

Decision of the European Ombudsman on complaint 1144/2000/GG against the European Parliament

Decision

Case 1144/2000/GG - Opened on 26/10/2000 - Decision on 18/09/2001

Strasbourg, 18 September 2001

Dear Mr W.,

On 14 September 2000, you lodged a complaint with the European Ombudsman against the European Parliament which concerned Parliament's new system for staff reports and for the attribution of promotion points and decisions taken on the basis of this system with regard to you.

On 26 October 2000, I forwarded the complaint to the European Parliament for its comments. The European Parliament sent its opinion on your complaint on 1 February 2001, and I forwarded it to you, together with a translation into German prepared by my services, on 26 February 2001 with an invitation to make observations, if you so wished. On 28 March 2001, you sent me your observations on Parliament's opinion.

On 9 April 2001, I wrote to the European Parliament in order to ask for further information in relation to your complaint. The European Parliament sent its reply on 19 June 2001, and I forwarded it to you on 26 June 2001 with an invitation to make observations. On 11 July 2001, you sent me your observations on the European Parliament's reply.

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

THE COMPLAINT

In 1999, the European Parliament introduced new rules on staff reports and promotions for its staff. On 8 March 1999, the Bureau of the European Parliament adopted the "General Implementing Provisions applicable to Article 43 of the Staff Regulations and Article 15 of the Conditions of Employment of Other Servants (Staff Report)". According to the complainant, the version of this document that was circulated to Parliament's staff included the following further documents: (1) a staff report form, (2) a document called "Instructions regarding Promotions and Career Planning" and/or a document called "Instructions concerning the drafting procedure" and (3) a provisional timetable for the staff reports and promotions procedure 1999. On 1



September 1999, the European Parliament's Secretary-General informed the staff of the European Parliament that he had adopted, on the basis of the "Instructions regarding Promotions and Career Planning", two sets of rules in order to implement the new promotions system, the "Dispositions pour la mise en oeuvre du nouveau système de promotion" and the "Instructions relatives à la procédure d'attribution des points de promouvabilité". These documents were attached to the Secretary-General's note.

The complainant is an A5 official in Parliament's Directorate-General III. It appears that he has had problems with his Head of Unit. According to the complainant, this official committed various instances of maladministration that subsequently became the subject-matter of a special report of the task force "Internal Organisation" set up by the European Parliament's Secretary-General in early 1999. The complainant claimed that he had to contribute to this report and that, as a result, his head of unit prepared a staff report (covering the period from 1997 to 1998) with very bad marks for him. A copy of the staff report was attached to the complaint. It appears that the critical assessments made by the head of unit were overruled by the Director of DG III, and that as a consequence the head of unit refused to sign the staff report.

In December 1999, the complainant received two computer printouts that showed that on the basis of the European Parliament's new promotion system, one promotion point (out of a maximum of 3) had been attributed to him for 1997 and another one for 1998. The complainant thereupon addressed himself to the Staff Reports Committee of the European Parliament which, in its opinion of 19 January 2000, informed the Secretary-General of the European Parliament of its view that the procedure followed by Parliament had been deficient. In a note dated 15 February 2000, the Secretary-General of the European Parliament informed the complainant that he had given instructions to redo his staff report.

On 17 February 2000, and given that the time-limit for bringing an internal appeal was about to expire, the complainant nevertheless submitted a complaint under Article 90 of the Staff Regulations. In this complaint, the complainant criticised the decision regarding the attribution of promotion points to him. He also called into question the legality of the new rules on both staff reports and promotions. The complainant added that in his view there were three possibilities to satisfy him, namely by treating him like those civil servants who had obtained the maximum number of promotion points, by treating him like civil servants to whom the new system did not apply or by declaring the system as such and the underlying regulations invalid.

In the absence of a reply to this complaint, the complainant turned to the Ombudsman. In his complaint to the Ombudsman, the complainant essentially made the following allegations:

- The European Parliament's decision on the promotion points to be attributed to him for 1997 and 1998 was wrong
- The European Parliament's new rules on both staff reports and promotions were illegal
- The European Parliament's decision to appoint the complainant's head of unit as his first assessor constituted maladministration.

