



## Reports of Cases

### Case C-337/15 P

#### European Ombudsman v Claire Staelen

(Appeal — Non-contractual liability of the European Union — Handling by the European Ombudsman of a complaint concerning the management of a list of suitable candidates in an open competition — Breaches of the duty to act diligently — Concept of a ‘sufficiently serious breach’ of a rule of EU law — Non-material damage — Loss of confidence in the office of the European Ombudsman)

Summary — Judgment of the Court (Grand Chamber), 4 April 2017

1. *EU law — Principles — Principle of sound administration — Duty to act diligently — Scope*
2. *Non-contractual liability — Conditions — Unlawfulness — Sufficiently serious breach of EU law — Infringement by the European Ombudsman of the duty to act diligently in the context of an inquiry into cases of maladministration — Requirement of a manifest and grave disregard on the part of the Ombudsman of the limits on her discretion — Criteria for assessment*  
*(Art. 340, second para., TFEU; European Parliament Decision 94/262)*
3. *Non-contractual liability — Conditions — Unlawfulness — Sufficiently serious breach of EU law — Distortion by the European Ombudsman of the content of a document sent to her in order to support the conclusions of a decision closing an inquiry — Included*  
*(Art. 340, second para., TFEU; European Parliament Decision 94/262)*
4. *Non-contractual liability — Damage — Damage for which compensation is available — Non-material damage caused by a loss of confidence in the office of the European Ombudsman — Not included*  
*(Art. 340, second para., TFEU; European Parliament Decision 94/262)*

1. The duty to act diligently which is inherent in the principle of sound administration and applies generally to the actions of the EU administration in its relations with the public requires that that administration act with care and caution. In that respect, where an administration is called upon to conduct an inquiry, it is for that administration to conduct it with the greatest possible diligence in order to dispel the doubts which exist and to clarify the situation.

(see paras 34, 114)

2. In order for it to be concluded that there is a sufficiently serious breach of the Ombudsman’s duty to act diligently, it is necessary to establish that, by failing to act with all the requisite care and caution, the Ombudsman gravely and manifestly disregarded the limits on her discretion in the exercise of her powers of investigation. Whilst having regard to that context, account must, to that end, be taken of all

aspects characterising the situation concerned, including, in particular, the obviousness of the lack of care shown by the Ombudsman in the conduct of the investigation, whether it was excusable or inexcusable, or whether the conclusions drawn from the Ombudsman's examination were inappropriate and unreasonable.

A mere breach of the principle of diligence is not sufficient to establish the existence of a sufficiently serious breach that may render the European Union liable. Only a sufficiently serious breach, not merely any breach, of a rule of EU law protecting individuals is capable of giving rise to non-contractual liability on the part of the European Union. Furthermore, where an EU institution or body has been given a discretion, only that particular institution's or body's manifest and grave disregard of the limits on that discretion is capable of constituting a sufficiently serious breach of EU law. The same applies in the event of a breach by the Ombudsman of the duty to act diligently, which does not automatically amount to unlawful conduct that may result in liability being incurred by the European Union, but must be assessed taking into account the fact that, in the performance of her duties, the Ombudsman is merely under an obligation to use her best endeavours and enjoys very wide discretion as regards (i) the merits of complaints and the way in which they are to be dealt with; (ii) the way in which open inquiries and investigations are to be conducted; and (iii) analysis of the information gathered and the conclusions to be drawn from that analysis.

(see paras 36-38, 41)

3. Although the Ombudsman enjoys very wide discretion in the performance of her duties, notably with regard to the way in which complaints are to be dealt with and investigated, the fact remains that, in describing the content of a document sent to the Ombudsman, in order to support the conclusions reached in a decision closing an inquiry, the Ombudsman has only a reduced, or even no, discretion.

(see para. 57)

4. In the case of the non-contractual liability of the European Union, the damage for which compensation is sought must be actual and certain. That is not the case where damage consists of a possible loss of confidence in the office of the Ombudsman. Any such damage that may result from actions taken by the Ombudsman in the course of her inquiries is likely to affect, indiscriminately, everyone entitled to lodge a complaint with the Ombudsman at any time.

(see paras 91, 94)