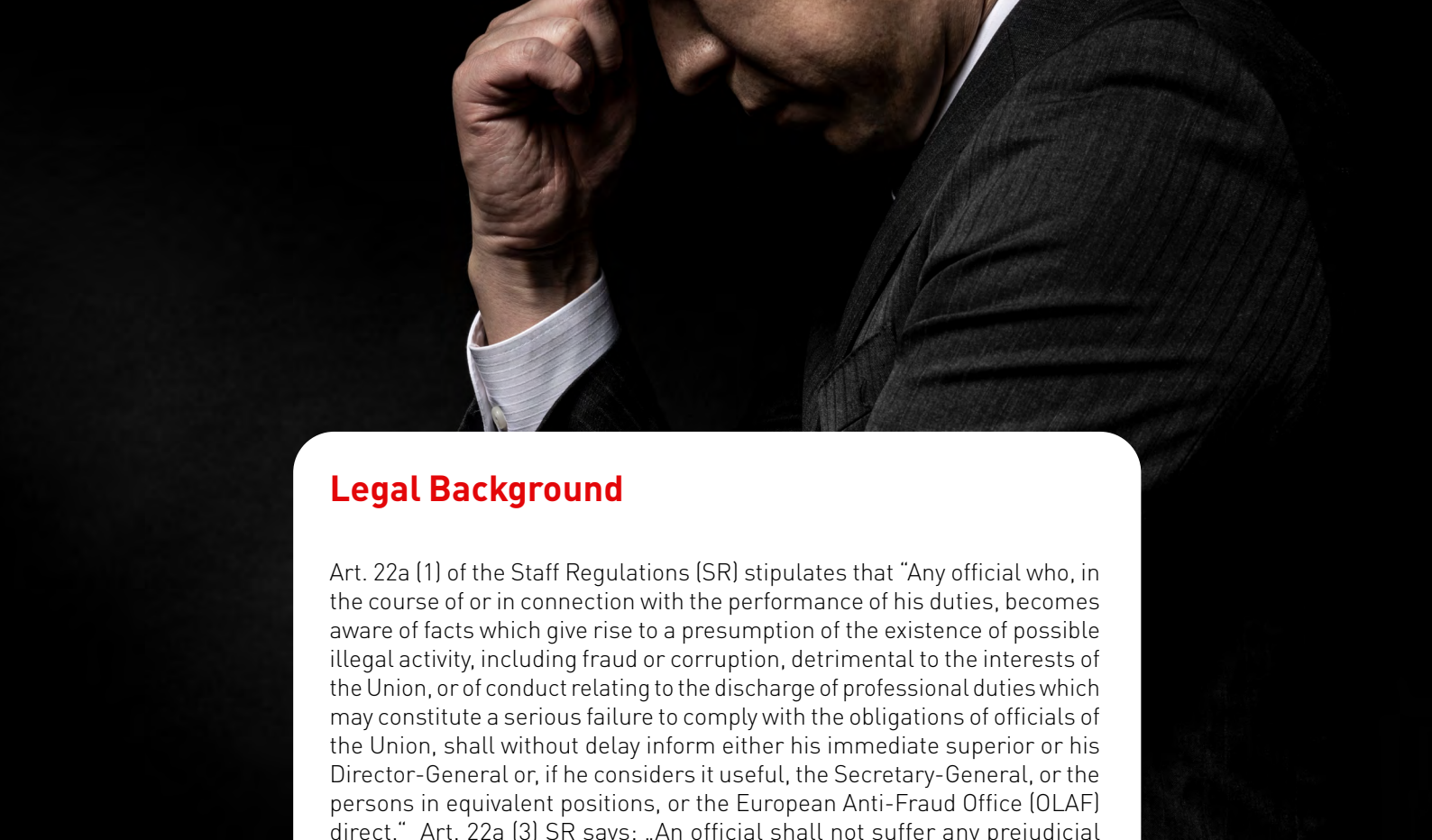
Legal News from Union Syndicale

All staff have a right to work in an environment free of harassment and retaliation. This newsletter is about a case of a parliamentary assistant (APA) who requested assistance against harassment and asked for protection as informant¹. He was then transferred to another MEP and later discharged of his professional duties. The law stipulates that a staff member blowing the whistle shall not suffer any prejudicial effects on the part of the institution. Even if an APA cannot enforce renewal of his contract without a corresponding demand from MEP side, the EP under its duty of assistance has to ensure balanced and effective protection against any form of retaliation. Once the informant provides credible evidence that he suffers harm, the burden of proof shifts towards the institution to show that it has taken sufficient measures to protect the informant.

