

Personnel Cttee, Online 16 Nov 2020
Agenda Item: 2
Document Name:
2GB2020_DOC13C CONFIDENTIAL REPORT HH
Purpose: For information

Report on the situation with Fr Heikki Huttunen

Confidential

1) Factual presentation

A dispute has arisen between CEC and its former Secretary General, Mr Heikki Huttunen (Fr. Heikki), whose employment contract ended on 27 May 2019.

On 27 May 2020, CEC filed an application before the Labour Court in Finland, claiming payment of 80,848.32 EUR to Fr. Heikki composed as follows:

- 73,554.27 EUR for reimbursement of loan (payment and advance on salary which had been made during employment in order to enable Fr. Heikki to meet his personal tax obligations);
- 7,293.05 EUR for non-justified professional expenses during his mandate as General Secretary of CEC;
- 1,00 EUR provisional for compensation for damages (due to mismanagement when he was Secretary General of CEC);

CEC's claims are not new and have been pending since January 2019. They are part of the reasons that led CEC to terminate the employment relationship in May 2019.

On 27 May 2020, Fr. Heikki filed an application before the Labour Court of Belgium, claiming payment of 54,995 EUR to CEC, composed as follows:

- 3,456.81 EUR due to the lack of indexation of his basic salary in 2017 and 2018 ;
- 17,283.12 EUR due to non-payment of double holiday pay in 2017 and 2018;
- 24,742.16 EUR due to non-payment of end of contract holiday pay ;
- 841.28 EUR due to non-payment of public holidays (public holidays falling within a period of 30 days after the end of the employment contract on 27.05.2019);
- 1.00 provisional due to severance pay under Finnish law;
- 2,337.94 EUR due to *additional* severance pay under Belgian law (as Finnish labour law doesn't apply);

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- 4,335.52 EUR due to unlawful withholding of salary at the end of the contract (the withholding having been made without Fr. Heikki prior agreement);

Fr. Heikki's claims, who are highly questionable, were first formulated in May 2020, almost a year after the end of his employment contract.

2) Seeking an amicable solution

It should be noted that:

- 1) These procedures had to be introduced in order to suspend the prescription of reciprocal claims; This procedure started in Finland is not the expression of a procedural will of CEC, but the preservation of CEC's interest.
- 2) These procedures could have been avoided if Fr. Heikki had agreed to communicate openly and negotiate an amicable settlement;

For 18 months, we have spared no initiative (meetings in Belgium with Fr. Heikki during his engagement, taking contact with Fr. Heikki's lawyers in Finland and Belgium after his engagement, several requests for additional information concerning Fr. Heikki's tax dispute in Finland, amicable proposals on a reasonable base), however without obtaining any clear answers from Fr Heikki.

In September 2020, CEC's Belgian lawyers sent a confidential letter to Fr Heikki's Belgian lawyer, with an analysis of the reciprocal claims, in order to find an amicable agreement.

Our Belgian lawyers suggested settling in return for payment by Fr. Heikki to the CEC of at least 55,000 EUR (to be eventually increased by 7,293.05 EUR for non-justified professional expenses) according to payment terms over 2 or 3 years.

Our Lawyers also have suggested that the two procedures, introduced in Belgium and Finland, should be joined for reasons of connexity and ideally pursued in Belgium (since Belgian Law applies to both cases).

There is no answer yet from Fr. Heikki's lawyers to those initiatives (no counter-arguments, no counter-proposals, etc.).

Obviously, Fr Heikki is in a strategy of avoidance, refusing to answer, and thus refusing to enter into the search for an amicable solution.

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The present file sets out the factual elements to report to the Governing Board in full transparency. This transparency is also necessary because Fr Heikki has contacted third parties, giving them partial information, trying to give the impression that CEC wants to sue him. In the coming months, we hope the procedure pending in Finland will lead Fr. Heikki to finally negotiate a solution. As long as no settlement is found, I propose to continue the legal procedure.

