

Decree-Law No 6/2019

January 14

Law No 35/2014 of June 20 has repealed the rule set out in article 12 of the Disciplinary Statute of Employees fulfilling Public Functions, approved by Law No 58/2008 of September 9. As a result of this repeal, the Public Administration was unable to enforce a disciplinary sanction to an employee linked by a term employment contract in public functions, as of the moment in which the termination of that link supervenes.

The situation assumes particular relevance within the scope of contracting for transitional needs of workers, in which to a contract that expires may succeed a new one without being possible the enforcement of a disciplinary sanction for an offence committed in the validity of the prior public employment relationship. Thus, it is absolutely necessary the prediction that the disciplinary sanctions resulting from offences committed before the expiration of the link be executed if and when the worker establishes a new public employment link.

The General Labour Law in Public Functions needs also an amendment with a view to adopting the recommendation from the Assembly of the Republic, addressed to the Government through the Resolution of the Assembly of the Republic, No 217217/2016, of November 10, under the terms of which it is envisaged to equate the public sector regime to the private sector regime, in which it is allowed to continue work to those who wish so, after completing 70 years of age.

The need for knowledge transfer on the part of workers with the referred age, should that be their choice to keep an active professional life, that could result in an added value to the regular services' operation, by also fostering a quality and harmonious professional environment, as well as promoting the professional experience and knowledge transfer among employees of different generations, with the purpose of enhancing good practices and know-how sharing.

In this regard, a legislative authorization to the Government has been entered in article 328 of Law No 114/2017, of December 29, to amend the General Labour Law in Public Functions, passed and annexed to Law No 35/2014, of June 20, in its current wording, with the following meaning and extension: i) on the one

hand, change the rules relating to the fulfilment of the disciplinary power by the public employer, set out in articles 76 and 176, safeguarding the non-expiration of disciplinary procedures in cases in which, after termination of the public employment relationship, a new public employment relationship is verified for the same functions to which the disciplinary procedure relates; ii) on the other hand, regulate the recruitment procedure, the filling and the requirements for the fulfilment of public functions by pensioners or retirees, in exceptional cases.

This last aspect, in turn, shall entail the need to carry out a surgical amendment to the Retirement Statute, in order to allow for the accumulation between the compensation received for the fulfilment of public functions and the pension' remaining value, when this one is higher. It is intended to provide an identical solution to that one provided for in article 30 of the State Budget Law for 2018, as to cooperation agents, thereby eliminating a disincentive currently resulting from the law with regard to the fulfilment of public functions by retirees or pensioners.

The collective negotiation procedures arising from the General Labour Law in Public Functions, passed by Law No 35/2014 of June 20, in its current wording have been complied with.

Thus:

Making use of the legislative authorization granted by article 328 of Law No 114/2017 of December 29 and under the terms of subparagraphs a) and b) of paragraph 1 of article 198 of the Constitution, the Government decrees as follows:

Article 1

Object

The present decree-law shall amend:

- a) General Labour Law in Public Functions (GLLPF), passed and annexed to Law No 35/2014, of June 20, in its current wording;
- b) Retirement Statute passed by Decree-Law No 498/72, of December 9, in its current wording;
- c) Law No 11/2014, of March 6, in its current wording, that establishes convergence mechanisms of the public function social protection scheme with the social security general scheme.

Article 2

Amendment to the General Labour Law in Public Functions

Articles 76, 176, 291 and e 292 of the LTFP shall be replaced by the following:

«Article 76

[...]

Without prejudice to provisions set out in article 176, the public employer has disciplinary power over the employee at its service, as long as the public employment relationship is in force.

Article 176

[...]

1 - [...].

2 - [...].

3 - [...].

4 - The termination of the public employment relationship or the change of the juridical-functional situation of the employee shall not prevent the punishment of offences committed in the fulfilment of functions.

