

Decision in case 593/2020/MMO on how the European Global Navigation Satellite Systems Agency dealt with an administrative complaint from a staff member who had not been promoted

Decision

Case 593/2020/MMO - Opened on 19/05/2020 - Decision on 18/12/2020 - Institution concerned European GNSS Agency (No maladministration found) |

Background to the complaint

1. The complainant is a staff member (Temporary Agent) of the European Global Navigation Satellite Systems Agency (GSA). The GSA did not promote him in the 2019 reclassification [1] exercise.
2. The complainant made an administrative complaint [2] against that decision. The GSA's complaints committee rejected that complaint on 24 January 2020 upholding the initial decision not to promote him.
3. Not satisfied with the GSA's reply, nor with the way it handled his administrative complaint, the complainant turned to the Ombudsman in March 2020.

The inquiry

4. The Ombudsman opened an inquiry into the complaint, and in particular into how the GSA handled the complainant's administrative complaint procedurally.
5. In the course of the inquiry, the Ombudsman received the GSA's reply on the complaint, and, subsequently, the comments of the complainant in response to the GSA's reply.

Arguments presented to the Ombudsman

6. In his administrative complaint, the complainant said that, since his recruitment in 2014, he had never been promoted. He listed his achievements at work, which, in his view, demonstrated



that he she should have been promoted. He also referred to “ *troubling coincidences, such as family ties* ” as regards promoted staff members.

7. The GSA's complaints committee examined and decided on the administrative complaint. In its decision, the complaints committee said that a limited number of staff members can be promoted, that the time spent at a certain grade is not a relevant consideration for promotion and that the promotion procedure is a comparative exercise. It then set out the reasons why the complainant's performance did not qualify him for promotion that year. It rejected as groundless and unsubstantiated the complainant's allegation that family ties affected the decision on promotions.

8. In his complaint to the Ombudsman, the complainant contends that there were a number of procedural errors in the handling of his administrative complaint, such as: the complaints committee was the wrong authority to assess his complaint and the committee was created after he had submitted his complaint; he had not received sufficient information prior to the hearing before the committee; the representative of the GSA administration delivered a statement at the beginning of the hearing, about which the complainant had not been informed in advance, and that person was present during the deliberation of the committee.

9. The complainant also contends that the GSA discriminated against him on grounds of nationality and due to the fact that he did not have 'connections' in the GSA. Moreover, in the course of the hearing, the representative of the GSA administration belittled his work contributions, in a way that amounted to harassment.

10. Finally, the complainant considers that the complaints committee's decision contained errors and inaccuracies, but the committee refused to examine the complainant's submission relating to those errors and inaccuracies, saying that it had no authority to review its own decisions.

11. In its reply to the Ombudsman, the GSA said that the complainant was informed of the role and the composition of the complaints committee, as well as the procedure before it, both orally and in writing. He was also informed that he could be accompanied by a colleague of his choice to the hearing.

12. The GSA also said that the representative of the GSA administration was not present during the deliberations of the complaints committee. Only the secretary of the complaints committee was present “in listening mode” in order to assist the complaints committee with its administrative and clerical tasks. The head of the HR department had been appointed as the secretary of the complaints committee.

13. In the course of the inquiry, the GSA shared with the Ombudsman its internal decision on the delegation of powers for handling administrative complaints [3] . The GSA also said that it is in the process of developing rules of procedure of the complaints committee.

The Ombudsman's assessment



14. There are inherent limits to the extent of the Ombudsman's review in cases that concern the EU institutions' internal organisation. The EU Court has consistently recognised that the institutions have wide powers of internal organisation, including a wide discretion to decide on the assessment and promotion of their staff. [4]

15. It is in general not the role of the Ombudsman to review an institution's internal day-to-day measures of organisation, or decisions on promotion. [5] The Ombudsman would question a promotion decision only in case of an indication of a manifest error of assessment. In this case, the decision of the complaints committee addressed the substantive arguments that the complainant had put forward in his administrative complaint in a reasonable way and there is no indication of a manifest error of assessment in relation to the decision not to promote the complainant in the 2019 promotion exercise.

