



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

16 October 2019*

(Civil service — Members of the temporary staff — Pensions — Pension scheme — Severance grant — Article 12(2) of Annex VIII to the Staff Regulations — Principles of equal treatment and non-discrimination — Legitimate expectations — Principle of good administration — Duty of care)

In Case T-432/18,

Peeter Palo, former member of the temporary staff of the European Union Agency for Law Enforcement Cooperation (Europol), residing in Tallinn (Estonia), represented by L. Levi and A. Blot, lawyers,

applicant,

v

European Commission, represented by B. Mongin and D. Milanowska, acting as Agents,

defendant,

APPLICATION based on Article 270 TFEU seeking, first, annulment of the Commission's decision of 5 October 2017 not to pay the applicant the severance grant provided for in Article 12(2) of Annex VIII to the Staff Regulations of Officials of the European Union, in the version resulting from Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15), and annulment of the Commission's decision of 10 April 2018 rejecting the applicant's complaint against that decision and, secondly, compensation for the material and non-material damage allegedly suffered by the applicant following those decisions.

THE GENERAL COURT (Second Chamber),

composed of F. Schalin, acting as President, B. Berke and M.J. Costeira (Rapporteur), Judges,

Registrar: P. Cullen, Administrator,

having regard to the written part of the procedure and further to the hearing on 6 May 2019,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

- 1 The applicant, Mr Peeter Palo, was a member of the temporary staff of the European Agency for Law Enforcement Cooperation (Europol) from 1 December 2010 to 31 August 2017.
- 2 On 19 June 2017, the applicant requested a severance grant under Article 12(2) of Annex VIII to the Staff Regulations of Officials of the European Union, in its version resulting from Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15, ‘the Staff Regulations’). For that purpose, the applicant submitted a form entitled ‘Personal Statement — Derogation under Article 12(2) of Annex VIII [to the Staff Regulations]’ in which, first, he declared that, since taking up his duties at Europol, and in order to establish or maintain his pension rights, he had paid into a private insurance scheme and, secondly, he requested that the actuarial equivalent of his pension rights acquired under the pension scheme of the European Union institutions (‘PSEUI’) be paid directly into his bank account. The applicant attached to that form an attestation issued by the private insurance company concerned certifying that he had paid the company an amount of EUR 14 200 for the period from 1 November 2010 to 31 August 2017. On 19 September 2017, the applicant indicated to the Office for Administration and Payment of Individual Entitlements (PMO) of the European Commission that, on 1 December 2014, he had concluded another insurance contract with that company in which contributions should amount to EUR 87 460.
- 3 By decision of 5 October 2017, the Commission rejected the applicant’s request (‘the contested decision’). In that decision, the PMO stated, *inter alia*, that the aim of the system established in Article 12 of Annex VIII to the Staff Regulations was to privilege the constitution of a pension, as a regular future revenue, and to avoid situations where persons would find themselves without sufficient revenue at the age of retirement and would have to appeal to the social assistance of the Member States. The PMO also stated that, from that perspective, the payments made into a national pension scheme or a private insurance scheme, pursuant to Article 12(2) of that annex, ‘in order to establish or maintain pension rights’, had to correspond with the amount of pension contributions which should be expected to be paid under a national pension scheme or which had actually been paid to the PSEUI during the same period, and therefore the future revenue guaranteed by those payments had to be consistent with the payments ensured through the transfer of the pension rights acquired under the PSEUI. In that regard, the PMO noted that the amount of the payments made into the private insurance scheme (EUR 14 200) was clearly not consistent with the amount of the contributions paid to the PSEUI (EUR 65 334.95), and therefore it could in no way provide the applicant with an income equivalent to that which he would have been able to acquire on the basis of the actuarial equivalent of his pension rights acquired under the PSEUI. Lastly, the PMO stated that the applicant did however satisfy the conditions for a transfer to another scheme, under Article 12(1)(b) of that annex, which implied that the pension rights which he had acquired with the European Union during his period of employment with Europol are transferred to a national pension scheme or a private insurance scheme or a pension fund of his choice, in accordance with the conditions laid down by that provision.
- 4 On 11 December 2017, the applicant lodged a complaint against that decision, pursuant to Article 90(2) of the Staff Regulations.
- 5 By decision of 10 April 2018, the authority empowered to conclude contracts (‘the AECE’) of the Commission rejected that complaint. In that decision, the AECE, in essence, upheld the contested decision by essentially reproducing the same reasoning as that provided by the PMO. The AECE, moreover, considered that the second insurance contract concluded by the applicant, on 1 December

2014, could not be taken into account for the purposes of applying Article 12(2) of Annex VIII to the Staff Regulations since it had not been concluded 'since taking up [his] duties' at Europol. The AECE, finally, rejected the applicant's arguments based on the principle of equal treatment, the principle of good administration and the principle of the protection of legitimate expectations.

