

Decision of the European Ombudsman on complaint 1119/98/BB against the European Parliament

Decision

Case 1119/98/BB - Opened on 07/01/1999 - Decision on 26/04/2000

Strasbourg, 26 April 2000 Dear Mrs T., On 20 October 1998 you made a complaint to the European Ombudsman concerning the decision of 12 November 1997 by which the Political Group "Union for Europe" (hereinafter: UPE, after 1999 UEN) terminated your temporary agent contract. On 7 January 1999, I forwarded the complaint to the President of the European Parliament. The Parliament sent its opinion on 21 April 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 30 June 1999, I received observations from you. On 9 September 1999, you contacted by telephone the Ombudsman's secretariat in order to obtain a document mentioned in point 3 a of the Parliament's opinion. The Ombudsman's secretariat contacted the Parliament services. On 23 September 1999, the Parliament sent a copy of the document which was forwarded to you. On 17 February 1999, you sent me further submissions. On 14 September 1999, you sent a letter describing your problems with the European School. On 21 September 1999, you forwarded a copy of a letter you sent to Mr. Pinck at the European Commission about the payment of the minerval to the European School. On 22 September 1999, you forwarded a copy of a second letter to Mr Pinck. On 3 November 1999, you forwarded a copy of a letter sent to Mr. Courtheoux, Director General at the Regional Office of Employment in Brussels. I am writing now to let you know the results of the inquiries that have been made. I apologise for the length of time it has taken to deal with your complaint.

THE COMPLAINT

A political group in the European Parliament had employed the complainant as a secretary-typist in 1994. First as an auxiliary and then as a temporary agent. On 12 November 1997, her temporary agent contract was terminated. On 26 March 1998, the complainant complained to the Appointing Authority under Article 90 of the Staff Regulations, but received a negative response. The complainant then complained to the Ombudsman presenting the following claims: Firstly, the complainant alleged that there was a lack of reasoning in the decision to terminate her temporary agent contract. Secondly, the complainant alleged that her staff report was established late and prepared without her knowing about it. On 9 July 1998, she had received the letter sent by the Parliament on 6 July 1998 containing her staff report. On 12 October 1998, the complainant sent her comments on her staff report to the Secretary General of the European Parliament. Thirdly, the complainant alleged harassment at the work place. She claimed that an exchange of e-mail correspondence with her superior had been deleted



from her e-mail register despite a password she had used. She also claimed that on 11 November 1997 she had sent an e-mail to her colleagues in which she had asked for an investigation to be carried out. On 12 November 1997, she was asked to apologise for sending that e-mail, which she refused to do. Furthermore, she alleged abuse of power, discrimination and lack of competence by the A grade administrators of the Parliament.

THE INQUIRY

The Parliament's opinion The complainant had been employed as a temporary agent from 1 January 1995 under a contract that provided for a three months notice in case one of the parties wished to terminate the contract. This contract was signed by the President of Forza Europa and the complainant. Later, Forza Europa merged with UPE and in 1997, part of the Italian Members of UPE joined the EPP. EPP and UPE concluded an agreement to modify the organisation chart. Personnel transfers took place on 22 June 1998. In conformity with Article 47 of the Conditions of employment for other servants of the European Communities, the co-Presidents of UPE sent on 12 November 1997 a registered letter in order to terminate the complainant's contract on 28 February 1998. This letter was returned to UPE. The Secretary General of the group gave a copy of that letter to the complainant on 6 January 1998. The termination of the contract was postponed until 6 April 1998. The complainant presented three main allegations: (i) Wrongful termination of contract The termination of the temporary agent contract was in conformity with the provisions of Article 47 of the Conditions of employment which requires no reasoning to terminate a temporary agent contract. Despite a lack of obligation to give a reasoning the Secretary General of the Parliament sent a letter to the complainant on 14 October 1998 informing her that the Presidents of political groups had adopted on 17 February 1997 a key of the distribution of posts in the organisation chart of the political groups. This key of the distribution included consequences for UPE. The Secretary General also confirmed that the complainant's former post had been given to another political group of the European Parliament in conformity with the distribution plan. Despite a lack of obligation to give a reasoning the Secretary General of the Parliament sent a letter to the complainant on 14 October 1998 informing her that the Presidents of political groups had adopted on 17 February 1997 a key of the distribution of posts in the organisation chart of the political groups. This key of the distribution included consequences for UPE. The Secretary General also confirmed that the complainant's former post had been given to another political group of the European Parliament in conformity with the distribution plan. (ii) Undue delay and secrecy related to the staff report As regards the preparation and transmission of the complainant's staff report, this has nothing to do with the issue that mainly concerned the legality of the termination of her contract. However, it is true that this report covering the period from 1 January 1995 to 1 January 1997 was delayed. The delay was partially due to the long sickness leave, as an interview needed to take place before a report could be established. The termination of the complainant's contract was only possible on 5 July 1998 due to sickness leave. In fact Article 47.2.a of the Conditions of employment provides that the three months' period of notice cannot start to run during a sickness leave. Due to problems related to human relations the complainant was working for different administrators during the two years' period. Therefore, the Secretary General of the group was her sole '*notateur*' after consulting the various administrators with whom she had collaborated. According to a letter sent by the Parliament on 6 July 1998, the complainant had one month to present her comments on the



