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Dear readers,

In this issue of the **OFFICI@L**, we take a look at the sharing of family allowances and derived benefits between two parents employed by the European Union.

As regards the case law, the General Court of the European Union delivered an interesting judgment on the appointment procedure to fill a vacancy (T-670/19). In this case, it annulled the Appointing Authority's decision to reject an application on the grounds that it had been adopted following an irregular recruitment procedure.

In the "Human Rights – An insight" section, we will look at a very recent condemnation of Spain by the ECHR in the granting of the child's name.

Finally, rather than our "Day-to-day life in Belgium" section, we offer you a comparative table of Covid-19 regulations in the EU Member States. Unfortunately, the disparities are legion!

We wish you an excellent reading!

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THE SHARING OF FAMILY ALLOWANCES AND DERIVED RIGHTS BETWEEN TWO PARENTS EMPLOYED BY THE EUROPEAN UNION

We have noticed that, in practice, the question of the sharing of family allowances and derived rights between two separated officials who both simultaneously maintain a child has arisen within the EU institutions.

The sharing of family allowances between two parents employed by the European Union

Family allowances include the dependent child allowance, the household allowance and the education allowance. Articles 67 and 68 of Annex VII to the Staff Regulations lay down the requirements for receiving these allowances.

The General Court considers that the child of two separated EU officials can be considered as being actually maintained by these two officials at the same time and can therefore be considered as being dependent on them simultaneously (judgment of 10 October 2006, T-87/04). Consequently, neither the Staff Regulations nor the case law preclude two divorced or separated officials who are actually and simultaneously maintaining a child from both being entitled to family allowances.

With regard to the payment arrangements, Article 1(4) of Annex VII to the Staff Regulations provides that in cases where, under the foregoing provisions, a husband and wife employed in the service of the Union are both entitled to the household allowance, this shall be payable only to the person whose basic salary is the higher. This rule applies to spouses employed by the Union, who by definition are not separated or divorced. The Staff Regulations do not provide for similar rules in respect of dependent child and education allowances.

Based on our experience, we have found that in practice, following a separation or divorce between two persons employed by the Union, the former spouse with the higher basic salary often continues to receive the full amount of the family allowance, even when both former spouses are entitled to it (since they are both maintaining their children at the same time). It is then up to the one who receives the allowance to pay part of it to the other parent.

Yet the GIPs of the Commission, the Council and the European Parliament provide that where custody of the same child alternates between two persons, family allowances shall be paid on a pro rata basis according to the duration of custody (Article 3 of the GIPs of each of the institutions relating to Articles 67 and 68 of the Staff Regulations and Articles 1, 2 and 3 of Annex VII thereto). The Council's and the Commission's GIP specify that if there is no court order or order of the competent administrative authority (or in the absence of such an order, no stable agreement between the persons concerned laying down the precise pro rata duration of the custody within the Commission), half of the family allowances shall be paid to each person.

Thus, if the Administration continues to pay all the family allowances to the parent official with the highest salary, the other official or agent may, if he or she is also entitled to part of these allowances, submit a request on the basis of Article 90(1) asking for part of the family allowances (depending on whether there is a decision or an agreement) to be paid directly to him or her. We advise you to refer to the GIP applicable in your institution for this purpose.

The entitlement to an additional tax abatement, a right derived from family allowances

In addition to the deduction of family allowances received by officials and agents, Regulation No 260/68 of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities provides that an additional abatement equivalent to twice the amount of the allowance for a dependent child shall be made for each dependent child of the person liable as well as for each person treated as a dependent child within the meaning of Article 2(4) of Annex VII to the Staff Regulations (Article 3(4)). This additional abatement is a derived right which supplements the dependent child allowance (General Court, 12 mars 2020, T-484/18).

This provision may have raised questions within the Administration as to the sharing of this derived right when family allowances are paid directly to two separated or divorced officials on a pro rata basis.

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The General Court has already ruled that when two divorced officials both contribute to the actual maintenance of their children, entitlement to the benefits derived from the family allowances, and in particular the additional tax abatement provided for in Regulation No 260/68, is justified for the same reason as that for which entitlement to them is justified, namely the maintenance of the children (General Court, 10 October 2006, T-87/04). There is a link between the benefit of the abatement and the receipt of child allowance (General Court, 12 March 2020, T-484/18).

Thus, if both parents are receiving the dependent child allowance on a pro rata basis for the duration of custody, they are also both entitled to the additional tax deduction equivalent to the amount each receives.

Again, if you find that this is not the case, you can make a request under Article 90(1) of the Staff Regulations to the Administration to have this done.

CASE LAW

THE GENERAL COURT RECALLS THE RULES GOVERNING THE APPOINTMENT PROCEDURE TO FILL A VACANT POST

In a judgment of 14 July 2021 (T-670/19), the General Court of the European Union annulled the Appointing Authority's decision to reject the applicant's candidature on the grounds that it had been adopted following an irregular recruitment procedure.