Procedure and forms of order sought

- 6 By application lodged at the Registry of the General Court on 13 July 2018, the applicant brought the present action.
- 7 The Commission lodged its defence at the Registry of the General Court on 2 October 2018.
- 8 The applicant claims that the Court should:
 - annul the contested decision;
 - annul the decision rejecting the complaint;
 - order the Commission to pay compensation for the material damage suffered;
 - order the Commission to pay compensation for the non-material damage suffered;
 - order the Commission to pay the costs.
- 9 The Commission contends that the Court should:
 - dismiss the action;
 - order the applicant to pay the costs.

Law

The claims for annulment of the contested decision

- 10 As a preliminary point, it should be noted that the applicant claims that the Court should annul the contested decision and annul the decision rejecting the complaint. In that regard, it should be borne in mind that, according to settled case-law, claims for annulment formally directed against a decision rejecting a complaint have, where that decision lacks any independent content, the effect of bringing before the Court the act against which the complaint was submitted (judgment of 17 January 1989, *Vainker v Parliament*, 293/87, EU:C:1989:8, paragraph 8). Since the decision rejecting the complaint lacks any independent content, the action must be regarded as being directed against the contested decision.
- 11 In support of his claims for annulment directed against the contested decision, the applicant raises four pleas in law. The first plea alleges an infringement of Article 12(2) of Annex VIII to the Staff Regulations. The second plea concerns the infringement of the principles of equal treatment and non-discrimination. The third plea concerns the infringement of the principle of the protection of legitimate expectations. The fourth plea alleges an infringement of the principle of good administration and of the duty of care.

The first plea, alleging infringement of Article 12(2) of Annex VIII to the Staff Regulations

- 12 The applicant submits that he was entitled to rely on Article 12(2) of Annex VIII to the Staff Regulations since he satisfied all of the conditions for it to apply set out therein. It follows that, by refusing to award him the severance grant he had requested, the contested decision infringes that provision.
- 13 In particular, the applicant disputes the ‘consistency criterion’ invoked by the Commission, in accordance with which the coverage provided by the pre-existing pension scheme must be at least comparable to that offered by the PSEUI. That criterion does not appear anywhere in Article 12(2) of Annex VIII to the Staff Regulations, which was confirmed by the Executive Director of Europol in a letter dated 26 February 2018 which was addressed to, inter alia, the Director-General of the Directorate-General (DG) for ‘Human Resources and Security’ of the Commission. Moreover, that criterion has not been clarified or quantified in any way by the Commission, which makes it impossible to comply with.
- 14 Furthermore, the applicant submits that, even if it were accepted that the ‘consistency criterion’ might be deduced from Article 12(2) of Annex VIII to the Staff Regulations and that a teleological interpretation of that provision would require the contributions paid to a private pension scheme to be ‘consistent’ with those paid to the PSEUI ‘in order to establish or maintain pension rights’, which is not the case here, the contested decision does not state what that level of consistency should be, thus infringing the requirements of legal certainty. In that regard, being ‘consistent’ does not mean being ‘equivalent’. Consequently, the applicant maintains that the contributions paid by him to the private insurance scheme must be regarded as consistent.
- 15 According to the applicant, that conclusion is all the more compelling since, in 2014, he concluded another insurance contract with the same private insurance company in which contributions amounted to EUR 87 460. In that regard, the applicant criticises the Commission for not having taken that second contract into account for the purposes of applying Article 12(2) of Annex VIII to the Staff Regulations, on the ground that that contract had not been concluded ‘since taking up his duties’. The applicant disputes that interpretation and submits that the wording ‘since taking up his duties’ does not necessarily mean that the payment must have taken place ‘as from the very beginning of the taking up’ but that it may take place after those duties have been taken up. The applicant considers that the double payment of contributions to the same private insurance scheme of that company, the amount of contributions paid totalling EUR 101 660, should have been taken into account as a whole by the Commission, with the result that those contributions should have been regarded as ‘at least comparable’ to the PSEUI contributions.
- 16 The Commission, for its part, refutes the applicant’s arguments and contends that the first plea in law should be rejected.
- 17 As a preliminary point, it should be recalled that Article 11(1) of Annex VIII to the Staff Regulations provides as follows:

‘An official who leaves the service of the Union to:

- enter the service of a government administration or a national or international organisation which has concluded an agreement with the Union;
- pursue an activity in an employed or self-employed capacity, by virtue of which he acquires pension rights under a scheme whose administrative bodies have concluded an agreement with the Union,

shall be entitled to have the actuarial equivalent of his retirement pension rights updated to the actual date of transfer, in the Union transferred to the pension fund of that administration or organisation or to the pension fund under which he acquires retirement pension rights by virtue of the activity pursued in an employed or self-employed capacity.’

