

Tofan, Mihaela; Bercu, Ana-Maria

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DISCIPLINAIRE LIABILITIES OF THE EUROPEAN PUBLIC SERVANTS

Mihaela Tofan

“Alexandru Ioan Cuza” University of Iași

Ana-Maria Bercu

“Alexandru Ioan Cuza” University of Iași

Abstract: *Work discipline is essential for the proper conduct of business within an organization with implications for productivity and efficiency. Disciplinary liability arises as a direct result of breach of service obligations and rules of behaviour. At EU level, disciplinary responsibility of community public servant is governed by the provisions of the Statute of the European Community published in the Official Journal of the European Community no. L 56 March 4, 1968 and amended on numerous occasions. This paper proposes an analysis of concrete conditions which require disciplinary liability of the European public servant, disciplinary sanctions and procedures for implementing them.*

Keywords: public servant, disciplinary sanctions, liability, authority, administrative crime

JEL Classification: E02, H11, E61

European Union institutions have workers of various level of education, whose activities take place according to rules from special adopted legal documents. These legal documents from European public servant law, a new legal field of research that gain autonomy because of the special interest and the importance of this matter for the entire activity of the union.

There are two different meanings for the expression European public servant, according to the context that the words are used in. The widest meaning of these words is that it refers to the persons that have public authority and work for an institutions or a European organism, but also refers to the public servants that work for public administration institutions in every state member of the union.

On the other hand, the persons that work for the institutions and communitarian organism are either European servants, or contractual agents, that are persons who work on a labour contract basis and have no authority power invested in them.

In 2004 the total number of public servants and agents was 30.725, from which 22.055 worked for the European Commission. Large parts from them are interpreters or translators. This number is extending every day, because of the extension of the Union (Jacgue, 2004, p. 184).

All three communities established in the 50's (Economic European Community, Coal and Steel Community and Atom-electrical Community) had at the beginning its own staff, that worked according to special rules. Until the applying into practice of the treaty of fusion, there were three different legal frameworks for the public servants status, with different rules for the level of grades, different level of remuneration, various retirement regimes.

Article 24 from the treaty of fusion for the executive institutions of the communities (1967) determined the negotiation over a unique status for all the persons that worked for communitarian institutions.

The unification process took place through Regulation CEE, CECA and CEEA no. 259 from the 29th of February 1968, modified many times after the adoption moment. The most recent and the most important modification were done according to the Regulation CE and EURATOM nr. 723 from the 22nd of March 2004. This regulation, with all the further modification and joint with the other rules and regulation is known under the title STATUS, regulations and rules applied to the public servant and other European Communities agents (Vedinaş, 1999, p. 12).

The definition of European public servant in the restricted meaning of the term is explained in the article 1 from the STATUS, according to which the public servant of the communities is every person that has been appointed in the condition from the STATUS for a permanent job for one of the Communities institution, according to a written document by the authority invested with the power to appoint workers for that institution.

So, in order to become a communitarian public servant the competent authority must write the appointment document. From the legal point of view, the appointment document has the following characteristics:

- it is a unilateral act, meaning that in the moment of its adoption the only part that gains liabilities is the only issuing authority; the beneficiary of this document has obligation after he or she expresses the approval for the job or the public service the document refers to;

- it must be adopted only if there is a vacant job to be occupied, after an exam or after being successful in an election process;

- it is an authority document, that produces any effect only if the issuing has the competence demanded by communitarian legal rules to adopt such a document

- it gives to the beneficiary or the person regarded by the document the quality of the public servant; so, this is a document that creates new rights

- it is a formal document, meaning that there are rules that establish it must be written and consists of certain information, such are the authority that wrote it, the date, the public service taken into consideration, the reason of appointment, and the date of starting the job and so on.

According to the 5th article from the STATUS, the European Public servants are divided into 4 categories: a, b, c and d. In this hierarchy each of these categories is divided into grades. The grade is given to the public servant in the moment of his appointment to the mission, conferring in the same moment the vocation to occupy certain jobs. The grade may be also given if the person passes an exam or is promoted in his or her career.

There is a certain difference between grade and job. So, if the job is erased from an institution personnel framework, the person that occupied that job has no more the mission given by the job but still, he or she keeps the grade and may occupy another job for from the same level. This gives a greater flexibility to the public servants career (Vedinaş, 1999, p. 24).

„A” category consists in 8 grades, on their turn organized in functions extended on 2 gradations. These functions may refer to function of direction, conception or study. In order to occupy such a function some must have special university studies, as the public servants has very important mission to accomplish for the particular communitarian institution they work for: elaborating European politics, preparing the legal document projects and reports, supervising the way that communitarian legislation is applied.

„B” category consists in 5 grades, grouped on function extended on 2 gradations. These functions from B category refer to applicative and executive missions and demand studies of highschool level or professional experience of equivalent level.

„C” category has 5 grades, grouped on functions on 2 gradations. This category refers only to function invested with executive missions that demands studies of medium level or professional experience of equivalent level.

„D” category consists only in 4 grades, grouped in functions extended in 4 gradations. These grades refer to manual function or to missions that demand studies of basic level, rarely joint with technical abilities (administrative personnel).

There is also a fifth category (LA) that consists in translators and interpreters.