staff report which she did not do. (iii) Alleged harassment at the work place As regards the complainant's allegations of harassment at the work place, they rather relate to the exercise of executive powers contested by the complainant. In this respect the Parliament wished to recall the duty of officials under Article 21 (1) and (2) of the Staff Regulations. To the obligation to assist and advise (Article 21 (1)) one can as well add the responsibility of respect and correctness towards the persons to whom the institution has conferred executive powers. In addition, in case of serious criticism, allegations have to be founded on concrete evidence, which was not the case with the complainant. The Secretariat General asked the political group in question about the validity of the complainant's allegations. The reply of the political group indicated that there was no evidence to corroborate the allegations. According to the Parliament, professional responsibilities cannot be assimilated to harassment at the work place. The complainant alleged abuse of power, discrimination and lack of competence of A grade administrators. These allegations are unfounded and question the prerogatives of the Appointing Authority under Article 29, 31 and 34 of the Staff Regulations and Article 12 and 14 of the Conditions of employment. Finally, the Parliament concluded by stating that the decision to terminate the contract followed the provisions in force in so far as it is a result of a simple reduction of the organisation plan of the group. The allegation of harassment at work place was unfounded. **The complainant's observations** The complainant maintained her complaint. She claimed that due to the fact that the Parliament's decision to terminate her contract did not contain any reasoning the Belgian unemployment benefit authority (*Capac*) was continuously requesting her to fill in a form C4 indicating the reasons for the termination of her contract. In her observations the complainant put forward new allegations concerning unpaid leave, false information on her individual information sheet, lack of a Belgian special card and issues related to the European School.

THE DECISION

Firstly, it should be remarked that the Ombudsman did not find it justified to start inquiries into the new allegations raised in the complainant's observations of 30 June 1999 and in her subsequent correspondence as those went beyond her original complaint. On 4 October 1999, the complainant contacted the European Ombudsman secretariat by telephone about her new allegations. The secretariat explained to the complainant that her allegations went beyond the original complaint, but that she could envisage presenting a new complaint to the Ombudsman.

1 Alleged lack of reasoning 1.1 The complainant alleged that there was a lack of reasoning in the decision to terminate her temporary agent contract. 1.2 The Ombudsman observes that on 14 October 1998 the Secretary General of the Parliament sent a letter to the complainant informing her about the reasons behind the decision to terminate her contract. According to the Secretary General, the Presidents of political groups adopted on 17 February 1997 a key of the distribution of posts in the organisation chart of the political groups. This key of the distribution included consequences for UPE. The Secretary General also confirmed that the complainant's former post had been given to another political group of the European Parliament in conformity with the distribution plan. 1.3 In view of the above, it appears from the Ombudsman's inquiry, that the European Parliament had in fact given a reasoning and, therefore, taken steps to settle the matter and satisfy the complaint. **2 Alleged delay and secrecy related to the staff report**

2.1 The complainant alleged that there was undue delay in preparing her staff report and that the report had been prepared without informing her. 2.2 In its opinion the Parliament admitted



that the staff report covering the period from 1 January 1995 to 1 January 1997, was delayed. The delay was partially due to the long sickness leave, as an interview needed to take place before a report could be established. The termination of the complainant's contract was only possible on 5 July 1998 due to sickness leave. 2.3 The complainant acknowledged that on 9 July 1998 she received a letter sent by the Parliament on 6 July 1998 containing her staff report. The Parliament informed the complainant in this letter that she had one month to present her comments on the staff report. However, the complainant did not send her comments within one month. 2.4 According to established case-law of the Community Courts, failure to establish a staff report on time is a service-related fault. The European Parliament has acknowledged that the staff report in this case was delayed but has offered an explanation concerning part of the delay, which the complainant has not contested. In these circumstances, the Ombudsman does not consider it justified to continue further inquiries into this aspect of the case. The evidence available to the Ombudsman is that the complainant was given the opportunity to comment on the staff report and there appears therefore to be no maladministration in relation to this aspect of the case. **3 Alleged harassment at the work place and abuse of power** 3.1 The complainant alleged harassment at the work place. She claimed that an exchange of e-mail correspondence with her superior had been deleted from her e-mail register despite a password she had used. She also claimed that on 11 November 1997 she had sent an e-mail to her colleagues in which she had asked for an investigation to be carried out. On 12 November 1997, she was asked to apologise for sending that e-mail, which she refused to do. Furthermore, she alleged abuse of power as proof of discrimination and incompetence of the officials of the Parliament. 3.2 In its opinion the Parliament explained that the Secretariat General had asked the political group in question about the validity of the complainant's allegations regarding alleged harassment. The reply of the political group indicated that there was no evidence to corroborate the allegations. According to the Parliament, the allegations relate to the exercise of executive powers contested by the complainant. The Parliament considered the allegation of harassment unfounded. 3.3 The Ombudsman notes that since the complainant has made no allegation of invasion of privacy, it appears that the actions of the Parliament services prima facie relate to the exercise of executive powers and the Ombudsman has found no evidence to doubt that this was not the case. 3.4 In view of the above findings, there appears to be no maladministration in relation to this aspect of the case. **4 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Parliament. The Ombudsman therefore closes the case. The President of the European Parliament will also be informed of this decision. Yours sincerely, Jacob SÖDERMAN