18 Article 12 of Annex VIII to the Staff Regulations is worded as follows:

‘1. An official aged less than the pensionable age whose service terminates otherwise than by reason of death or invalidity and who is not entitled to an immediate or deferred retirement pension shall be entitled on leaving the service:

- (a) where he has completed less than one year’s service and has not made use of the arrangement laid down in Article 11(2) [of Annex VIII to the Staff Regulations], to payment of a severance grant equal to three times the amounts withheld from his basic salary in respect of his pension contributions, after deduction of any amounts paid under Articles 42 and 112 of the Conditions of Employment of Other Servants;
- (b) in other cases, to the benefits provided under Article 11(1) [of Annex VIII to the Staff Regulations] or to the payment of the actuarial equivalent of such benefits to a private insurance company or pension fund of his choice, on condition that such company or fund guarantees that:
 - (i) the capital will not be repaid;
 - (ii) a monthly income will be paid from age 60 at the earliest and age 66 at the latest;
 - (iii) provisions are included for reversion or survivors’ pensions;
 - (iv) transfer to another insurance company or other fund will be authorised only if such fund fulfils the conditions laid down in points (i), (ii) and (iii).

2. By way of derogation from point (b) of paragraph 1, officials under pensionable age who, since taking up their duties, have, in order to establish or maintain pension rights, paid into a national pension scheme, a private insurance scheme or a pension fund of their choice which satisfies the requirements set out in paragraph 1, and whose service terminates for reasons other than death or invalidity without their qualifying for an immediate or deferred retirement pension, shall be entitled, on leaving the service, to a severance grant equal to the actuarial value of their pension rights acquired during service in the institutions. In those cases the payments made in order to establish or maintain their pension rights under the national pension scheme in application of Articles 42 or 112 of the Conditions of Employment of Other Servants shall be deducted from the severance grant

...’

19 It should be noted that those provisions of Articles 11 and 12 of Annex VIII to the Staff Regulations were substantially amended during the 2004 reform of the Staff Regulations. By the adoption of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (OJ 2004 L 124, p. 1), the EU legislature specifically intended, as is apparent from recital 32 of that regulation, ‘[to amend] the rules of severance grant ... to take into account [EU] rules on portability of pension rights [and] this should be achieved by correcting a number of inconsistencies and introducing greater flexibility’.

20 Articles 11 and 12 of Annex VIII to the Staff Regulations have become the expression of that intention of the EU legislature. Thus, the EU legislature limited the cases in which staff members who were not entitled to a PSEUI retirement pension, namely those who had not completed at least 10 years’ service, could receive a severance grant, and extended the possibility of transferring pension rights to another pension scheme. It follows from those provisions that the portability of pension rights was established as the rule and the severance grant became a derogating and exceptional mechanism to which strict conditions apply.

