

Entscheidung in der Sache 3513/2005/MF - Nichtumsetzung einer Entscheidung einer Fraktion in Personalangelegenheiten

Entscheidung

Fall 3513/2005/MF - Geöffnet am 02/12/2005 - Entscheidung vom 25/07/2007

Der Beschwerdeführer war als Zeitbediensteter für eine der Fraktionen im Parlament tätig. Am 31. März 2005 legte die Einstellungsbehörde dieser Fraktion fest, dass der Herkunftsort des Zeitbediensteten Athen war. Diese Entscheidung wurde der Generaldirektion Personal („GD Personal“) des Parlaments zur Umsetzung vorgelegt; die GD Personal war der Auffassung, dass der Einstellungs- und Herkunftsort eine Frage war, die sie selbst klären musste, und dass der Beschwerdeführer nicht alle Belege vorgelegt hatte, die normalerweise für diesen Zweck verlangt werden. Am 4. April 2005 traf die GD Personal die Entscheidung, Brüssel zum Herkunfts- und Einstellungsort des Beschwerdeführers zu erklären. Der Beschwerdeführer hat gegen diese Entscheidung intern Beschwerde eingelegt. In seiner Antwort auf diese Beschwerde hat der Generalsekretär des Parlaments den Beschwerdeführer davon in Kenntnis gesetzt, dass er beschlossen hatte, die Entscheidung der GD Personal vom 4. April 2005 aufzuheben.

In seiner Beschwerde beim Bürgerbeauftragten behauptete der Beschwerdeführer, dass das Parlament die Entscheidung der Einstellungsbehörde vom 31. März 2005 nicht umgesetzt und damit die Befugnisse und Vorrechte der betreffenden Fraktion überschritten habe.

In seiner Stellungnahme erklärte das Parlament, dass die Angelegenheit Artikel 4 der Entschließung des Präsidiums des Parlaments vom 3. Mai 2004 (die „Entschließung“) unterlag. Dem Parlament zufolge ergab sich aus dieser Bestimmung, dass im Hinblick auf Zeitbedienstete wie den Beschwerdeführer die der Einstellungsbehörde übertragenen Befugnisse von derjenigen Behörde auszuüben seien, die von den einzelnen Fraktionen dafür benannt wurde. Das Parlament führte jedoch mehrere Argumente zur Untermauerung seiner Auffassung an, wonach seine Dienststellen trotz allem befugt seien, in Entscheidungen einzugreifen, die sich auf einzelne Ansprüche der entsprechenden Zeitbediensteten beziehen. In diesem Zusammenhang bezog sich das Parlament insbesondere auf seine gängige Praxis in dem betreffenden Bereich und auf die Notwendigkeit, für eine gute Verwaltungspraxis zu sorgen und die Grundsätze der Rechtssicherheit und Gleichbehandlung zu achten.

Der Bürgerbeauftragte war der Auffassung, dass im Sinne von Artikel 4 der Entschließung die zuständige Behörde, die den Herkunftsort des Beschwerdeführers festlegen kann, in der Tat die



Einstellungsbehörde war, die von der entsprechenden Fraktion benannt worden war. Er stimmte zu, dass die vom Parlament vorgeschlagene Herangehensweise tatsächlich geeignet sein könnte, um eine gute Verwaltungspraxis zu gewährleisten und die Grundsätze der Rechtssicherheit und Gleichbehandlung zu achten. Der Bürgerbeauftragte vertrat allerdings auch die Auffassung, dass die Herangehensweise des Parlaments einer rechtlichen Grundlage entbehrte und nicht mit den Vorschriften, die von ihm selbst aufgestellt worden waren, in Einklang stand. Er war ferner der Meinung, dass das Parlament nicht nachgewiesen hatte, dass das Eingreifen seiner Dienststellen unerlässlich war, um die Ziele, auf die sich das Parlament bezogen hatte, zu erreichen.

