

Decision in case 1035/2018/AP on how the European Parliament dealt with a request from a staff member with a disability to be allowed to work remotely

Decision

Case 1035/2018/AP - Opened on 12/12/2018 - Decision on 10/10/2019 - Institution concerned European Parliament (No maladministration found) |

The case concerned the European Parliament's decision to reject the request from a staff member with a disability to be allowed to work remotely to accommodate her special needs. Parliament argued that the complainant does not need to work remotely to be able to carry out the essential tasks of her job.

Based on her inquiry, the Ombudsman found that there was no maladministration by Parliament.

Background to the complaint

1. The complainant is a staff member of the European Parliament, who has a disability. Between 2012 and 2017, she had been allowed to work remotely under a 'teleworking scheme' in place in her Directorate-General, following her request for teleworking due to her health situation.
2. In 2017, the complainant submitted a request to be allowed to telework in order to accommodate the special needs relating to her disability (so-called, 'reasonable accommodation'), in accordance with the EU Staff Regulations [1] . While Parliament recognised the complainant's disability in May 2017, it rejected her request because it considered that she could carry out the essential tasks of her job without teleworking.
3. In November 2017, the complainant made an administrative complaint [2] against this decision, arguing that Parliament wrongly assessed her disability and her request, and did not sufficiently explain the reasons for its decision. She also complained that Parliament failed to follow the procedure for dealing with her request and took too long to reach a decision.
4. Parliament rejected the complaint in March 2018. The complainant then turned to the European Ombudsman.



The inquiry

5. The Ombudsman opened an inquiry to examine how Parliament handled the complainant's request to accommodate her special needs by allowing her to telework.
6. In the course of the inquiry, the Ombudsman's inquiry team inspected Parliament's file and met with relevant representatives from Parliament to gain a better understanding of its position on the complainant's case.

Arguments presented to the Ombudsman

Initial arguments raised by the complainant

7. The complainant argued that Parliament failed to follow its own guidelines on how to deal with requests for reasonable accommodation [3] and took too long to take a decision on her request.
8. She stated that Parliament's advisory committee [4] , which is responsible for considering requests for reasonable accommodation, was consulted twice on her request. The complainant argued that the committee had initially given a favourable opinion. However, the composition of the committee then changed, and it subsequently did not give a favourable opinion. She also argued that the initial opinion was not sent to Parliament's decision-making body within 10 working days, the limit set out in the guidelines. [5] In addition, she was concerned that the new advisory committee did not give sufficient reasons for its decision to give a different opinion.
9. The complainant also contested Parliament's assessment and decision on her request. In her view, Parliament did not give a reasonable explanation for its decision, but merely provided a statement that contradicts medical opinions on her case. In her view, according to the applicable rules, Parliament can refuse requests for reasonable accommodation only if the measures requested are deemed 'excessive'. However, her request for teleworking could not be deemed excessive.
10. The complainant argued that teleworking arrangements were necessary to accommodate her special needs, given the long hours and pace of work of her job. She also argued that she had teleworked effectively for more than four years, as her annual staff evaluation reports demonstrated, and that her request was not therefore disproportionate.

Arguments raised by Parliament

11. Parliament expressed regret for the time taken to consider the complainant's request, but



stated that the delay in reaching a decision was, in part, due to the request falling during the summer leave period and the absence of the relevant head of unit. Parliament argued that the delay did not have a material impact on the decision however. [6]

12. Parliament explained that, according to the applicable procedure, it first assesses whether the proposed reasonable accommodation measures are appropriate for responding to the special need and are necessary to help the staff member to carry out their essential tasks. Only after this, does Parliament assess whether a proposed measure represents a disproportionate burden.

13. Parliament clarified that the initial opinion of the advisory committee had been reached in the absence of the Parliament's medical doctor. Parliament emphasised the importance of the medical doctor in the procedure, for reviewing the staff member's medical record and determining if the request is appropriate to the special needs. As such, it had decided to ask the advisory committee for a new opinion.

14. Based on the advisory committee's opinion and its own assessment, Parliament determined that the complainant did not need to telework in order to be able to perform the essential tasks of her job as a translator. Parliament also noted that the complainant's request did not concern her activities with Parliament's Staff Committee.

