

THE CHARACTERISTICS OF THE EUROPEAN PUBLIC JOB

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Abstract: *The most important European institutions are: the European Parliament, the Council of Ministers (known as the Council of the European Union), the European Commission, the Court of Justice, the Economical and Social Committee, the European Court of Auditors, the European Bank of Investments and three organisms sated up under Commission and they are: the European Publications Office, the European Centre for the Development of Vocational Training and the European Foundation for improving life and labour conditions.*

Each of these organisms has its own personnel politics, grafted on a common status to all European civil servants. The most numerous effective belongs to the European Commission with 23 directions.

Each of the community institutions has its own personnel.

From its foundation till today, the number of the agents was in a continuous growth, registering considerable percents.

Key words: *European public job, community institutions*

1.GENERAL ASPECTS REGARDING THE PUBLIC COMUNITARY JOB

In the European Community's organisms unfolds their activity agents subjected to some special norms, which represents the law of the European public job. The principles that shapes this law are also found in the Public Job Status (approved in 1949 as a status of the European community personnel) and in the regime applicable to other agents.

The organism are formed both of elements taken from the national regimes of the public job, many with a constant value, and from the special aspects, typical only for the European public job. An example from the first category is represented by the communication to the civil servant of the decisions taken that regards him. In France, the rule of communicating the file was instituted through the Law from April 22nd, 1905, Article 65. The article imposed several disciplinary sanctions for the civil servants, obliging them to justify and make it public, by means of Article 18 of the Law from July 13th, 1983.

Also, in the labour legislation it is being impose, regarding disciplinary responsibility, the obligation that the decision should be communicate to the employee.

Developing this rule, applicable mostly regarding the responsibility of the civil servant (employee), Paragraph 2 of Article 25 from the Status stipulates that all the decisions taken for the appliance of the Status should be communicated to the interested part, meaning the civil servant. The decisions should, also, be motivated, the written form being imposed form the next reasons:

To constitute a form of probation

To ensure the *judicial security*, respectively the foundation on judicial reasons of some taken measure, forestalling the arbitrary.

A compulsory character has, as we said before, the motivation, of which reasons are imposed in the next circumstances:

It is made the de facto and de iure foundation of the decision, to the civil servant are given justification elements of the taken decision.

It is being ensured the transparency of the authority's action, the problem of the transparency being one of the most debated issues in the national and community administrations.

It is being eased the jurisdictional control of the qualified authority.

It is being found here the classic principle of the labour law, according to the employer has full powers and full rights in sanctioning. The authority given with the power of naming in a European public job has full discretionary power to do so.

In this sense, the European Court of Justice stipulated in the decision given in the File No. 280/1980 that "*it belongs to the administration the right to name the selection criteria, in the virtue*

of its sanctioning power and having in count the exactingnesses of the organization and the reasoning of the services”.

In the European public job's law there are some disposals which recognize to the community organism the capacity of using its discretionary power regarding its own civil servants.

In the same time, there are a large number of disposals, which pursues that the freedom in the community administration's decisions should be limited by the following of the procedures and the form and the character's conditions, which will accomplish two main objectives:

On one hand, the correct character of the decision, from an objective point of view.

On the other hand, the accomplishment of a natural, necessary balance between individual interests and the administration's needs.

Regarding all that was said before we can express some of the aspects that are characteristic for the European public job:

The re-foundation of the general principles, taken from the national legislations regarding the employee and the civil servants' regime;

The existence of some specific aspects, particular for the European public job's regime;

The existence of a balance situation between the capacity of the community organism to decide the faith its civil servant and the necessity that the decisions should be reported to the legal limits.

The preoccupation of ensuring a more objective balance between the individual interest and the administration's needs.

The Court of Justice emphasized in many times, and mostly in the cases with more spectacular aspects that it pursues, regarding to the European public job's law *the respect of the discretionary power limits and that it opposes to the illicit practice*. The difference known in the German doctrine and the freedom percent has no role in the European public job's law, characterized by the freedom of decision of the authority invested with the power of naming, decision limited by the law.

We can give a definition to the European public job as being the ensemble of the norms that governs the European public job's regime, concluded from the community stipulations and completed with the jurisprudential principles of the European Court of Justice.

In the occidental, contemporary literature, mostly in the community one, are placed in connection to the European civil servants two issues:

First, which is their place and part in the Community's life?

Related to the first aspect, in what way are they involved in achieving the European politics? Because the debated issues are in an obvious dependence, two answer variants may be considered: A first answer variant is to recognize for the community civil servants just an executive part; they have only the quality of the effective realization of the decisions which were marked by the political community business.

A second answer variant is the recognition of an effective part in influencing the Union politics. From this perspective, the European civil servant does not limit himself just to execute decisions, he effectively involves in the elaboration of them.

Through public job we understand the ensemble of all the rights and obligations established for a natural person (chosen or named) for the accomplishment of one public authority, public institution or administration's competence, with the purpose of continuous satisfaction of a public interest.

The road is not simple at all. The difficulty of finding the best solution results, among others, from the fact that the European Union is being built of a conglomerate of states, each one with different traditions regarding the public job. These traditions naturally influence different community experiences, without establishing the transformation of the public job in one of French, German or English type.

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2. THE FOUNDATION OF THE NOTIONS

In the European Community's organisms unfold their activity agents subjected to some special norms that are the European public job's law.

The present status of the European civil servants replaced the status of the civil servants and the regime applicable to other agents of the European Economic Community and of the European Atomic Energy Community, edited by the Council, based on Article 212 of the E.E.C and the EURATOM, which contained provisions, departed from the Status of the EURATOM personnel from January 28th 1956.

