

Decision of the European Ombudsman on complaint 404/99/BB against the European Parliament

Decision

Case 404/99/BB - Opened on 26/05/1999 - Decision on 08/06/2001

Strasbourg, 8 June 2001

Dear Mrs M.,

On 12 April 1999 you made a complaint to the European Ombudsman concerning alleged discrimination by the European Parliament in engaging you during a long period of time as a member of external staff based on service contracts without offering you a post or regularising your employment situation. Furthermore, you put forward allegations of irregularities in the internal functioning of the micrographic archives and in the carrying out of the tender related to the service contracts.

On 26 May 1999, I forwarded the complaint to the President of the Parliament. The Parliament sent its opinion on 6 September 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 26 October 1999, I received your observations on the Parliament's opinion.

On 4 May 2000, you made a further submission containing a certificate from the European Parliament for the period during which you worked at the European Parliament, several lists of documents, a reference for the period during which you worked as an auxiliary at the European Parliament.

On 20 and 22 June 2000, your solicitor Mr SCOTT sent two letters to the Ombudsman informing that he is representing you in this complaint and requesting information on the Ombudsman's inquiry into your complaint. In his letter he mentioned that a copy of the complainant's file has been sent to the Court of Auditors on 21 July 1999. Mr Scott annexed a list of content of this file.

On 21 July 2000, the Ombudsman replied to Mr Scott informing him that the inquiry into your complaint is still on-going.

On 11 October 2000, Mr Scott sent a letter to Mr Priestley in which he asked for a solution to your complaint. On the same day, Mr Scott wrote to the Ombudsman requesting a meeting between the European Parliament and the complainant. Mr Scott had annexed a copy of a letter sent to you on 4 October 2000 by Mr Priestley in which he requested that you communicate to



him any new elements related to your complaint in order to launch a separate inquiry.

As both sides appeared to appreciate an exchange of views and information, I wrote to the President of the Parliament on 26 October 2000 suggesting that the representatives of the Parliament convene a meeting with you in order to discuss the matter in question. I requested information of the outcome of the meeting by 31 January 2001. On 31 January 2001, the President of the Parliament sent a letter informing the Ombudsman of the results of the meeting.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant alleges discrimination in that after having been employed within the Parliament's premises during a long period of time at the micrographic archives she has not been recruited directly by the Parliament.

The complainant was employed as an auxiliary agent by the Parliament during the following periods:

14.07.1980 - 13.11.1980 15.01.1981 - 15.05.1981 17.05.1982 - 26.11.1982 01.02.1983 - 31.08.1983

The complainant was at the Parliament's disposal on the basis of service contracts with private companies specialised in micrographics selected through various tender procedures during the following periods:

Société ARTIBUREAU 15.11.1980 - 15.12.1980 01.06.1981 - 15.12.1981 03.01.1982 - 15.05.1982 01.12.1982 - 31.01.1983 (part-time) Société KIEFFER 01.01.1983 - 30.09.1987 Société KODAK 01.01.1987 - 15.02.1989 Société SERVITIA 15.02.1989 - 08.02.1999
On 8 February 1999, the complainant handed in her resignation to SERVITIA.

The complainant alleges that she was promised that a competition would eventually be organised. The complainant notes that she has passed the age limit allowing her to participate in competitions and therefore she is not eligible for open competitions.

Furthermore, the complainant alleges that the Parliament has recommended her recruitment to different companies with which she is not familiar with as these companies have always had their relations only with the Head of service of the official archives of the Parliament. According to her, she never met the responsible of the first external company she was supposedly working for.

The complainant is claiming that she should be entitled to a post at the micrographic archives of the Parliament and that her situation should be regularised.

The complainant also alleges irregularities in the internal functioning of the micrographic archives and in the carrying out of the tenders. According to her, the works were never carried



out according to the tenders and there were false receipts sent to the companies. The complainant indicates that she has a list of persons who were never declared neither to the insurance scheme nor to the fiscal authorities.

THE INQUIRY

The Parliament's opinion

In its opinion the Parliament stated the Appointing Authority has always preferred external contracts for extensive work carried out in the micrographic archives. According to the Parliament, the complainant is claiming the status of an official and wants to get back her position at the Parliament's archives. The Parliament explained that the complainant benefited from auxiliary contracts at the Parliament during the following periods:

from 14.07.1980 to 13.11.1980 from 15.01.1981 to 15.05.1981 from 17.05.1982 to 26.11.1982 from 01.02.1983 to 31.08.1983 (part-time)

After that she was working on the premises of the Parliament on behalf of external companies which had concluded service contracts with the Parliament, according to the length and schedule established in the terms of reference and order forms.

