



## **Decision of the European Ombudsman in case OI/1/2020/LM on the European External Action Service's decision (EEAS) not to pay a severance grant to a retired staff member of the EU Delegation to Algeria**

Decision

**Case** OI/1/2020/LM - **Opened on** 05/02/2020 - **Decision on** 29/01/2021 - **Institution concerned** European External Action Service ( No maladministration found ) |

The complaint concerned the European External Action Service's (EEAS) decision not to pay a severance grant to a locally hired staff member in the EU Delegation to Algeria. The Delegation had supported paying the grant, arguing that this had been the practice based on an administrative note.

The Ombudsman inquired into the issue and found that the staff member had no 'legitimate expectation', in the legal sense, to receive a severance grant. She thus closed the case with a finding of no-maladministration. The Ombudsman pointed out, however, that it was regrettable that the EEAS had failed to ensure clear and consistent communication to staff about the rules applying to the individuals in question. This lack of clarity left the staff member concerned with an incorrect understanding of the situation. As the EEAS is phasing out the relevant staff category, the Ombudsman will not pursue this matter. She trusts, however, that the EEAS will, in the meantime, ensure that the employment conditions applicable to the individuals in question are clarified.

Background to the inquiry

**1.** The EU is represented through some 140 EU delegations and offices around the world. The European External Action Service (EEAS) manages the EU's foreign, security and defence policies, and coordinates EU delegations. These delegations are staffed by staff members recruited from the EU (permanent EU civil servants and contract staff) and locally recruited staff. There are different contractual terms applying to locally recruited staff, with different corresponding rights.

**2.** The Ombudsman received a complaint from the staff representatives in the EU Delegation to Algeria on behalf of a former locally recruited staff member, who had worked for many years at the Delegation. The staff member was recruited as an 'agent under local law' ('agent de droit local' also known internally as 'loc loc agents'). The complaint concerns the EEAS's decision not to pay a severance grant to the staff member when she retired.



**3.** The Delegation had asked the EEAS to approve a severance grant for the staff member. The EEAS refused because staff recruited under the contractual terms applying to the staff member in question are not eligible for a severance grant. A severance grant is provided for in the 'Conditions of Employment of Local Staff of the EU engaged in places outside the EU' (CPEs) [1] . The CPEs apply to 'local agents' only, and not to loc loc agents, who are subject to different contractual terms, based on local labour law.

**4.** The Delegation then argued that the staff member's contract fell under the scope of application of a note on human resources issues that had been sent to the Delegation by the European Commission [2] on 1 June 2005 (hereafter, 'the 2005 note') regarding the adoption of updated CPEs [3] . This note established "similar working conditions" for local agents and loc loc agents.

**5.** According to the Delegation, loc loc agents have always benefitted from similar employment conditions to local agents. It added that the EEAS had approved the payment of a severance grant for another loc loc agent, who had retired from the Delegation in 2011.

**6.** The Delegation added that, in November 2018, the EEAS had authorised a salary advance for the staff member in question, for which her severance grant was considered as a guarantee.

**7.** The EEAS said that it clarified, in a separate note sent in 2016 [4] , that the CPEs do not apply to loc loc agents, whose contracts are based on local law. They therefore do not have the same rights and obligations as local agents.

**8.** After the EEAS refused to authorise the payment of a severance grant, the staff representatives of the Delegation turned to the Ombudsman. They argued that the EEAS' s position is at odds with previous rules and established practice. They argued that, based on this, loc loc agents have 'legitimate expectations', in the legal sense, to receive a severance grant. They further argued that the decision violates the principle of equal treatment among staff members, as well as local labour law, which forbids discrimination amongst staff. The inquiry

**9.** The Ombudsman opened an own-initiative inquiry [5] into the issues raised in the complaint.

**10.** In the context of her inquiry, the Ombudsman suggested that the EEAS should consider paying, on an *ex gratia* basis, a severance grant to the staff member in question. In doing so, she considered that:

(i) past practice indicates that loc loc agents have received severance grants ;

(ii) no clear information that this practice had changed appears to have been shared with the Delegation or staff concerned by the change;

(iii) the issue appears to involve a small amount of money [6] .



