DALDEWOLF

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EDITO

Dear Readers,

This issue focuses on overtime and a ruling by the General Court of the EU on decisions to reclassify staff.

In our section " Droit Belge ", we look at alternative dispute resolution in family disputes.

This newsletter is also yours, and we welcome any suggestions you may have for future issues. Don't hesitate to contact us by e-mail: theofficial@daldewolf.com.

We hope you enjoy your reading!

The DALDEWOLF team

OUR TEAM

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FOCUS

OVERTIME

The regulatory framework for overtime for officials and other servants of the European Union is set out in the Staff Regulations and provides strict and clear guidelines as to the conditions, compensation and remuneration associated with such additional working hours. Article 56 of the Staff Regulations lays down the conditions for working overtime and Annex VI to the Staff Regulations sets out the arrangements for compensating and remunerating overtime. Article 56 applies in a similar way to other staff.

Conditions for working overtime

Under Article 56 of the Staff Regulations, officials may only be required to work overtime in emergency situations or where there is an exceptional increase in workload. The judgment of the Civil Service Tribunal confirmed that the purpose of Article 56 of the Staff Regulations is to protect officials against excessive workloads (Wanègue v Committee of the Regions, T-682/15 P).

Authorisation to work nights, Sundays or public holidays is subject to a procedure defined by the Appointing Authority. In addition, the total amount of overtime required of a civil servant may not exceed 150 hours in any six-month period.

Officials working part-time are authorised, according to the Decision No 59/2023 of the General Secretary of the Council'', they are authorized to work more hours than specified in the context of their part-time schedule, or between 8.00 p.m. and 7.00 a.m., or at weekends or on public holidays or days when the offices are closed, provided that this work is requested by their line manager and that the official has given their agreement. Compensation in the form of credit time with the corresponding actual working time will be granted where appropriate.

Compensation and remuneration for overtime

The right to compensation or remuneration for overtime provided for in Article 1 of Annex VI shall be reserved for officials in the lower steps of the grade scale who receive lower remuneration than their peers in higher grades. Officials in function groups AD and AST in grades 5 to 11 are not eligible for compensation or remuneration for overtime.

In addition, overtime worked by certain groups of officials in grades SC 1 to SC 6 and grades AST 1 to AST 4, working under special conditions, may be compensated in the form of a flat-rate allowance. The terms and amount of this allowance shall be determined by the Appointing Authority, after consulting the Joint Committee.

Provisions giving entitlement to financial benefits must be interpreted strictly. In this respect, the Civil Service Tribunal has clearly stated that an official occupying a higher grade, even if he performs duties generally attributed to the lower levels of the grade scale, is not entitled to overtime pay on account of his higher monthly salary (Wanègue v Committee of the Regions T-682/15 P).

For categories or grades not covered by Annex VI, overtime is only recovered in the form of time. For example, the Council's Decision specifies that an official or temporary agent in grades AD9/AST9 and higher may recover his or her overtime credit in tranches of half-days, up to a maximum of eight half-days per calendar month.

CASE LAW

RECLASSIFICATION DECISIONS AND MULTIPLIER RATES

In a judgment of 22 November 2023 (QN /eu-Lisa European Parliament, T-484/22), the EU General Court annulled the reclassification decision taken by eu-LISA (hereinafter the "Agency") in respect of the 2021 financial year.

In so doing, the EU General Court completes the case law relating to the reference multiplication rates intended for the equivalence of average careers in the context of the reclassification of temporary agents, as well as that relating to the possibility of using these rates to calculate the average seniority in the grade applicable prior to the reclassification.

The applicant before the EU General Court has been a member of the temporary staff in grade AD9 at the Agency since 2019. By his action, he sought annulment of the decision by which the Agency reclassified certain of its staff for the 2021 financial year.

In terms of reclassification, the applicable standards prescribe :

1. Comparison of merits ;
2. Taking into account available budgetary resources and
3. Compliance with the reference multiplication rates, used in particular to determine the average length of career in a grade and, ultimately, the minimum average seniority required for each of the grades concerned in order to be eligible for reclassification.

In the present case, the Agency had applied the multiplication rates provided for in Annex I, Section B, to the Staff Regulations, as implemented in the General Implementing Provisions (GIP) to Article 54 of the CEOS which it had adopted. For the grade applicable to the applicant, AD9, a rate of 25% was applied, equivalent to a minimum seniority of 4 years.

Nevertheless, according to the applicant, the reclassification decision had infringed the principle of non-discrimination, since the Agency had not applied the minimum average seniority condition to all eligible staff in the various grades. In particular, this condition had been applied to the higher grades (e.g., between AD9 and AD13), to the exclusion of at least four grades, including two AD grades lower than that of the applicant.

