

## **Decision of the European Ombudsman on complaint 1462/2001/ME against the European Parliament**

Decision

**Case 1462/2001/ME - Opened on 15/11/2001 - Decision on 31/10/2002**

Strasbourg, 31 October 2002

Dear Mr E.,

On 9 October 2001, you made a complaint to the European Ombudsman concerning your reinstatement in the Danish Translation Division of the European Parliament. After a request from my secretariat, you sent further information on 30 October 2001.

On 15 November 2001, I forwarded the complaint to the President of the European Parliament. Following two reminder letters, the Parliament sent its opinion on 3 April 2002. I forwarded it to you with an invitation to make observations, which you sent on 25 April 2002. On 4 June 2002, I asked the Parliament for further information. Following a reminder letter, the Parliament sent its opinion on 1 October 2002. I forwarded it to you with an invitation to make observations, which you sent on 15 October 2002.

In addition, several telephone conversations took place between you and my secretariat and you sent a further letter on 21 May 2002.

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

### **THE COMPLAINT**

The complainant lodged a complaint with the European Ombudsman in October 2001. The complainant was an official working in the Danish Translation Division of the European Parliament. He had been on unpaid leave until 31 July 1996 and stated that he had still not been reinstated by the Parliament.

The complainant had visited the Parliament and sent it letters to inquire about the situation but had not received any replies. The Secretary General of the Parliament replied only once, on 13 November 2000, stating that no possibility for reinstatement corresponding to the complainant's profile had been identified. The complainant had identified at least three posts published in 1999 and 2000 that could have been offered to him.



In summary, the complainant firstly alleged that he had not been reinstated after his unpaid leave expired on 31 July 1996 despite the fact that Article 40(4)(d) of the Staff Regulations provides that "on expiry of his leave an official must be reinstated in the first post corresponding to his grade which falls vacant in his category or service, provided that he satisfies the requirements for that post". Secondly, he alleged that the Parliament had not replied to several of his letters.

The complainant claimed to be reinstated and to obtain compensation for loss of income and pension rights since September 1998.

## **THE INQUIRY**

### **The Parliament's opinion**

In its opinion, the Parliament stated that the complainant became eligible for reinstatement as a translator in the Danish Translation Division as of 1 August 1996. Since then, there had only been one post in which the complainant could have been reinstated, post No 403 (vacancy notice No 8408), published from 25 May to 8 June 1998. However, this post was not formally offered to the complainant since, in accordance with the administrative policy at the time, posts were not offered to officials eligible for reinstatement unless they had given a clear indication of their interest. Also, when the complainant visited the Danish Translation Division in 1998, he informed the Head of Division that he had no plans to return to Luxembourg in the near future.

The Parliament stated that it had followed the matter since the complainant made his first request to be reinstated in 1999. Since that date, due to the decision of the Bureau of the Parliament to place vacant posts in a reserve for the forthcoming enlargement, no vacant posts corresponding to his profile had become available.

As regards the complainant's letter of 5 March 2000, the Parliament put forward that it had several telephone conversations with the complainant following receipt of that letter. Further, on 13 November 2000, the Secretary General of the Parliament wrote to the complainant informing him that, for the time being, there was no possibility of reinstating him. The Parliament was at present actively re-examining the situation.

### **The complainant's observations**

In his observations, the complainant put forward the following.

He had the right to be reinstated in the Parliament, and not only in the Danish Translation Division. He put forward that translators were used in other Divisions as well. After the expiry of his unpaid leave, the complainant received a letter from the Parliament dated 18 October 1996 leaving no doubt that he would be automatically contacted when a post became vacant. A copy of Article 40(4)(d) of the Staff Regulations was attached to the letter. At no point did the Parliament inform the complainant of its administrative policy diverging from the Staff Regulations and the complainant questioned its legality.

The complainant stated that he had not visited the Parliament in 1998. The conversation with



the Head of Division took place in October 1996. The Head of Division had then informed the complainant that only translators with qualifications in Polish, Czech or Hungarian would be taken into consideration, which the complainant, under the circumstances, accepted.

The complainant was of the view that there had indeed been posts that could have been offered to him. During his visit to the Parliament in July 2001, he identified three posts, vacancy notices No 8478, 8741 and 8425.

It was not true that the Parliament had had several telephone conversations with the complainant following his letter of 5 March 2000. He underlined that he had never received a telephone call from the Parliament. The complainant was appalled that the Parliament could not simply admit that it had made a mistake in his case and correct it, instead of manipulating dates and years, and by virtually lying. The complainant further pointed out that the reply of 13 November 2000 was sent following the complainant's letter of 22 July 2000, in which he had complained about the Parliament's failure to reply.

