Decision of the European Ombudsman on complaint 1398/2006/WP against the European Parliament

Decision
Case 1398/2006/WP - **Opened on** 21/06/2006 - **Decision on** 15/11/2007

Strasbourg, 15 November 2007
Dear Mr X,

On 11 May 2006, you submitted a complaint to the European Ombudsman against the European Parliament concerning your working conditions and staff evaluation.

On 21 June 2006, I forwarded the complaint to the President of Parliament, which sent its opinion on 28 September 2006. I forwarded it to you on 5 October 2006 with an invitation to make observations, which you sent on 13 November 2006.

On 14 February 2007, you sent a further letter in which you made additional observations.

In a letter of 30 May 2007, I asked Parliament for further information in relation to your complaint. I informed you accordingly on the same day.

On 13 July 2007, Parliament sent its reply. On 24 July 2007, it forwarded an annex that was missing from this reply. I forwarded Parliament's reply and its annex to you on 26 July 2007 with an invitation to make observations, which you sent on 23 August 2007.

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

THE COMPLAINT

The complainant is a grade A official at the European Parliament. In his complaint to the European Ombudsman, he criticised his working conditions which, according to him, had had negative consequences on his staff report for the year 2004.

It appeared that conflicts in the complainant's work relationship with Parliament particularly arose from a working method the complainant had chosen in order to handle correspondence, which was not approved by his superior, the Head of Unit. The complainant reported that he used a voice recorder in order to dictate his replies on tape and that he asked a secretary to

produce transcripts of the tape records. He submitted that this was a very efficient method, which he had been using for decades. According to him, it would be a lot more time-consuming and cumbersome for him to produce his texts in writing, as his superior requested. The complainant alleged that, when his secretary refused to produce transcripts of his tape records, his superior supported her in her refusal to work, which seriously hampered his work. He also alleged that his work continued to be hampered because he was not accorded a German-speaking secretary who was willing to produce transcripts of tape records. The complainant alleged that this constituted harassment. From the documents attached to the complaint, it appeared that the complainant's superior asked the complainant to either use the voice recognition programme installed on his computer or to supply manuscripts, a request which was subsequently confirmed by the competent Director-General.

According to the complainant, the alleged maladministration in his working conditions at Parliament had negative consequences on his staff report for the year 2004. He alleged that certain statements made in this report concerning his performance were untruthful and defamatory. Furthermore, the complainant alleged that his superior lacked all professional and moral ability to evaluate others. According to him, among many other things, his superior lacked the necessary language skills to assess his performance, did not properly supervise the Unit's work and impeded the efficient completion of the complainant's tasks.

The complainant furthermore alleged that his staff report for 2004 was void for a number of procedural reasons. First, it had been drawn up half a year too late and thus half way into the next reference period. The complainant submitted that this constituted maladministration because, in case an official had to improve his performance in the next reference period, half of this period would already have passed, which meant that the assessee incurred the risk of being confronted with the same reproach in his next staff report.

Moreover, the complainant alleged that the report contained a formal error in that the distinction between his hierarchical superior and his first assessor had not been observed. According to the complainant, this distinction was required by Article 5 of the implementing provisions for the assessment procedure. He argued that, since his report had thus been signed by an official who was not competent to sign it, it was void.

In relation to his staff report, the complainant, prior to turning to the Ombudsman, submitted a complaint under Article 90(2) of the Staff Regulations to Parliament. In its reply, Parliament found that the staff evaluation procedure had been lawful. According to Article 3 of the " *General implementing provisions applicable to article 43 of the Staff Regulations and article 15 of the conditions of employment of other servants* " of 8 March 1999 ("the GIP of 1999"), it was not excluded that the assessee's superior could be the first assessor or even the final assessor, which was also logical from a certain grade onwards. Furthermore, the Bureau had made certain changes to the assessment and promotion system, which had been circulated in a communication of 25 September 2003. Point 2.2 of this communication provided that, in principle, the first assessor was always the immediate superior in grade A. Parliament added that, for the complainant's previous staff report, his superior had also been the first assessor, which the complainant had not contested. Parliament therefore rejected the complaint.

