

## **Decision of the European Ombudsman on complaint 262/2006/OV against the European Commission**

Decision

**Case 262/2006/OV - Opened on 07/02/2006 - Decision on 03/07/2008**

Strasbourg, 3 July 2008

Dear Mr V.,

On 23 January 2006, you submitted a complaint to the European Ombudsman against the European Commission concerning alleged discrimination created by the rule setting out a maximum nine-year period for the secondment of teachers to the European Schools.

On 7 February 2006, I forwarded the complaint to the President of the Commission. The Commission sent a first version of its opinion on 26 April 2006, and an amended version on 16 May 2006, together with the translation into Dutch. I forwarded it to you with an invitation to make observations, which you sent on 8 June 2006.

On 3 September 2007, you had a telephone conversation with a member of my Legal Service concerning your complaint.

On 19 September 2007, I wrote to the Commission with a request for a supplementary opinion concerning your complaint. I informed you in a letter of the same day.

The Commission sent its additional opinion in English on 19 November 2007, as well as a translation in Dutch on 28 November 2007. I forwarded it to you with an invitation to submit observations, which you sent on 15 December 2007. On 22 January 2008, you sent additional information.

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

I apologise for the length of time it has taken to deal with your case.

### **THE COMPLAINT**

According to the complainant, the relevant facts are as follows:



The complainant was a music teacher on secondment to the European School in Mol (Belgium). On 12 September 2005, the complainant made a complaint to the European Ombudsman against the European Commission (registered under reference 2937/2005/OV) concerning the duration of teachers' contracts at the European School. In his reply of 29 September 2005, the Ombudsman informed the complainant that he could not deal with the complaint on the basis of Article 2(4) of the Ombudsman's Statute, as the complainant had not made prior administrative approaches to the Commission. The complainant was advised to write to the Commission.

On 18 October 2005, the complainant wrote to the Commission alleging that there was discrimination between different categories of teachers at the European School. According to the complainant, there are three categories of teachers: (1) teachers with a contract dating from before 1989 who have a permanent status and who can work at one of the European Schools for the complete period of their employment; (2) teachers with a contract with the national authorities who are on secondment to the European Schools and who, after nine years of secondment, return to their job in their own Member State (for instance, German, French and Belgian teachers); and (3) teachers with a contract with the national authorities, who, after the nine years of secondment, are dismissed and cannot return to the job they occupied before the secondment (for instance, Dutch and British teachers).

In his letter, the complainant pointed out that, since he belonged to the third category, he would be dismissed in September 2007, although the post would continue to exist. The complainant stated that such an employment contract was contrary to EU law, as a contract should become permanent after four years. As the maximum period of nine years of secondment is foreseen in the Regulations for Members of the Seconded Staff of the European Schools (the "Regulations"), the Commission was co-responsible. On the basis of the above, the complainant claimed that the Commission should put an end to the alleged discrimination by abolishing the nine-year limit.

On 9 January 2006, the Commission replied to the complainant and pointed out that the situation of teachers on secondment to the European Schools is governed by the Regulations. With regard to the period of secondment, the Commission stated that Article 29 of the Regulations provides that the total period of secondment may not exceed nine years. The Commission further stated that the teacher's Member State of origin has to take the necessary measures to guarantee that the contracts which they conclude with the teachers who are offered a post in the European Schools are legally in conformity with Community labour legislation. The Commission mentioned that teachers with contracts dating from before 1989 could have their secondment renewed without being subject to a maximum duration and that those teachers have been allowed to maintain these rights.

On 23 January 2006, the complainant made the present complaint to the Ombudsman. In his complaint, he pointed out that, in its reply, the Commission acknowledged the difference between teachers as regards the end of their secondment. The complainant stated that the Commission held the Dutch authorities responsible for his future dismissal. The complainant however pointed out that it is the nine-year rule that is contained in the Regulations which obliges the Dutch authorities to dismiss him. In this regard, he added that the Regulations were



approved by the Board of Governors, including the Commission. The Commission therefore bears responsibility for the complainant's future dismissal.

In his complaint, the complainant therefore made the following allegation and claim:

The Commission, in its letter of 9 January 2006, did not react to the complainant's position that, after four years of service, contracts of teachers should become permanent.