Im Hinblick auf die vorstehenden Ausführungen gelangte der Bürgerbeauftragte zu der Schlussfolgerung, dass die anfängliche Missachtung der Entscheidung der Einstellungsbehörde vom 31. März 2005 durch das Parlament nicht mit den eigenen Vorschriften des Parlaments übereinstimmte und eine Überschreitung der Befugnisse und Vorrechte der Fraktionen im Hinblick auf die Verwaltung ihrer eigenen Bediensteten darstellte. Da jedoch die Entscheidung der GD Personal vom 4. April 2005 anschließend vom Generalsekretär des Parlaments aufgehoben worden war, war der Bürgerbeauftragte der Auffassung, dass offenbar keine Gründe vorlagen, um weitere Untersuchungen in Bezug auf die Beschwerde anzustellen. Der Bürgerbeauftragte schloss daher den Fall ab, brachte jedoch eine weitere Anmerkung vor, in welcher er darauf aufmerksam machte, dass es sinnvoll wäre, wenn das Parlament eine Änderung seiner Vorschriften in Erwägung ziehen könnte, um zu gewährleisten, dass es in der Praxis nicht dagegen verstößt.

Strasbourg, 25 July 2007

Dear Mr X,

On 11 November 2005, you submitted a complaint to the European Ombudsman against the European Parliament concerning the determination of your place of origin. You requested that your complaint be treated urgently.

On 12 December 2005, I forwarded the complaint to the President of Parliament. In view of your request, I asked Parliament to submit an opinion before 28 February 2006 at the latest.

On 21 December 2005, you sent me further documents concerning your complaint.

By e-mails of 9, 10, 25 and 26 January 2006, you sent me, in copy, further correspondence you had exchanged with Parliament as regards the object of your complaint.

On 23 February 2006, Parliament requested an extension of the deadline for its opinion.

On 27 and 28 February 2006, you sent me further documents concerning your complaint.

By letter of 3 March 2006, I granted Parliament's request to extend the deadline for its opinion until 24 March 2006. You were informed accordingly by letter of the same day.



By e-mail of 6, 7, 13 and 15 March 2006, you sent me, in copy, further correspondence you had exchanged with Parliament as regards the object of your complaint.

On 15 March 2006, Parliament sent me a copy of an e-mail it had addressed to you that day. In this e-mail, Parliament informed you that a draft decision had been prepared and forwarded for the signature of the Authority Empowered to Conclude Contracts of Employment of the Group establishing your place of recruitment as Athens.

On 31 March 2006 and 6 April 2006, you sent me further correspondence relating to your complaint.

Parliament sent its opinion on 7 April 2006. On 12 April 2006, I forwarded it to you with an invitation to make observations. In my letter, I also replied to some questions contained in your letters of 31 March 2006 and 6 April 2006. No observations were received from you by the date set for this purpose.

By e-mails of 25 April 2006, 11, 18, 23, 25, 29, 30 May 2006, 13, 19, 26, 28, 30 June 2006, 4, 5, 12, 19, 21, 24 July 2006, 31 August, 1, 14 and 20 September 2006, as well as by fax of 11 May 2006, you sent me, in copy, your correspondence with Parliament's services concerning the payment of your daily subsistence allowance.

On 4 July 2006, Parliament's Director for Personnel sent me a copy of a note it had addressed that day to the Vice-President of the Group concerning the determination of your individual entitlements.

By e-mails of 4, 5, 12, 19, 21, 24 July 2006, 31 August, 1, 14 and 20 September 2006, you sent me, in copy, your correspondence with Parliament's services concerning your request for an exemption from VAT and for the "double indemnity" for the installation allowance.

I am writing now to let you know the results of the inquiries that have been made. I apologise for the delay in the handling of your complaint.

THE COMPLAINT

The original complaint

According to the complainant, the relevant facts were, in summary, as follows:

The complainant worked as a temporary agent for a political group of the European Parliament.

By decision of 31 March 2005, the Authority Empowered to Conclude Contracts of Employment (the "AECE"), namely, Mr B., a Member of the European Parliament designated for this purpose by the political group, determined that the complainant's place of origin was Athens and that this decision entered into force retroactively, as from 14 February 2005.

