

---

## The legal status of bursaries

**Tim Joosen (ACOD afgevaardigde Ugent)**

**Jo Coulier (Hoofdafgevaardigde ABVV Vrije Universiteit Brussel)**

**January 2017**

---

### 1 Legal framework regarding bursaries

- The bursary status was created as a result of crisis measures taken by the government in 1993
- The bursary status is not fixed through a royal resolution or a decree, but through a circular letter of 6 Feb 1997 (Ci.RH.241/467.677)
- The text of the circular letter is brief, but clearly states that what is awarded is a grant, paid to PhD students in the framework of research and without a labour contract

### 2 Legal framework continued

Because the wording of the aforementioned circular letter is vague and causes problems of interpretation, it was adapted and clarified a number of times. We review the changes below.

The circular letter nr. Ci.RH.241/467.677 (AOIF 25/2002) dated 08.10.2002, offers 6 clarifications:

1. The grant cannot be for services commissioned by the university or knowledge institute.
2. It clarifies the manner in which the minimal sum of the grant is calculated.
3. A tax exemption may only given once to the same person, even if this person would later work for a different institution than for the first grant.
4. It contains the specification of an exclusion condition regarding scientific research conducted before the grant: only staff members that have previously been employed as an assistant are excluded from the grant; no other personnel status is a ground for exclusion. It is not possible to interrupt an ongoing labour contract to replace it by a grant.
5. The grantee may only do research, and this without a labour contract.
6. The grant does not need to be awarded for a uninterrupted period of 4 years. Breaks are possible, although 48 months of the grant have to lie within a 72-month period.

**Annex to the circular letter Ci.RH.241/467.677 (AOIF Nr. 25/2002)** dated 08.10.2002: This annex specifies that the grant need not be paid per full month, thus allowing breaks within a month. Among other things, this implies that time credit can be taken up (see below)

**Circular letter nr. Ci.RH.241/596.009 (AOIF Nr. 17/2009)** dated 07.04.2009. To date, this is the most recent version of the circular letter on the bursary status. It concerns an answer of the administration to a

question asked by professor S'Jegers, at the time vice-rector for Education at the VUB, about carrying out of paid or unpaid activities outside of the normal research activities of the PhD student (e.g. odd jobs during the weekends, remuneration for political mandates, sports or cultural activities). The administration explicitly permits such activities. Flexi-jobs, on the other hand, are not possible, as they require a labour contract.

Because of the vagueness of the aforementioned circular letters, many institutions refer to article 90, WIB 92 (aj.2011) paragraph 2, when they need to specify the conditions under which a grant may be awarded. This paragraph refers to the award of prizes to scholars, writers or artists, for whom the field of application is further specified in article 53, KB/WIB 92 (aj. 2013)

This is mainly about boundary conditions on the source of the funding of the bursary's grant. Universities use these regulations to allow bursaries on project financing from the government (2nd and 3rd cash flow). These statutory provisions, however, are only applicable to postdoctoral grants, and not to the grants of PhD students.

### **3 Same rights as employees**

#### **3.1 Work outside normal research**

Other income from work performed outside of the normal research activities. Just as an employee is allowed to carry out tasks outside of his or her principal employment contract, this is also possible for bursaries. It is important to know that this rule is hardly ever applied by universities and other knowledge institutes and is sometimes even explicitly forbidden. It is clear that the circular letter of 7 April 2009 is not well known or is not applied.

#### **3.2 Career breaks**

Interruptions of the grant for all kinds of care credit, time credit and part-time work. Because the grant can be paid out over a period of 72 months, all forms of career breaks and time credits (palliative care, parental leave, leave without motive) are in principle also available to bursaries. Practice teaches us that the RVA will pay be a benefit. This is insufficiently known and is not applied generally.

The bursary is socially insured: because a bursary pays full social contributions, she or he is fully socially insured, for pensions, unemployment benefits, sickness and accidents at work (see below).

#### **3.3 Work-related accidents**

##### **Law on work-related accidents of 10 April 1971**

Judgment labour court Nivelles 12 November 1986: For a bursary who has a work-related accidents and is permanently incapacitated as a result, it needs to be checked what the average salary is of employees belonging to the category to which he would have belonged at the end of his PhD studies (JTT, 1988, 85-87).

Specifically:

- Proposed reference wage insurer ULB: 332 799 BEF
- Judgement Labour Court, reference of age 1980 776 130 BEF

Disadvantage: gross salary equals net salary. Benefits such as unemployment allowance, or pensions are calculated based on the gross salary and are therefore disadvantageous to the bursary, because the tax exemption implies a lower gross salary.