The Commission should put an end to the discrimination by abolishing the maximum nine-year period of secondment of teachers to the European Schools, foreseen in the Regulations.

In his letter of 7 February 2006 to the Commission asking for an opinion on the complaint, the Ombudsman noted that the provision which the complainant wished to see abolished had not been adopted by the Commission, but by the Management Board of the European Schools. He therefore reformulated the complainant's claim as follows:

The Commission should use its influence in order to put an end to the discrimination by abolishing the maximum nine-year period of secondment of teachers to the European Schools, foreseen in the Regulations.

## THE INQUIRY

### The Commission's opinion

In its opinion, the Commission made, in summary, the following comments:

The terms of employment for seconded teachers are laid down in the Regulations applicable from 1 September 1996 onwards. The complainant's contract as a seconded teacher from the Netherlands was about to expire, since he was close to the maximum nine-year period laid down in the Regulations.

The length of secondments is dealt with in Title III, Chapter II, Article 29 of the Regulations. The reasoning behind this rule is that the Board of Governors of the European Schools believes that a certain turnover of teachers is beneficial for pedagogical purposes, as newly seconded teachers bring recent experience from their home countries and therefore keep the European Schools in tune with educational developments in the Member States. The Commission shared the Board's view.

Seconded teachers are paid by the Member State which has seconded them and they retain their promotion and retirement rights under their national rules (Articles 12(4)(a) and 25(1) of the Convention defining the Statute of the European Schools ("the Convention").

The Commission also referred to Article 3(3)(b) of the Convention, which states that " *[a]ny proposal to modify the official status of the teachers shall require a unanimous vote of the Board of Governors* ". Therefore, even if it were to agree with the complainant's view - quod non -, the Commission would not be in a position to guarantee any change in the Regulations.



The Commission concluded that it would not propose to the Board of Governors that they should change the rule concerning seconded teachers, as it considered that the rule had clear pedagogical benefits for the European School system.

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

The complainant made, in summary, the following comments:

The complainant attached to his observations a note from the Staff Committee of the European Schools of May 2003 which addressed the issue of the "nine-year rule". According to the complainant, this note, which had been sent to all relevant bodies, including the Commission's representative in the Board of Governors, gave an overview of how the nine-year rule had been established and of the criticisms made against it.

The complainant stated that the Commission's position that teachers on secondment to the European Schools continue to be paid by their Member States of origin and maintain their promotion and retirement rights under the national rules is not correct. The complainant stated that he, as well as other Dutch teachers on secondment, would be dismissed after nine years of secondment and that he would have to turn to the Dutch social security system in order to obtain an allowance. The complainant stressed that he would himself have to try to find a new job. He stated that this was also the case for British and Scandinavian teachers on secondment to the European School. According to the complainant, there was no question of promotion and of maintaining retirement rights.

On a personal level, the complainant stated that the dismissal would affect him and his family deeply as his son was attending the European School free of charge. When the complainant would have to terminate his employment as a seconded teacher and have to live on social security allowances, he would have to pay school tuition fees of EUR 4800 per year. In view of these considerations, his son would have to change schools. The complainant also expressed the view that it would be very hard for him to find another job as a music teacher after his dismissal, given his age and current salary scale.

The complainant stated that the Commission's comment that a certain turnover of teachers is beneficial for pedagogical purposes showed that the Commission was not aware of the real situation. The complainant stated that there were fixed curricula in the European Schools and that the teachers adopt the Schools' teaching method and teaching content, so there is little space for introducing one's national experience. Considering the time necessary to integrate upon arrival and the time preceding the return to the Member State of origin, a teacher could be fully efficient for only five to six years. The complainant believed that, contrary to the view expressed by the Commission, the nine-year rule led to less involvement in the school project. He added that his view was shared by a number of his colleagues.

In conclusion, the complainant stated that the nine-year rule led to unreasonable and substantial differences between teachers of the different Member States, some of whom maintained their job or returned to their Member State and continued their job there whereas others were dismissed.



With regard to his first allegation, the complainant pointed out that the Commission had not commented on his question as to whether contracts should become permanent after four years. He stated that the Commission should reply to this issue.