3) Historical overview

a) Appointment under Belgian law

Fr Heikki took office on 15 January 2016. At that time his employment contract, subject to Belgian law, stipulates a gross monthly salary of 8,000 EUR. Belgian law provides for the payment of a 13th month's salary, as well as a holiday allowance of 0.92%. The gross annual salary is therefore $8,000 \times 13.92 = 111,360$ EUR.

b) A second employment contract on request of Fr Heikki

On 16 October 2016, a second employment contract is signed at the request of Fr Heikki. It is the result of a negotiation aimed at enabling Fr Heikki to benefit from Finnish social security. This contract agrees on a gross remuneration of 9,300 EUR per month payable in 12 instalments, which corresponds to a gross annual salary of 111,600 EUR. This contract also provides that "the territory in which the employee performs his or her duties is the whole of Belgium and Finland."

c) Deficient management of withholding tax

After legal clarification in Belgium (via Social Secretariat Securex), and after Fr Heikki taking legal advice in Finland, it was agreed that the withholding of tax would be split 50% for Belgium and 50% for Finland.

The withholding tax for the Finnish tax authorities in 2016 (8,815.18) EUR and 2017 (8,898.24 EUR) was not paid, however. In December 2017, CEC therefore developed a debt to the Finnish tax authorities of 17,713.42 (EUR). This situation seems to be due to the absence of a tax invoice from the Finnish tax authorities. CEC was not registered as an employer in Finland, but this was done in the course of 2018 in order to secure future tax payments.

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d) Fr Heikki's request to CEC

It is my understanding that at the end 2018, the Finnish tax authorities asked Fr Heikki to pay income tax for 2016 and 2017. The amounts requested correspond to taxation of the entire income, 41,074.16 EUR for 2016 and 33,775.60 EUR for 2017. These amounts are on the one hand linked to CEC's debts to the Finnish Tax Authorities and on the other hand Heikki's personal share of tax.

On 10 December 2018, Fr Heikki asked CEC's Treasurer, Rev Jelle Brouwer, to pay these amounts, explaining that part of them were kept as a reserve in CEC's accounts, that he appealed against the full taxation of his income in Finland and that he would return the money as soon as the Finnish tax authorities had ruled. He assured that the Finnish tax authorities would clarify the situation within 4 or 5 months. (Cf. document in point 6 below).

e) The situation at the time of the decision

Finnish tax authorities claim from Fr Heikki an amount which includes in part a debt of CEC, and expose him and CEC to the risk of penalties. A few days before the Christmas break, Fr Heikki asks CEC to help him urgently. The CEC accountant had at this time been on sick leave for 2 months. As the General Secretary had not reorganised the office to make it operational, nobody was able to tell the amount that CEC owed to the Finnish tax authorities.

The working regulations in force at the time allowed the General Secretary to grant a loan to an employee. By extension, the President and the Treasurer felt that they could make such an operational payment (concerning CEC obligations) and allow an advance to the General Secretary to clear his situation.

In agreement with the Treasurer, I as the President of CEC agreed to help Fr Heikki in the form of an advance which was at his request paid directly to the Finnish Tax Authorities. In his response, the Treasurer asked for a written recognition of debt. Such an agreement, however, was never produced. (Cf. document in point 5 below).

f) End of mandate on 27 May 2019

During the negotiations around the end of the General Secretary's term of office, taking into account the fact that Fr Heikki was seeking for a new job, I proposed to start repayment from 2020 onwards. Even in the absence of an agreement, I stuck to this line. In accordance with Belgian law, at the time of the termination of his contract, CEC had withheld a total amount of 4,335.52 EUR from his redundancy package as repayment.

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g) **Negotiations that drag on**

It takes two to negotiate and find a solution in a dispute. Clearly, Fr Heikki seeks to avoid negotiation.