This decision was forwarded for implementation to the Individual Entitlements Unit of



Parliament's Directorate-General for Personnel ("DG Personnel") which, after having considered the matter, took the view that (i) determining the places of recruitment and of origin was a matter for itself to handle and (ii) the complainant had not supplied all the supporting documents normally required from all staff in order to demonstrate the location of their centre of interests. On 4 April 2005, the Head of the Individual Entitlements Unit took a decision designating Brussels as the place both of origin and of recruitment of the complainant when he took up his appointment.

In a letter of 21 April 2005, the Director-General of Parliament's Directorate-General for Personnel informed the Secretary-General of the political group that the AECE was not entitled to determine the place of origin. He further pointed out that, pursuant to the decision of the Bureau of 26 October 2004, the Head of the Unit Individual Entitlements had been nominated as the Appointing Authority responsible for this determination.

On 16 May 2005, the complainant lodged a complaint under Article 90(2) of the Staff Regulations against Parliament's refusal to implement the decision adopted by the AECE of the political group, fixing Athens as his place of origin.

On 13 June 2005, the complainant lodged a further complaint under Article 90(2) of the Staff Regulations. In this complaint, he challenged the decision adopted on 4 April 2005 by the Head of the Individual Rights Unit fixing Brussels as his place of origin and recruitment, pursuant to which he was not eligible for the expatriation, daily subsistence, and installation allowances. The complainant asked for clarification of the allocation of powers between the political groups and Parliament's administration; the revision of the decision establishing his individual rights; and the payment, with late-payment interest, of the allowances to which he claimed to be entitled.

In a letter dated 14 October 2005, the Secretary-General of Parliament replied to the complainant's two complaints. In his reply, the Secretary-General referred to the decision entitled "*Devolution of the powers of the Appointing Authority and of the Authority Empowered to conclude Contracts of Employments ('AECE')*" of 3 May 2004 (1). Article 4 of this decision provides that the authority to conclude employment contracts lies with the authority designated for this purpose by each political group. The Secretary-General thus decided to annul the decision of 4 April 2005 establishing the complainant's rights at the time he had taken up his duties. However, the Secretary-General further took the view that the complainant had not provided any of the supporting documents required to enable Parliament to determine his habitual place of residence. The Secretary-General concluded that the complainant was not entitled to late-payment interest.

The complainant took the view that he had submitted all the documents necessary to prove that his centre of interest and his place of origin were Athens. Furthermore, by decision dated 31 March 2005, the AECE had already recognised that the complainant's centre of interest and place of origin were in Athens.

In his complaint to the European Ombudsman, the complainant alleged that Parliament had failed to implement the decision of the AECE of 31 March 2005 fixing the complainant's place of



origin as Athens, as from 14 February 2005.

Further correspondence of 31 March 2006

On 31 March 2006, the complainant sent a letter to the Ombudsman in which he informed him that Parliament had accepted that his place of recruitment and his place of origin was Athens. The complainant pointed out that, despite this fact, Parliament asked him to send additional documents in order to allow it to determine the daily subsistence and installation allowances. In the complainant's view, he had already submitted all the relevant documents.

In his letter, the complainant requested that the Ombudsman ask Parliament to proceed with the immediate settlement of the issue related to the daily subsistence and installation allowances. He sent the Ombudsman copies of his exchange of correspondence with Parliament's services concerning the determination of his individual entitlements.

The Ombudsman's reply of 12 April 2006

In his reply, the Ombudsman informed the complainant that Parliament's opinion on his original complaint had arrived on 7 April 2006 and that he had the possibility to submit observations on this opinion. The Ombudsman pointed out that he would decide what next step needed to be taken in the case after having received those observations and on the basis of the information contained in the complainant's letter of 31 March 2006. Such steps could, for instance, include inviting Parliament to submit an additional opinion on the complainant's claim for the settlement of his daily subsistence and installation allowances.