#### **Further inquiries**

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary.

On 19 September 2007, the Ombudsman therefore wrote to the Commission. The Ombudsman pointed out that, after a detailed analysis of the Commission's opinion, it appeared that the Commission, whilst making certain comments on the situation of teachers seconded to the European Schools, had not adequately addressed the complainant's allegation. It further appeared that the Commission had not addressed the issue of discrimination that was raised in the complainant's claim. The Ombudsman therefore asked the Commission to provide him with a supplementary opinion on the complainant's allegation and claim.

#### **The Commission's additional opinion**

In its additional opinion, the Commission stated that it could not agree with the suggestion that it had not reacted to the complainant's argument that, after four years of service, contracts with teachers should become permanent. The Commission pointed out that this issue had already been dealt with in the Commission's direct reply to the complainant dated 9 January 2006.

The Commission pointed out that there is no direct contract between the European Schools and the seconded teachers, who, during their secondment, are covered by the Regulations. These teachers, while seconded, remain employed by their national employer and the national rules apply between the two parties. Neither the Commission nor the European Schools are responsible for changing the national rules concerning the employment of teachers in their respective countries.

As regards the complainant's statement that there is a different legal status for teachers in different countries after their secondment from the European Schools, the Commission observed that this was true. It was also true that the conditions for teachers' employment vary among the Member States before they are seconded to the European Schools.

The Commission recalled that the length of secondments is dealt with in Title III, Chapter II, Article 29 of the Regulations. These Regulations were adopted by all the Member States and the Commission, which are members of the Board of Governors of the European Schools.

The Commission emphasised that the previous rules (in force until 1 September 1996) applicable to teachers seconded to the European Schools did not provide for any limit to the length of secondments. The purpose of the Regulations is precisely to change that situation. Indeed, the absence of a time-limit in the old rules led to a difference of treatment among teachers from different Member States, with some Member States having the opportunity to obtain an indefinite secondment while most Member States wanted to benefit from the added experience of their teachers who had been seconded to the European Schools. However, the main argument for the change in question was that the turn-over of teachers is beneficial for



one fundamental aim of the European Schools, namely, to remain compatible with the national education systems of all Member States. This is also a way to offer the children of staff of the European institutions an education which benefits from the latest improvements to teaching methods made in all countries of the European Union.

The Commission is in this regard not of the opinion that the abolition of the maximum nine-year period of secondment would be pedagogically beneficial to the more than 20 000 pupils in the European Schools. The Commission does not therefore consider it appropriate to ask for a change in the current situation regarding the period of secondment of teachers to the European Schools. The Commission does not intend to propose to the Board of Governors to change the rule in question.

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

In his additional observations, the complainant made, in summary, the following comments:

The complainant was still of the opinion that the Commission had not replied to his question whether there exists European legislation which prescribes that, after three or four years of service, contracts of teachers should become permanent. The complainant pointed out that his question concerned the legal position in general.

The complainant further stated that, in its additional opinion, the Commission had approached his complaint only from a very general perspective. The complainant also pointed out that there is a fundamental difference between returning to the same job after the secondment or being confronted with dismissal.

The Commission stated that the Regulations were designed to avoid a difference of treatment between teachers from different Member States. According to the complainant however, the Regulations created another more serious unequal treatment.

The complainant further pointed out that the main reason for the introduction of the Regulations was of a financial character, since teachers were entitled to an indemnity for dismissal, which was calculated on the basis of the number of years they had worked at the School, and which could lead to extremely high amounts. The complainant further stated that the nine-year rule had been introduced without due reflection and in a chaotic manner, that not all the Member States were present at the vote and that there was a very small majority in favour of that measure.

The complainant stated that the pedagogical reasons invoked by the Commission showed that the Commission appeared to possess no substantial knowledge concerning the education at the European Schools. The complainant stated that the Commission showed ignorance concerning the inequality among teachers and the pedagogical reality.

The complainant stated that several court procedures had been initiated in the Netherlands against the nine-year rule, but that the judges and authorities referred to the European nine-year rule, whereas the Commission constantly referred to the national authorities. In the end, it was the dismissed teachers who were the victims of this situation.