The STATUS establishes the principle according to which the public servants from a category are obliged to respect the same rules for recruitment process and also for current activities (Vedinaş, 1999, p. 26).

When a public servant does not respect, on his own will, the STATUS clauses, the disciplinary, civil, criminal or administrative liability is implied.

Breaking the current activity discipline rules is a disciplinary crime and it demands a disciplinary penalty for the public servant who is guilty of that fact. The disciplinary crimes are:

- a) repetitive delay in doing the current jobs;
- b) unjustified absence from the job activities

- c) the pressure to solve a demand outside the legal framework
- d) inappropriate attitude during the job time
- e) not respecting the professional secrecy or the confidentiality of the documents that have this status;
- f) unmotivated refusal to do the tasks and the activities of the service;
- g) repetitive mistakes in job missions;
- h) actions that touch the reputation of the institution or public authority for which the public servant works;
- i) expressing or doing, as a public servant or during the working hours, opinions or public activities with political input;
- j) not respecting the legal rules referring to incompatibilities or interdictions regarding public servant STATUS.

For these forbidden actions above, the public servants may suffer the following punishments:

- a) being attention upon the mistakes he/she made;
- b) legal punishment;
- c) losing 5 to maximum 10% from the salary, for 1 up to 3 months;
- d) interdiction to advance in career for 1 up to maximum 3 years;
- e) passing into a lower job, for 6 up to 12 months, with the respective salary loss;
- f) losing the job;

In order to establish the particular punishment applied to a particular situation, the following criteria must be taken into consideration:

- the causes and the importance of the mistake;
- the particular circumstances that generated the misconduct in the public servant activity;
- the guilt of the servant and the result of his/her mistake;
- the general activity of the public servant ;
- his/her previous conduit in the working filed and other mistakes he-she made before (if there are any);

The disciplinary punishment may be taken into consideration only after the complete analyse of the fact and after the interrogation of the public servant for the respective facts. What the public servant says in his defence must be written. The refusal of the public servant to participate to interrogation or to sign the declaration he/she made must be put down on a document and signed by 2 different persons (witnesses).

The attention upon the mistake and *punishment* may be done by the direct chief of the public servant, and the public servant may appeal to the manager of the institution in maximum 15 days,

counted from the day he/she was informed about the punishment. The manager of the institution will study the case and will draw the final decision considering the facts and the legal framework.

The other punishments may be ordered the he manager of the institution, who decides after the disciplinary commission makes a proposal. The STATUS of the public servants says that in every institution must be organized a disciplinary commission, that will investigate any mistake done be the public servants and will make proposal for a particular punishment, according to the legal rules of the moment.

The public servant that is not happy with the punishment he/she must suffer may apel to the administrative judge, asking for annulment or the modification of the punishment decided.

The disciplinary punishment has three function: educative function (that is the learning process to respect a certain rule) the prevention sanction (that is to determine the public servant not to break the legal rules, because they will suffer some punishments) and the punitive sanction (the punishment itself).

According to educative function, the disciplinary punishments are deleted from the personal record in the fallowing conditions:

a) the *punishment* and the attention upon the mistake are deleted after one year, if the public servant did not do another mistake in that year;

b) the other punishments are deleted in 2 years after the period they have been applied for expired and if the public servant did not do other mistakes in that period of time.

Besides the disciplinary liability, which is mainly established in the rules from the STATUS of the public servants, the public servant may also be involved in situations regarding other forms of legal liability, such as:

- civil or pecuniary liability;
- administrative liability;
- criminal liability.

The administrative liability for the public servants is applied when they did a mistake during the public service mission, mistake considered administrative crime by the law. In these cases there must be a document that speaks about the mistake and about the punishment applied for the public servant. He/she may appeal this document in front of the judge that is invested to solve the petition in the area where the institution or the public authority has his official location.

The civil liability is applied in the fallowing conditions:

- a) for the prejudice upon the institution or the public authority assets
- b) for delaying the paying back of the sum that are in the public servant possession and are not his own;

c) for the amount of money that the institution or the public authority paid in his/hers names to the other damaged persons, according to a legal solution obtained after a juridical process.

The first two situations are solved when the manager of the institution or of the public authority writes an order to keep the money from the public servant monthly salary, and the fifth situation is solved if the public servant agrees to sign a document which says the terms and the amount of money he/she will pay monthly.

For the criminal facts that the public servant did during the job the criminal law establishes very precise steps to be followed.

If a prosecutor is appointed to solve the case, the manager of the institution or of the public authority will decide to suspend the public servant from his current job. This measure is always taken into consideration if the criminal fact that the public servant did puts him/her in the situation of not being eligible as a public servant.

If the judge invested to solve the public servant criminal situation decide he/she is not guilty, the person will take the job and will receive the salary that are not in his account because of the suspension period.

REFERENCES

- Călinoiu, C., Vedinaș, V. (1999), *Teoria funcției publice comunitare*, Lumina Lex Publishing, House, Bucharest.
- Ghimpu, S., Țiclea, A. (2001), *Dreptul muncii*, All Beck Publishing House, Bucharest.
- Jacque, J.P. (2004), *Droit institutionnel de l'Union Europeenne*, 3e Edition, Cours Dalloz, Paris.
- Statutul Comunităților Europene* (1968), Official Journal of European Community no. L 56 from 04.03.1968.