



# The Offici@l

LEGAL NEWSLETTER ON EUROPEAN CIVIL SERVICE LAW

DALDEWOLF

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## Edito

Dear readers,

In this new issue of *The Offici@l*, we continue to review the administrative positions of EU officials. We will particularly focus on the leave on personal grounds and the secondment at the official's request. A recent judgment of the EU Court of Justice, regarding compensation for the non-pecuniary damage suffered by a EU official as a result of the Ombudsman's handling of a complaint, also deserves attention.

We wish you a pleasant reading,

*The DALDEWOLF team*

## FOCUS

### Leave on personal grounds or secondment at an official's own request: your rights

In the last issue of *The Offici@l*, we looked through the officials' rights when they are seconded in the interests of the service or assigned on leave in the interests of the service or non-active status. But what are the officials' rights when the secondment or the leave is made at their own request?

#### • Leave on personal grounds

Pursuant to article 40 of the Staff Regulations, the leave on personal grounds (LPG) gives to officials the opportunity to take leave during a period of a maximum of one year. Such leave may be extended, at the official's request, and the total length of the LPG must not exceed 12 years in the course of the official's career. Moreover, LPG can allow officials to engage in another occupational activity, to assist a member of his/her family with serious disability or to be involved in associative activities.

If an official take a LPG and is engaging in a gainful activity during this period, he would not be covered by the European social security scheme and would not continue to acquire pension rights. In the same vein, the official is not entitled to advancement to a higher step or promotion during the LPG.

On the expiry of the leave, the official's request for reinstatement does not give rise to the right to be reinstated on the very same position, but on the first post corresponding to his/her grade in his/her function group, provided that he/she satisfies the requirements for that post.

Moreover, a reinstatement can take a certain length of time, especially if the official declines the first post offered to him by the Administration. In the meanwhile, the official remain on unpaid leave on personal grounds.

In case of request for reinstatement, if the official declines twice the posts offered to him/her (and which correspond to his/her function group, grade and skills), the Administration may require the official to resign. In such case, the Institution's Joint Committee must imperatively be consulted.

#### • Secondment at the official's own request

Pursuant to articles 37 and 29 of the Staff Regulations, an official may be seconded at his/her own request to be placed at the disposal of another EU Institution or at the disposal of an organization devoted to the Union's interests.

Such position may be attractive, but officials must know beforehand that an official seconded at his/her own request does not benefit from the same rights than the official seconded in the interests of the service (see *The Offici@l*, March 2017).

For example, the official seconded at his/her own request does not have a right to benefit from the same level of remuneration than in his/her parent Institution. Thus, the Staff Regulations does not provide the possibility to pay a salary differential to bridge the gap between the remunerations.

The official on secondment continues to pay pension contributions, by reference to his/her position to his/her parent Institution.

The official on secondment retains his rights to advancement to higher step but, unlike secondment in the interests of the service, he is not eligible for promotion.

As regards reinstatement, the official does not keep his/her position but must be reinstated in a post corresponding to his/her function group and grade. As for the LPG, until effectively reinstated, the official continue to be on secondment but unpaid. Moreover, if the official declines twice the posts offered to him/her (and which correspond to his/her function group, grade and skills), the Administration may require the official to resign. In this case, Institution's Joint Committee must also be consulted.

## Case Law

### Compensation for the non-pecuniary damage suffered as a result of the Ombudsman's handling of a complaint

By a judgement of 4 April 2017 (C-337/15 P), the Court of Justice of the European Union ("CJEU") set aside in part the judgement of the EU Tribunal of 29 April 2015 (T-217/11) on the handling by the Ombudsman of the complaint of a successful candidate to an open competition alleging mismanagement by the European Parliament of the list of suitable candidates, on which she appeared. The applicant, notably, alleged that the Ombudsman had not been impartial, had lacked of objectiveness and independence, and had made several manifest errors of assessment while examining the merits of her claim. Indeed, the Ombudsman had concluded that there were no instance of maladministration by the European Parliament of the list of suitable candidates.

Contrary to the Tribunal, the Court states that a breach by the Ombudsman of the duty to act diligently does not automatically amount to unlawful conduct that may result in liability being incurred by the European Union. The Court underlines that the Ombudsman enjoys very wide discretion as regards, firstly, the merits of complaints and the way in which they are to be dealt with; secondly, the way in which open inquiries and investigations are to be conducted; and finally, the analysis of the information gathered and of the conclusions to be drawn from that analysis.

However, in this case, the Court rules that the Ombudsman committed a set of sufficient serious breaches capable of rendering the EU liable, consisting notably in a clearly weak investigation, a lack of care and caution, and a manifest and serious disregard of the limits of his discretion.

In practice, the Court criticises the Ombudsman for not having investigated when and how the applicant's inclusion on the list of suitable candidates was communicated to the other institutions, bodies, offices and agencies of the EU. Indeed, the Ombudsman was satisfied in that respect with the mere disclosure by the Parliament of what was known as a 'pooling' document dating from 2007 which indicated that only one candidate remained on the list of suitable candidates. However, it could not be inferred from that document when and how the inclusion of the applicant, supposedly made in 2005, had been communicated by the Parliament to the other institutions, bodies, offices and agencies of the EU.

Moreover, the Court criticises the Ombudsman for having stated that in the light of the inspection of the Parliament's file, the applicant's candidature had been successfully transferred to all the directorates-general of the Parliament. Indeed, the Court notes that the Ombudsman failed to refer more specifically to the documents capable of substantiating that assertion, or to substantiate that assertion with anything other than mere supposition.

Furthermore, regarding the allegation of the applicant's discrimination related to the period of her inclusion on the list compared to the other suitable candidates of the same open competition, the Court states that the Ombudsman illegitimately relied on the explanation given by the Parliament without making any attempt to obtain more detailed information to check that the exculpatory matters invoked by the Institution could be established.

In conclusion, although the Court refuses compensation for the non-pecuniary damage caused by a loss of confidence in the Office of the Ombudsman, it acknowledges the applicant's feeling of «psychological harm» as a result of the way in which her complaint to the Ombudsman was dealt with and orders the Ombudsman to pay her a compensation of 7,000 euros.

## Our team

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