

Decision of the European Ombudsman on complaint 1250/2000(JSA)/IJH against the European Parliament

Decision

Case 1250/2000/IJH - Opened on 26/10/2000 - Decision on 19/07/2001

Strasbourg, 19 July 2001

Dear Maître R.,

On 6 October 2000, you made a complaint to the European Ombudsman on behalf of Mr Koldo GOROSTIAGA, MEP and Mr Karmelo LANDA, a former Member of the European Parliament. The complaint is against the European Parliament.

On 26 October 2000, I forwarded the complaint to the President of the European Parliament. On 8 January 2001, you informed me that you had written to the President of the European Parliament on 12 December 2000 to request that the complete file of material and documents concerning the adoption of the contested decisions should be communicated to you. The European Parliament sent its opinion to me on 30 January 2001 and I forwarded it to you with an invitation to make observations, if you so wished. On 14 March 2001, you requested an extension of the deadline for observations to 30 April 2001. On 22 March 2001, I informed you that your request had been granted. On 13 April 2001, you sent your observations on the European Parliament's opinion.

On 20 April 2001, I informed you that, for organisational reasons, a different legal officer in the office of the Ombudsman would henceforth deal your complaint.

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

THE COMPLAINT

The complaint against the European Parliament is made by a lawyer, Me R., on behalf of a Member of the European Parliament, Mr Koldo GOROSTIAGA and a former MEP, Mr Karmelo LANDA.

According to the complaint, Mr GOROSTIAGA invited Mr LANDA to assist him in his work during the first part-session of the European Parliament in Strasbourg in October 2000. As a former MEP, Mr LANDA was in possession of an entry permit, which entitled him to have



access to the premises of the European Parliament. The security service of the European Parliament had contacted Mr LANDA in order to deliver this entry permit to him in June 2000.

On Thursday 5 October 2000, two officers of the security services of the European Parliament came to the office of Mr GOROSTIAGA MEP, in order to carry out an order to expel Mr LANDA from the premises of the Parliament. The security officers said that the President of the European Parliament had made a decision to this effect. However, they were unable to produce a copy of the decision when requested to do so. The security officers made a telephone call to the services of the Presidency. Those services then faxed a decision of the Bureau of the Parliament, dated 14 July 1997, to withdraw all Mr LANDA's rights as a former MEP. This decision had never been notified to Mr LANDA, who was previously unaware of it.

Finally, two high officials of the European Parliament came to the office of Mr GOROSTIAGA. They took away Mr LANDA's entry permit as a former MEP, purportedly in application of the Bureau's decision of 14 July 1997. They provided Mr LANDA with a visitor's entry permit, valid for 5 October 2000.

On the basis of the above facts, the complaint is that:

- the Bureau's decision of 14 July 1997 is null and void for the following reasons: it lacks any legal basis, was neither signed nor notified to the complainant; and was taken without respecting the rights of the defence since Mr LANDA had no opportunity to make oral or written observations;
- the complainant was entitled to be on the premises of the European Parliament and the decision to expel him on 5 October 2000 was unsigned, gave no reasons and was not properly notified to the complainant, since it was not even made in writing.

The complainants claim that:

- Mr LANDA should be re-established in all his rights as a former MEP
- the persons responsible for the incident should be subject to exemplary sanctions in order to prevent such actions in future.

THE INQUIRY

The European Parliament's opinion

The opinion of the European Parliament made, in summary, the following points.

The decision to withdraw Mr LANDA's entry permit

At its meeting of 16 July 1997, the College of Quaestors concluded that the rules and procedures applicable to honorary members should be extended to former MEPs, whose rights and privileges are essentially comparable to those accorded to honorary members. Article 4 of the rules concerning honorary members, adopted by the Bureau on 30 November 1988, provides that the title and privileges of an honorary member may be withdrawn, in case of



abuse, by decision of the President, on a proposal of the College of Quaestors, after consulting the Bureau.

At the meeting of the Bureau on 17 July 1997, Mr BALFE, a Quaestor, recalled that the rights accorded to former MEPs are in the nature of social facilities and in no way authorise them to pursue their political activities in Parliament. Mr GUTIERREZ DIAZ, Vice-President, declared that Mr LANDA had acted as an apologist for murders carried out in the Spanish Basque country by a terrorist organisation. Mr VERDE I ALDEA, Vice-President, criticised Mr LANDA for pursuing anti-democratic activities from the Parliament. The Bureau then decided unanimously to withdraw the advantages accorded to Mr LANDA as a former MEP.