While being employed by external companies, she had no administrative or financial link to the Parliament. All her salary slips were issued by the various companies, which employed her.

Article 28 of the Staff Regulations provide clearly that no person can be nominated an official unless he/she has passed a competition based on either qualifications or tests, or both qualifications and tests. All competitions are published within the institutions and in the press. Nothing prevented the complainant from applying for the many competitions organised periodically by the European Parliament and other institutions.

The complainant put forward that she has passed the age limit allowing her to participate in these competitions. It needs to be underlined that the age limit for applications in a competition is 45 years (the complainant has not reached that age yet), with possible exemptions under particular conditions.

As regards the complainant's request to get back her old position within SERVITIA, the Parliament underlines that the complainant herself, on her own initiative, handed in her resignation to the employer.

The complainant alleges that the Parliament recommended her recruitment to different companies providing for the framework within which she offered her services. The Institution recommended her to these companies by referring to her professional experience, but without being qualified to impose any recruitment. These recommendations were made in her favour and therefore the allegation is inadmissible, as the complainant has not suffered any damage due to her recruitment by the different companies.

The complainant claims that she does not know the companies for which she was working. The documents annexed to her complaint indicate the contrary:



- salary slips from the companies;
- certificate from SERVITIA company fixing her working hours for 8.30 - 17.30 with a one-hour break at midday, which made it impossible for her to pick up her daughter during the lunch hour. This certificate was issued by her employer, not by the institution;
- letters from the companies requesting the complainant to come to their premises to obtain her contracts;
- letter from the head of the archives of the Parliament to SERVITIA containing an appreciation of the complainant's qualities as an employee;
- all the employment contracts between the complainant and the different companies for which she has worked have been signed jointly by the complainant and the representatives of the different companies.

Furthermore, SERVITIA has informed the Parliament that the complainant received meal vouchers and that she was working also during Friday afternoons, a free period at the Parliament, on the premises and on behalf of SERVITIA. Managerial staff of the companies regularly checked her work at her workplace.

The complainant attached to her complaint a list of persons who allegedly worked for the archives of the Parliament without being registered with the sickness insurance or tax authorities. The Parliament contested this information and presented a list of auxiliary employees and officials working for the European Parliament.

The Parliament stated that it is impossible for officials to work without being registered. Auxiliary agents employed by the Parliament are regularly registered with different compulsory insurance schemes. As regards persons employed by companies providing services, there appeared to be no irregularities in the salary slips of the complainant.

Persons from outside the Parliament, working in the archives without belonging to the Parliament's staff, had one of the following statuses: service provider, subcontractor for a business firm, member of the staff of a business firm or interim personnel (until 1993/1994).

The complainant claims that work to be carried out under the tenders was never done and that false receipts were sent to the companies.

In 1995, the person in charge of the archives informed the Director of the Personnel Division that his service had the possibility to hire external services for archiving and micrographics. In order to carry out these tasks, the service set up a procedure in accordance with the financial regulations and has always treated the selected firms on the basis of a "value for money" evaluation. The Parliament underlined that the complainant had been put at its disposal by the selected firms according to the terms and on the basis of the contracts between the complainant and the selected firm. The Parliament had a contractual relationship only with the selected firms. Furthermore, the financial controller has never made observations either on the provision of services or on the items presented for his visa. The service of the archives indicated that it had never made any commitments as regards the agents put at its service within the framework of providing services, although it appreciated a consistent quality provided by an employee familiar



with the work of the service according to the special terms of reference. Finally, the order forms specified always that the provider was the only person responsible for the personnel and that it had to select or replace the personnel taking into account the criteria presented by the service of the archives.

According to the Parliament, the contracts signed by the complainant prevent her from divulging information. The Parliament mentioned that in a meeting between her and Parliament representatives the complainant had shown a pile of photocopies of accounts and another file which she had obtained via illegal procedures and in violation of her contract in the exercise of her functions.

The Parliament is of the view that none of the allegations made by the complainant have been supported by any proof.

The complainant's observations

The complainant maintained her complaint. She claimed that she was working on the premises of the European Parliament and not for external companies. According to the complainant her orders came from the official of the Parliament who had concluded the contracts with the external companies.