- 21 The purpose of this system promoting the portability of pension rights, laid down in Articles 11 and 12 of Annex VIII to the Staff Regulations, is to give priority to the establishment of a retirement pension, namely a regular income or a monthly income to be received at a later date during retirement. That would thus avoid situations in which former staff members would be without sufficient income at retirement age and would be forced to rely on the social assistance of the Member States, despite the fact that they acquired pension rights during their affiliation to the pension scheme concerned.
- 22 Moreover, the system for the transfer of pension rights, as provided for in those provisions, seeks, by enabling the PSEUI to be coordinated with the national or private schemes, to facilitate movement between the EU administration and national employment, whether public or private (see, to that effect, judgment of 13 October 2015, *Commission v Verile and Gjergji*, T-104/14 P, EU:T:2015:776, paragraph 77 and the case-law cited). Similarly, in order to maintain the attractiveness of EU institutions as a future employer, Article 12(2) of Annex VIII to the Staff Regulations offers a staff member, by way of derogation from Article 12(1)(b) of that annex, and under certain strict conditions, the possibility of acquiring or continuing to acquire rights from another existing or pre-existing national or private pension scheme, that is to say by becoming or remaining a member of that scheme and paying or continuing to pay contributions into it, while allowing him, when he leaves the service, to receive a severance grant equal to the actuarial value of their pension rights acquired in the PSEUI.
- 23 In that regard, it must be borne in mind that the severance grant, referred to in Article 12(2) of Annex VIII to the Staff Regulations, is not an end-of-service allowance to which the staff member concerned is automatically entitled at the time when his contract is terminated or expires, but is a financial measure coming under provisions of the Staff Regulations on social security (judgment of 2 March 2016, *FX v Commission*, F-59/15, EU:F:2016:27, paragraph 32). That provision, which is subject to provisions of EU law which give entitlement to financial benefits, must be interpreted strictly (see judgment of 22 May 2012, *AU v Commission*, F-109/10, EU:F:2012:66, paragraph 24 and the case-law cited). Moreover, as is apparent from the very wording of that provision, according to which the provision applies 'by way of derogation' from Article 12(1)(b) of that annex, it must be interpreted strictly.
- 24 It follows from the wording of Article 12(2) of Annex VIII to the Staff Regulations that payments to the national or private pension scheme chosen by the staff member must be made 'to establish or maintain pension rights'. This provision therefore requires -- in order to avoid situations in which a staff member would find himself without sufficient income at retirement age and would be obliged to have recourse to social assistance from Member States, notwithstanding the acquisition of rights within the PSEUI that may be transferred to another scheme -- that such payments guarantee the staff member a retirement pension, namely a monthly income that he will receive at retirement age.
- 25 It follows that a strict interpretation of Article 12(2) of Annex VIII to the Staff Regulations requires that payments made to the national or private pension scheme chosen by the staff member must be able to ensure, as such, sufficient pension rights at retirement age. Indeed, if those payments were not such as to guarantee the staff member concerned sufficient income at retirement age and he had squandered, at that age, the severance grant previously received under that provision, he would probably be obliged to have recourse to social assistance from the Member States, which would contravene that provision, which requires that such payments must be made 'to establish or maintain pension rights'.
- 26 However, if the staff member concerned opts to transfer his pension rights acquired in the PSEUI to another national or private scheme of his choice, pursuant to Article 12(1)(b) of Annex VIII to the Staff Regulations, he will be entitled to sufficient pension rights at retirement age. That transfer will guarantee him, at that age, a monthly income so as to avoid having to resort to social assistance from the Member States.

- 27 Therefore, Article 12(2) of Annex VIII to the Staff Regulations necessarily presupposes that payments made under that provision to the national or private pension scheme concerned must, as such, provide the staff member with sufficient coverage at retirement age, providing him with a retirement pension which excludes any recourse to social assistance from the Member States.
- 28 In order to determine whether those payments, pursuant to Article 12(2) of Annex VIII to the Staff Regulations, are such as to guarantee a retirement pension which excludes any recourse to social assistance from the Member States, an assessment must be carried out on a case-by-case basis. That assessment means that account must be taken of the relevant factual evidence of the particular case, such as, *inter alia*, the nature of the pension insurance in question, the amount of the payments made in that respect by the member of staff concerned since taking up his duties or the reasonably foreseeable income likely to be generated by those payments and to be received at retirement age.
- 29 In the present case, it is apparent from the documents before the Court (Annex A.2 to the application) that the payments made by the applicant to the private insurance company concerned, since taking up his duties at Europol, amounted to a total amount of EUR 14 200 on 31 August 2017, namely on the date on which he left the service. Furthermore, it should be noted that, as indicated by the applicant at the hearing, without having supported that claim by any evidence, that amount would represent, at the date of that hearing, a capital of EUR 22 000, to which the interest generated by that capital should be progressively added, at the very least until the age from which the applicant would receive a monthly income within the meaning of Article 12(1)(b) of Annex VIII to the Staff Regulations, that is to say, at the earliest, for a further 10 years.
- 30 In the light of the evidence in the documents before the Court and, in particular, those mentioned in paragraph 28 of the present judgment, it must be noted that the payments made by the applicant to the private insurance company concerned since taking up his duties are clearly not such as to guarantee him a satisfactory retirement pension which excludes any recourse to social assistance from the Member States. The total amount of EUR 14 200 paid by the applicant under the first contract with that company certainly cannot guarantee him such a retirement pension. In any event, the applicant has not shown that those payments would guarantee him that retirement pension.
- 31 Moreover, as regards the applicant's argument that the Commission should have taken into consideration the second contract concluded in 2014 with the insurance company for the purposes of Article 12(2) of Annex VIII to the Staff Regulations, it is important to note that that provision expressly requires that the payments concerned must be made by the staff member 'since taking up [his] duties'. In the present case, however, it must be noted that the applicant took up his duties at Europol on 1 December 2010 and that the payments relating to that second contract were made from December 2014, namely almost 4 years after taking up his duties over a total period of 6 years and 9 months of employment with Europol. Consequently, those payments can in no way be regarded as having been made 'since taking up [his] duties'.
- 32 Therefore, it follows from all the foregoing considerations that, by refusing him the severance grant requested, the contested decision did not infringe Article 12(2) of Annex VIII to the Staff Regulations. Consequently, the first plea in law must be rejected.