In accordance with normal practice, the minutes of the meeting of the Bureau of 14 July 1997 were communicated to the security service to be implemented. The minutes were probably not directly communicated to Mr LANDA.

The security service did not withdraw Mr LANDA's entry permit following the Bureau's decision since they did not have his address, nor did they note his presence on the premises of the Parliament. The security service made an error in agreeing to Mr LANDA's request for a new entry permit in July 2000.

The mandate of the Ombudsman

Contrary to what the complainants appear to believe, former MEPs have no right to enjoy the facilities that Parliament accords to them. These facilities are accorded to them in the exercise of Parliament's power of internal organisation.

From a legal perspective, the decision to withdraw privileges given to a former MEP and, in particular, the decision as to what constitutes an abuse of such privileges is a political activity of the European Parliament, dealt with by a political body according to political criteria.

Insofar as the complaint contests the validity of the decision made in 1997 to withdraw Mr LANDA's privileges as a former MEP, it is therefore outside the mandate of the Ombudsman.

The validity of the decision of 14 July 1997

The Community Courts recognise the rights of the defence as general principles of Community law. However they apply the right to be heard only in cases involving a legal relationship between a natural or legal person and the institution concerned. The present case merely concerns facilities that Mr LANDA wishes to enjoy.

Mr LANDA could not have challenged the Bureau's decision under Article 230 EC because it did not produce legal effects which are binding on him and capable of affecting his interests by bringing about a distinct change in his legal position (1) .

Furthermore, the Bureau cannot be assimilated to an administrative body applying rules that create rights and obligations. Nor was Mr LANDA gravely damaged in his interests, since on 5 October 2000 he was able to enter the European Parliament and remain there even after his entry permit as a former MEP had been removed.



As regards the duty to give reasons for decisions, Article 253 EC, which is cited as the source of the obligation in the Charter of Fundamental Rights of the European Union, applies only to acts having legal effects. According to the established case law, the purpose of the duty to give reasons is to allow the person concerned to ascertain whether the decision is vitiated by a defect which may permit its legality to be contested and to enable the Court to review the legality of the decision. Since its decision could not have been legally challenged, the Bureau was under no obligation to give reasons.

As regards the complainants' argument that all decisions unfavourable to an individual should be signed and notified to the affected person, with reasons, no such general obligation exists in Community law. The normal practice in the European Parliament is that decisions of the Bureau are notified to MEPs through the minutes, of which every Member receives a copy.

In any event, the decision of the Bureau was adequately reasoned and the text of the decision was notified to the complainants on 5 October 2000. Hence, the complainant no longer has any legitimate interest in this aspect of the complaint.

If the Bureau were to adopt a similar decision today, it would be obliged, at least politically, to take account of the right to good administration in Article 41 of the Charter of Fundamental Rights of the European Union. This right includes the right of every person to be heard, before any individual measure which would affect him, as well as the obligation of the administration to give reasons for its decisions. However, the drafters of the Charter did not limit themselves to a codification of existing rights and the European Parliament cannot be criticised for failure to comply in 1997 with a provision which was drafted and proclaimed only in the year 2000.

The complainants' observations

In his observations, the complainants' legal representative complained that he had received no reply from the European Parliament to his request that the complete file of material and documents concerning the adoption of the contested decisions should be communicated to him. He argued that the failure to reply violates Article 255 EC, the European Parliament Decision of 10 July 1997 on access to its documents as well as Articles 171 and 172 of the Parliament's Rules of Procedure.

The legal representative contested the European Parliament's legal argument that the Ombudsman has no mandate to deal with the complaint. He pointed out in particular that Articles 22 and 25 of the Rules of Procedure of the European Parliament refer to administrative functions of, respectively, the Bureau and the Quaestors. Furthermore, according to the legal representative, the European Parliament must, on request, recognise a former MEP as such and furnish him with an identity card and the rights attached thereto. This ensures that there can be no difference of treatment between former MEPs. Withdrawal of an entry permit from a former MEP is an administrative act, which the Ombudsman can supervise.

As regards the events of 5 October 2000, the legal representative argued that neither complainant had committed any abuse that morning and that the order for expulsion was therefore disproportionate and an abuse of power.



