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Constitutional Court confirms the (belatedly introduced) unified status

In a recent decision of 21 January 2016, the Constitutional Court once again ruled on the earlier distinction between blue-collar and white-collar workers with regard to their advance notice period and the way this distinction was eliminated by the legislature in the Unified Status Act of 26 December 2013

The underlying dispute concerned a case before the Labour Court of Liège where an employee was dismissed for serious cause in November 2013. The serious cause was declared to be unfounded, whereupon a discussion arose about the applicable compensation in lieu of advance notice to which the employee was entitled.

By decision of 7 July 2011, however, the Constitutional Court ruled that the discrimination between blue-collar and white-collar employees in terms of notice periods and the first day of sick leave for blue-collar employees (“carenzdag”) had to be resolved by 8 July 2013 at the latest. This deadline was not respected, since the Unified Status Act only entered into force on 1 January 2014.

The dismissal of the employee involved thus took place within the period after the Constitutional Court’s deadline but before the entry into force of the new regulations. As a result, the dismissal still took place subject to the rules that were held to be discriminatory by the Constitutional Court.

In the present decision at the end of January 2016, the Constitutional Court reiterates that the different rules that existed in the past concerning the termination of blue-collar and white-collar workers are in violation of the Constitution. However, the Court is lenient with the legislature and decides that the consequences of these discriminatory provisions of the law still have to be enforced until 31 December 2013, i.e. until the entry into force of the Unified Status Act.

The Constitutional Court justifies this decision by reference to the principles of legal certainty and legitimate expectations. If the nullification of the provisions were to have immediate consequences, for a judge who has to deal with a similar case, there would no longer be any legal basis for determining the applicable compensation in lieu of advance notice.

The Court adds to this that the objective – the harmonisation of the two statuses – has already been achieved through the entry into force of the Unified Status Act, even if the regulator did not meet the imposed deadline and thus discriminations still existed during a brief period.

For more information on this topic, you can consult Sébastien van Damme (author) and Sara

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