The second plea, alleging breach of the principle of equal treatment and non-discrimination

- 33 The applicant submits that the contested decision infringed the principle of equal treatment and non-discrimination. He relies on the settled case-law of the EU courts in that regard, as well as Article 1d of the Staff Regulations, which contains, first, a substantive rule, which is the expression of a general principle of law laid down in the Charter of Fundamental Rights of the European Union and, secondly, a procedural guarantee which provides that the obligation to provide proof does not fall to the person who presented *prima facie* evidence.

- 34 In particular, relying on a number of documents (Annex A.8 to the application), the applicant submits that several former Europol staff members have obtained a severance grant, under Article 12(2) of Annex VIII to the Staff Regulations, after the end of their contract with Europol, even though they had paid only a limited contribution to a private pension scheme. The applicant states that he is aware of specific cases in which those former staff members have been awarded that grant even though they were in a comparable situation to his, namely cases where their contributions to such a scheme could, in accordance with the interpretation adopted by the Commission in the contested decision, have been regarded as not 'consistent' with the rights accumulated in the PSEUI.
- 35 The Commission, for its part, refutes the applicant's arguments and contends that the second plea in law should be rejected.
- 36 In that connection, it should be noted, in the first place, that Article 1d of the Staff Regulations cannot be applied in the present case. That provision prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation. That is clearly not the case here, since the applicant does not invoke such discrimination, but rather the case of several former Europol staff members who obtained a severance grant, when they are in a situation comparable to his own.
- 37 It should be noted, in the second place, that according to settled case-law the principle of equal treatment and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgments of 9 October 2008, *Chetcuti v Commission*, C-16/07 P, EU:C:2008:549, paragraph 40, and of 9 February 1994, *Lacruz Bassols v Court of Justice*, T-109/92, EU:T:1994:16, paragraph 87).
- 38 However, it is settled case-law that the principle of equality of treatment must be reconciled with the principle of legality, according to which no person may rely, in support of his claim, on an unlawful act committed in favour of another (see judgment of 4 July 1985, *Williams v Court of Auditors*, 134/84, EU:C:1985:297, paragraph 14 and the case-law cited). A possible unlawful act committed with regard to another staff member, who is not party to the present proceedings, cannot lead to a finding by the EU judicature that it is discriminatory and, therefore, unlawful with regard to the applicant. Such an approach would be tantamount to laying down a principle of 'equal treatment in illegality' (see, to that effect, judgment of 16 November 2006, *Peróxidos Orgánicos v Commission*, T-120/04, EU:T:2006:350, paragraph 77).
- 39 It follows that the applicant cannot claim that the granting to him of a severance grant should be subject to the same treatment as that already afforded to other staff members in a situation comparable to his own, where that treatment does not comply with the relevant statutory provisions, namely, in the present case, those of Article 12(2) of Annex VIII to the Staff Regulations, as is apparent from the examination of the first plea.
- 40 Therefore, the second plea, alleging infringement of the principle of equal treatment and non-discrimination in relation to other staff members, must be rejected.

Third plea, alleging breach of the principle of protection of legitimate expectations

- 41 The applicant claims that the contested decision infringes the principle of protection of legitimate expectations. He considers that he was legitimately led to believe, from authorised sources and repeatedly, that he could have recourse to Article 12(2) of Annex VIII to the Staff Regulations when he left Europol.

