Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL (Second Chamber)

16 December 2015*

(Civil service — EMA staff — Placement on 'non-active status' — Act adversely affecting an official or staff member — Right to be heard — Infringement)

In Case F-135/14,

ACTION brought under Article 270 TFEU,

DE, a former member of the temporary staff of the European Medicines Agency, residing in Buckhurst Hill (United Kingdom), represented by S. Rodrigues and A. Blot, lawyers,

applicant,

v

European Medicines Agency (EMA), represented by S. Marino, T. Jabłoński and N. Rampal Olmedo, acting as Agents, assisted by D. Waelbroeck and A. Duron, lawyers,

defendant,

THE CIVIL SERVICE TRIBUNAL

(Second Chamber),

composed of K. Bradley (Rapporteur), President, H. Kreppel and M.I. Rofes i Pujol, Judges,

Registrar: P. Cullen, Administrator,

having regard to the written procedure and further to the hearing on 6 October 2015,

gives the following

Judgment

1 By application received at the Registry of the Civil Service Tribunal on 25 November 2014, DE brought the present action, seeking, in essence, the annulment of the decision of 31 January 2014 by which the European Medicines Agency (EMA) ('the Agency') placed him on 'non-active status' from 1 February 2014 until the expiry of his temporary staff contract on 15 March 2014, and an order that the EMA pay compensation for the harm suffered.

* Language of the case: English.

Legal context

2 The case arises in the legal context, first, of Article 41 of the Charter of Fundamental Rights of the European Union, and, secondly, of the second paragraph of Article 25 of the Staff Regulations of Officials of the European Union ('the Staff Regulations'), applicable by analogy to members of the temporary staff by virtue of Article 11 of the Conditions of Employment of other servants of the European Union ('the CEOS').

3 In addition, on 1 December 2006 the Executive Director of the EMA adopted a decision regarding the placement on 'non-active status' of temporary or contractual staff members employed by the EMA. That decision is worded as follows:

'[The Executive Director]

[having regard] to [the Staff Regulations] and [the CEOS] and in particular ... Articles 47 and 119 [of the CEOS],

[having regard] to the opinion of the [EMA] Staff Committee,

[whereas] it is necessary to have a clear policy in place in the event of expiry of a contract [of employment] that protects the interests of the Agency,

[has adopted] the following rules:

Article 1

Where a staff member is notified that their contract as a Temporary Agent or as a Contract Agent will expire at the end of the fixed period, [the authority empowered to conclude contracts of employment] reserves the right to place the staff member on non-active status during the notice period. Full salary, allowances, advancement of step will continue to be paid during the non-active status period. ...

...'

Factual background to the dispute

4 The applicant entered into the service of the Agency as a Scientific Administrator on 1 January 1999 under a temporary staff contract concluded on the basis of Article 2(a) of the CEOS.

5 On 11 February 2004, the parties concluded a contract pursuant to which the applicant was employed as a Principal Scientific Administrator, commencing on 16 March 2004 for a period of five years expiring on 15 March 2009. That contract was renewed once, until 15 March 2014.

The 2010-2012 performance evaluation report

6 The procedure for drawing up the performance evaluation report for the period running from 15 September 2010 to 15 September 2012 ('the 2010-2012 evaluation report') began on 15 August 2012 with a meeting between the applicant and his reporting officer. The 2010-2012 evaluation report became final on 16 January 2013.

7 On 6 March 2013, the applicant lodged a complaint, pursuant to Article 90(2) of the Staff Regulations, against the 2010-2012 evaluation report, a complaint which was rejected by a decision of the Executive Director of the Agency in his capacity as the Agency's authority empowered to conclude contracts of employment ('the AECE') of 2 July 2013.

8 On 14 October 2013, the applicant brought an action before the Tribunal against his 2010-2012 evaluation report, which was registered as Case F-103/13.

9 By judgment of 11 December 2014 in *DE* v *EMA* (F-103/13, EU:F:2014:265), the Tribunal dismissed the applicant's action.

The decision not to renew the applicant's contract

10 By letter of 12 September 2013, the AECE informed the applicant of its decision not to renew his contract, which thus came to an end upon its expiry on 15 March 2014 ('the decision not to renew the contract').