On this point, the EU General Court did indeed find a difference in treatment.

The principle of equal treatment required the Agency in principle to apply the condition relating to the minimum average seniority in the grade to all eligible staff, or not to apply it to any grade. On the contrary, in the reclassification decision, the General Court found a difference in treatment between staff in lower grades, some of whom were reclassified without reaching the minimum average seniority in their grade, and the applicant, to whom the Agency had awarded the second highest reclassification grade in the entire Agency, in view of the excellent results highlighted in his 2020 and 2021 reports.

However, the Agency was able to justify such a differentiation by demonstrating that it had followed an objective and reasonable criterion and had complied with the principle of proportionality. In this respect, the Director of the Agency had stated that he wanted to reward staff who had made great efforts to overcome the exceptional crisis caused by the pandemic.

However, the difference in treatment observed to the detriment of the applicant was in any event, in the General Court's view, disproportionate having regard to the level of his merits and his reclassification grade, his significant contribution during the pandemic and the fact that at least three posts had been open to staff in his grade for reclassification.

Consequently, the EU General Court upheld the applicant's claim and annulled the contested decision.

ALTERNATIVE DISPUTE RESOLUTION TO THE RESCUE OF FAMILIES

On 2 July 2018, the Moniteur Belge published the law containing various provisions to promote Alternative Dispute Resolution Methods (more commonly known as ADR). These methods are: mediation, negotiation, collaborative law, conciliation and arbitration.

This law, published at a time when the public was denouncing a major backlog of court cases, stipulates that in the event of a dispute, recourse to mediation and collaborative law are prerequisites for bringing a case before the courts. Its aim was to reduce the number of cases pending before the courts.

Lawyers must now inform their clients of the existence of different forms of amicable dispute resolution and must encourage the use of ADR wherever possible.

Unfortunately, the backlog of court cases is still with us, while these different methods have taken on a central role in the resolution of disputes between parties, particularly in family law.

These are methods which, outside of legal proceedings, give the parties an essential place and a space in which to express themselves, enabling them to find creative solutions that are adapted to their situation.

These methods therefore differ radically from the traditional route of legal proceedings, which often prove long and costly, and from which the parties sometimes emerge unsatisfied.

The three ADR we have chosen to discuss in this article are, in our view, those most commonly used in family disputes. These are negotiation, mediation and collaborative law (conciliation and binding third-party decisions will not be discussed in this article).

They are different, however, and we thought it important to point out the differences between them and their respective advantages.

The aim of **negotiation** is to resolve disputes amicably, by seeking common ground through dialogue and compromise. It takes place directly between the parties or with their respective lawyers.

Unlike other ADR, negotiation does not require compliance with specific rules (even though interest-based negotiation is based on basic principles that share a common foundation with the tools used in mediation). Nor does it require any specific training for the people who practise it. The framework is therefore set freely by the parties.

Negotiation can take place at any time: before, during or even after legal proceedings.

If the parties reach an agreement, whether partial or global, it can be approved by the judge.

Mediation is a voluntary and confidential process. It differs significantly from negotiation in that it requires the presence of a neutral, impartial and independent third party, specifically trained in this method.

The role of this third party will be to facilitate communication between the parties, using a specially designed process, and to help them creatively seek the terms of an agreement acceptable to each.

Mediation can take place in the presence of lawyers. The process generally takes place over several sessions and lasts until the parties reach an agreement. The mediator and/or the parties may choose to interrupt the mediation at any time.

Family mediation can take different forms: it can be judicial, when the judge orders it and provided that all the parties to the case do not oppose it, or it can be extrajudicial, when it is set up independently of any judicial intervention.

Unlike negotiation, this process implies the absence of legal proceedings, or at least the suspension of any legal proceedings already in progress.

An agreement reached through mediation can be approved in a simplified manner by the judge if the mediator is approved.

Finally, **collaborative law** is a voluntary and confidential process that originated in Canada and has been legally recognised since 1er January 2019.

This is a specifically structured negotiation in which each party is assisted by a lawyer trained in collaborative law, who is present throughout the process.

Collaborative law has developed to meet the expectations of litigants who wish to be supported by a professional in the search for amicable solutions that meet their needs (including those of their children).

Collaborative law therefore involves four people in a secure environment, working together towards a single common goal: reaching an agreement that meets everyone's interests.

Unlike all other ADR, collaborative lawyers have an obligation to withdraw if the process fails, which means that another lawyer will have to step in in the event of legal proceedings. Either party may terminate the process at any time, without prejudice to the other party, but as long as the process continues, the 4 parties involved work together to find common ground.

In a world where conflicts are legion, ADR are destined to play an increasingly crucial role in resolving disputes between parties. They are therefore proving to be essential tools to which everyone should pay particular attention.