16. Regarding the complainant's argument that there were procedural shortcomings in the way in which the GSA handled his administrative complaint, the Ombudsman notes that, under the GSA's internal rules, the complaints committee was the correct authority to assess and decide on the complainant's administrative complaint. [6] The fact that the composition of the complaints committee was determined after the complainant had made his administrative complaint is not problematic as long as none of the members of the committee was in a conflict of interest situation in relation to the complainant. The complainant has not put forward any such concerns.

17. The complainant does not substantiate any concerns about the Head of the GSA's HR department acting as secretary of the complaints committee. There is nothing to suggest that she interfered in the deliberations of the complaints committee either.

18. Having said that, the Ombudsman trusts that, for the future, the GSA will adopt clear rules of procedure for the complaints committee, possibly based on best practices developed and shared within the network of EU agencies. Such rules of procedure could also indicate who may be appointed as the secretary of the complaints committee, taking into account whether the Head of the HR department is the person best suited to carry out those tasks, given that person's prominent function within the GSA.

19. The Ombudsman further notes that, during the administrative procedure, the complainant had the opportunity to present his views and arguments, both orally and in writing, and that a colleague of his choice accompanied him during the hearing. The Ombudsman finds it reasonable that also the GSA administration was given an opportunity to present its point of view during the hearing. In the course of the Ombudsman's inquiry, the GSA said that the representative of the administration was not present for the deliberations of the committee. The complainant has not put forward any argument to put into question the GSA's statement.

20. The complainant has not provided any information suggesting that the GSA discriminated against him or that decisions on promotions were based on 'connections'. [7] Regarding the complainant's argument that his work contributions were belittled, the information available



shows that the intention of the GSA administration was to explain to the complaints committee why the complainant had not been promoted. Even if the complainant may not agree with what was put forward, the Ombudsman considers that the information in the complaints committee decision does not go outside the limits of what can be considered reasonable in the given context.

21. The Ombudsman also finds it reasonable that the complaints committee does not review its own decisions.

22. Having assessed the extensive arguments put forward by the complainant, the Ombudsman does not identify any procedural shortcomings that may have had an impact on the assessment of the administrative complaint and the outcome of that assessment. For the future, the adoption of clear rules of procedure for the complaints committee would enhance transparency and confidence in its handling of administrative complaints.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [8] :

There was no maladministration by the Global Navigation Satellite Systems Agency European.

The complainant and the GSA will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 18/12/2020

[1] 'Promotion' will be used throughout instead of the technical term 'reclassification'.

[2] According to Article 90(2) of the Staff Regulations of Officials and Article 46 of the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community:

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

[3] Decision of the Administrative Board of 24 September 2015 delegating the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority empowered to conclude contracts of employment to the Executive Director of the European GNSS Agency, Article 1(3) regarding the delegation of powers within the GSA for handling complaints under Article 90(2) of the Staff



Regulations.

[4] For instance judgement of the Court of First Instance of 22 October 2002, *Plugrad v European Central Bank* , Joined Cases T-178/00 and T-341/00,

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=47813&pageIndex=0&doclang=EN&mode=lst&dir=>
[Link] and also judgment of the General Court of 10 November 2020, *T-260/09 P, OHMI v Dos Santos* , <http://curia.europa.eu/juris/liste.jsf?language=en&num=T-260/09%20P> [Link]

[5] Similarly in decision in 1401/2017/PB and 1558/2017/PB:

<https://www.ombudsman.europa.eu/en/decision/en/114157> [Link]

[6] See footnote 3 above.

[7] There was no concrete information that the decision on promotions was taken also based on considerations such as ‘family ties’ in the administrative complaint either.

[8] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of [the Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]