Additional arguments raised by the complainant

15. In her comments on the Ombudsman's inspection meeting report in this case, the complainant emphasised that, based on a very general medical document recognising her disability, Parliament could not find a causal link between the type of disability recognised and the need for the specific measures she requested. She did not agree with Parliament's view that she could easily perform the essential functions of her job without teleworking. She said that, very often, translators have to work during lunchtime, evenings and weekends. Given the nature of her disability, she has to follow a very strict diet and no group catering facility can provide her with an appropriate meal. This makes it impossible for her to execute her work properly.

16. The complainant also stated that there was no reason to call for the second advisory committee because the first one disposed of the (positive) medical opinion. The presence of the medical doctor who issued it was not necessary for the first advisory committee to take a decision on her request.

The Ombudsman's assessment

17. The delay by Parliament in dealing with the complainant's request is regrettable. The EU institutions should strive to organise their work so that the absence of particular staff members has as little impact as possible on dealing with administrative matters within a reasonable time.



18. That said, the Ombudsman finds reasonable Parliament's explanation that the advisory committee had to issue a second opinion because the medical doctor had not taken part in the meeting where the original decision on the complainant's request was taken. Even though the advisory committee was in possession of the favourable medical opinion during its meeting, the specificity of the complainant's situation, as described in paragraph 15, made the presence of the doctor desirable, for the committee to be able to take a fully informed decision. This is why Parliament's decision to call for a new advisory committee opinion (in the presence of the medical doctor) was justified.

19. Parliament has addressed most of the arguments set out by the complainant in her administrative complaint, either in its reply to her or during the Ombudsman's inspection meeting of which the complainant received the report.

20. While the complainant had benefitted from a general teleworking scheme available to all staff in her Directorate-General between 2012 and 2017, her request in 2017 to telework to accommodate her special needs was covered by different rules [7] . As such, even though she had previously benefitted from general teleworking arrangements, this did not mean that her new request would automatically be approved.

21. Parliament's internal rules on reasonable accommodation [8] set out three **cumulative** conditions for granting requests: (i) the staff member must have a disability that is officially recognised; (ii) the staff member is able to perform the essential functions of his/her position **provided** reasonable accommodation measures are granted, and (iii) the requested measures must not impose a disproportionate burden on the administration.

22. Parliament rejected the complainant's request on the grounds that the second condition was not met. While Parliament views teleworking as a possible reasonable accommodation measure [9] , it concluded that, based on her disability, the complainant did not need to telework to perform her job. Parliament's decision was informed by the opinion of the advisory committee, which included a medical doctor. The Ombudsman is not in a position to call that opinion into question.

23. According to the applicable rules, Parliament has discretion in deciding on requests for reasonable accommodation measures. While the complainant is understandably disappointed that Parliament rejected her request, there is no indication that Parliament went beyond the limits of its discretion in this case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There was no maladministration by the European Parliament in its decision to reject the complainant's request to be allowed to telework.



The complainant and the European Parliament will be informed of this decision .

Emily O'Reilly

European Ombudsman Strasbourg, 10/10/2019

[1] Article 1d(4) of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community ('the EU Staff Regulations'), available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link].

According to Article 1d(4), in order to prevent discrimination on the grounds of disability, EU institutions are obliged to accommodate the special needs of staff members with disabilities ('reasonable accommodation').

[2] Complaint under Article 90(2) of the EU Staff Regulations.

[3] Parliament's Guidelines of 11 December 2015 on the implementation of its Internal Rules implementing Article 1d(4) of the EU Staff Regulations.

[4] The role and composition of the advisory committee is set out in Article 7 of Parliament's Internal Rules of 1 April 2015 implementing Article 1d(4) of the EU Staff Regulations.

[5] Points 11(2) and 14 of Parliament's Guidelines of 11 December 2015 on the implementation of its Internal Rules implementing Article 1d(4) of the EU Staff Regulations.

[6] In its reply to the complainant's internal administrative complaint, Parliament referred to the Judgement of the Civil Service Tribunal of 18 May 2019, *Meister v OHIM* , Joint Cases F-138/06 and F-37/08.

[7] Her request for teleworking as a reasonable accommodation measure was governed by Article 1d(4) of the EU Staff Regulations.

[8] Article 4 of Parliament's Internal Rules implementing Article 1d(4) of the EU Staff Regulations.

[9] Point 3(2) of Parliament's Guidelines on the implementation of its Internal Rules implementing Article 1d(4) of the EU Staff Regulations.