The legal representative also observed that the competent organ to decide on cases of abuse by a former MEP is the Presidency, acting on a proposal from the Quaestors, after consulting the Bureau. The Bureau had no competence to decide the matter itself. Furthermore, there were discrepancies in the dates, since the Bureau had apparently made a decision on 14 July 1997, which took account of a meeting of the Quaestors of 16 July 1997 and of allegations made on 17 July 1997.

The legal representative also repeated that the decision had not been communicated to the complainant within a reasonable time and that he had not been heard. As regards the reasoning of the Bureau's decision, it was vague, uncertain and imprecise.

The legal representative concluded that the case should be dealt with through a friendly solution under Article 3 (5) of the Statute of the Ombudsman, leading to restoration of the former MEP's rights and to an apology from the Presidency to the complainants.

THE DECISION

1 The Ombudsman's competence to deal with the complaint

1.1 The European Parliament disputes the competence of the Ombudsman to deal with the complaint, insofar as the complaint contests the decision of the Bureau to withdraw the entry permit of a former MEP. According to Parliament, former MEPs have no right to enjoy the facilities that it accords to them in the exercise of its power of internal organisation. From a legal perspective, the decision to withdraw a privilege from a former MEP and, in particular, the decision as to what constitutes an abuse of privilege is a political activity, dealt with by a political body according to political criteria: the Ombudsman therefore has no competence in the matter.

1.2 According to the Court of Justice, the power of internal organisation authorises the institutions to take measures to ensure their internal operation, in conformity with the interests of good administration (2). The Ombudsman therefore considers that he is competent to deal with a complaint which concerns possible maladministration by the European Parliament in the exercise of its power of internal organisation.

1.3 The Ombudsman notes that the power of internal organisation involves extensive discretionary powers and recalls that he does not question discretionary administrative decisions, provided that the institution has acted within the limits of its legal authority.

2 The decision to withdraw the entry permit of a former MEP

2.1. According to the complainants, the Bureau's decision to withdraw the entry permit of a former MEP is null and void. They argue that the decision lacks any legal basis; was neither signed nor notified to the complainant; and was not made by the competent organ of Parliament. They claim that the former MEP's rights should be restored.

2.2 According to Parliament, former MEPs have no right to enjoy the facilities that Parliament accords to them. The Bureau cannot be assimilated to an administrative body applying rules that create rights and obligations. Its decision to withdraw a former MEP's entry permit does not produce legal effects which are binding on and capable of affecting the interests of the former



MEP by bringing about a distinct change in his legal position.

2.3 The Ombudsman notes that the role of MEPs as democratically elected representatives of the peoples of the States is enshrined in the EC Treaty and in Article 39 of the Charter of Fundamental Rights of the European Union. In contrast, the status of former MEPs is recognised only in Parliament's measures of internal organisation. Those measures foresee the possibility of withdrawal of an entry permit in the case of abuse.

2.4 The Ombudsman is not aware of any rule or principle which could prevent Parliament from using normal administrative procedures to apply the measures which it has adopted concerning entry permits for former MEPs. Normal administrative procedures include the requirements considered in the next section of this decision. However, they do not necessarily involve all the formalities which attach to a decision concerning legal rights and obligations.

2.5 The Ombudsman's inquiry has revealed no evidence that could put in question Parliament's legal authority, as an Institution, to withdraw the former MEP's entry permit. The Ombudsman does not consider it necessary or appropriate, in this case, to inquire into the allocation of competences between different organs of Parliament, or the precise dates on which those organs dealt with the case.

2.6 The Ombudsman's inquiry has therefore revealed no maladministration in relation to this aspect of the case.

3 The right to be heard and the duty to give reasons

3.1 The complainants allege that the Bureau's decision to withdraw the former MEP's entry permit was taken without respecting the rights of the defence, since he had no opportunity to make oral or written observations, nor was he notified of the decision or the reasons for it.

3.2 According to Parliament, the Community Courts apply the right to be heard only in cases involving a legal relationship between a natural or legal person and the institution concerned. The present case merely concerns facilities which the former MEP wishes to enjoy and no challenge to the Bureau's decision was possible under Article 230 EC.

3.3 Again according to Parliament, the duty to give reasons exists only in cases where the decision concerned could be challenged in Court. The decision of the Bureau in this case could not have been so challenged and the Bureau therefore had no obligation to give reasons. In any event, the decision of the Bureau was adequately reasoned and the text of the decision was notified to the complainants on 5 October 2000.