The regime difference between civil servants of the three Communities visas several aspects that are:

The different hierarchy of the degrees.

The ensemble level of salaries, which was smaller by 3%.

The pensions' regime which was less liberal.

Before the Fusion Treaty, the community institutions' personnel was subjected, on one hand, to some protocols regarding the applicable privileges and immunities, and, on the other hand, to a regime first conventional and then statutory, proper to each community.

The fact that the three communities were not founded in the same time, determined, in a first phase, a juxtaposition of the three organisms of agents subjected to different regimes. Thus, European Coal and Steel Community (E.C.S.C) knew until July 1st, 1956 when it was approved a status of it's the civil servants, a period in which the civil servants were recruited based on a public law contract.

The same system was used also by the E.E.C and by the EURATOM in the pre-state period (1958-1962).

The fusion of the communities was to stimulate the unification, in the same measure, of the status and the privilege and immunity regime.

By Article 24 of the Fusion Treaty form April 8th, 1965 it was imposed *the establishment of a regulation of the personnel common to all community institutions*. This unification was made through the E.E.C, E.C.S.C and EURATOM, no. 259 from February 29th, 1968, published in the Official Journal of the European Community no. L 56 from March 4th, 1968, modified several times.

This regulation subjected to many modifications, together with other texts, is reunited in a Community's internal document named "*Status*", having as a subtitle "*Regulations and stipulations applicable to civil servants and to other agents of the European Communities*".

The "status" notion has the next meaning: "*it indicates the nature of the civil servants' status. It also, supposes a more restricted signification, which designates texts that contain the main disposals applicable to all civil servants or to the ensemble of the civil servants from an area or compartment.*"

The adoption of a status influenced the general regime of the community public job because, as it is well sustained about the national civil servants status, the confession is valid also regarding the community ones, "*the general status is a global frame in which are integrated civil servants' bodies or frames*".

Therewith, the status has the vocation of grouping the main problems that are supposed by the judicial condition of the employee. There are, beside this unique status, some special stipulations regarding the civil servants in the scientific and technical compartments.

This status is divided into four parts:

The first part is dedicated to the Status of the European civil servants and has eleven annexes.

The second part is dedicated to the regime applicable to other European agents' categories.

The third part contains other stipulations applicable to the European Communities' civil servants and agents.

The last part contains the stipulations taken in common agreement by the European Communities' institutions and applicable to the civil servants and to the community agents.

The intervention of a stipulation with the value of a status has not remained without any consequences regarding the regime of the public job.

Its effect was the fact that "*it placed the community public job in the category of the public jobs so-called closed.*" This system "*is similar to the French or German public job in which the real civil servants are holders of their jobs and have vocation to a career.*"

In the French system is sustained the fact that defining the public job requires the revelation of two characteristic elements: the permanence of the job and the integration in an administrative hierarchy.

The issue that always preoccupied the doctrine from the country, as all the national doctrines, is that "*the judicial nature of the civil servants' situation is one of public law or a private law one?*" Further, "*if the civil servant is in a legal and settled situation or he is in a subjective situation deduced from a contract.*" To these main issues the French authors found consequent answers in the sense that "*the situation of the civil servant is legal and settled and not subjective.*"

The European civil servants' regime borrows some of the dimensions of the public job's national regimes, over which overlapped the elements deduced from the fact that it unfolds its activity in a space which the community doctrine names it community territory.

The understanding of this collocation imposes a certain attention because "*in the absence of a definition of the territorial area of application of the European Union's Treaty we should prudently refer to the community territory notion...*"

The European Court itself often uses the concept "*community territory*", which "*appears as a functional territory with a variable geometry, based on certain community competences*".

The community public job gathers "more thousands of civil servants and agents", over 26.000 in the community institutions' services and in different organisms which are found in the community structure or that is found at its outskirts (for instance, the European Foundation for improving life and labour conditions, the European Centre for the Development of Vocational Training, the European University Institute).

3. THE DEFINITION OF THE COMMUNITY'S CIVIL SERVANT NOTION

Is to be found in the Article 1 of the Status, according to which "*it is the Communities' civil servant, in the sense of the present Status, any person who was named in the conditions of the named Status, in a permanent function in one of the institutions of the Community, through a written document of the authority, which was given the power to name in this institution*".

This definition is the distinction between community civil servants, on one hand, and, on the other hand, the category of agents, hired in the contractual regime.

This category of personnel, hired based on a contract, temporarily, in most cases 5 years with the possibility of renewing; it is being stipulated by the Regulation no. 2615 from 1976.

Getting the community's civil servant status is it being determined by the existence of a naming document given by the competent authority.

Thus, "*the civil servants are being recruited through a one-sided document of the competent authority and they are subjected exclusively to the community law*".

The competence of naming an international civil servant can only result from an international document, which stipulating the existence of the civil servant, also establishes the

authority which will have to name him, or respectively, chose him. The naming document will have to mention, according to Article 3 from the Status, also, the date from which the naming will *produce effects*. This date cannot be, for any reason, previous to the one when the named person has started to work.

The stipulation of the judicial situation of the civil servants through a Status determines the conclusion that they are subjected to a legal and regulation situation, which means that they are integrally subjected to the community law contained by the Status. Through a regulation of the Council, it has been established that their judicial situation can be unilateral modified.

The authority that will exert "*the naming power*" will be designated by each organism of the Community.

As a rule, the president of each institution represents, for that institution, the authority with the naming power.

Paragraph 2, Article 1 of the Status assimilates the Economic and Social Committee, the Region Committee and the Unions Mediator, applying the stipulations of the Status, except for the situations in which there are contrary disposals.

These organisms will establish, through their interior regulation, the authority that will receive "the naming powers".

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