In his complaint to the Ombudsman, the complainant criticised this decision. He argued that Article 5 of the GIP of 1999 was very clear and that Parliament's remark that it did not apply to higher grades was absurd. As to the communication of 25 September 2003, he submitted that he had not received such a communication. Furthermore, the complainant argued that, in any event, it would be void because it did not have the approval of the Staff Regulations Committee. It would also be inadmissible because it would mean a "shortening of the channel of appeals".

The complainant added that Parliament's internal rules on staff evaluation provided that the assessee could ask for a consultation with his or her final assessor before the latter's verification of his or her staff report. However, the complainant pointed out that these provisions also stated that the final assessor had (only) ten working days to approve or amend the report. The complainant submitted that, in practice, this meant that the procedure was effectively not viable because, with respect to the available time, the assessee was not given the chance to apply for such a consultation. According to the complainant, this constituted a "shortening of the channel of appeals" and a denial of the right to be heard.

In summary, the complainant made the following allegations:
- His staff report for 2004 was drawn up with excessive delay;
- His staff report for 2004 contained untruthful and defamatory statements;
- It was unlawful for his superior to be appointed as his first assessor;
- The procedure that allowed assessees to apply for a consultation with the final assessor was effectively not viable;
- His work had been hampered by his superior in a way that constituted harassment; and
- His superior failed properly to carry out his tasks and fulfil his functions.

THE INQUIRY

The Ombudsman's considerations

The Ombudsman noted that the complainant did not appear to have raised his above fourth allegation under Article 90(2) of the Staff Regulations. Given that the complainant had therefore not exhausted Parliament's internal remedies, the Ombudsman rejected this allegation on the basis of Article 2(8) of the Ombudsman's Statute.

The Ombudsman noted, furthermore, that Parliament had rejected the complainant's sixth allegation, which he had raised in his Article 90(2) complaint, given that it did not concern an action that had caused a grievance. The Ombudsman considered that this view appeared to be correct on the basis of the applicable rules and that there were therefore no grounds to open an inquiry into this allegation as it was presented by the complainant. However, one aspect of this allegation appeared to be that the complainant considered his staff report for 2004 to be void because his superior allegedly lacked the necessary qualification and ability to evaluate his performance. Given that the evaluation of an official's performance constitutes an action that could cause a grievance, the Ombudsman decided to modify the complainant's sixth allegation in the following way:

(6) The complainant's staff report for 2004 was void because his superior allegedly lacked the necessary qualification and ability to evaluate his performance.

The Ombudsman asked Parliament for an opinion on allegations (1) to (3), (5) and on the modified allegation (6).

Parliament's opinion

In its opinion, Parliament pointed out, as a preliminary remark, that its internal rules on staff reports and promotion had changed during the year 2005. The GIP of 1999 had been replaced by the implementing rules of 6 July 2005 ("the GIP of 2005"). These rules had entered into force on the date of their adoption and were first applicable as regards the procedure of assessment of merit which took place in 2004 and promotions which took effect in 2005. However, the rules did not affect the stages of the procedure already completed up to the date of their adoption.

Furthermore, the " *Note to the members of the Bureau on the proposals for the improvements to Parliament's staff reports and promotion system* " (1) , dated 17 July 2003 ("the 2003 Note"), had been replaced by a decision of the Bureau of 6 July 2005 introducing a new " *Policy of promotion and career planning* " ("the 2005 decision").

Concerning the complainant's first allegation

As regards the complainant's allegation that his staff report for 2004 had been drawn up with excessive delay, Parliament pointed out that the GIP of 1999 did not establish an exact timetable for the annual assessment of merits. The 2003 Note indicated a timetable in its Annex I. According to this timetable, the assessed official should receive the draft staff report in January of the year following the relevant year of assessment. The interview should take place up to the end of February. The final assessor should sign the report by 15 March.

Parliament submitted that the complainant's draft staff report was drawn up on 22 April 2005. The interview with his first assessor had been arranged for 13 May 2005. However, on that very date, the complainant had requested "more time to consider". Thus, the interview had been rescheduled and had taken place on 23 May 2005. The report had been validated on 3 June 2005.