THE INQUIRY

Parliament's opinion

Parliament's opinion on the complaint was, in summary, as follows:

The complainant was recruited on 14 February 2005 as a temporary member of staff in accordance with Article 2(c) of the Conditions of Employment of Other Servants of the European Communities ("CEOS"), for an indefinite period, to work as an administrator for a political group of the European Parliament.

Concerning the Appointing Authority competent to determine the individual entitlements of temporary staff referred to in Article 2(c) of the CEOS

Parliament stated that it clearly emerged from Article 4 of the amended Decision of the Bureau of 3 May 2004 that, as regards the temporary staff referred to in Article 2(c) of the CEOS, the powers conferred on the AECE were to be exercised by the authority designated for this purpose by each political group. Parliament's Secretary-General had accordingly rightly decided to overturn the decision adopted on 4 April 2005 by the Head of the Individual Entitlements Unit establishing the complainant's rights when he took up his appointment.

Parliament pointed out however, that, in the interests of equal treatment of all officials and other staff, the individual entitlements of staff recruited pursuant to Article 2(c) of the CEOS have, in practice, always been determined by Parliament's administration. The "*preamble to the above Decision on the devolution of the powers of the Appointing Authority adopted by the Bureau on 29 May 2002*" (2) stated that the Secretariat must have the power to take 'routine' decisions and decisions on the rights and obligations of these staff in order to ensure better



administration, respect for legal certainty and equality of treatment. The Individual Entitlements Unit, which specialises in these matters, therefore applies the same procedure to every case and requires each newly-arrived member of staff to supply the same supporting documents concerning his or her personal circumstances. Draft decisions on individual entitlements, including those concerning political-group staff, are then submitted for validation to the Ex Ante Verification Service of the Budgetary Coordination Unit before being implemented.

Parliament further stated that it would seem contrary to the principles of equal treatment and legal certainty to allow the political groups to take decisions on the individual entitlements of their staff, without requiring the same supporting documents as those required by the administration. Parliament's administration is accustomed to dealing with all cases relating to officials, and is thus in a position to determine which documents may be useful in light of the specific circumstances of each member of staff.

With all due respect for the allocation of powers as established by the decision of 3 May 2004, Parliament considers it desirable that the appropriate departments of DG Personnel should compile the files relating to individual entitlements and check the relevance of the documents submitted. After this has been done, Parliament may forward the whole file of the member of staff concerned to his Group's AECE in order to enable him or her to take a final decision.

Concerning the implications of the decision of 31 March 2005 pursuant to which the complainant's place of origin was Athens

Pursuant to Article 2 of the General Implementing Provisions of this decision, the place of origin is determined when an official takes up his appointment, taking account of his place of recruitment or centre of interests, that is, the place where he retains family ties, patrimonial ties or interests in the sphere of public life.

In this regard, the complainant submitted a certificate concerning property which he owns in the town of R. in Greece. He also submitted a certificate from the commune of H. in Greece, indicating that he and his wife exercised their electoral rights in that commune and that they were permanently resident in the same commune at the home of the complainant's mother-in-law. The complainant also submitted a civil status certificate. Parliament stated that, in light of all these documents, the decision that the complainant's place of origin was Athens seemed perfectly well founded.

Parliament then dealt with the place of recruitment of the complainant and hence his entitlement to the expatriation, daily subsistence and installation allowances. Parliament stated that the decision according to which the complainant's place of origin was Athens had no influence on the award of the daily subsistence and installation allowances.

As regards the complainant's case, in accordance with Article 4 of Annex VII of the Staff Regulations and the interpretation of this provision by the Community Courts, Parliament had to consider the complainant's circumstances during the five years which expired six months before he took up his appointment. On the basis of this rule, Parliament calculated the relevant five-year period as running from 14 August 1999 to 14 August 2004. Parliament stated that it was entitled to consider that the documents concerning the complainant's place of work were



not conclusive and did not make it possible to exclude the possibility of his having lived in Brussels.