## **4 Lack of employee rights**

### **4.1 No employer's authority**

As the bursary receives a grant and does not have a labour contract, the supervisor or scientific institution cannot exert hierarchical control on the bursary. In practice however this does happen.

### **4.2 Bursaries on projects**

The question may be asked whether hiring bursaries on projects is actually covered by the application of the circular letter on tax exemptions. In the case of project research, the PhD research is often not free in the sense of academic freedom and one could then consider the bursary system to be misused to cover what is actually regular employment.

### **4.3 Bursaries given other tasks than research**

The circular letters clearly prohibit the execution of other tasks than those in the context of the PhD research, with the exception of a maximum of four hours a week for the support of practical courses. In practice, bursaries are often used for administrative or technical tasks, the correction and supervision of exams, or to help with obtaining contract funding, which is not allowed.

### **4.4 Conflict between the bursary and the supervisor or institution**

Because of the unclear legal status of bursaries, the well-being of the bursary is often strongly dependent on having a good relation with the supervisor and his or her goodwill. If however a conflict arises, supervisors and institutions often abuse this lack of clarity to put the bursaries under pressure. Bursaries cannot go to the Labour Court unless there is a concealed labour agreement. Bursaries at universities subject to public law can address the Council of State.

### **4.5 End of contract**

In principle a bursary agreement has a fixed start and end date. In practice both the bursary and the supervisor or institution may have reasons to prematurely end the contract. Some supervisors then unjustly demand damages.

If the premature termination of the contract does not happen with mutual agreement, the outcome is often determined by the balance of power within the institution (supervisor vs bursary, institution vs trade unions). Institutions try to circumvent this by including conditions on the witch a bursary contract may be terminated premature early.

### **4.6 Lower year and bonus and lower holiday pay**

Because the end of year bonus and the holiday pay for contractual scientific staff is determined by the gross salary, PhD bursaries have a lower year and bonus and lower holiday pay. The average yearly loss is between 1200 and € 1400.

### **4.7 Low replacement salary and pensions**

Because such salaries are based on the gross salary, they are lower for bursaries

### **4.8 Short-term contracts**

A long-term succession of short-term contracts can lead to uncertainty about the labour situation of the bursary and to a strong dependence on the goodwill of the supervisor and the institution.

#### **4.9 Lack of union rights**

This is mainly a problem at the level of the institution. Union rights are recognised in the personal field of application VOC (*codex hoger onderwijs*).

#### **5 Advantages of bursary status?**

- In some cases the lack of a labour income can give more rights for some benefits and disadvantages for other, fiscal, benefits such as a mortgage.
- Whether or not a bursary, all told, has more advantages or disadvantages, strongly depends on the specific situation (family situation, personal circumstances)
- On average adversary is worse off than an employee (lower pension due to lower gross salary, fewer tax-deductible items)

#### **6 Join the union**

Employers claim that bursaries are students and can therefore not be represented by a trade union. We disagree, because

- as a trade union, we believe it is up to us to decide whose rights we wish to defend, and not up to the employer
- the higher education Codex explicitly includes bursaries in the application area of the Flemish Negotiation Committee.

#### **7 Stand up for your rights**

We strive for a clear legal status for bursaries. At least the following issues should be addressed:

- The purpose of the bursary status, which is to obtain a PhD, should be respected
- There should be a fixed term for bursary contracts. We propose two two-year contracts, where the extension after the first period should be automatic if the evaluation is positive. There should be the possibility to appeal if the evaluation is negative
- We are against the premature retraction of the grant, except in the case of a breach of contract. This should be objectively assessed, with the right of appeal by the bursary and the right to be assisted by a union representative

#### **8 Stand up for your rights, continued**

- Net amount of grant should be the same as the net salary of an assistant with the same family situation
- No disconnection of the amount of the grant from the indexing of assistants' salaries
- Equal rights to pensions and other benefits, holiday pay and year-end bonus as researchers who are employees
- Award of union rights, active as well as passive

## 9 Qualified court of law

Which court is qualified?

- institutions under public law: Council of State
- institutions under private law: ?

### Examples:

- Judgment Council of State nr. 205.002 dated 10 June 2010: annulment of decision University of Antwerp not to appoint x as a postdoctoral assistant. Do PhD bursaries have the same rights?
- Judgment Council of State nr. 223.276 dated 5 June 2013, appeal of x against exclusion (= dismissal for urgent reasons) as a PhD student is rejected (no administrative legal acts, so the Council of State declares it is not qualified).