11 On 19 November 2013, the applicant lodged a complaint, pursuant to Article 90(2) of the Staff Regulations, against the decision not to renew the contract. That complaint was rejected by decision of the AECE of 13 March 2014.

12 On 23 June 2014, the applicant brought an action before the Tribunal against the decision not to renew the contract. That action was registered as Case F-58/14 and is currently pending before the Tribunal.

The decision to place on 'non-active status'

13 By decision of 31 January 2014, the Executive Director of the EMA in his capacity as the AECE placed the applicant on 'non-active status' from 1 February 2014 until the expiry of his contract on 15 March 2014. That decision was worded as follows:

'...

I have carefully considered the fact that there is an on-going legal dispute between you and the Agency at the European Court of Justice. In view of this fact I have decided to place you on non-active status as of 1 February 2014 until your contract expiry date, 15 March 2014.

Your full salary and allowances will continue to be paid during the period of non-active service.

A copy of this letter will be filed on your personal file.

...'

14 By email of 5 February 2014, the applicant's hierarchical superior informed his team that the workload would temporarily increase owing to the departure of two staff members.

15 By letter of 14 March 2014 ('the letter of 14 March 2014'), the Executive Director of the EMA in his capacity as the AECE made the following statement to the applicant:

'...

I write to follow up on my letter to you of 31 January 2014 where I decided to place you on non-active status. As a clarification, it was brought to my attention that [29 374] pages have been printed or copied against your user account on the Agency's multi-functional print devices ... during the [thirteen-]month period starting January 2013 and ending January 2014.

This level of printing is not commensurate with the normal duties assigned to a [staff member] with your grade and responsibility level. To put this volume into context a total of [3 200] printed or copied pages were registered against your user account on the [Agency's multi-functional print] devices in 2012 — i.e. an increase of over 900%. It is noted that the volume of [documents printed] increased significantly after 12 September 2013 which is the date I wrote to inform you that I was taking no action to renew your contract of employment.

The assumption [is] that this level of printing [of documents] may be connected with the on-going legal case at the [European] Court of Justice.

...'

16 On 24 April 2014, the applicant lodged a complaint, pursuant to Article 90(2) of the Staff Regulations, against the decision of 31 January 2014 to place him on 'non-active status'. That complaint was rejected by decision of the AECE of 15 August 2014 ('the decision rejecting the complaint').

17 By letter of 1 October 2014, the applicant asked the AECE to provide him with certain explanations regarding the decision rejecting the complaint and to send him a number of documents.

18 By letter of 23 October 2014, the AECE replied to the request for information set out in the applicant's letter of 1 October 2014 and sent him some of the documents requested, namely, a list of the documents printed by him for the period from 1 January 2012 to 31 January 2014 inclusive, and records of documents photocopied and printed for — according to the AECE — the years 2012 and 2013.

Forms of order sought and procedure

19 The applicant claims that the Tribunal should:

— declare the action admissible;

— annul the decision of 31 January 2014 to place him on 'non-active status' and the letter of 14 March 2014;

— annul, so far as necessary, the decision rejecting the complaint;

— compensate him for the non-material harm suffered, estimated at EUR 20 000;

— order the EMA to pay the costs.

20 The EMA contends that the Tribunal should:

— declare the action inadmissible;

— in the alternative, dismiss the action in its entirety;

— dismiss the claim for compensation for non-material harm;

— order the applicant to pay the costs.

21 By a letter from the Registry of 25 February 2015, the parties were informed of the Tribunal's decision to authorise a second exchange of pleadings confined to the objections of inadmissibility raised by the EMA in its defence. The reply was received at the Registry of the Civil Service Tribunal on 7 April 2015 and the rejoinder was received on 18 May 2015.

22 By letter of 11 May 2015, the Registry of the Tribunal sent the parties a recommendation from the Judge-Rapporteur intended to help the parties find an amicable solution to the dispute. That recommendation was unsuccessful.

Law

Subject matter of the dispute

23 The applicant seeks the annulment of the decision of 31 January 2014 to place him on 'non-active status', the letter of 14 March 2014, and — so far as necessary — the decision rejecting the complaint.