As regards the evidence for his normal place of residence, the complainant did not submit any documentary evidence concerning his domicile in Brussels since his arrival in Belgium. Nor did he submit a lease or other invoices relating to the maintenance of a home either in Brussels or in Athens. Accordingly, Parliament was entitled to consider the complainant's file incomplete and to take the view that, in light of the documents submitted, it was not possible to award him an expatriation allowance. The same reasoning applied as regards the daily subsistence allowances provided for in Annex VII, Article 10 and the installation allowance referred to in Annex VII, Article 5.

Parliament's Secretary-General had also specified the documents required in order to establish the complainant's individual entitlements. In this regard, the complainant had to supply a residence certificate issued by the municipality where he resided in Belgium, with a record of the places where he had resided since entering Belgium, as well as his wife's employment contract.

Parliament stated that the complainant had finally provided the requested documents. Parliament had received his residence certificate in January 2006, and had prepared a draft decision for the AECE of his political group, establishing his place of recruitment as Athens.

The complainant's observations

No observations were received from the complainant by the date set for this purpose.

However, the complainant continued to send to the Ombudsman copies of the correspondence he had with Parliament's services concerning the determination of his individual entitlements.

THE DECISION

1 The relevant facts and the scope of the Ombudsman's inquiry

1.1 The complainant worked as a temporary agent for a political group of the European Parliament. By Decision of 31 March 2005, the Authority Empowered to Conclude Contracts of Employment (the "AECE"), namely, Mr B., a Member of the European Parliament, designated for this purpose by the political group, determined that the complainant's place of origin was Athens. This decision entered into force retroactively, as from 14 February 2005. Furthermore, this decision was forwarded for implementation to the Individual Entitlements Unit of Parliament's Directorate-General for Personnel ("DG Personnel") which, after having considered the matter, took the view that (i) the determination of the places of recruitment and of origin was a matter for itself to handle and, (ii) the complainant had not supplied all the supporting documents normally required from all staff in order to demonstrate the location of their centre of interests. On 4 April 2005, the Head of the Individual Entitlements Unit took a decision designating Brussels as the place both of origin and of recruitment of the complainant when he took up his appointment. In a letter of 21 April 2005, the Director-General of DG Personnel informed the Secretary-General of the Political group that the AECE was not entitled to determine the complainant's place of origin. He further pointed out that, pursuant to the decision of Parliament's Bureau of 26 October 2004, the Head of the Individual Entitlements Unit had



been nominated as the Appointing Authority responsible for this determination. On 16 May 2005, the complainant lodged a complaint under Article 90(2) of the Staff Regulations against Parliament's refusal to implement the decision adopted by the AECE of the Political group, fixing Athens as his place of origin. On 13 June 2005, the complainant lodged a further complaint under Article 90(2) of the Staff Regulations. In this further complaint, the complainant challenged the decision adopted on 4 April 2005 by the Head of the Individual Rights Unit fixing Brussels as his place of origin and recruitment, pursuant to which he was not eligible for the expatriation, daily subsistence, and installation allowances. The complainant asked for clarification of the allocation of powers between the political groups and Parliament's administration; the revision of the decision establishing his individual rights; and the payment, with late-payment interest, of the allowances to which he claimed to be entitled.

On 14 October 2005, Parliament's Secretary-General replied to the complainant's two complaints. The Secretary-General decided to annul the decision of 4 April 2005. However, the Secretary-General also took the view that the complainant had not provided any of the supporting documents required to enable Parliament to determine his habitual place of residence and that he was not entitled to late-payment interest.

1.2 In his complaint to the European Ombudsman, the complainant alleged that Parliament had failed to implement the Decision of the AECE of 31 March 2005 fixing his place of origin as Athens, as from 14 February 2005. The Ombudsman forwarded the complaint to Parliament for an opinion.

1.3 On 31 March 2006, the complainant sent a letter to the Ombudsman in which he informed him that Parliament had accepted that Athens was both his place of recruitment and his place of origin. The complainant pointed out that, despite this fact, Parliament had asked him to send additional documents in order for it to determine the appropriate daily subsistence and installation allowances. In the complainant's view, he had already submitted all the relevant documents. In his letter, the complainant requested the Ombudsman to ask Parliament to proceed with the immediate settlement of the issues related to the daily subsistence and installation allowances.