#### **Further inquiries**

After careful consideration of the Parliament's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked the Parliament to provide him with the following information:

(i) A list of all posts (including the requirements) corresponding to the complainant's grade which were vacant in his category or service in the period following the expiry of his leave on personal grounds on 31 July 1996.

(ii) Further information and documentation on the justification and formulation of the administrative policy applied by the Parliament, according to which officials eligible for reinstatement, were not offered posts unless they had given a clear indication of their interest.

(iii) Further information and documentation on the justification and formulation of the Bureau's decision to place vacant posts in a reserve for the forthcoming enlargement.

The Ombudsman also drew the Parliament's attention to the case law of the Court of First Instance (especially cases T-48/90, *Giordani v. Commission*, [1993] ECR II-721, T-276/94, *Buick v. Commission*, [1995] ECR-SC IA-221; II-667 and T-205/96, *Bieber v. Parliament*, [1998] ECR-SC IA-231; II-723) relating to reinstatements.

#### **The Parliament's further opinion**

In its further opinion, the Parliament firstly informed the Ombudsman that the complainant had been offered a post in the Danish Translation Division as from 1 October 2002 and that the complainant had accepted the offer.

(i) The Parliament submitted a list of eight posts that had become vacant from May 1998 to May 2002 for Danish translators. For post No 403, the post referred to by the Parliament in its first opinion, the Parliament stated that the complainant had expressed that he did not wish to be reinstated for the time being. For posts No 1378, 3009, 1439 (the latter published twice), the Parliament put forward that the complainant did not fit into the profile required for these posts,



notably he lacked the necessary experience in relation to working with reports or minutes, or he did not possess a degree in law or equivalent professional experience. As regards post No VII/LA/425, this post was transferred from the Danish to the French Translation Division between 22 September 1999 to 31 December 2001. From 1 January 2002, the post was transferred to the SILD Division. Concerning posts No 419, 430 and 2306, they were reserved for the forthcoming enlargement.

(ii) The Parliament stated that its administrative policy, according to which, officials eligible for reinstatement were not offered posts unless they had given a clear indication of their interest, was based on its interpretation of the *Giry* (1) judgement from 1977. The Parliament understood this case to mean that there was no obligation on the administration to reinstate the official after a period of unpaid leave on the first available post, when the actions of the official put into doubt his or her intention to return to the institution. The purpose of this policy was to avoid undesired reinstatements, which are often followed by new requests of unpaid leave for a longer period of time. The Parliament had changed its policy and contacts systematically all officials for whom the unpaid leave expires following the *Bieber* (2) judgement from 2000.

(iii) In view of the forthcoming enlargement, in 1997, the Parliament created a working group that would deal with its present and future linguistic problems. A final report from the working group was adopted in April 1999. The report foresees the progressive reduction of posts in the linguistic Divisions to around 35 translators in order to make room for the new languages. In September 2001, the Bureau adopted a further report stating that 200 posts could be created over a period of ten years, by the non-replacement of posts that become vacant and by means of restructuring.

#### **The complainant's observations on the further opinion**

The complainant stated that there are many indications in this case that the Parliament does not find its own arguments convincing but only tries to conceal the breach of the Staff Regulations. He put forward that it was simply not true that he had stated in 1998 that he was not interested in being reinstated. As regards the vacancies, he stated that it was clear that he could not fill post No 1439 for which a lawyer was sought. However, all posts in the Plenary Acts Division were filled by translators from the Danish Translation Division having no previous experience of working with minutes. The complainant also questioned the Parliament's *Giry* practice.

## **THE DECISION**

### **1 The reinstatement of the complainant**

1.1 The complainant, a Parliament official working in the Danish Translation Division, alleged that he had not been reinstated after his unpaid leave expired on 31 July 1996 despite the fact that Article 40(4)(d) of the Staff Regulations provides that "on expiry of his leave an official must be reinstated in the first post corresponding to his grade which falls vacant in his category or service, provided that he satisfies the requirements for that post".

1.2 The Parliament stated at first that there had only been one post in which the complainant could have been reinstated since 1 August 1996. This post was not offered to him since, in accordance with the administrative policy at the time, posts were not offered to officials eligible



for reinstatement unless they had given a clear indication of their interest. When requested by the Ombudsman, the Parliament submitted a list of all the posts that had become vacant since the complainant's unpaid leave expired and explained why none of them had been offered to the complainant. The Parliament stated that its administrative policy was based on the *Giry* judgement from 1977 and that this policy had changed following the *Bieber* judgement in 2000. The Parliament further explained its policy on placing vacant posts in a reserve for the forthcoming enlargement.