24 The Tribunal points out, in the first place, that the letter of 14 March 2014 is not a decision since, as the EMA explained at the hearing, it is intended to clarify the reasons for the decision of 31 January 2014 to place the applicant on 'non-active status'.

25 In the second place, the Tribunal recalls that, according to established case-law, claims for annulment formally brought against a decision to reject a complaint have, where that decision lacks any independent content, the effect of bringing before the Tribunal the act against which the complaint was submitted (judgment of 11 December 2014 in *DE* v *EMA*, F-103/13, EU:F:2014:265, paragraph 29 and the case-law cited).

26 In the present case, the decision rejecting the complaint confirms the placement on 'non-active status' decision of 31 January 2014, as supplemented by the letter of 14 March 2014, by providing explanations regarding the reasons used to support that first decision. In such circumstances, it is indeed the legality of the initial act adversely affecting the official or staff member — in the present case, the decision to place him on 'non-active status', supplemented by the letter of 14 March 2014 — which must be examined, taking into account the reasons set out in the decision rejecting the complaint, those reasons being expected to be the same as those for that act (judgment of 18 April 2012 in *Buxton* v *Parliament*, F-50/11, EU:F:2012:51, paragraph 21 and the case-law cited).

27 It follows from all of the foregoing that the claim for annulment brought against the letter of 14 March 2014 and the claim for annulment brought against the decision rejecting the complaint lack any independent content and, consequently, must be regarded as being formally directed against the decision of 31 January 2014 placing the applicant on 'non-active status' ('the contested decision'), as supplemented, as regards the reasons for it, by the letter of 14 March 2014 and by the decision rejecting the complaint (judgment of 11 December 2014 in *DE* v *EMA*, F-103/13, EU:F:2014:265, paragraph 30 and the case-law cited).

Admissibility of the action

Arguments of the parties

28 In the first place, the Agency contends, in essence, that the contested decision is not an act adversely affecting an official or staff member for the purposes of Article 90(2) of the Staff Regulations, in so far as it does not have binding legal effects liable to affect the applicant's interests by bringing about a distinct change in his legal position.

29 According to the Agency, the idea that the contested decision is an act adversely affecting an official or staff member should be rejected for a number of reasons.

30 First, in adopting the contested decision — which should be distinguished from a normal suspension measure, which is an act adversely affecting an official or staff member — the EMA merely exercised 'a right, which [it] can avail itself of in order to protect its interests, when a staff member is notified that his/her contract as a Temporary Agent or a Contract Agent will expire at the end of the fixed period'. The EMA adds that express provision is made for the adoption of the measure contained in the contested decision by means of the decision of its Executive Director of 1 December 2006 on 'non-active status', which had been brought to the attention of the staff of the Agency, and that such measures are common practice within the Agency, which has, on occasion, adopted measures of placement on 'non-active status' at the request of the staff members concerned. Second, as the applicant continued to receive his salary and allowances in full throughout the period during which he was placed on 'non-active status', his legal position has not undergone any distinct change.

31 In the second place, the Agency contends that the annulment of the contested decision would not be of any benefit to the applicant, since that decision ceased to have effect on 15 March 2014, and that, accordingly, the action is devoid of purpose.

32 By contrast, the applicant submits that the contested decision adversely affects him in so far as it affects his career and professional reputation.

33 In particular, the applicant claims, by way of example, that the contested decision prevented him from publishing a scientific article, prepared as part of the objectives which had been assigned to him by the Agency and of which he was the first author, and that his colleagues at the Agency and the persons outside the Agency with whom he was working had been given 'a suspicious and negative message' regarding his abrupt departure, having received no other explanation than the one given in the email from his hierarchical superior of 5 February 2014.

34 In addition, the applicant submits that, in the decision rejecting the complaint, the AECE accused him of having spent a disproportionate amount of time photocopying or printing documents and that the contested decision, added to his personal file, contains an explicitly negative assessment concerning his performance, with the result that he has an interest in contesting it so that his performance may be assessed in a just and equitable manner.

35 As regards his interest in challenging the contested decision, the applicant submits that a staff member may establish an interest in bringing proceedings when an act affects his reputation, as in the present case. In addition, the annulment of the contested decision would give him the opportunity to obtain compensation for the non-material damage which he claims to have suffered.