1.4 The Ombudsman considered that the complainant's request raised new issues which were not initially submitted in his complaint. In his reply of 12 April 2006, the Ombudsman therefore invited the complainant to submit observations on Parliament's opinion. The Ombudsman informed the complainant that he would decide on what further steps needed to be taken in this case after having received Parliament's observations and on the basis of the information contained in the complainant's letter of 31 March 2006. The complainant did not make any observations on Parliament's opinion. However, he continued to send to the Ombudsman copies of his correspondence with Parliament concerning the determination of his individual entitlements.

1.5 The Ombudsman notes that it emerges from a letter of 4 July 2006, sent by DG Personnel to the Vice-President of the political group, that Parliament had decided to grant the complainant the daily subsistence allowance. It further emerges from an e-mail sent by



Parliament to the complainant on 31 August 2006 that it had decided to pay the complainant the installation allowance. The Ombudsman also notes that it appears from the correspondence submitted to him that the complainant had requested an exemption from VAT.

1.6 Before discussing the substance of the case, the Ombudsman considers it necessary to ascertain the scope of the complainant's allegation. On the basis of the complaint, the Ombudsman considers that the complainant takes the view that, by acting as it did, Parliament infringed the powers and prerogatives of the political groups with regard to the management of their own staff. However, it cannot be excluded that the complainant also considered that, once the decision on his place of origin had been taken by the AECE, Parliament should have granted him the expatriation, daily subsistence, and installation allowances, without proceeding to any further checks. The Ombudsman will therefore examine both aspects of the complainant's allegation.

1.7 The Ombudsman notes, however, that the complainant's correspondence with Parliament also concerns an issue that had not been raised in the complaint or in the complainant's letter to the Ombudsman of 31 March 2006, that is, his entitlement to an exemption from VAT. This issue will therefore not be examined in the present decision.

2 Parliament's alleged failure to implement the Decision of the AECE of 31 March 2005 fixing the complainant's place of origin as Athens

2.1 In his complaint, the complainant alleged that Parliament had failed to implement the AECE's Decision of 31 March 2005 fixing his place of origin as Athens, as from 14 February 2005.

2.2 In its opinion, Parliament referred to Article 4 of the amended Decision of the Bureau of 3 May 2004 (3). Parliament stated that it clearly emerged from Article 4 that, as regards the temporary staff referred to in Article 2(c) of the Conditions of Employment of Other Servants of the European Communities ("CEOS"), the powers conferred on the AECE were to be exercised by the authority designated for this purpose by each political group. Parliament's Secretary-General had therefore correctly decided to overturn the decision adopted on 4 April 2005 by the Head of the Individual Entitlements Unit establishing Brussels as the place of origin and the place of recruitment of the complainant. It had to be pointed out, however, that, in the interests of equal treatment of all officials and other staff, the individual entitlements of staff recruited pursuant to Article 2(c) of the CEOS have, in practice, always been determined by Parliament's administration. The preamble to the decision on delegating the powers of the Appointing Authority adopted by the Bureau on 29 May 2002 (4) stated that the Secretariat must have the power to take routine decisions and decisions on the rights and obligations of these staff in order to ensure better administration, respect for legal certainty and equality of treatment. Parliament further stated that it would seem contrary to the principles of equal treatment and legal certainty that the political groups should be able to take decisions on the individual entitlements of their staff without requiring the same supporting documents as the administration. Parliament's administration is accustomed to dealing with all cases relating to officials and is thus in a position to determine which documents may be useful in light of the specific circumstances of each member of staff. Concerning the implications of the decision of 31 March 2005, Parliament stated that the decision pursuant to which the complainant's place



of origin was Athens seemed perfectly well founded. As regards the complainant's place of recruitment and hence his entitlement to the expatriation, daily subsistence, and installation allowances, Parliament stated that it was entitled to consider the complainant's file as incomplete. Parliament also stated that it was entitled to take the view that, in light of the documents submitted by the complainant, it was not possible to award him these allowances. Parliament's Secretary-General had also specified the documents required in order to establish the complainant's individual entitlements. In this regard, the complainant had to supply a residence certificate issued by the municipality where he resided in Belgium, with a record of the places where he had resided since entering Belgium, as well as his wife's employment contract. Parliament stated that the complainant had in the meantime provided these documents. His residence certificate had been received by Parliament in January 2006, and a draft decision had been prepared for the AECE of his political group, establishing his place of recruitment as Athens.