- 42 In particular, the applicant submits that, in accordance with the case-law, he received precise assurances in the form of precise, unconditional and consistent information coming from authorised and reliable sources that, by setting up a private pension by paying a minimum monthly contribution of EUR 50, he would receive a severance grant when he left the service. In that regard, the applicant cites a Europol internal communication dated 16 July 2014 (Annex A.7 to the application), in accordance with which Europol had informed its staff members that paying a EUR 50 contribution per month into the insurance fund of the private insurance company concerned was sufficient in order to receive the severance grant. The same information had been provided in a PowerPoint presentation (Annex A.9 to the application) which was delivered by that company on 30 August 2010 to Europol staff at Europol's premises. Other exchanges in 2010 between Europol and that company also show that Europol staff members had set up their private pension account with a view to receiving the severance grant at the end of their contract (Annex A.10 to the application) and that a payment of EUR 600 per year or EUR 50 per month would have been sufficient in order to obtain that grant (Annex A.11 to the application).
- 43 Moreover, the applicant refers to a letter dated 26 February 2018 from the Executive Director of Europol (Annex A.6 to the application). In that letter the Executive Director considered that the way in which Article 12(2) of Annex VIII to the Staff Regulations was implemented had changed since September 2017, taking the view that the legitimate expectations of staff should, where possible, be met and that the conditions for implementation should not be changed retroactively.
- 44 The Commission, for its part, refutes the applicant's arguments and contends that the third plea in law should be rejected.
- 45 In that regard, it should be borne in mind that it is settled case-law that the principle of the protection of legitimate expectation, which is one of the fundamental principles of EU law (see judgment of 5 May 1981, *Dürbeck*, 112/80, EU:C:1981:94, paragraph 48 and the case-law cited), implies that any official or other staff member is entitled to rely on that principle in a situation where it is clear that an institution of the European Union, by giving that person precise assurances, has led him to entertain well-founded expectations (see judgment of 16 December 2010, *Kahla Thüringen Porzellan v Commission*, C-537/08 P, EU:C:2010:769, paragraph 63 and the case-law cited).
- 46 According to settled case-law, the right to claim protection of legitimate expectations requires three conditions to be satisfied. First, precise, unconditional and consistent assurances originating from authorised and reliable sources must have been given to the person concerned by the EU authorities. Second, those assurances must be such as to give rise to a legitimate expectation on the part of the person to whom they are addressed. Third, the assurances given must comply with the applicable rules (see judgment of 27 January 2016, *Montagut Viladot v Commission*, T-696/14 P, EU:T:2016:30, paragraph 43 and the case-law cited).
- 47 In the present case, first, as regards Europol's internal communication of 16 July 2014, in Annex A.7 to the application, it should be noted that it is not disputed that that communication — signed by a Europol staff member from the 'G 14 Public Relations & Events' department — was circulated by email, on behalf of Europol, to all members of the temporary and contract staff in active employment at Europol, which on that date included the applicant.
- 48 However, it is important to note that Europol's internal communication dated 16 July 2014 cannot have given rise to well-founded expectations on the part of the applicant which would enable him to claim protection of legitimate expectations. It would be difficult to say that that communication provides precise, unconditional and, even less so, consistent assurances. Nor does that communication appear to come from an entirely reliable source. Rather, it appears to have been issued on the proposal of the private insurance company concerned, as evidenced by several passages in that communication, such as the one in bold indicating the phrase 'we have been informed by [the private insurance company concerned] that', the part below that mentioning the phrase 'we also would like to draw the

attention to the fact that [the private insurance company concerned] voiced to me, in order to disclose this message to all existing or potential clients, that', and finally the passage, at the very end of the communication, suggesting to contact the private insurance company concerned directly, whose email address was provided, for any questions related to that communication. Moreover, the applicant could not have been unaware that a monthly payment of a minimum of EUR 50 could not create the conditions for obtaining appropriate pension rights, as evidenced by the fact that he considered it necessary to supplement the initial payments with a second contract, concluded in 2014. His hopes of being able to obtain the severance grant could therefore not appear 'well founded' to him.

- 49 In addition, it should also be noted that any assurances provided in Europol's internal communication of 16 July 2014 do not comply with the rules applicable to the staff member concerned. It appears from the considerations set out in the context of the first plea that any assurances received by the applicant as to the payment of a severance grant were, in any event, not in accordance with the letter or spirit of Article 12(2) of Annex VIII to the Staff Regulations. In that regard, it should be noted that the applicant cannot reasonably claim to obtain a different result from that which follows from the application of that provision (see, to that effect, judgment of 7 June 2018, *Winkler v Commission*, T-369/17, not published, EU:T:2018:334, paragraph 71).
- 50 Secondly, as regards the PowerPoint presentation delivered by the private insurance company concerned on 30 August 2010, it should be noted that, although it was delivered to Europol staff at Europol's premises, that presentation did not come from an authorised and reliable source. In order to be able to rely on the protection of legitimate expectations, the alleged assurances must have been given to the person concerned, at the very least, by the EU administration. That is not the case with that presentation, so that it cannot have given rise to well-founded expectations on the part of the applicant within the meaning of the abovementioned case-law.
- 51 Thirdly, as regards the other exchanges between Europol and the private insurance company concerned, which took place from April to July 2010, set out in Annexes A.10 and A.11 to the application, it should be noted that those exchanges were not addressed to the applicant, so they could not give rise to a legitimate expectation on his part. The applicant was not the addressee of those exchanges, which consisted of messages sent by email between the Europol staff responsible for pension rights and the persons in charge of the private insurance company concerned. In any event, it must be stated that the applicant has not adduced evidence that he was aware of the exchanges at issue, at the very least prior to the contested decision.
- 52 Fourthly, as regards the letter of 26 February 2018 from the Executive Director of Europol, in Annex A.6 to the application, that letter could in no way give rise to well-founded expectations on the part of the applicant that he would be able to obtain the severance grant requested. That letter came after the contested decision and did not come from an authorised and reliable source in the present case, but from the applicant's hierarchical superior, who was writing specifically to the competent persons within the Commission who are responsible for the application of Article 12(2) of Annex VIII to the Staff Regulations, namely, mainly, the Director of the PMO and the Director-General of DG for 'Human Resources and Security'.
- 53 It follows that the third plea, alleging breach of the principle of the protection of legitimate expectations, must be rejected.