In support of his second allegation, the complainant invoked the following arguments: (1) None



of the implementing provisions (in particular the "Instructions regarding Promotions and Career Planning" and the "Instructions relatives à la procédure d'attribution des points de promouvabilité") that were published together with or after the "General Implementing Provisions applicable to Article 43 of the Staff Regulations and Article 15 of the Conditions of Employment of Other Servants (Staff Report)" adopted by the Bureau of the European Parliament on 8 March 1999 found a basis in the latter decision or were adopted in conformity with Article 110 of the Staff Regulations after having heard the Staff Regulations Committee; (2) Parliament's new system regarding staff reports was contrary to the principle of legality since it was not substantiated enough and since it was in contradiction with the Guide to Staff Reports 1999 according to which assessments were not to be expressed in figures; (3) Parliament's new system regarding staff reports was illegal since it was to be applied retroactively to the past; (4) Parliament's new system regarding the attribution of promotion points was contrary to Article 45 of the Staff Regulations since it did not provide for a comparison of the merits of staff; (5) Parliament's new system regarding the attribution of promotion points was illegal since (a) it had no legal basis, (b) it infringed the principle of legal certainty and the prohibition of a retroactive deterioration in the position of the civil servant, (c) it infringed the principle of the protection of legitimate expectations and (d) it infringed the principle of equal treatment, given that there were quotas for promotion points for each category; and (6) in view of the number of regulations, instructions and notices Parliament's new systems regarding staff reports and the attribution of promotion points lacked transparency.

THE INQUIRY

The European Parliament's opinion

In its opinion, the European Parliament claimed that the complainant's Article 90 complaint had never been transmitted to the appointing authority. Further to the Secretary-General's decision of 15 February 2000, the complainant's staff report for the years 1997 and 1998 had been redone. The complainant had initialled the new staff report on 19 September 2000.

The European Parliament further informed the Ombudsman that it had reviewed its decision regarding the promotion points to be attributed to the complainant. By decision of 1 February 2001, the Secretary-General had attributed two promotion points for 1997 and two points for 1998 to the complainant.

In these circumstances, the European Parliament considered that the complainant's problems relating to his staff report and his promotion points for 1997 and 1998 had been solved.

The complainant's observations

In his observations, the complainant maintained his complaint. He informed the Ombudsman that he considered Parliament's decision to grant him two promotion points for both 1997 and 1998 to be a step in the right direction but that he would only be satisfied when the European Parliament granted him the maximum of three points for both years and also for 2000 and when the European Parliament had promoted him to A 4. The complainant further claimed that he had not initialled the new staff report which he had seen for the first time when he had received Parliament's opinion in this case.



The complainant also took the view that since the European Parliament had not commented on his arguments, it had accepted them as being correct.

Further inquiries *Request for further information*

Having received the complainant's observations, the Ombudsman considered that he needed further information in order to deal with the complaint. He therefore asked the European Parliament to comment (1) on the complainant's claim that the appointment of his head of unit as first assessor constituted maladministration and (2) on the allegation that the "Instructions regarding Promotions and Career Planning" that had been published together with the "General Implementing Provisions" adopted by the Bureau on 8 March 1999 did not find a basis in the latter and had not been adopted in conformity with Article 110 of the Staff Regulations.

The Parliament's reply

In its reply, the Parliament made the following comments:

According to Article 3 of the decision of the Bureau of the European Parliament of 8 March 1999 adopting the "General Implementing Provisions applicable to Article 43 of the Staff Regulations", the staff report of a category A official shall be prepared by the staff member's superior and signed by two assessors. The first assessor shall be the head of unit in grade A3-A4 or the director in grade A-2 to whom the staff member is answerable. He shall be designated in accordance with the structure of the departments and the category of staff to be assessed. The final assessor shall be the Director-General or a director designated by him. In the present case, Mr C. had been designated as the complainant's superior and as first assessor, and Mrs L., Director in the relevant Directorate-General, as the final assessor. These designations had thus been carried out in conformity with the existing rules. In so far as the complainant's allegations against his head of unit were concerned, the Parliament's services had indeed prepared a report on the functioning and the working methods of its Citizens' Mail Division. However, the conclusions reached in this report in no way related to alleged instances of maladministration on the part of the complainant's superior.

The Bureau of the European Parliament had adopted, on 8 March 1999, the "General Implementing Provisions applicable to Article 43 of the Staff Regulations". It emerges from page 6 of these rules that both the standard form to be used for staff reports and the "Instructions concerning the drafting procedure" were attached as annexes. The "Instructions regarding Promotions and Career Planning" had likewise been adopted by the Bureau on 8 March 1999. Both the "General Implementing Provisions applicable to Article 43 of the Staff Regulations" and the "Instructions regarding Promotions and Career Planning" had been circulated to staff by a note from the Secretary-General of the European Parliament of 24 March 1999.