2.4 No observations were received from the complainant within the deadline set for this purpose. However, the complainant continued to send to the Ombudsman copies of his correspondence with Parliament's services concerning the determination of his individual entitlements.

2.5 The Ombudsman notes that, pursuant to Article 2(c) of the CEOS, "*[f]or the purposes of these conditions of employment, 'temporary staff' means: (...) (c) staff, other than officials of the Communities, engaged to assist (...) one of the political groups in the European Parliament (...).*"

The Ombudsman further notes that Article 4 of the Decision of the Bureau of the European Parliament of 3 May 2004 states the following:

" [t]he powers conferred on the AECE under the Conditions of Employment in respect of the temporary staff referred to in Article 2(c) of the Conditions of Employment shall be exercised by the authority designated by each political group, or, where no express decision has been taken by a political group in this connection, the chairman of the group concerned (...). "

2.6 The Ombudsman considers that it emerges from the above that, in the complainant's case, the competent authority to determine his place of origin was the AECE, who was designated for this purpose by the relevant political group, namely, Mr B.

2.7 The Ombudsman notes that, in its opinion, Parliament submitted a number of considerations in order to support its view that the relevant departments of its DG Personnel should check the relevant facts in each individual case before a decision is taken by the AECE of the political group. In particular, Parliament referred to the need to ensure better administration, respect for legal certainty and equality of treatment. The Ombudsman agrees that the approach proposed by Parliament would indeed make good sense. In view of its vast experience in staff matters, Parliament's DG Personnel would indeed appear to be best placed to carry out the necessary checks. It should further be noted that Parliament is accountable for the use made of the funds allocated to it, including the funds that are used for the purposes of the political groups, and that it would therefore be reasonable for Parliament to maintain a certain control as regards



decisions in staff matters that have financial implications. The Ombudsman further considers that an ex-ante verification concerning the personal entitlements of all staff by Parliament's services, prior to the adoption of such decisions in staff matters by the AECE of the relevant political group, would be in the interest of guaranteeing respect for the principles of equal treatment and legal certainty.

2.8 It remains to be examined, however, whether there is a sufficient legal basis for Parliament's verification of the relevant facts in each individual case before a decision is taken by the AECE of the political group. The Ombudsman notes that Parliament does not deny that the decision concerning the complainant's place of origin was to be taken, pursuant to the terms of its Decision of 3 May 2004, by the AECE of the relevant political group. It appears that Parliament invokes four arguments to support its view that it nevertheless acted correctly. *First*, Parliament refers to what appears to be its practice in the area concerned. According to Parliament, its services have always determined the individual entitlements of temporary staff recruited under Article 2(c) of the CEOS. The Ombudsman notes, however, that the Decision of 3 May 2004 does not contain any provisions that would oblige the AECE of the relevant political group to submit the matter to Parliament's services before deciding on the place of origin of such a member of staff. In these circumstances, the Ombudsman is unable to see how Parliament could have relied on such a practice in order to refuse to accept the AECE's decision of 31 March 2005. *Second*, Parliament submits that it would be desirable that its services carry out an ex-ante verification concerning the personal entitlements of all staff. The Ombudsman agrees with this view. However, the Ombudsman is unable to see how the argument submitted by Parliament could have entitled the latter to disregard the decision adopted by the AECE on 31 March 2005. *Third*, Parliament submits that the preamble to the Decision on the devolution of the powers of the Appointing Authority adopted by the Bureau on 29 May 2002 envisaged that Parliament's services should have the power to take 'routine' decisions and decisions as regards staff matters. The Ombudsman is unable to verify this argument, since no copy of the said decision was submitted to him. In any event, the Ombudsman notes that Article 13 of the Decision of the Bureau of 3 May 2004 stipulates that this decision "cancels and replaces" the Decision of 29 May 2002. The Ombudsman therefore considers that Parliament cannot rely on the contents of the Decision of 29 May 2002 in the present case. *Fourth*, Parliament contends that its approach ensures that the principles of equal treatment and legal certainty are respected. In the Ombudsman's view, this argument would be convincing if it were established that these principles could be guaranteed only if Parliament's services were able to intervene before an AECE adopted a decision such as the one at issue in the present case. It appears clear that Parliament's services have a vast experience in dealing with matters relating to the personal entitlements of Parliament's members of staff. As mentioned above, it would therefore clearly be useful if they were to examine, as regards each and every member of staff, whether an entitlement to a certain allowance existed. The Ombudsman considers, however, that Parliament has not established that the intervention of its services is indispensable in order to achieve the aims to which Parliament has referred. This is confirmed by the fact that Parliament ultimately accepted that the Decision of the AECE of 31 March 2005 concerning the complainant was correct.

