Reports of Cases

Case T-29/17

RQ
v
European Commission

(Civil service — Officials — Director-General of OLAF — Decision waiving the applicant's immunity from legal proceedings — Lis pendens — Act adversely affecting a person — Obligation to state reasons — Duty of assistance and duty to have regard to the welfare of officials — Legitimate expectations — Rights of the defence)

Summary — Judgment of the General Court (Seventh Chamber, Extended Composition), 24 October 2018

1. *Actions brought by officials — Act adversely affecting an official — Definition — Decision to waive the immunity of an official or member of staff — Included*

   (Protocol on the Privileges and Immunities of the European Union, Art. 11; Staff Regulations, Arts 90 and 91)

2. *Fundamental rights — Charter of Fundamental Rights of the European Union — Right to sound administration — Right to be heard — Decision to waive the immunity of an official — Investigative confidentiality invoked by the national authorities — Weighing-up of the requirements in connection with investigative confidentiality and the respect of the right to be heard*

   (Charter of Fundamental Rights of the European Union, Art. 41(2)(a))

1. The immunity from legal proceedings provided for by Article 11 of Protocol No 7 on the Privileges and Immunities of the European Union protects officials and members of staff from prosecution by the authorities of the Member States for acts performed in their official capacity. Hence, a decision to waive the immunity of an official or member of staff alters his legal position, simply because it removes that protection, re-establishing his status as a person who is subject to the general law of the Member States and thus laying him open, without the necessity for any intermediary rule, to measures, inter alia those ordering detention and the bringing of legal proceedings, imposed by the general law.

The discretion left to the national authorities, following the waiver of immunity, as regards the resumption or discontinuance of proceedings brought against an official or member of staff has no bearing on the fact that his legal position is directly affected, since the effects attached to the decision to waive immunity are restricted to the removal of the protection he enjoyed on account of his status as an official or member of staff, which does not involve any additional implementing measure.

It follows from the foregoing that the institution's decision waiving the immunity from legal proceedings of the person concerned constituted an act adversely affecting him.

(see paras 38-40)

2. In accordance with Article 52(1) of the Charter of Fundamental Rights of the European Union, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of the fundamental right at issue. In addition, in compliance with the principle of proportionality, such limitation may be made only if it is necessary and genuinely meets objectives of general interest recognised by the European Union.

In Member States where such a measure is provided for, investigative confidentiality is a principle of public policy intended not only to protect investigations, in order to prevent fraudulent consultations and attempts to conceal evidence, but also to protect suspected or accused persons whose guilt has not been established. Thus, the fact that the person concerned was not heard can be objectively justified by investigative confidentiality, detailed rules for which are provided for by law, to the extent that it appears to be necessary and proportionate to the objective to be attained, that is, the proper conduct of criminal proceedings.

However, since the institution is required to respect the right to be heard when it adopts an act adversely affecting a person, it must pay the utmost attention to the way in which it can accommodate the respect of that right of the person concerned and the legitimate considerations of the national authorities. That weighing-up of interests ensures both that the rights conferred on EU officials and other staff, and, consequently, the interests of the European Union, in accordance with the second paragraph of Article 17 of Protocol No 7 on the Privileges and Immunities of the European Union, are protected, and that national criminal proceedings are conducted efficiently and smoothly in keeping with the principle of sincere cooperation.

In the present case, the fact that the person concerned was not heard before the decision to waive immunity from legal proceedings was adopted goes beyond what is necessary to attain the objective of preserving investigative confidentiality and therefore does not respect the essence of the right to be heard enshrined in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union.

(see paras 56, 59, 60, 67, 74)