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Staff Matters

Legal News from Union Syndicale



In this issue of **Staff Matters**, we will examine some cases where taking a decision or communicating it took an excessive time and the damages awarded by the Court. Do not hesitate to send us your suggestions for new subjects or your questions and comments: StaffMatters@unionsyndicale.eu

Excessive time periods to take decisions, damages

Time periods for taking a decision must not be excessive. If it happens, the staff member may be entitled to compensation for non-material damages

Joined Cases F-124/05 and F-96/06 *A et G / Commission*
Case T-274/04, *Rounis/Commission*
Case T-181/00, *Lavagnoli/Commission*
Case F-4/13, *Cwik/Commission*

Case F-65/11, *Schönberger/Parliament*
Case F-46/11, *Tzirani/Commission*
Case F-111/12, *Nardone/Commission*

In Brief

The employing authority has to take an adequate decision within reasonable time, for example relating to a promotion, an evaluation, a disciplinary procedure or the attribution of points of merit.

This is even more important when the uncertainty and insecurity has lasted for long time and has heavily affected the official. Cases of maladministration on the side of the employing authority can lead to considerable compensation for material and non-material damage.

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.

Facts and court decisions

The court has handed down a number of decisions relating to **disciplinary procedures** in cases where the procedures were unjustified from the outset or had not been immediately terminated once it turned out that they were not justified. In joined Cases F-124/05 and F-96/06, *A and G/Commission* the period between reproaching facts were brought up against the official and the termination of the disciplinary procedure was ten years. Where reproaches in a disciplinary procedure are unjustified, the procedure shall be immediately stopped and - in view of the publicity of the procedure - a public excuse may have to be offered to the wrongly accused official. In the above case where this was not correctly handled the employing authority had to pay damages of 25.000 Euro for a breach of its duty to act within reasonable time.

Where the **staff report** was set up too late or was not set up at all, case law allows for compensation for the non-material damages suffered (cf. Case T-274/04, *Rounis/Commission* and Case T-181/00, *Lavagnoli/Commission*). A period of five and a half months was considered to be an overlong delay for drawing up a revised staff report (Case F-4/13, *Cwik/Commission*). In this Case, the delays that were caused by the employing authority (in total over four years) prompted the Tribunal to annul the decision establishing the staff report. When assessing the delay, the court will look at the appropriate length of the individual steps within the procedure as well as at the overall duration of the procedure. In Case *Cwik*, the Tribunal further granted a non-material damage of 15.000 Euro to the applicant for having suffered uncertainty and frustration due to the delays.

Another applicant questioned the allocation of **merit points**. He also turned to the Ombudsman to complain about the alleged personnel administration's unfair attribution of points. The Ombudsman decided in favour of the applicant, but it took 16 months until the reasoning of the decision on the attribution of points was communicated. The applicant only learnt that a new decision had been taken, because he had launched a petition in the meantime. In total, it took 6 years to revise the original decision of the administration (Case F-65/11, *Schönberger/Parliament*).

In Case F-46/11, *Tzirani/Commission*, the **administrative investigation** further to a request for assistance lasted for 32 months, out of which eleven months elapsed without any action. Here, the Tribunal awarded compensation of 6.000 Euro to the applicant for the non-material damage linked to the excessive duration of the procedure and the breach of the duty to have regard for the welfare of officials.

The principle to observe an appropriate duration of the procedure also applies to **medical assessments**. It is of significance that the court considers the speed of the work of the medical committee to be within the sphere of responsibility of the administration, cf. Case F-111/12, *Nardone/Commission*. In that case, an amount of 4.000 Euro for damages was attributed for an overlong delay to establish the medical report. The medical assessments in order to ascertain invalidity, incapacity to work or determine an occupational disease will be the subject of another newsletter of Union Syndicale.



Comments

Unjustified delays in administrative decision-making are not only a nuisance, but can amount to maladministration. Not taking a decision or delaying a decision has consequences. Refusal of managerial responsibility forces others to take their decisions on allocation of resources and causes suffering from uncertainty and insecurity.

The legal consequence of an action for annulment is that

the act (decision) is annulled *ex tunc*. Although in staff cases the court has some broader possibilities to interfere, the usual decision is also here (only) to annul the decision that was attacked. The employing authority then has to draw its conclusions from the judgment and take its administrative decisions that are in line with the law as decided in the judgment and its reasoning. Regularly, the annulment of the decision attacked is considered sufficient compensation to make good for the infringement of the law.



The Court acknowledges however that the damage caused to the official may not be completely neutralised by the mere annulment of an illegal decision of the employing authority, but additionally grants compensation for damages that would remain as a separate consequence even after the decision is annulled. The calculation of material damages caused by maladministration may be sometimes difficult, but the court exercises a large discretion ("*ex aequo et bono*") as to the determination of the non-material damages, that remain beyond the annulment of a wrongful decision¹.

¹ For further reading see O. Mader, *Le droit à l'indemnisation ex aequo et bono dans la fonction publique européenne*, KritV/CritQ/RCrit 2/2013 (Nomos) ISSN 2193-7869