Findings of the Tribunal

– Whether the contested decision is an act adversely affecting the applicant

36 As a preliminary point, it should be borne in mind that, for the purposes of Article 90(2) of the Staff Regulations, only those acts or measures having binding legal effects which are such as to affect a staff member's interests by bringing about a distinct change in his legal position are acts adversely affecting a staff member (judgment of 23 October 2013 in *Solberg* v *EMCDDA*, F-124/12, EU:F:2013:157, paragraph 16 and the case-law cited).

37 In addition, it has been held that, even if it does not affect the material interests and/or rank of the staff member concerned, a change of duties may, in so far as it alters the conditions for the performance of his duties and also the nature of those duties, impair his non-material interests and future prospects and thus adversely affect him (judgment of 8 May 2008 in *Kerstens* v *Commission*, F-119/06, EU:F:2008:54, paragraph 45 and the case-law cited).

38 Next, it should be borne in mind that, pursuant to Article 23 of Annex IX to the Staff Regulations, if the administrative authority accuses a staff member of serious misconduct, it may suspend that staff member. According to settled case-law, such a measure, although temporary, is, by its nature, an act adversely affecting the person concerned, as it is based on an accusation of serious misconduct and may have serious consequences for that person, both personally and professionally, by depriving him, on those grounds, of the opportunity to perform his duties (see, to that effect, judgments of 5 May 1966 in *Gutmann* v *Commission*, 18/65 and 35/65, EU:C:1966:24, ECR pp. 149 and 168, and 15 June 2000 in *F* v *Commission*, T-211/98, EU:T:2000:153, paragraphs 30 and 31). In addition, measures which, without withholding or reducing his salary, deprive the staff member concerned of the opportunity to perform his duties, as in the present case, may be classed as acts adversely affecting him (see, concerning the suspension measure provided for by the Staff Regulations of the EIB, judgment of 16 December 2004 in *De Nicola* v *EIB*, T-120/01 and T-300/01, EU:T:2004:367, paragraphs 108 and 113).

39 In the present case, it must be held that the purpose and effect of the contested decision was to deprive the applicant of the opportunity to perform his duties for a period of six weeks. As is apparent from reading the contested decision — which includes the letter of 14 March 2014 and the decision rejecting the complaint — that decision was taken, inter alia, in view of the fact that, during 2013 and in particular after 12 September 2013, the date on which the AECE informed the applicant of the decision not to renew his contract, the applicant — according to the Agency — photocopied and printed an extremely large number of documents. According to the Agency, the reason for the number of documents photocopied and printed was not the performance of duties assigned to the applicant, but was connected with legal proceedings then pending before the Tribunal between the applicant and the Agency in the case which gave rise to the judgment of 11 December 2014 in *DE* v *EMA* (F-103/13, EU:F:2014:256). Moreover, at the hearing, the Agency's representatives contended that, in using the EMA's printers and photocopiers for private purposes, the applicant had failed to fulfil his professional obligations, and some of his colleagues had complained about the fact that he was making unreasonable use of the shared printers.

40 In those circumstances, although the Agency has described the contested decision as a measure of placement on 'non-active status', such a decision is, in terms of its effects, equivalent to a decision to suspend a person from duty pursuant to Article 23 of Annex IX to the Staff Regulations, taken as a result of an accusation of wrongful conduct made against the applicant whom it adversely affects both by its reasoning and its operative part.

41 That finding cannot be called in question by the arguments put forward by the EMA.

42 First, the fact that, during the period running from 1 February to 15 March 2014, the applicant retained his salary and allowances in full cannot, per se, decisively establish that the contested decision is not an act adversely affecting him: the fact that the staff member concerned has been prevented from performing his professional duties is in itself liable to impair his non-material interests, especially if such a decision is based, as in the present case, on accusations of wrongful conduct made against that staff member.

43 Second, the fact that other Agency staff members have expressly asked to be placed on 'non-active status', even if it were to be proved, is also entirely irrelevant given that, in any event, this was not the situation in the present case.