1.3 The Ombudsman notes that Article 40(4)(d) of the Staff Regulations foresees that on the expiry of his leave an official must be reinstated in the first post corresponding to his grade which falls vacant in his category or service, provided that he satisfies the requirements for that post. According to the case law of the Court of First Instance, the administration shall verify systematically, through a detailed examination, the abilities of the official awaiting reinstatement in relation to each vacant post corresponding to his grade (3) . The procedure for verifying the ability of officials awaiting reinstatement must be effective and must take its course in such a way that the institutions can prove that it has been observed (4) .

1.4 At the Ombudsman's request, the Parliament submitted a list of eight posts (of which one had been published twice) that had become vacant from May 1998 to May 2002 for Danish translators. The Ombudsman notes that the Parliament has not submitted any proof that it in fact did examine the complainant's abilities in relation to the requirements of the posts mentioned and thereby ensured that reasons were stated for the refusal to reinstate him in one of those posts. Such proof could have consisted of notes in the complainant's personal file relating to such examinations.

1.5 In the absence of proof of a systematic examination of the complainant's abilities in relation to each post to which he could have been reinstated, the Parliament has not sufficiently shown that it observed the procedure for examining the abilities of the complainant as an official awaiting reinstatement, the principles of which are determined by Article 40(4)(d) of the Staff Regulations. This constitutes maladministration. The Ombudsman will therefore make a critical remark to the Parliament.

1.6 As far as the Parliament's administrative policy based on the *Giry* judgement is concerned, the Ombudsman notes that this judgement was delivered in 1977 and shows a different set of facts compared to the present complaint, as the official concerned had persisted that his service with the Commission be terminated, which cast doubt on the seriousness of his intention to be reinstated. It is also important to point out that the Court of First Instance already in 1993, in the *Giordani* judgement, clearly stated that reinstatement does not depend on any additional condition such as an indication of interest on the part of the official concerned or whether he works or not during his leave (5) . The Parliament's argumentation based on its *Giry* practice has therefore no bearing in this case.

## **2 The reply to the complainant's letters**

2.1 The complainant alleged that the Parliament had not replied to several of his letters.

2.2 The Parliament stated that, following the complainant's letter of 5 March 2000, it had several



telephone conversations with him. Further, on 13 November 2000, the Secretary General of the Parliament wrote to the complainant informing him that, for the time being, there was no possibility of reinstating him.

2.3 In view of the fact that the complainant's letters related to his reinstatement, and since the complainant has now been reinstated, there are no grounds for the Ombudsman to inquire further into this aspect of the case.

### **3 The complainant's claims**

3.1 The complainant claimed to be reinstated and to obtain compensation for loss of income and pension rights since September 1998.

3.2 The Parliament informed the Ombudsman that the complainant had been reinstated in the Danish Translation Division as from 1 October 2002 and that the complainant had accepted the offer.

3.3 The Ombudsman firstly notes that the complainant, in telephone conversations with the Ombudsman's secretariat, confirmed that he had been reinstated and started to work on 1 October 2002. The Ombudsman therefore finds that, as far as this part of the complainant's claim is concerned, the Parliament has taken steps to settle the claim. Regarding the claim to obtain compensation for loss of income and pension rights, the Ombudsman considers that it is for the complainant to address the Parliament directly, should he wish to pursue this part of his claim.

### **4 Conclusion**

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

In the absence of proof of a systematic examination of the complainant's abilities in relation to each post to which he could have been reinstated, the Parliament has not sufficiently shown that it observed the procedure for examining the abilities of the complainant as an official awaiting reinstatement, the principles of which are determined by Article 40(4)(d) of the Staff Regulations. This constitutes maladministration.

Given that this aspect of the case concerns procedures relating to specific events in the past, and based on the conclusions set out in part 3 of the decision, there is no need to pursue the matter further. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) Joined cases 126/75, 34 and 92/76, *Giry v. Commission*, [1997] ECR 1937.



(2) Case T-205/96, *Bieber v. Parliament* , [1998] ECR-SC IA-231; II-723.

(3) Cases T-48/90, *Giordani v. Commission* , [1993] ECR II-721, paragraph 51 and T-276/94, *Buick v. Commission* , [1995] ECR-SC, IA-221; II-667, paragraph 37.

(4) Cases T-48/90, loc.cit., paragraph 52 and T-276/94, loc.cit., paragraph 34.

(5) Case T-48/90, loc.cit., paragraph 50.