The complainant observed that, at the time of writing, he was looking for a job. The Commission's earlier statement that, after secondment, the teachers' promotion and pension rights are guaranteed was therefore incorrect.

The complainant concluded that the Commission should assume its responsibilities and put an end to the discrimination, by (1) abolishing the nine-year rule; or (2) ensuring that teachers who are dismissed receive financial compensation which guarantees a salary and pension until retiring age; or (3) putting the responsibilities of nominations on the schools themselves; or (4) linking the nomination of teachers to the national framework, without any restrictive European rule.

On 22 January 2008, the complainant sent further documents to support his complaint, namely, a judgment in which the London Employment Tribunal ruled in favour of the appointment as a permanent employee (of the United Kingdom Ministry of Education) of a teacher of the European School in Culham. The complainant stated that the judgment made clear that his concerns and arguments against the nine-year rule were shared by others. The complainant also attached a question from the United Kingdom Delegation addressed to the Secretary-General of the European Schools (which was linked to the above court case) and the Secretary-General's proposal to the Board of Governors.

## THE DECISION

### **1 The alleged lack of reaction from the Commission on the point raised by the complainant**

1.1 On 18 October 2005, the complainant, a music teacher on secondment to the European School in Mol (Belgium), wrote to the European Commission alleging that there was discrimination between different categories of teachers at the European School. According to the complainant, there are three categories of teachers: (1) teachers with a contract dating from before 1989 who have a permanent status; (2) teachers with a contract with the national authorities who are on secondment to the European Schools and who, after nine years, return to their job in the Member State (German, French and Belgian teachers); and (3) teachers with a contract with the national authorities, who, after nine years of secondment, are dismissed and cannot claim a job (Dutch and British teachers). Since he belonged to the third category, the complainant pointed out that he would be dismissed in September 2007, although the post would continue to exist. The complainant stated that, according to EU law, after four years of service, a contract should become permanent. The maximum period of nine years is provided for in the *Regulations for Members of the Seconded Staff of the European Schools* ("the Regulations"). In his complaint to the Ombudsman, the complainant alleged that the Commission, in its letter of 9 January 2006, did not react to his position that, after four years of service, contracts of teachers should become permanent.

1.2 In its opinion, the Commission referred to the terms of employment for seconded teachers and the length of the secondment which is governed by Article 29 of the Regulations. The Commission did not comment on the issue raised by the complainant that contracts should





become permanent after four years.

1.3 In his observations, the complainant pointed out that the Commission had not commented on the question he had raised. As the Commission had not adequately addressed the complainant's allegation, the Ombudsman made further inquiries and asked the Commission, by letter of 19 September 2007, to provide him with a supplementary opinion on the complainant's allegation that, in its reply of 9 January 2006, the Commission had not reacted to his position that, after four years of service, contracts of teachers should become permanent.

1.4 In its additional opinion, the Commission stated that it could not agree with the suggestion that it had not reacted to the complainant's argument that, after four years of service, contracts with teachers should become permanent. The Commission pointed out that this issue had already been dealt with in its direct reply to the complainant dated 9 January 2006.

1.5 In his additional observations, the complainant pointed out that the Commission had still not replied to this point.

1.6 The Ombudsman recalls that, in his letter opening the present inquiry, he asked the Commission to submit an opinion on the complainant's allegation that "*the Commission, in its reply of 9 January 2006, did not react to the complainant's position that, after four years of service, contracts of teachers should become permanent*". However, in its opinion the Commission failed to address this allegation. The Ombudsman therefore asked the Commission specifically to comment on this allegation. In its additional opinion, the Commission stated that it had already replied to the complainant's argument in the letter it had addressed to him on 9 January 2006. However, it emerges from this letter that the Commission did not specifically address the complainant's statement according to which contracts should become permanent after four years. In these circumstances, the Ombudsman cannot but conclude that the Commission has failed to express its views on this argument. The Ombudsman very much regrets the attitude that the Commission has displayed as regards this issue, which would appear to suggest a lack of respect both for the complainant and for the institution of the Ombudsman.