¹ on terminology: “informant” is used here in the same sense as “whistleblower”.

Waiver

Although this newsletter is accurately prepared, it cannot replace individual legal advice. Legal situations are manifold and require both complex analysis and strategic action. You should therefore not rely on general presentations or former case-law alone to draw conclusions for your concrete situation. Please turn to us timely, should you require individual legal advice and/or representation.



Legal Background

Art. 22a (1) of the Staff Regulations (SR) stipulates that “Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union, shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct.” Art. 22a (3) SR says: „An official shall not suffer any prejudicial effects on the part of the institution as a result of having communicated the information referred to in paragraphs 1 and 2, provided that he acted reasonably and honestly.”

Facts of the Case

The applicant was under contract as accredited parliamentary assistant (APA) within the European Parliament (EP). He reported cases of harassment and financial irregularities involving the Member of Parliament (MEP) whom the applicant himself assisted. He requested assistance and protection under Art. 24 SR from the EP. He also reported these alleged irregularities to OLAF. In response to this, as a measure of provisional protection, the EP transferred him to another MEP. Later, when the applicant alleged to have suffered retaliation, the EP decided to discharge him from his duties until the end of duration of his contract. The applicant asked to be transferred to any other post within the EP and submitted several requests of renewal of his contract. His contract though was not renewed. He challenged that decision and the implied refusal to recognise his status as an informant and to adopt protective measures in addition to the measure discharging him from his duties. Further, the EP had informed the MEP - to which the APA was transferred - that he will be discharged from his duties subsequent to his request for assistance and also about the fact that he is an informant; this information was however passed on by the EP without the authorisation of the applicant to disclose his status. For that reason, the applicant claimed compensation of € 200.000 for breach of the rules on the protection of informants and the confidentiality of his informant identity.

Decision of the Court

The **General Court** (Court) annuls the EP’s implied refusal vis-à-vis the applicant to be protected as informant under Art. 22a to 22c SR and to adopt protective measures in addition to the measure discharging him from his duties. The Court acknowledges the non-material harm suffered by the applicant and awards him compensation of € 10.000.

The Court finds that, by confining itself to relieving the APA of his duties, the EP did not take all the measures necessary to ensure that he had **balanced and effective protection** against any form of retaliation. The Court points out that the protection of the informant applies automatically to any person reporting potentially illegal activities. There is no need to adopt a decision or other formality recognising that the person concerned had the status of an informant. Under Art. 22a to 22c SR, once the EP as competent authority in charge of the protection of their staff is informed about a possible illegal activity detrimental to the interests of the Union or of serious compliance failures, it has to acknowledge receipt of such information and inform the person of the measures in line with its duty of care and with the internal rules implementing the protection of informants (Art. 22c SR). The Court held that in the case at hands the EP did not correctly inform the person concerned of the action taken in response to his complaints within the prescribed period. Where the informant had provided credible evidence that

he or she had suffered harm as a result of the transfer to the second MEP, the Court decides, it is for the institution to demonstrate that it fulfilled its duty of protection towards that person by adopting sufficient measures to that effect. Art. 22a to 22c SR aim in particular to ensure protection for informants against possible retaliation measures. The institution cannot provide for rules less protective than those which have been specifically adopted, in this regard, by the Union legislature with regard to the protection of informants by the Member States.