44 Third, the EMA cannot validly rely either on the fact that provision is made for the possibility of placing a staff member on 'non-active status' through a decision of which all its staff have been made aware or on the fact that that possibility is a 'right' of the Agency, as the exercise of any privilege by an administrative authority is, in any event, subject to judicial review by the Courts of the European Union (see, to that effect, judgments of 23 April 1986 in *Les Verts* v *Parliament*, 294/83, EU:C:1986:166, paragraph 23, and 20 September 2011 in *Evropaïki Dynamiki* v *EIB*, T-461/08, EU:T:2011:494, paragraph 46).

45 The plea of inadmissibility raised by the EMA on the ground that the contested decision is not an act adversely affecting an official or staff member must therefore be rejected.

– Objection of inadmissibility on the ground that there is no need to adjudicate

46 It should be noted that the contested decision ceased to have effect upon the date of expiry of the applicant's contract, namely, 15 March 2014.

47 However, the expiry of the contract did not withdraw the contested decision with retroactive effect. Moreover, it must be held that, although the contested decision did not affect the applicant's material situation, since he was not deprived of his salary during his suspension, it may on the other hand have had an effect on his reputation (see, to that effect, judgment of 30 November 2009 in *Wenig* v *Commission*, F-80/08, EU:F:2009:160, paragraph 35 and the case-law cited). In those circumstances, at the time the action was brought, the contested decision had indeed had binding legal effects liable directly to affect the applicant's interests by bringing about a distinct change in his legal position, effects which have not disappeared in the course of the proceedings (see, to that effect, judgment of 16 December 2004 in *De Nicola* v *EIB*, T-120/01 and T-300/01, EU:T:2004:367, paragraphs 113 and 114).

48 The plea of inadmissibility raised on the ground that there is no need to adjudicate must therefore be rejected and the present action declared admissible.

Merits of the claim for annulment of the contested decision

49 In support of his claim for annulment of the contested decision, the applicant raises, in essence, six pleas in law, the first alleging infringement of the right to an effective remedy, the second alleging a manifest error in the assessment of the facts, the third alleging a breach of the duty to provide a statement of reasons, the fourth alleging infringement of the principle of sound administration, the fifth alleging infringement of the right to be heard and the sixth alleging infringement of Articles 4, 11, 12 and 25 of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

50 The Tribunal will begin by examining the fifth plea in law, alleging infringement of the right to be heard.

Arguments of the parties

51 The applicant submits that, in breach of Article 41 of the Charter, the EMA adopted the contested decision without having given him the opportunity to put forward his arguments and without providing him with the documents on the basis of which it was making that decision.

52 In particular, according to the applicant, if he had been heard, he could have explained to the Agency that the data concerning the photocopying and printing of documents on which the AECE had based the contested decision were completely wrong. In addition, at the hearing, the applicant maintained that he could have pointed out to the Agency that he was exercising a fundamental right — that of access to the courts — and that he could not be penalised for that fact.

53 The EMA contends that, as the contested decision is not an act adversely affecting the applicant, it was not possible to infringe his right to be heard prior to the adoption of that decision.

Findings of the Tribunal

54 The Tribunal recalls at the outset that observance of the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, forms part of the observance of the rights of the defence (see, to that effect, judgments of 19 June 2014 in *BN* v *Parliament*, F-157/12, EU:F:2014:164, paragraph 84, and 15 April 2015 in *Pipiliagkas* v *Commission*, F-96/13, EU:F:2015:29, paragraph 54).

55 That right has been set out in Article 41(2)(a) of the Charter, which acknowledges 'the right of every person to be heard, before any individual measure which would affect him or her adversely is taken', a provision which is of general application (judgment of 11 September 2013 in *L* v *Parliament*, T-317/10 P, EU:T:2013:413, paragraph 81). In order to ensure that the addressee of such a measure is in fact protected, the object of that rule is, in particular, to enable him to correct an error or produce such information relating to his personal circumstances as will tell in favour of the decision's being adopted or not, or of its having this content or that (judgments of 21 December 2011 in *France* v *People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 65 and the case-law cited, and 9 September 2015 in *De Loecker* v *EEAS*, F-28/14, EU:F:2015:101, paragraph 128).