1.7 As regards the substance of the argument raised by the complainant, the Ombudsman notes that the complainant, in his letter of 18 October 2005 to the Commission, stated that "*such an employment contract [namely, the one he had] is contrary to European legislation. An employment contract should, after four years, acquire a permanent character (1)*". However, in his letter, the complainant did not provide further clarifications in this regard or indicate which European legislation would have been infringed. In his complaint to the Ombudsman, the complainant did not provide any further indications in this respect (2). The Ombudsman would like to point out that he is not aware of any provision in Community law according to which, as suggested by the complainant, contracts such as the complainant's one should become permanent after four years.

1.8 Principles of good administration require that the institutions reply as completely and as accurately as possible to correspondence (3). In the present case, it appears that, on 18





October 2005, the complainant wrote to the Commission with regard to the maximum nine-year period of secondment of teachers in the European Schools. In its reply of 9 January 2006, the Commission addressed the various points raised by the complainant in his letter, with the exception however of the complainant's argument according to which, after four years of service, contracts of teachers should become permanent. In spite of the Ombudsman's inquiry which clearly identified this allegation of the complainant and the further inquiries he conducted in this particular respect, the Commission failed to address this precise question. This constitutes an instance of maladministration. In view of his findings concerning the substance of the matter (see point 1.7 above), the Ombudsman considers that there is no point in inviting the Commission once more to comment on this argument. However, the Ombudsman will make a critical remark concerning this aspect of the case.

## **2 The claim for the abolition of the alleged discriminatory provision**

2.1 The complainant claimed that the Commission should use its influence in order to put an end to the discrimination that existed in his view by abolishing the maximum nine-year period of secondment of teachers to the European Schools, foreseen in the Regulations.

2.2 In its opinion, the Commission explained that the reasoning behind the nine-year rule is that the Board of Governors of the European Schools believes that a certain turnover of teachers is beneficial for pedagogical purposes, as newly seconded teachers bring recent experience from their home countries and therefore keep the European Schools in tune with educational developments in the Member States. The Commission noted that it shared the Board's view. It further pointed out that the seconded teachers are paid by the Member State that has seconded them and they retain their promotion and retirement rights under their national rules (Articles 12(4)(a) and 25(1) of the Convention defining the Statute of the European Schools ("the Convention"). The Commission also referred to Article 3(3)(b) of the Convention, which states that "*[a]ny proposal to modify the official status of the teachers shall require a unanimous vote of the Board of Governors*". As the Commission did not share the complainant's view, it would not propose to the Board of Governors that it should change the rule concerning seconded teachers.

2.3 In his observations, the complainant stated that the Commission's position that teachers on secondment to the European Schools continue to be paid by the Member States of origin and maintain their promotion and retirement rights under the national rules was not correct. The complainant also stated that the Commission's comment that a certain turnover of teachers is beneficial for pedagogical purposes showed that the Commission was not aware of the real situation. He submitted that there are fixed curricula in the European Schools and that the teachers adopt the Schools' teaching method and teaching content, so there is little space for introducing one's national experience. Considering the time necessary to integrate upon arrival and the time preceding the return to the Member State of origin, the complainant stated that a teacher could be fully efficient for only five to six years. The complainant believed that, contrary to the view expressed by the Commission, the nine-year rule led to less involvement by the seconded teachers in the school project.

2.4 Given that the Commission had not addressed the issue of discrimination in its opinion, on 19 September 2007, the Ombudsman asked it to provide for an additional opinion. In its



additional opinion, the Commission stated that the complainant's statement that there is a different legal status for teachers in different countries after their secondment from the European Schools was true and that it was equally true that teachers' employment conditions also vary among the Member States before their secondment to the European Schools. The Commission emphasised that the previous rules (in force until 1 September 1996) did not provide for any limit to the length of secondments and this had led to a difference of treatment among teachers from different Member States and that the purpose of the Regulations was precisely to change that situation. The Commission concluded that it did not intend to propose to the Board of Governors to change the rule in question.