The Court considers that the non-renewal of the contract of the applicant by the EP was in accordance with the rules in force, since an APA has an employment relationship with the Member or Members whom he or she assists, which is characterised by the existence of a bond of trust. It is an element of this required bond of trust that the MEPs can freely choose their personal staff (cf. Art. 21 Statute for Members of the European Parliament). The duty of care of the EP however cannot imply that the EP is forced to renew a contract of APA, even if that person has the status of informant. The EP was nevertheless obliged to take all measures necessary to ensure that the informant has balanced and effective protection against any form of

retaliation, including threats and attempted retaliation. By merely informing the person concerned that the discharge of his duties was the only protection that could be envisaged, the EP has not demonstrated that it took all the measures necessary and assumed its duty of assistance to ensure that the APA did not suffer any prejudicial effects as a result of his status as an informant.

Finally, the Court states, when the EP - without the applicant's permission - disclosed the status of the APA as an informant and disclosed the fact that his contract was not renewed following his request for assistance, it exposed him to retaliation and infringed its duty of confidentiality and protection of the identity of the informant. In consideration of this infringement, which cannot be repaired by the sole annulment of the implicit decision that refused protection other than the discharge measure, the Court partially upholds the applicant's compensation claim and decides that EP has to pay to the applicant for non-material harm an amount of 10.000 €.



Comments:

1. The judgment adheres to a protective line for the benefit of whistleblowers / informants against retaliation by applying for the first time in civil service law the test if the institution has taken all measures necessary to ensure that the informant has received a "balanced

and effective protection against any form of retaliation, threats and attempts of retaliation". Mere transfer to another post or discharge of duties might easily turn out not to be "sufficient" measures.

2. The Court's decision is in line with the legal opinion¹ that the overall level of protection of whistleblowers under the SR should not fall short of the protection afforded to "reporting persons" under the whistleblower Directive (EU) 2019/1937, OJ 2019 L 305, p. 17-56). The Directive lays down common minimum standards for the Member States for the protection of persons reporting breaches of Union law. The Directive contains the phrasing "balanced and effective whistleblower protection" explicitly in its first recital, however not in any article in this legal text.

3. The protective status as informant comes automatically by the fact that a person provides information that qualify under Art. 22a (1) SR. There is no need for a request or decision to "grant the status".

4. Every EU institution is obliged (Art. 22c SR) to set up internal rules for the implementation of the whistleblower protection under Art. 22a to 22 c SR. These must include rules on the handling of the matters reported, the protection of the legitimate interests of informants and of their privacy and the procedure for the handling of complaints.

5. It is important to note that the Court applies a shift in the burden of proof in order to strengthen the protection against retaliation: Where the informant had provided "credible evidence", so the Court stated, that he had suffered harm as a result of the transfer to the second MEP, it was "for the institution to demonstrate that it fulfilled its duty of protection towards that person by adopting sufficient measures to that effect". This shift of onus is already known in the field of discrimination (Art. 1d (5) SR) and in cases of sexual harassment (Art. 12a (2) SR), however not yet in cases of retaliation against whistleblowers. This will strengthen the status of informants.

6. The Court further confirms two procedural rights of an informant: first, that the institution has to acknowledge receipt of such information and, secondly, that the institution has to inform the person of the measures in line with its duty of care and according to its internal rules on informant protection.

7. The specialty of the case lies in the fact that the applicant wanted to have his contract as APA renewed, but did not find the corresponding demand on the side of an MEP to further deploy him as an assistant. The possibility to freely choose their personal staff gives a prerogative into the hands of the MEPs that cannot be overturned by the EP. Thus, the strengthening of informants' rights by the Court appears here as an attempt of counterbalancing the APA's dependency on MEPs.

8. The protection of the identity and the reputation of a whistleblower are also endangered e.g. when the appointing authority distributes too widely an administrative investigation report after the reporting of an irregularity. Already in an earlier Case (T-681/20, OC / EEAS) the Court has awarded compensation for non-material harm of (as here) € 10.000.



Dr. Oliver Mader M.A. (KCL) is a leading expert in EU Civil Service Law. He advises, lectures and publishes widely on EU Staff Regulations, collective EU civil service law, EU constitutional law, remedies, public procurement, external relations and other aspects related to EU law. As attorney Dr Mader is the founder of [Kanzlei Mader | Mader Law](#), a law firm that champions excellence in EU legal matters and related aspects of international and domestic law. The firm also advises and represents individual EU staff members.

¹ Mader, EU Civil Service Law (2024), p. 152.