5 - In the case of termination of the public employment relationship, the disciplinary procedure or the execution of any sanctions provided for in sub-paragraphs b) to d) of paragraph 1 of article 180 shall be suspended for a maximum period of 18 months, but may continue in the event of the employee form a new public employment relationship for the same functions to which the disciplinary procedure relates and provided that from the beginning of it, save the suspension time period, shall not elapse more than 18 months up to the employee's notification concerning final decision.

Article 291

[...]

[...]:

a) [...];

b) [...];

c) With the employee's retirement, for old age or disability, or when the employee completes 70 years of age, without prejudice to provisions set out in article 294-A.

Article 292

[...]

1 - The public employment relationship shall lapse by employee's retirement, by old age or disability, or when the employee completes 70 years of age, without prejudice to provisions set out in article 294-A.

2 - [...].»

Article 3

Addition to the General Labour Law in Public Functions

Article 294-A shall be added to the GLLPF with the following wording

«Article 294-A

Fulfilment of public functions by a retiree's employee for completing 70 years of age

1 - In cases of exceptional public interest, duly justified, and without prejudice to other conditions and requirements established in articles 78 and 79 of the Retirement Statute, passed by Decree-Law No 498/72, of December 9, in its current wording, the employee who, is holder of a public employment relationship regulated by the present law, wishes to be maintained in the fulfilment of same public functions after retirement for completing 70 years of age shall manifest expressly that wish and in writing through request addressed to the respective public employer, at least, six months before completing that age.

2 - Authorization for the fulfilment of functions pursuant to the preceding paragraph shall be granted in accordance with provisions set out in article 78 of the Retirement Statute.

3 - In the case of the request being authorized, the public functions shall be fulfilled by the retiree or pensioner through the appropriate public employment relationship modality, under the following terms:

a) Fixed term employment contract in public functions or transitional appointment, whenever, the fulfilment of functions to which refers articles 7 and 8, are in question;

b) Limited executive tenure, when this one is the modality of public employment relationship foreseen for the fulfilment of the position, namely manager's position, as per article 9.

4 - Public employment relationships referred to in sub-paragraphs a) and b) in the preceding

paragraph shall be subject to the regime defined in the present law for the respective employment relationship modality, with due adaptations and the following specificities:

- a) The employment relationships shall be in force for six months period, and shall be renewed for equal and successive periods, up to the maximum limit of five years, without prejudice, in the case of limited executive tenure, to the maximum period defined for the respective limited executive tenure and renewal;
- b) The expiration of the contract or appointment and the termination of the limited executive tenure shall be subject to 30 or 15 days prior notice, according to the initiative shall be incumbent upon the employer or the employee;
- c) The expiration of the contract and the appointment and the termination of the limited executive tenure shall not entail payment to the employee of any compensation of any kind whatsoever.

5 - Provisions set out in preceding paragraphs may be applied, with due adaptations, to situations of designation of retiree or pensioner aged higher than 70 years, under limited executive tenure, for the fulfilment of the manager's position, under the cases in which the Manager's staff Statute of State central, regional and local administration public services, approved by Law No 2/2004 of January 15, in its current wording, shall not be applicable or the designation may operate, as per the same Statute, without the need for resorting to an open competition procedure.

6 - Provisions set out in preceding paragraphs shall not affect the application of the regime provided for in the Retirement Statute or the application of general or special rules establishing other specific reasons for termination of the de public employment relationship.

7 - Authorizations granted pursuant to provisions set out in the present article shall be published, by an extract, in the 2nd Series of the Official Gazette, with the identification of respective grounds»

Article 4

Amendment to the Retirement Statute

Article 79 of the Retirement Statute passed by Decree-Law No 498/72 of December 9, in its

current wording, shall be replaced by the following:

«Article 79

Accumulation of pension and compensation

1 - In the period in which the fulfilment of public functions authorized last, the retirees, pensioners, reservists outside the fulfilment of functions and similar status, receive the compensation that is defined for the functions or position that they fulfil or for the work fulfilled, maintaining the right to the respective pension, when this one is higher, and in the amount corresponding to the difference between that one and this one.