2.5 In his additional observations, the complainant stated that the Regulations might have prevented one potential difference of treatment, but that they had created another, more serious and unequal treatment, as there is a fundamental difference between returning to the same job after secondment and being confronted with dismissal. The complainant pointed out that the main reason for the introduction of the Regulations was of a financial character. The complainant further stated that the nine-year rule had been introduced without due reflection and in a chaotic manner; that not all the Member States were present at the vote; and that there was a very small majority in favour of the proposal finally adopted. The complainant also observed that, at the time of writing, he was looking for a job. The Commission's earlier statement that, after secondment, the teachers' promotion and pension rights were guaranteed was therefore incorrect. The complainant concluded that the Commission should take up its responsibilities and put an end to the alleged discrimination. On 22 January 2008, the complainant sent further documents of support for his complaint, namely, a judgment in which the London Employment Tribunal had ruled in favour of the appointment as a permanent employee of a teacher of the European School in Culham. The complainant stated that the judgement made clear that his concerns and arguments against the nine-year rule were shared by others. The complainant also attached a question from the United Kingdom Delegation addressed to the Secretary-General of the European Schools (which was linked to the above court case) and the proposal that the Secretary-General had submitted to the Board of Governors as a result thereof.

2.6 The Ombudsman is very well aware of the unfortunate situation in which the complainant finds himself as a consequence of the rules, including the national rules, which are currently in force. In particular, the Ombudsman regrets that the complainant has been unemployed since his nine-year secondment to the European School came to an end.

2.7 The Ombudsman notes that the main argument invoked by the complainant in support of his claim for the abolition of the nine-year rule is that there was discrimination. It appears that, in its additional opinion, the Commission did not address the alleged discrimination in explicit terms. The Commission merely confirmed that, after their secondment to the European Schools, teachers do indeed find themselves in different situations depending on the Member States to which they return. The Ombudsman notes that, as consistently held by the Community Courts, the principle of non-discrimination requires that comparable situations should not be treated in a different manner and different situations should not be treated alike unless such treatment is objectively justified. As regards the scope of the complainant's allegation, the Ombudsman



considers that three issues need to be distinguished, that is, (i) the difference in treatment between teachers who were seconded before 1 September 1989 and other teachers; (ii) the difficulties that teachers from some Member States encounter after their secondment to the European School, due to differences in national legislation; and (iii) the nine-year rule as such.

2.8 As regards issue (i), the Ombudsman notes that, initially, there was no limit to the period of the secondment of teachers at the European Schools and that the nine-year time-limit was introduced as from 1 September 1996 when the Regulations came into force. It appears that, given the need to protect the legitimate expectations of those teachers who had been recruited under the old rules, transitional provisions (namely, Articles 81 to 85 of the Regulations) were adopted which allowed those teachers who had arrived before 1 September 1989 to continue their contracts indefinitely. Article 83 provides that "*[t]he secondment of the members of the teaching and supervisory staff referred to in Article 81(2) of these Regulations [namely, staff in post before 1 September 1996, when the Regulations entered into force] shall be renewed for four-year periods in accordance with the provisions of Article 29*

*- for an indefinite period for members of staff seconded before 1 September 1989 , unless national regulations provide otherwise*

*- for a maximum period of nine years for members of staff seconded as from 1 September 1989*  
".

2.9 The Ombudsman regrets that the Commission has not provided any specific comments on this issue. However, he notes that the difference in treatment between these two categories of teachers, that is, teachers who were seconded to the European Schools before 1 September 1989 and other teachers, is thus explained by the fact that the Regulations introduced new rules as regards the length of secondments. Thus, transitional measures had to be foreseen for the categories of teachers who were already working for the European Schools when these new rules entered into force. It would appear that there is nothing in these transitional measures which goes beyond what could be considered just and appropriate in the given circumstances. The Ombudsman therefore concludes that the complainant has not established his view that the Regulations constituted discrimination. In these conditions, the Ombudsman considers that the complainant has not established his claim that the Commission should use its influence in order to abolish the maximum nine-year period of secondment.

2.10 As regards issue (ii), the Ombudsman considers that the Commission's position is correct. The difference in treatment between the teachers from various Member States after the end of their secondment to the European Schools is indeed the consequence of differences in national legislations and practices in the Member States concerned. The difference in treatment is therefore not the result of discrimination caused by the operation of the Regulations. This is demonstrated by the fact that, in several Member States, the teachers can, after their period of secondment to the European Schools, return to the teaching position they held before their secondment to the European Schools. Unfortunately for the complainant, this appears not to be the case in the Netherlands. The Ombudsman would like to point out in this context that he has no competence over the national authorities of the Member States.