Parliament argued that the fact that the procedure had been three months behind schedule did not constitute an excessive delay or render the assessment invalid. First, the timetable foreseen by the internal rules was only indicative. Second, the delay had not had any consequences on the complainant's career, especially not on the course of the promotion procedure.

Concerning the complainant's second allegation

As to the complainant's allegation that his staff report contained untruthful and defamatory statements, Parliament stated that the report contained several critical remarks concerning the complainant's ability, efficiency and conduct. One remark indicated that the complainant had great difficulty working in a team with his colleagues (" *a mis beaucoup de difficulté à former équipe avec les secrétaires de rédaction* "). Another comment on his ability expressed his opposition to innovations introduced in the Unit (" *conteste malheureusement les innovations appliquées dans l'Unité* "). With regard to the assessment of his efficiency, and particularly his respect for deadlines and priorities, the complainant was criticised for slowing down progress by refusing to use computer equipment (" *élément d'obstruction par son refus de toucher à*

l'informatique ") and for lacking creativity (" *on attend encore des propositions constructives de sa part* "). Concerning conduct, several remarks criticised the complainant's reluctance to adapt his work on the basis of that of his colleagues (" *[m]anifeste peu d'empressement à l'harmonisation rédactionelle avec ses collègues* ") and to use new working tools (" *[m]et beaucoup d'opposition à sa conversion aux outils bureautiques et consultation télématique* "). Other negative comments referred to an insufficient sense of team spirit (" *participe peu à la cohésion et au dynamisme de l'unité* ") and a lack of respect for internal rules (" *[a] tendance à imposer sa propre opinion* "). The overall assessment read: " *(...) confirmé et compétent, éprouvant toutefois du mal à s'intégrer dans un système réglementaire avec contraintes hiérarchiques* ".

Parliament argued that assessors had considerable discretion when judging the work of persons on whom they had to report. According to the case-law of the Community Courts, it was not for the courts to interfere with staff assessments, except in the case of error or manifest exaggeration (for example, Case T-23/91 *Maurissen v Court of Auditors* (2)).

Parliament added that it should be borne in mind that the aim of staff reports was to provide a complete picture of the performance of the official concerned. It insisted that the assessments in the complainant's staff report reflected his professional performance and were thus not untruthful or defamatory.

Concerning the complainant's third allegation

As to the complainant's allegation that it was unlawful for his superior to be appointed as his first assessor, Parliament argued that the relevant internal rules stipulated that staff reports were drawn up and approved by two assessors. The GIP of 1999 required that the staff report was prepared by the staff member's superior in category A/LA and signed by two assessors, the first assessor being the Head of Unit or the Director of the assessed official, the final assessor being the Director-General or a Director designated by him or her.

The 2003 Note specified that, in principle, the " *first assessor is the staff member's immediate superior in category A* ". This rule elaborated on the existing GIP and did not contradict them.

Parliament explained that the complainant's Head of Unit was his immediate superior in 2004 (and remained so). Thus, his appointment as first assessor complied with the applicable internal rules. The final assessor was the Director. The principle of involving two assessors had thus not been violated. In addition, the same two assessors had, in accordance with the GIP of 1999, been signing the complainant's staff reports from 1999 to 2003. The fact that the first assessor had signed the report on 3 June 2005 and that the second assessor had signed it on 8 June 2005 did not in any way influence the regularity of the procedure.

Concerning the complainant's fifth allegation

As to the complainant's allegation that his work had been hampered by his superior in a way that constituted harassment, Parliament submitted that every member of staff had the right to consult or to introduce a formal complaint to the "Committee on harassment and its prevention at the workplace". The Committee could, if it deemed it advisable, make recommendations and draft a report to the Secretary-General, who would then decide whether to conduct a detailed investigation. To date, Parliament had not been informed of any such complaint.

Parliament recalled that the complainant had criticised the refusal of his superior to provide him with a German-speaking secretary who could produce transcripts of his tape records. It stated that, seen from its perspective, the complainant had repeatedly disregarded instructions of his immediate superiors and had thus violated the obligation to assist and advise his superiors, laid down in Article 21 of the Staff Regulations. The instructions, confirmed by the higher hierarchical authority, had been fully within the scope of duties assigned to the complainant. According to Parliament, there were no indications of harassment. The practice of being up-to-date with regard to modern technologies was an essential duty of an official of the highest standards of ability, efficiency and integrity.