The "General Implementing Provisions applicable to Article 43 of the Staff Regulations" clearly refer to the opinion of the Staff Regulations Committee and the consultation of the Staff Committee. The Staff Regulations Committee had given its favourable opinion (171/99) on the draft by letter of 3 February 1999. It was true that this committee had not been asked to give an opinion on the "Instructions regarding Promotions and Career Planning". However, Article 110 of the Staff Regulations only requires the consultation of the Staff Regulations Committee in so far as the general provisions for giving effect to these Staff Regulations are concerned. It followed, *a contrario*, that this procedure does not apply to other types of internal rules.



Furthermore, Article 45 (4), last sentence, clearly stipulates the following rule: "Each institution shall adopt general provisions for implementing paragraphs 3 and 4, in accordance with Article 110, as necessary." However, promotions of civil servants are governed by paragraphs 1 and 2 of Article 45. It followed, *a contrario*, that this provision allowed the Community institutions to adopt rules on the basis of these paragraphs without having to follow the procedure laid down in Article 110 of the Staff Regulations. In any event, the Staff Committee of the European Parliament had been consulted before the Bureau had adopted its decision of 8 March 1999, as indicated in the preamble of the "Instructions regarding Promotions and Career Planning".

The complainant's observations

In his observations, the complainant expressed the view that Parliament could have designated another person as first assessor. In view of the events described in the complaint, it was excluded that the immediate superior should also be the first assessor. The complainant suggested that the Ombudsman should now consult the special report that had been drawn up by the relevant services of Parliament.

According to the complainant, the standard form to be used for staff reports and the "Instructions concerning the drafting procedure" had not been attached to the decision on the "General Implementing Provisions applicable to Article 43 of the Staff Regulations" that the Bureau of the European Parliament had adopted on 8 March 1999. The complainant considered that Parliament's interpretation of Article 45 and 110 of the Staff Regulations was incorrect. In his view, the Staff Regulations Committee ought to have been consulted. Article 110 was a general provision referring to the whole of the Staff Regulations. Article 45 (4) did not allow a conclusion *a contrario*, given that this provision had only recently been introduced into the Staff Regulations. The "Instructions regarding Promotions and Career Planning" would in any event have to be regarded as void since they did not comply with Article 45 of the Staff Regulations but introduced a completely new element incompatible with the latter.

THE DECISION

1 The European Parliament's decision on the promotion points to be attributed to the complainant for 1997 and 1998

1.1 The complainant was attributed one promotion point (out of a maximum of three) for 1997 and 1998 each. He claims that this decision was incorrect since it had been taken on the basis of a staff report for the relevant period that had been irregular.

1.2 The European Parliament points out that it has in the meantime reviewed both the staff report and its decision regarding the promotion points. As a result, the complainant was attributed two promotion points for both 1997 and 1998.

1.3 The Ombudsman considers that in the light of the European Parliament's decision to increase the number of promotion points, there would only be maladministration if the complainant was entitled (as he claims he was) to receive the maximum of three points for each of the two years concerned. In the Ombudsman's view, the complainant has not established that this is the case.



1.4 In his observations, the complainant claims that he should also be given three promotion points for the year 2000. He also appears to suggest that Parliament should promote him to grade A 4. These further claims are separate from the complainant's original claims and will therefore not be examined here.

1.5 On the basis of the above, there appears to have been no maladministration on the part of the European Parliament in so far as the first allegation is concerned.