56 Next, it should be explained that observance of the right to be heard involves the person concerned being put in a position, prior to the adoption of the decision adversely affecting him, effectively to make known his views on the truth and relevance of the facts and circumstances on the basis of which that decision was adopted (see, to that effect, judgments of 14 May 2014 in *Delcroix* v *EEAS*, F-11/13, EU:F:2014:91, paragraph 35 and the case-law cited, and 13 November 2014 in *De Loecker* v *EEAS*, F-78/13, EU:F:2014:246, paragraph 33).

57 As regards, in particular, a suspension decision adopted on the basis of Article 23 of Annex IX to the Staff Regulations, which is taken where there is an accusation of serious misconduct, it has been held that, while taking into account the urgency which normally obtains when such a decision is taken, that decision must be adopted in accordance with the rights of the defence, of which the right to be heard is one expression. Consequently, unless special circumstances are duly established, a decision to suspend a person from duty as a disciplinary measure may be adopted only after the official or staff member concerned has been put in a position effectively to make known his views on the evidence relied on against him and on which the competent authority proposes to base that decision (judgments of 15 June 2000 in *F* v *Commission*, T-211/98, EU:T:2001:153, paragraphs 26 et seq., and 16 December 2004 in *De Nicola* v *EIB*, T-120/01 and T-300/01, EU:T:2004:367, paragraph 123).

58 In the present case, as has been stated in paragraph 39 above, the contested decision had the effect of depriving the applicant of the opportunity to perform his duties and was taken as a result of the fact that he had photocopied and printed an extremely large number of documents in connection — according to the EMA — with the dispute then pending before the Tribunal between the applicant and the Agency. As was concluded in paragraph 40 above, the contested decision must be regarded as equivalent, in terms of its effects, to a decision to suspend a person from duty as a disciplinary measure and is thus liable adversely to affect the applicant's interests. In that regard, the contested decision could, in the circumstances, have had particularly serious implications for the applicant's career, damaging his image both within and outside the Agency, since he occupied a position there which involved, inter alia, extensive contact with persons from outside the Agency.

59 Furthermore, the EMA did not rely, either in its written pleadings or at the hearing when responding to a question put by the Tribunal in that regard, on any special circumstance establishing that the AECE had been unable in practice to hear the applicant prior to the adoption of the contested decision or establishing that a prior hearing would have been incompatible with the interests of the service.

60 In those circumstances, the adoption of the contested decision should not have taken place without the applicant being heard beforehand.

61 However, it is common ground that the applicant was not heard prior to the adoption of the contested decision. That fact is not disputed by the EMA, which confines itself to contending, in essence, that the contested decision is not an act adversely affecting the applicant.

62 It must therefore be held that the applicant's right to be heard before the adoption of any decision adversely affecting him was not observed by the EMA, in breach of Article 41(2)(a) of the Charter.

63 In addition, when questioned at the hearing regarding whether, after having heard the applicant, the AECE might have adopted the same decision, the EMA did not adduce any evidence allowing the Tribunal to conclude that it would have adopted the contested decision in any event, even if the applicant had been heard beforehand (see, to that effect, judgment of 8 October 2015 in *DD* v *FRA*, F-106/13 and F-25/14, EU:F:2015:118, paragraph 65).

64 By contrast, the applicant argued that, if he had received the documents on the basis of which the AECE adopted the contested decision and if he had been heard prior to the adoption of that decision, he would have been able to inform the AECE that its reasoning was based on a misinterpretation of the data under examination. Indeed, it is apparent from the documents sent to the applicant by the Agency on 23 October 2014 that the data regarding the number of documents photocopied and printed by the applicant in 2012 concern only the last three months of that year and not the whole of 2012 as was wrongly asserted by the EMA in (i) the letter of 14 March 2014 and the decision rejecting the complaint and (ii) the letter of 23 October 2014 to which the documents mentioned above were appended. Accordingly, the AECE compared the volume of documents photocopied and printed over a thirteen-month period, running from January 2013 to the end of January 2014, with the volume for a single quarter of the year 2012 and thus relied on considerations that were manifestly incorrect. Furthermore, the EMA itself acknowledged, both in its defence and at the hearing, that such an error had been made.