Further inquiries

As both sides appeared to appreciate an exchange of views and information, the Ombudsman requested on 26 October 2000 that the Parliament convenes a bilateral meeting with the complainant and her representative Mr Scott in order to discuss the matter in question. The Ombudsman requested information of the outcome of the meeting by 31 January 2001.

On 31 January 2001, the President of the Parliament sent a letter informing the Ombudsman of the results of the meeting. It appeared from the Parliament's letter that the parties were not able to find a solution to the matter in question.

THE DECISION

1 Alleged discrimination in that the European Parliament has not offered the complainant a post or regularised her employment situation despite her long period as a member of external staff based on service contracts between the Parliament and various external companies

1.1 The complainant alleges discrimination in that after having worked during a long period of time at the European Parliament's micrographic archives she has not been offered a post and her employment situation has not been regularised. According to the complainant, she was promised that a competition would eventually be organised. The complainant notes that she has passed the age limit allowing her to participate in competitions and therefore she is not eligible for open competitions. Furthermore, the complainant claims that the Parliament recommended her recruitment to different companies with which she is not familiar with.

1.2 According to the Parliament, the Appointing Authority has always preferred external contracts for extensive work carried out in the micrographic archives. During the complainant's period as an employee of the external companies she had no administrative or financial link to the



European Parliament. All her salary slips originate from the different companies, which employed her.

1.3 According to the Parliament, Article 28 of the Staff Regulations provides clearly that no person can be nominated an official unless he/she has passed a competition based on either qualifications or tests, or both qualifications and tests. All competitions are published within the institutions and in the press. Nothing prevented the complainant from applying for the many competitions organised periodically by the European Parliament and other institutions.

1.4 The complainant put forward that she has passed the age limit allowing her to participate in these competitions. The Parliament underlined that the age limit for applications in a competition is 45, with possible exemptions under particular conditions. The complainant was therefore still eligible for future competitions organised by the Community institutions.

1.5 As regards the complainant's request to get back her old position within SERVITIA, the Parliament underlined that the complainant herself, on her own initiative, handed in her resignation to the employer.

1.6 On the basis of the information provided both by the complainant and the Parliament the Ombudsman understands that during the periods as an employee of the external companies the complainant was under temporary employment contracts between herself and various external companies governed by Luxembourg law.

1.7 The Ombudsman concludes that in accordance with Article 28, paragraph (d) of the Staff Regulations an official may be appointed only on condition that he has, subject to Article 29(2), passed a competition based on either qualifications or tests, or both qualifications and tests, as provided for in Annex III of the Staff Regulations. It appears that the complainant has not passed a competition in accordance with Article 28, paragraph (d) of the Staff Regulations. Therefore, the Ombudsman finds that the issue of discrimination does not arise in this particular case and no maladministration appears to have been established with regard to the first allegation.

2 Alleged irregularities in the internal functioning of the micrographic archives

2.1 The complainant alleges irregularities in the internal functioning of the micrographic archives and the actions of the Head of service of the official archives of the European Parliament. She has attached to her complaint a list of persons who allegedly worked for the archives of the European Parliament without being declared to the sickness insurance schemes or fiscal authorities.

2.2 The Parliament in its opinion has contested the information about employees not being declared to the sickness insurance schemes and fiscal authorities. The Parliament stated that it is impossible for officials to work without being declared. Auxiliary agents employed by the Parliament are regularly declared to different obligatory insurance schemes. As regards persons employed by companies providing services, the Parliament pointed out that there appeared to be no irregularities in the salary slips of the complainant.



2.3 The Ombudsman's inquiries have revealed no elements in support for the complainant's allegation. The Ombudsman therefore finds that any further inquiry into the allegation is not justified.

3 Alleged irregularities in the carrying out of the tenders

3.1 The complainant claims that works to be carried out under the tenders were never made and false receipts were sent to the companies.

3.2 The Parliament in its opinion stated that in 1995, the person in charge of the archives informed the Director of the Personnel Division that his service had the possibility to hire external services for archiving and micrographics. In order to carry out these tasks, the service set up a procedure in accordance to the financial regulations and has always treated the selected firms on the basis of a "value for money" evaluation. The Parliament stated that the financial controller has never made any observations neither on the provision of services nor on the items presented for his visa.

3.3 From the information available to the Ombudsman it appears that the complainant has submitted her allegation to the Court of Auditors which is a specialised body auditing the accounts and the implementation of the budget of the European Union. The Ombudsman therefore finds that any further inquiry by the Ombudsman into the allegation is not justified.

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 has therefore decided to close the case.

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

Yours sincerely,

Jacob SÖDERMAN