1. In summer 2019, CEC had to comply with its obligations as an employer in Finland, vis-à-vis the tax authorities, social security and pension fund, before terminating this status. Noting the refusal of Fr Heikki's lawyer to cooperate, in particular to exchange tax information, CEC contracted a law firm in Finland to carry out these operations. Thus CEC has clarified its situation in Finland and is no longer indebted to any Finnish authority.
2. At the beginning of 2020, I attempted to call Fr Heikki several times for a discussion. Fr Heikki replied that he could not talk to me, that he had to be prudent. Thus, CEC still does not know whether the Finnish tax authorities have ruled on Fr Heikki's appeal, and if so, what the decision is.
3. In March 2020, I then asked CEC's lawyer to formulate a request for reimbursement.
4. In the absence of a response from Fr Heikki, **to protect CEC's interests and to avoid a prescription**, I asked our lawyer to file a complaint in Finland. In addition to the above-mentioned amounts, this complaint also requests the reimbursement of 7,293.05 EUR for expenses incurred by Fr Heikki during his time as General Secretary of CEC which he has not yet justified. This procedure is still ongoing.

h) **Complaint to the Labour Court Brussels**

On 27 May 2020, Fr Heikki filed a case before the Labour Court of Brussels, in Dutch, demanding the payment of 54,995 EUR, the major part of which relates to the holiday pay that in 2016 he had precisely asked to be included in the payment of his salary in 12 months.

In June 2020, our lawyer made two requests: 1) that the case could be processed in French, 2) that the two complaints (that of t CEC in Finland and that of Fr Heikki in Belgium) could be joined and processed in Belgium. The first request received a favourable answer. The second one remains unanswered.

In September 2020, our lawyer approached Fr Heikki's lawyer to present the overall situation in order to start a negotiation. There is yet no response to that initiative.



4) Summary of lawyers cost

The legal costs related to the processing of this advance to date amount to 5,536.96 EUR in Belgium and 8,396.04 EUR in Finland.

5) Documentation: Request from Fr Heikki

Heikki Huttunen

Due to difficulties in defining my fiscal domicile and the income tax payable to Belgium and Finland respectively, the payment of my income tax to Finland has been delayed.

The Finnish tax authority has taxed me for my entire income for the years 2016-2017, without taking into account the tax paid to Belgium. This has been contested by an appeal made on my behalf, but due to the slow process between the two jurisdictions, the final decision is not yet available.

As tax debt will influence my credit report in Finland, the unpaid income tax required by Finland for 2016 and 2017 should be paid as soon as possible. When the final decision about taxes required by Finland will be reached, the extra payment will be returned.

It should be added that an approximate amount has been retained from my monthly salary for this purpose, and has not been forwarded to the Finnish tax authority, due to the unresolved situation as mentioned above. From 2019 CEC is registered as an employer in Finland, which will clarify my taxation. Charlotte Vander Borgh has negotiated and taken the required actions in negotiation with my legal counsel in Finland, Mr. Janne Huttunen, Esq.

The unpaid income taxes to Finland consist of the following sums:

2016 : 41 074, 16 e

2017: 33 775, 60 e

Payable to the bank account: To be confirmed.

Reference code: To be confirmed

Brussels 10 December 2018

6) Documentation: Response to Fr Heikki's request by the treasurer

De : Jelle Brouwer <jhbrouwer@gmail.com>

Date : mercredi 12 décembre 2018 à 15:20

À : Heikki HUTTUNEN <hhu@cec-kek.be>



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Cc : Szabolcs LÖRINCZ <lor@cec-kek.be>, President <President@cec-kek.be>

Objet : Re: income tax Finland

Dear Heikki,

after consultation with Christian (I hope you don't mind - I'm new to this and the amounts involved are rather considerable), I authorise the sums mentioned in your letter (€ 41074,16 and € 33775,60 respectively) to be payed from the CEC accounts as an advance to you. As a remark I must add, that we still haven't established the amount that has already been deduced from your salary, whereas the rest will be considered an advance to you personally, to be payed back as soon as your situation is clarified (i.e. as soon as the court ruling is final). Furthermore, we would like to have an official document resp. official documents specifying the calculation, in order that we may justify this expenditure to the Governing Board.

I hope this suffices as an answer to your letter.

Kind regards,

Jelle

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