Parliament is obviously free to amend the rules it has adopted in the area concerned. The



Ombudsman considers, however, that as long as no such amendment has taken place, and in the absence of convincing arguments to suggest otherwise, Parliament has to respect the rules it has itself adopted.

2.9 The Ombudsman therefore considers that Parliament's initial disregard for the decision adopted by the AECE on 31 March 2005 was not in conformity with Parliament's own rules and constituted an infringement of the powers and prerogatives of the political groups with regard to the management of their own staff. However, given that the decision of 4 April 2005 of the Head of the Individual Entitlements Unit was annulled on 14 October 2005 by Parliament's Secretary-General, the Ombudsman considers that there appear to be no grounds for further inquiries into this aspect of the complainant's allegation. It appears nevertheless useful to make a further remark in this context.

2.10 The position adopted by Parliament would have to be regarded as being clearly correct if the complainant's allegation were to be understood as meaning that Parliament should have granted him the expatriation, daily subsistence, and installation allowances without conducting any further checks after the AECE had adopted the decision of 31 March 2005. As the Secretary-General explained in his letter of 14 October 2005 and as Parliament reiterated in its opinion on the present complaint, the AECE's decision that the complainant's place of origin was Athens was not sufficient to establish that the complainant was entitled to the said allowances. Such entitlement only existed if all the relevant conditions set out in the Staff Regulations were fulfilled. Parliament's decision concerning this issue is therefore clearly correct.

2.11 From the further correspondence, it appears that Parliament has in the meantime decided on the complainant's requests to be granted the said allowances. Should the complainant be dissatisfied with any of the Parliament's relevant decisions, he is of course free to submit a new complaint to the Ombudsman, after having exhausted internal remedies.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appear to be no grounds for further inquiries. The Ombudsman therefore closes the case.

The President of Parliament will also be informed of this decision.

FURTHER REMARK

The Ombudsman notes that the 3 May 2004 Decision of the Bureau of the European Parliament provides for a distribution of powers between the AECE and Parliament's Secretariat. Pursuant to these rules, in the case of the temporary staff referred to in Article 2(c) of the CEOS, the powers conferred on the AECE under the CEOS shall be exercised by the authority designated for this purpose by each political group.

The Ombudsman notes, however, that it appears to emerge from Parliament's opinion that, in practice, Parliament's services intervene in order to determine which documents are to be



submitted in light of the specific circumstances of each member of staff and to check their validity prior to the adoption of the definitive decision by the AECE of the relevant political group.

This intervention is certainly beneficial. However, the Ombudsman is of the view that it would be most useful if Parliament could consider amending the rules in force in order to take due account of this practice.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Decision amended by means of Bureau Decision of 26 October 2004.

(2) No further information was provided as regards this decision.

(3) Decision of Parliament's Bureau entitled " *Devolution of the powers of the Appointing Authority and of the Authority Empowered to conclude Contracts of Employments ('AECE')* ".

(4) No further information was provided as regards this decision.