In this case, the European Parliament had published vacancy, transfer and recruitment notices to fill a post. The applicant is an official of the European Parliament and had applied for the post.

An Advisory Committee for the appointment of senior officials was set up to review the applications and make recommendations to the Appointing Authority. The recruitment procedure involved two stages. In the first stage, the Advisory Committee made an initial selection of applications based on three comparative merit criteria established on the basis of vacancy, transfer and recruitment notices. The applicant was selected for the second phase, during which the Advisory Committee invited the shortlisted candidates for an interview. The members of the Advisory Committee had drawn up a list of seven topics to be used for the assessment of the candidates during the interviews. At the end of this second phase, the Advisory Committee drew up a reasoned report addressed to the Appointing Authority in which it ranked the various candidates in order of merit and annexed its recommendations. The applicant was ranked second. The Appointing Authority decided to follow those recommendations and therefore appointed the candidate ranked first and rejected the applicant's application.

The applicant lodged a complaint under Article 90(2) of the Staff Regulations, challenging the decision to reject his application, which was rejected. He then brought an action before the General Court seeking the annulment of that decision. He claimed, inter alia, that (i) the comparative analysis criteria had been changed between the two recruitment phases, and (ii) the Committee had not properly reported on his professional experience at the Appointing Authority.

On the first point, the judges recalled that the principle of equal treatment requires that the benchmarking criteria be established prior to the recruitment concerned. These must not change during the selection procedure to prevent the criteria from being adapted according to the applications received. In this case, the Advisory Committee

decided, during the second stage of interviews, to select seven topics to assess the candidates. The judges emphasised that while it was possible to ask the candidates questions, these questions should not become new benchmarking criteria adopted during the selection procedure. Thus, the ranking could not be based solely on the answers provided by the candidates on the seven topics discussed during the interviews. However, the General Court found that the candidates' replies were analysed solely on the basis of this list of subjects without the three analysis criteria from the vacancy, transfer and recruitment notices adopted during the first stage being taken into account for their ranking in order of merit.

Furthermore, it is settled case law that the report sent to the Appointing Authority by the pre-selection committee must specify the criteria for comparative analysis of the merits on which they were based in order to enable the Appointing Authority to know and understand the way in which the candidates' merits were assessed. However, the judges noticed in this case that the list of subjects discussed during the interview had not been communicated to the Appointing Authority.

Consequently, the General Court considered that the decision to reject the applicant's application was adopted following an irregular procedure, in breach of the principles of sound administration and equal treatment.

On the second point, the General Court recalled that even if the Appointing Authority has broad discretion when comparing the merits of a candidate for a position, it is required to comply with the requirements contained in the vacancy, recruitment or transfer notices to which the candidates applied, all the more so when the position to be filled is of high grade. The judges found that the Advisory Committee had not properly informed the Appointing Authority of the applicant's professional experience, even though the applicant had, inter alia, performed ad interim the responsibilities of the position to be filled for several months. According to the judges, this may have contributed to an erroneous assessment and comparison by the Appointing Authority, so that they conclude that there was a manifest error of assessment.

For these reasons, the General Court annulled the contested decision and orders the European Parliament to pay the applicant the sum of EUR 40 000 to compensate for the material damage.

HUMAN RIGHTS: AN INSIGHT

ACCORDING TO THE EUROPEAN COURT OF HUMAN RIGHTS, THE AUTOMATIC IMPOSITION OF THE FATHER'S NAME TO A CHILD FOLLOWED BY THE MOTHER'S NAME IS DISCRIMINATORY

An interesting ruling by the European Court of Human Rights on 26 October 2021 in a case of Leon Madrid/Spain (Application No 30306/13).

Spanish legislation provides that when parents disagree, the child would bear the surname of the father followed by that of the mother.

In this legislative context, the applicant had a short-term relationship with a man and became pregnant. He insisted that she terminate the pregnancy and she decided to cut off all contact with him. She gave birth to a daughter who was entered in the register of births with the two surnames used by her mother.

A year later, the biological father brought a non-marital paternity suit, which was opposed by the applicant. At the end of these proceedings, the biological paternity of the child was established and the judge decided, in accordance with the law in force, that the child would bear the surname of the father followed by that of the mother.

This decision was unsuccessfully challenged before the higher courts.

Before the European Court, the applicant considered that this regulation was discriminatory and that the attribution of the order of surnames should take into account the particular circumstances of each case.

The Court agreed, finding that in this case two individuals in a similar situation - the applicant and the child's father - were treated differently on the basis of a distinction based exclusively on sex.

In its judgment, the Court concedes that the rule that the father's name should be placed first in the event of disagreement between the parents might be necessary in practice and was not necessarily incompatible with the European Convention on Human Rights, but it considers that the inability to derogate from it was excessively stringent and discriminated against women.

While placing the paternal surname first could serve the purpose of legal certainty, the same purpose could be served by having the maternal surname in that position. What is criticised in this case is not the existence of a rule, but its automatic application and therefore lack of proportionality.