The fourth plea, alleging infringement of the principle of good administration and of the duty of care

- 54 The applicant submits that the contested decision infringed the principle of good administration and the duty of care.

- 55 First, the applicant considers that if he had been properly heard, the contested decision would have been different. In particular, he would have been able to explain that he had received assurances that a monthly contribution of EUR 50 to a private pension scheme was sufficient in order to obtain a severance grant.
- 56 Secondly, the applicant accuses the PMO of not having also sent to former Europol staff members, including himself, a communication concerning the application of Article 12(2) of Annex VIII to the Staff Regulations, addressed to Europol staff members in November 2017. Moreover, the refusal to provide him with a reason as to why that had not been done is further proof of the infringement of the principle of good administration and of the duty of care.
- 57 Thirdly, the lack of duty of care is demonstrated by the fact that the PMO completely abstained, in the contested decision, from establishing the applicant's guaranteed pension rights or any other income which he would receive at retirement age. That failure is clear, moreover, from the decision refusing to award a severance grant, adopted by the Commission on 30 April 2018, concerning another former Europol staff member, which contained almost the same wording as the decision concerning the applicant, but in which the Commission clearly acknowledged that that staff member would receive a national pension.
- 58 Fourthly, the applicant accuses the PMO of not having informed him that the award of a severance grant had been refused, on the basis of conditions that he had nevertheless fulfilled in good faith, until 5 October 2017, thus when his contract had already ended. At that time, even if he had decided to comply with the new requirements of the PMO, it was impossible for him to rectify his personal situation retroactively.
- 59 The Commission, for its part, refutes the applicant's arguments and contends that the fourth plea in law should be rejected.
- 60 In that regard, it should be recalled that, according to case-law, the duty of care reflects the balance of reciprocal rights and obligations in the relationship between the official authority and the civil servants. That balance implies, in particular, that when the relevant authority takes a decision concerning the position of an official, it should take into consideration all the factors capable of affecting its decision and that when doing so it should take into account not only the interests of the service but also, in particular, those of the official concerned. The latter obligation is also imposed on the administration by the principle of good administration enshrined in Article 41 of the Charter of Fundamental Rights (see judgment of 13 December 2018, *UIP v Commission*, T-706/17, not published, EU:T:2018:924, paragraph 59 and the case-law cited).
- 61 The protection of the rights and interests of officials is, however, subject to compliance with the rules in force (see judgment of 5 December 2006, *Angelidis v Parliament*, T-416/03, EU:T:2006:375, paragraph 117 and the case-law cited).
- 62 It follows that the principle of good administration and the duty of care cannot reasonably be invoked by the applicant to contravene the provisions of Article 12(2) of Annex VIII to the Staff Regulations. It follows from the examination of the first plea that the Commission was right to base the contested decision on those provisions.
- 63 Moreover, as regards the arguments put forward by the applicant in the context of the fourth plea, the Court makes the following observations.
- 64 First, it should be noted that the relevant administrative procedure within the Commission has been fully and consistently respected. The applicant first submitted his application for a severance grant under Article 12(2) of Annex VIII to the Staff Regulations. In that regard, the applicant was given the opportunity to provide any information he considered relevant. Subsequently, in accordance with

Article 90(1) of the Staff Regulations, the PMO issued its decision on the basis of all the information provided by the applicant. Then, pursuant to Article 90(2) of the Staff Regulations, the applicant lodged a complaint with the AECE, in which he was able to explain the reasons why he considered he could obtain that grant and also provide all the information he considered useful. Finally, the Commission adopted its decision taking into consideration all the factors likely to determine it, in particular those provided by the applicant in the context of that procedure. Consequently, the applicant cannot criticise the Commission for not having been heard properly.