3.4 Parliament also acknowledged that if the Bureau were to adopt a similar decision today, it would be obliged, at least politically, to take account of the right to good administration in Article 41 of the Charter of Fundamental Rights of the European Union. However, Parliament considers that the drafters of the Charter did not limit themselves to a codification of existing rights and that it cannot be criticised for failure to comply in 1997 with a provision which was drafted and proclaimed only in the year 2000.



3.5 Parliament's argument therefore seems to be that the Charter of Fundamental Rights could be a purely political instrument, in which case citizens would have no right to be heard before an adverse decision, or to know the reasons for such a decision, unless they also have the right to challenge the decision in Court.

3.6 In the Ombudsman's view, Parliament's argument is wrong in law.

3.7 As regards the right to a hearing, the Court of Justice has stated that *"In accordance with a general principle of good administration, an administration which has to take decisions, even legally, which cause serious detriment to the person concerned, must allow the latter to make known their point of view unless there is a serious reason for not doing so."* (3) Furthermore, the case law of the European Court of Human Rights on Article 6 of the Convention considers that a fair hearing during an administrative procedure is more important, not less important, in cases where the decision is not subject to judicial review.

3.8 As regards the duty to give reasons, it is true that one of the purposes of this obligation is to enable the Community Courts to review the legality of the decision. This does not, however, justify the conclusion that the duty to give reasons exists only when judicial review is possible. The case law of the Courts also mentions another purpose served by the duty to give reasons, which is *"to make the persons concerned aware of the reasons for the measure."* (4)

3.9 The Ombudsman's view, therefore, is that every citizen has the right to know the reasons for an administrative decision which adversely affects his or her interests and to be heard before such a decision is made. Before taking away the former MEP's privileges, Parliament should therefore have told him what he had done wrong and given him the opportunity to put his side of the case. It should also have communicated its reasoned decision to him promptly. Its failure to do so was an instance of maladministration.

4 The complainants' other claims and allegations

4.1 In observations on Parliament's opinion, the complainants' legal representative argued that neither complainant had committed any abuse on the morning of 5 October 2000 and that the order for expulsion was therefore disproportionate and an abuse of power. He claimed that the Presidency should apologise to the complainants. The original complaint claimed that the persons responsible for the incident should be subject to exemplary sanctions in order to prevent such actions in future.

4.2 The evidence available to the Ombudsman is that neither complainant was expelled from the premises of the Parliament on 5 October 2000. Nor do there appear to be any grounds to call in question the conduct of members of the security service, or of the services of the Presidency, on that day.

4.3 In observations on Parliament's opinion, the complainants' legal representative complained that he had received no reply from the European Parliament to his request that the complete file of material and documents concerning the adoption of the contested decisions should be communicated to him.



4.4 The Ombudsman recalls that failure to reply to correspondence could be an instance of maladministration. However, the Ombudsman does not consider it necessary or appropriate to examine the complainants' new allegation in the framework of his inquiry into the present complaint. A new complaint could be lodged if necessary.

4.5 In observations on Parliament's opinion, the complainants' legal representative concluded that the case should be dealt with through a friendly solution under Article 3 (5) of the Statute of the Ombudsman, leading to restoration of the former MEP's rights.

4.6 Although the Ombudsman has made a finding of maladministration in paragraph 3.9 above, his inquiry has revealed no evidence that could put in question Parliament's legal authority, as an Institution, to withdraw the former MEP's entry permit. The finding of maladministration does not, therefore, provide a basis to seek a friendly solution that could satisfy the complaint in accordance with Article 3 (5) of the Statute of the Ombudsman.

5 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark:

Every citizen has the right to know the reasons for an administrative decision which adversely affects his or her interests and to be heard before such a decision is made. Before taking away the former MEP's privileges, Parliament should therefore have told him what he had done wrong and given him the opportunity to put his side of the case. It should also have communicated its reasoned decision to him promptly. Its failure to do so was an instance of maladministration.

For the reasons given in paragraph 4.6 of the decision, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) Case 60/81 *IBM v Commission* 1981 ECR 2639 Para 9.

(2) Case C-58/94, *Netherlands v Council*, [1996] ECR I-2169, paragraph 37.

(3) Joined Cases 33 and 75/79, *R. Kuhner v Commission* 1980 ECR 1677 para. 20. See also Case 17/74 *Transocean Marine Paint* [1974] ECR 1063 at 1081: "a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known."

(4) See for example *G. R. Amylum v Council (Isoglucose)* [1982] ECR 3107, para 19.