2.11 As regards issue (iii), the Ombudsman notes that, as laid down in Article 29 of the Regulations, "*[t]he total period of secondment may not be more than nine years*". The Ombudsman would first like to point out that this rule applies without distinction to teachers on secondment from all Member States and, therefore, contains no discrimination between the teachers from the different Member States. The Ombudsman would also like to point out in this context that Article 29 only concerns the duration of the secondment and that the Regulations do not govern the situation in which teachers find themselves after the period of secondment has ended. There is for instance - contrary to what the complainant argues - no rule in the Regulations that would oblige a Member State to terminate the contract of the teacher after the period of secondment. The Convention provides in Article 12(4)(a) that the teaching staff shall retain their promotion and retirement rights guaranteed by their national rules.

2.12 Although the complainant has argued that the nine-year rule constitutes discrimination, the Ombudsman notes that the arguments put forward by the complainant and the counter arguments submitted by the Commission would appear to concern not the issue of discrimination, but the merits of the nine-year rule. Together with his additional observations, the complainant has submitted a number of documents, including a recent judgment by a British tribunal concerning the situation of a British teacher who had been seconded to the European Schools and who had reached the end of the nine-year period for secondments. From the information provided by the complainant, it appears that at least some Member States appear to take the view that the nine-year rule ought to be changed or abolished. However, the Ombudsman considers that he does not need to deal with the arguments that have been raised in this context, given that they concern the appropriateness of the nine-year rule and not the question as to whether this rule constitutes discrimination.

2.13 On the basis of the above considerations, no instance of maladministration by the Commission was found.

2.14 The Ombudsman considers it useful to add that there would not appear to be any reason why the Netherlands could not, like most other Member States, adopt rules which would allow Dutch teachers, after their secondment to the European Schools, to return to their teaching jobs in the Netherlands. The fact that this is not the case at present, which appears to be at the basis of the complainant's complaint, is however a question which falls within the competence of the Dutch authorities and which can only be dealt with by them.

### **3 Conclusion**

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

Principles of good administration require that the institutions reply as completely and as accurately as possible to correspondence (4). In the present case, it appears that, on 18 October 2005, the complainant wrote to the Commission with regard to the maximum nine-year period of secondment of teachers in the European Schools. In its reply of 9 January 2006, the Commission addressed the various points raised by the complainant in his letter, with the exception however of the complainant's argument according to which, after four years of



service, contracts of teachers should become permanent. In spite of the Ombudsman's inquiry which clearly identified this allegation of the complainant and the further inquiries he conducted in this particular respect, the Commission failed to address this precise question. This constitutes an instance of maladministration.

Given that the rule referred to by the complainant does not appear to exist in Community law, it does not appear appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) In the original Dutch: "*Tevens stel ik vast dat een dergelijke arbeidsovereenkomst in strijd is met Europese Wetgeving. Een arbeidsovereenkomst moet immers na 4 jaar een permanent karakter krijgen*".

(2) The Ombudsman notes that the complainant probably refers to what is stated in a note of the European Schools' Staff Committee which he enclosed to his observations. In this note, the Staff Committee refers to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC (European Trade Union Confederation), UNICE (the Union of Industrial and Employers' Confederations of Europe) and CEEP (the European Centre of Enterprises with Public Participation). According to the Staff Committee, the Directive foresees that employees employed for a fixed period of four years or more obtain the same rights as employees who have a contract for an unlimited period. However, the Ombudsman has been unable to find such a provision in the Directive. The framework agreement only foresees that Member States, after consulting with the social partners and/or the social partners, shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships shall be deemed to be contracts or relationships of unlimited duration. No reference is made to a period of four years.

(3) See Article 12(1) of the European Code of Good Administrative Behaviour, which is available on the Ombudsman's website (<http://www.ombudsman.europa.eu/code/en/default.htm> [Link]).

(4) See footnote 3.