- 65 Secondly, it should be noted that the November 2017 communication concerning the application of Article 12(2) of Annex VIII to the Staff Regulations was sent by the PMO to Europol so that Europol could send it to the persons concerned. Europol then sent that communication to its staff members in active employment. It should be noted that the Commission was not required to forward that communication to former staff members who had definitively left the service, since it would not have changed their situation. Moreover, for the same reasons, the Commission was also not required to provide the applicant with the reason why that communication had not been addressed to former Europol staff members. In any event, it is important to stress that that administrative conduct is not such as to affect the legality of the contested decision, which was adopted before that communication and in a manner consistent with the provisions of Article 12(2) of Annex VIII to the Staff Regulations, as is apparent from the examination of the first plea. Therefore, the applicant cannot rely in that respect on any breach of the principle of good administration and the duty of care.
- 66 Thirdly, with regard to the alleged breach of the duty of care, it must be noted that the applicant has not shown that the Commission did not take into consideration all the relevant factors likely to determine its decision. Similarly, the applicant has not established that the Commission failed to take his interests into account when processing his application for a severance grant. In any event, it must be noted that, while ensuring that the interests of the service and those of the applicant were protected, the Commission adopted its decision on the basis of all the relevant factors likely to determine it. Consequently, the applicant cannot criticise the Commission for having acted in breach of its duty of care.
- 67 Fourthly, with regard to the applicant's claim that the refusal to grant the severance grant was communicated to him only after he had left the service of Europol, it must be noted that the Commission could not have done otherwise and that it cannot be accused of any fault in that respect. Indeed, the Commission only became aware of the applicant's personal situation, namely his participation, since taking up his duties in 2010, in a private pension insurance contract with limited payments, when he applied for a severance grant under Article 12(2) of Annex VIII to the Staff Regulations on 19 June 2017. In that regard, it should be noted, as the Commission has done, that the applicant has not suffered any damage, since the contributions paid to the PSEUI may be transferred to the applicant's pension scheme under Article 12(1)(b) of Annex VIII to the Staff Regulations. It follows that that complaint must be rejected.
- 68 Consequently, the fourth plea, alleging infringement of the principle of good administration and of the duty of care, must be rejected and, consequently, the claims for annulment must be rejected in their entirety.

The claims for damages

- 69 The applicant requests that the Court order the Commission to pay compensation for the material and non-material damage caused to him by the illegalities set out in the claims for annulment in the present action. In that regard, the applicant claims the payment, first, of EUR 42 737 by way of compensation for the material damage and, secondly, EUR 10 000, evaluated on a provisional basis, *ex aequo et bono*, by way of compensation for the non-material damage.

- 70 In particular, in respect of the material damage, the applicant submits that that damage must, in principle, be redressed by the annulment of the contested decision and by the application of Article 12(2) of Annex VIII to the Staff Regulations. Should the view be taken that that provision is not applicable, which the applicant disputes, that damage consists in his inability to access his funds at the private insurance company concerned or at the PSEUI, namely a sum of EUR 213 687 which represents the actuarial equivalent of his pension rights under the latter scheme. As the applicant intends to reinvest that amount privately until his retirement age, his financial damage is a percentage of that amount. As the applicant's private investments generate, on average, an annual return of 15 to 25%, his annual loss may, therefore, be calculated as approximately 20% of EUR 213 687, or EUR 42 737.
- 71 As regards the non-material damage, the applicant submits that that damage results from the repeated unfair treatment which has caused him significant stress, which has resulted in numerous sleepless nights and desperation. The uncertainty felt by the applicant has created a profound feeling of injustice as the rules are clear, as is the previous and repeated position of Europol, the PMO and the private insurance company concerned. Since he has been unable to concentrate fully on finding a new job after his contract with Europol ended, the applicant is, for the first time, unemployed, which is exacerbating the non-material damage suffered. That damage must, ultimately, be evaluated on a provisional basis, *ex aequo et bono*, at EUR 10 000.
- 72 The Commission, for its part, refutes the applicant's arguments and contends that the claim for compensation should be rejected.
- 73 In that regard, according to settled case-law concerning civil service proceedings, where an application for damages is closely linked with an application for annulment, the rejection of the latter, either as inadmissible or as unfounded, also results in the rejection of the application for damages (see judgment of 30 September 2003, *Martínez Valls v Parliament*, T-214/02, EU:T:2003:254, paragraph 43 and case-law cited).
- 74 In the present case, the claims for damages are closely linked to the claims for annulment.
- 75 As the claims for annulment have been rejected, the claims for damages must also be rejected.
- 76 It follows from all the above considerations that the action must be dismissed in its entirety.

Costs

- 77 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Mr Peeter Palo to pay the costs.**

Schalin

Berke

Costeira

Delivered in open court in Luxembourg on 16 October 2019.

E. Coulon
Registrar

D. Gratsias
President