65 Lastly, if the applicant had been heard prior to the adoption of the contested decision, he would have been able to challenge the other arguments put forward by the EMA to justify the contested decision. Although the EMA maintained in its written pleadings that, in any event, the volume of documents photocopied and printed by the applicant had been 'exceptional', when questioned on that point at the hearing, it was unable to provide a benchmark enabling the Tribunal to assess the 'exceptional' nature of that volume. In addition, although requested to do so by the Tribunal, it was unable to provide any explanation of its argument, put forward at the hearing, based on supposed complaints from the

applicant's colleagues and in particular regarding the fact that those complaints had been received during the month of September 2013, whereas the contested decision was not adopted until 31 January 2014.

66 In those circumstances, the Tribunal cannot rule out the possibility that, had the AECE heard the applicant prior to the adoption of the contested decision, it might have adopted a different decision and kept the applicant in service until the expiry of his contract.

67 In the light of all of the foregoing, the plea alleging disregard of the right to be heard must be upheld. It is therefore necessary to annul the contested decision, without there being any need to examine the other pleas raised.

Claim for compensation

Arguments of the parties

68 The applicant submits that the contested decision has caused him non-material and professional harm as well as damage to his reputation.

69 Maintaining that the annulment of the contested decision would not be appropriate compensation for the damage suffered, the applicant asks the Tribunal to order the EMA to pay him the sum of EUR 20 000.

70 The EMA contends that the claim for compensation should be dismissed.

Findings of the Tribunal

71 The Tribunal recalls that, according to settled case-law, the annulment of an unlawful act may in itself constitute appropriate and, in principle, sufficient compensation for any non-material damage that act may have caused, unless the applicant demonstrates that he has suffered non-material damage separable from the illegality of the act justifying its annulment and not capable of being entirely remedied by that annulment (judgment of 2 July 2014 in *Psarras* v *ENISA*, F-63/13, EU:F:2014:177, paragraph 54).

72 In the present case, the Tribunal finds that the annulment of the contested decision cannot in itself constitute appropriate and sufficient compensation for the non-material damage it has caused which relates to the feeling of injustice experienced by the applicant as a result of the unlawfulness of that decision.

73 That finding is based on the nature of the unlawful act committed by the AECE, namely, the infringement of the applicant's right to be heard, and on the circumstances in which that unlawful act took place. In that regard, account should be taken of the fact that: (i) the applicant was placed on 'non-active status' even though he had worked for the EMA for over fourteen years and was hoping to have his temporary staff contract renewed; (ii) the wording of the contested decision could lead the applicant to think that he was experiencing retaliation for having brought an action before the Tribunal; (iii) the AECE sent the applicant the data which it had relied on together with a statement that was false and likely to mislead, namely, that the data for the year 2012 concerned the whole year, when in reality they referred to only a quarter of that year.

74 In those circumstances, the Tribunal sets the sum *ex æquo et bono* which the EMA must pay the applicant as compensation for his non-material damage at EUR 10 000.

Costs

75 Under Article 101 of the Rules of Procedure, without prejudice to the other provisions of Chapter 8 of Title 2 of those Rules, the unsuccessful party is to bear his own costs and is to be ordered to pay the costs incurred by the other party if they have been applied for in the other party's pleadings. Pursuant to Article 102(1) of those Rules, the Tribunal may decide, if equity so requires, that an unsuccessful party is to bear his own costs, but is to pay only part of the costs incurred by the other party, or even that he is not to be ordered to pay any costs.

76 It is apparent from the grounds set out in the present judgment that the EMA is the unsuccessful party. In addition, the applicant has expressly requested in his pleadings that the EMA be ordered to pay the costs. As the circumstances of the present case do not justify applying Article 102(1) of the Rules of Procedure, the EMA must be ordered to bear its own costs and to pay the costs incurred by the applicant.

On those grounds,

THE CIVIL SERVICE TRIBUNAL

(Second Chamber)

hereby:

1. Annuls the decision of 31 January 2014 by which the European Medicines Agency placed DE on 'non-active status';

2. Orders the European Medicines Agency to pay DE the sum of EUR 10 000;

3. Orders the European Medicines Agency to bear its own costs and to pay the costs incurred by DE.

Bradley Kreppel Rofes i Pujol

Delivered in open court in Luxembourg on 16 December 2015.

W. Hakenberg
Registrar

K. Bradley
President