2 - Requirements for the accumulation of compensations referred to in the preceding paragraph are recognized in the authorization order foreseen in paragraph 1 of the preceding article

3 - (Former paragraph 2.)

4 - The beginning and the term of the fulfilment of public functions shall be compulsorily communicated to the Public Employees Special Pension Scheme, P.I. by the services, entities or companies to which refers paragraph 1 of the preceding article within the maximum time limit of 10 days calculated of from the same, indicating also the compensation value to be received, so that the Public Employees Special Pension Scheme, P.I. may suspend the pension or make the payment of the amount corresponding to the difference between the compensation and the pension.

5 - The compensation amendments within the scope of the fulfilment of public functions shall be also compulsorily communicated.

6 - The casual non-compliance with the duty to communicate laid down in preceding paragraphs shall hold the service top manager, entity or company, individually and severally responsible together with the retiree for the reimbursement to the Public Employees Special Pension Scheme, P.I., of amounts that this one has unduly paid as a result of that omission.

7 - In the case of carrying out studies, giving opinions, making projects or other specialized works, of a merely casual or specific nature, by retirees or pensioners, reservists outside the fulfilment of functions and with similar status, these ones shall maintain the respective pension, still receiving the one-off payment corresponding to the work made.»

Article 5

Amendment to Law No 11/2014, of March 6

Article 5 of Law No 11/2014 of March 6 shall be replaced by the following:

«Article 5

[...]

1 - [...].

2 - Within the time limit of 10 days, calculated as of the date of the beginning of functions, the beneficiaries referred to in the preceding paragraph shall communicate to the pension's processing service the beginning of functions and the compensation to be received.

3 - Amendments to compensation within the scope of the fulfilment of public functions shall still be compulsorily communicated.

4 - When the situations of fulfilment of functions as per paragraph 1, are verified, the pension's processing service shall suspend the pension or makes the pension's payment in the amount corresponding to the difference between the compensation and the pension.

5 - (Former paragraph 4.)

6 - Entities referred to in paragraph 1, that pay pensions, subsidies or other cash benefits of the same nature, basic or complementary, are obliged to communicate the pension's processing service, up to day 20 of each month, the amounts paid in that month per beneficiary.

7 - The casual non-compliance with the duty to communicate provided for in preceding paragraphs shall hold the service top manager individually and severally responsible together with the retiree for the reimbursement to the pension's processing service of amounts that this one has unduly paid as a result of that omission.

8 - (Former paragraph 7.)

9 - (Former paragraph 8.) »

Article 6

Transitional rule

1 - Employees in public functions who, on the date of entry into force of the present decree-law, are in less than six months to complete 70 years of age may submit the request foreseen in paragraph 1 of article 294-A of GLLPF, in the wording introduced by the present decree-law, up to the date they complete that age.

2 - Retirees or pensioners who, on the date of the entry into force of the present decree-law, have already completed 70 years of age, may submit the request provided for in paragraph 1 of article 294-A of GLLPF, in the wording introduced by the present decree-law, up to June 30, 2019.

Article 7

Entry into force and taking effects

1 – The present decree-law shall enter into force on the first day of the following month of its publication.

2 – Amendments introduced in articles 76 and 176 of the General Labour Law in Public Functions shall only be applicable to procedures initiated after the entry into force of the present decree-law.

Seen and approved in the Council of Ministers of December 20, 2018. - António Luís Santos da Costa - Mário José Gomes de Freitas Centeno - José António Fonseca Vieira da Silva.

Promulgated on January 4, 2019.

Let it be published.

The President of the Republic, Marcelo Rebelo de Sousa.

Countersigned on 9 January 2019.

The Prime Minister, António Luís Santos da Costa.