- 11.** The Ombudsman also asked the EEAS to clarify to the relevant EU Delegations and their staff its position on severance grants to avoid similar situations arising in future.
- 12.** In its reply to the Ombudsman, the EEAS maintained its refusal to pay the severance grant, even on an *ex gratia* basis.
- 13.** The EEAS said, in summary, that the 2005 note is not legally binding because it is not in line with Article 1 of the CPEs, which states that the CPEs do not apply to any other category of staff. The author of the note did not have any power to grant additional rights to loc loc agents. The EEAS noted that the note it sent in 2016 clarified the situation.
- 14.** The rights of loc loc agents are determined by their employment contract, which in turn is based on local law. The employment contract cannot, therefore, refer to the CPEs.
- 15.** Regarding the complainant's argument that the EEAS's decision goes against established practice and the legitimate expectations of loc loc agents, the EEAS stated that the payment of a severance grant to a loc loc agent in 2011 was the result of a misinterpretation of the applicable rules. The EEAS had clarified the situation through the 2016 note. According to the EEAS, the Delegation did not follow the EEAS's instructions when it linked the salary advance paid to the staff member in 2018 to the payment of a severance grant.
- 16.** Finally, the EEAS said that loc loc agents are a category of staff that will gradually disappear. Delegations are encouraged to phase out existing loc loc agent contracts and replace them with so-called 'service contracts', where possible.
- The Ombudsman's assessment
- 17.** The complainants do not dispute the fact that the staff member in this case did not have a right to a severance grant, based on her employment contract. Based on the inquiry, the Ombudsman considers that, by not paying the severance grant, the EEAS did not act against any rules or established practice, as argued by the complainants. Against this background, the former staff member concerned cannot be deemed to have a 'legitimate expectation', in the legal sense [7], to a severance grant.
- 18.** According to EU case-law, in order to have legitimate expectations, the EU institution in question must have given precise, unconditional, and consistent assurances originating from authorised and reliable sources to the person concerned. Those assurances must be such as to give rise to a legitimate expectation on the part of the person to whom they are addressed, and they must comply with the applicable rules [8].
- 19.** Over the years, there seems to have been a degree of ambiguity as to which rights should apply to loc loc agents. However, the Ombudsman finds no precise, unconditional and consistent assurances that loc loc agents are paid a severance grant.
- 20.** None of the administrative notes referred to in this case explicitly mentioned the payment of a severance grant to loc loc agents. The fact that one loc loc agent may previously have received a severance grant does not constitute an assurance to other loc loc agents in that regard. Furthermore, while loc loc agents may have enjoyed additional rights



stemming from the CPEs, the information assessed in this inquiry does not show that there was a consistent practice in terms of severance grants. Regarding the complainant's argument that the staff member concerned received, in 2018, an advance of her salary for which her severance grant was considered a guarantee, the Ombudsman notes that the document authorising the salary advance did not refer to the payment of a severance grant.

**21.** In light of the above, the staff member had no legitimate expectation to receive a severance grant, and the Ombudsman accepts the EEAS's reasons for not making the suggested *ex gratia* payment.

**22.** In addition, the Ombudsman considers that the fact that different categories of staff have different conditions of employment does not, as such, constitute discrimination.

**23.** Based on this assessment, the Ombudsman finds no maladministration.

**24.** That having been said, the Ombudsman finds it regrettable that the EEAS failed to ensure clear and consistent communication to staff about the rules applying to loc loc agents. This lack of clarity left the staff member concerned with an incorrect understanding of the situation.

**25.** As the EEAS is phasing out the loc loc agent staff category, the Ombudsman will not pursue this matter. She trusts, however, that the EEAS will, in the meantime, ensure that the employment conditions applicable to loc loc agents are clarified.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**There was no maladministration by the European External Action Service.**

The European External Action Service and the complainants in the case based on which this own-initiative inquiry was opened will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 29/01/2021

[1] Article 31(5) of the CPEs.

[2] At the time, the European Commission was responsible for the administration of the EU's external delegations in non-EU countries.

[3] Any modification of the working conditions of local agents, such as modifications to the CPEs, needs to be approved by the College of Commissioners.



[4] Ares (2016) 1897166 of 21/04/2016

[5] The Ombudsman may open inquiries on her own initiative where she finds grounds to do so. This can include matters of possible maladministration affecting an individual who would normally not be eligible to complain to the Ombudsman, according to the rules governing the Office.

[6] The severance grant sought amounts to approximately EUR 346, a significant amount for the staff member (more than half her monthly salary).

[7] The principle of legitimate expectations is one of the general principles of EU law.

[8] See judgement of the Court of First Instance of 30 June 2005 in case T-347/03, *Branco*, paragraph 102, at <http://curia.europa.eu/juris/document/document.jsf?jsessionid=2A583B83F562FD29700B55AB4E5AC12B>