The Court concludes thus to a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private life) of the Convention.

It held that the Spanish government was to pay the applicant EUR 10,000 in respect of non-pecuniary damage and considered that the applicant should be reimbursed EUR 23,853 in respect of costs and expenses.

Convention in this case and granted equitable relief.

UPDATE ON COVID-RELATED MEASURES IN THE MEMBER STATES

In these somewhat safer but still uncertain times, we thought it would be interesting to provide you with a comparative table of the existing rules in the different EU Member States to deal with new waves of the pandemic. This is an overview as of 15 November, as the situation in the various Member States evolves quickly. Differences may exist at the local level, due to the different institutional structures of the Member States and the degree of intensity of the epidemic in the different regions.

The category "Gatherings" corresponds to major sporting and cultural events, which may be held in open or closed venues.

The term "EU Covid Certificate" corresponds in the majority of cases to the presentation of one of the following three certificates: negative PCR test less than 48 hours old, vaccination certificate, recovery certificate less than 6 months old.

Country	Bars et Restaurants	Public spaces	Gatherings	Useful Information
Austria	Open on the evidence of vaccination, test or recovery certificate	FFP2 face mask mandatory	Indoor gatherings for vaccinated, tested or recovered people only	https://bit.ly/theofficial_covid_at (Austria confines unvaccinated people over 12 for 10 days from 15 November 2021)
Belgium	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places	Indoor gatherings for vaccinated, tested or recovered people only	https://bit.ly/theofficial_covid_be_en
Bulgaria	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory	Cultural sites open with capacity restrictions	https://bit.ly/theofficial_covid_bg

Country	Bars et Restaurants	Public spaces	Gatherings	Useful Information
Croatia	Open	Face mask mandatory in enclosed public places and outdoors when social distancing cannot be respected	Gatherings of more than 100 people authorised upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_hr
Cyprus	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory	Gatherings of more than 10 people authorised upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_cy_en
Czechia	Open on the evidence of vaccination or recovery certificate, with limited capacity	Face mask mandatory in enclosed public places and outdoors when social distancing cannot be respected	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_cz
Denmark	Open without restriction	Non-mandatory mask	No limitations	https://bit.ly/theofficial_covid_dk
Estonia	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_ee
Finland	Open with restricted hours and capacity limits	Face mask recommended	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_fi
France	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_fr_en
Germany	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places	Indoor gatherings for vaccinated, tested or recovered people only	https://bit.ly/theofficial_covid_de_en
Greece	Open on the evidence of vaccination or recovery certificate	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_gr
Hungary	Open	Non-mandatory mask	Gatherings in indoor or outdoor areas for more than 500 people upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_hu

Country	Bars et Restaurants	Public spaces	Gatherings	Useful Information
Ireland	Open on the evidence of vaccination or recovery certificate, with limited capacity and restricted hours	Face mask mandatory in enclosed public places	Indoor group activities limited to 100 people, no restrictions for outdoor activities	https://bit.ly/theofficial_covid_ie
Italy	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places and outdoors when social distancing cannot be respected	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_it_en (Italy requires all citizens to be vaccinated for access to the workplace, as well as students in higher education)
Latvia	Closed	Face mask mandatory in enclosed public places	Prohibited	https://bit.ly/theofficial_covid_lv (Latvia declared a state of health emergency on 1 November 2021 for a period of three months, with stricter restrictions for the unvaccinated population)
Lithuania	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_lt
Luxembourg	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_lu_en
Malta	Open with restricted hours	Face mask mandatory	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_mt
Netherlands	Open on presentation of a certificate of vaccination, test or recovery, with closure at 8pm	Non-mandatory mask	Sports events are no longer accessible to the public, the others are accessible upon evidence of EU COVID certificate with daytime hours and limited capacity, and concert halls, theatres and cinemas can remain open after 6pm	https://bit.ly/theofficial_covid_nl (The Netherlands is partially confined for 3 weeks from 15 November 2021)

Country	Bars et Restaurants	Public spaces	Gatherings	Useful Information
Poland	Open with limited capacity	Face mask mandatory in enclosed public places	Authorised gatherings with capacity limits	https://bit.ly/theofficial_covid_pl
Portugal	Open on evidence of EU COVID certificate	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_pt
Romania	Open on evidence of EU COVID certificate when the local incidence rate exceeds 3 per 1000 inhabitants	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate, with capacity limits	https://bit.ly/theofficial_covid_ro (A curfew is in effect from 10pm to 5am for the non-vaccinated population)
Slovakia	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places, FFP2 required in the most affected districts	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_sk
Slovenia	Open on the evidence of vaccination, test or recovery certificate	Face mask mandatory in enclosed public places	Gatherings accessible upon evidence of EU COVID certificate	https://bit.ly/theofficial_covid_si (Slovenia requires all citizens to be vaccinated before entering the workplace)
Sweden	Health restrictions lifted	Health restrictions lifted	Health restrictions lifted	https://bit.ly/theofficial_covid_sw_en