2 The European Parliament's new rules on both staff reports and promotions

2.1 The complainant claims that Parliament's new rules on staff reports and promotions are illegal.

2.2 In support of this view, the complainant puts forward the following arguments: (1) None of the implementing provisions that were published together with or after the "General Implementing Provisions applicable to Article 43 of the Staff Regulations and Article 15 of the Conditions of Employment of Other Servants (Staff Report)" adopted by the Bureau of the European Parliament on 8 March 1999 found a basis in the latter decision or were adopted in conformity with Article 110 of the Staff Regulations after having heard the Staff Regulations Committee; (2) Parliament's new system regarding staff reports was contrary to the principle of legality since it was not substantiated enough and since it was in contradiction with the Guide to Staff Reports 1999 according to which assessments were not to be expressed in figures; (3) Parliament's new system regarding staff reports was illegal since it was to be applied retroactively to the past; (4) Parliament's new system regarding the attribution of promotion points was contrary to Article 45 of the Staff Regulations since it did not provide for a comparison of the merits of staff; (5) Parliament's new system regarding the attribution of promotion points was illegal since (a) it had no legal basis, (b) it infringed the principle of legal certainty and the prohibition of a retroactive deterioration in the position of the civil servant, (c) it infringed the principle of the protection of legitimate expectations and (d) it infringed the principle of equal treatment, given that there were quotas for promotion points for each category; and (6) in view of the number of regulations, instructions and notices Parliament's new systems regarding staff reports and the attribution of promotion points lacked transparency.

2.3 The European Parliament has commented on the first of these arguments. It stresses that both the standard form to be used for staff reports and the "Instructions concerning the drafting procedure" were attached as annexes to the "General Implementing Provisions applicable to Article 43 of the Staff Regulations" adopted on 8 March 1999. The European Parliament further takes the view that there was no need to consult the Staff Regulations Committee on the "Instructions regarding Promotions and Career Planning" since Article 110 of the Staff Regulations only requires the consultation of the Staff Regulations Committee in so far as the general provisions for giving effect to these Staff Regulations are concerned. In Parliament's view, it followed from Article 45 (4), last sentence, of the Staff Regulations, *a contrario*, that this procedure does not apply to rules adopted on the basis of paragraphs 1 and 2 of Article 45. In any event, the Staff Committee of the European Parliament had been consulted before the Bureau had adopted its decision of 8 March 1999.

2.4 In so far as the complainant's first argument is concerned, the Ombudsman considers that



the complainant has not established that the standard form to be used for staff reports and the "Instructions concerning the drafting procedure" were *not* attached as annexes to the "General Implementing Provisions applicable to Article 43 of the Staff Regulations" adopted on 8 March 1999. Furthermore, the text circulated by the Secretary-General of the European Parliament to staff on 24 March 1999 would appear to confirm that the two documents had been attached to these provisions.

2.5 With regard to Article 110 of the Staff Regulations, the European Parliament has explained that it has complied with the requirements set out in this provision - consultation of the Staff Committee and of the Staff Regulations Committee - in so far as the "General Implementing Provisions applicable to Article 43 of the Staff Regulations" adopted on 8 March 1999 were concerned but that it considers that this article does not apply to rules such as the "Instructions regarding Promotions and Career Planning". The Ombudsman considers that the position adopted by the European Parliament is reasonable and compatible with the wording of the Staff Regulations. It should be recalled, however, that the highest authority on the interpretation of Community law is the Court of Justice.

2.6 In so far as the remaining arguments (2 to 6) are concerned, it appears useful to note that the fact that Parliament has not commented on them cannot be considered as an acceptance of these arguments by Parliament. As to the substance, the Ombudsman takes the view that the complainant has not put forward sufficient evidence to establish his claims.

2.7 On the basis of the above, there appears to have been no maladministration on the part of the European Parliament in so far as the second allegation is concerned.

3 The European Parliament's decision to appoint the complainant's head of unit as his first assessor

3.1 The complainant claims that Parliament was wrong to designate his immediate superior as his first assessor for the staff report. He claims that this designation was made without prior notice. In his view, the designation was furthermore illegal in view of the fact that the work of this person had been the subject-matter of a special report of the task force "Internal Organisation" set up by the European Parliament's Secretary-General in early 1999 to which he (the complainant) had largely contributed.

3.2 Parliament takes the view that the designation of the immediate superior as the complainant's first assessor was made in conformity with the rules. It further claims that the report referred to by the complainant in no way related to alleged instances of maladministration on the part of the complainant's superior.

3.3 The Ombudsman considers that the designation of the complainant's immediate superior as his first assessor appears to be in conformity with the applicable rules. These rules provide that the head of unit or the director to whom the staff member is answerable shall be designated. With hindsight, it appears that it would have been better if Parliament had not designated the complainant's immediate superior as the first assessor, considering the problems that this designation created. However, the complainant has not shown that Parliament knew or had to know at the relevant time that the designation of this person would cause such problems.



3.4 On the basis of the above, there appears to have been no maladministration on the part of the European Parliament in so far as the complainant's third allegation is concerned.

Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration on the part of the European Parliament. The Ombudsman therefore closes the file.

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

Yours sincerely,

Jacob SÖDERMAN