Concerning the complainant's (modified) sixth allegation

As to the complainant's allegation that his staff report for 2004 was void because his superior allegedly lacked the necessary qualification and ability to evaluate his performance, Parliament submitted that the superior in question had had substantial experience as a Head of Unit. While it was true that he did not speak German, this did not render him unable to assess the complainant's ability, efficiency and conduct. In fact, most critical remarks in the complainant's staff report concerned his unwillingness to work in a team and to use computer equipment, as well as his lack of initiative. Parliament added that the complainant's staff report also contained positive remarks concerning his good analytical skills and excellent knowledge.

Parliament argued that the main features of the complainant's working performance were evident even without looking at the content of the documents he drafted in German. In a multinational environment such as exists in the institutions of the European Communities, it is difficult to avoid a situation in which a superior does not speak the language of his or her subordinate. It was well established that English and French were used as working languages in the staff reports. In the case at issue, as an " *argumentum ad absurdum* ", the complainant's superior would have had to speak several official languages in order to be able to draft the staff reports for all the members of his Unit.

The complainant's observations *Concerning his first allegation*

In relation to the alleged delay in the production of his staff report, the complainant stated that Parliament had not observed the relevant timetable. According to him, the period between 13 and 23 May 2005 had been intended to constitute a reflection period for his first assessor, with a view to avoiding the subsequent complaint procedure. It was not intended for himself, given that he did not have anything to reflect upon at that stage. Furthermore, the complainant submitted that the delay of half a year had had far-reaching consequences for his career, which, as evidenced by his complaint to the Ombudsman, still persisted. He maintained that the delay constituted maladministration.

Concerning his second allegation

The complainant also maintained that his staff report contained untruthful and defamatory statements. He argued that the individual remarks raised a number of questions, such as who were the secretaries with whom he allegedly had difficulties; which innovations he had rejected; how could he have refused to use computer equipment when, at the same time, he made reference to websites; what the co-operation and dynamism of his Unit consisted of and, concerning his overall assessment, when had he ever ignored a rule or hierarchical constraints.

The complainant argued that his staff report was so negative that any responsible final assessor would have become suspicious. Therefore, according to him, the final assessor would have had to take the initiative and consult with the first assessor, especially given that the final assessor did not have any immediate contact with the assessees.

The complainant took the view that the opinion sent by Parliament even made matters worse because it showed that Parliament as a whole had now adopted the same negative position on his professional performance without any examination and without having heard him on this matter. According to him, this constituted a new instance of harassment against him, which he wished to pursue as a further instance of maladministration.

Concerning his third allegation

The complainant noted that, as Parliament itself had now acknowledged, its GIP of 1999 were applicable to the appointment of assessors. According to their Article 5, it was unequivocally clear that the function of an immediate superior had to be separated from the function of a first assessor. The complainant argued that Parliament had tried to "wriggle out" of having to admit this by stating that the 2003 Note only constituted an "elaboration" of the GIP of 1999, which did not require the approval of the Staff Regulations Committee according to Article 43 and 110 of the Staff Regulations. However, he argued that, since substantial changes concerning a "shortening of the already malfunctioning channel of appeals" were at issue, this argument had to fail. Therefore, the complainant took the view that, without the approval of the Staff Regulations Committee, the changes were invalid. On the basis of these considerations, he maintained his view that his immediate superior should not have been appointed as his first assessor and that his assessment was void.

Concerning his fourth allegation (not taken up by the Ombudsman)

In relation to his allegation that the procedure that allowed assessees to apply for a consultation with the final assessor was effectively not viable, which had been rejected by the Ombudsman, the complainant conceded that he had not raised this issue in his complaint under Article 90(2) of the Staff Regulations. However, since he considered that this issue was important and of general interest, he suggested that the Ombudsman could conduct an own-initiative inquiry in this respect.

Concerning his fifth allegation

The complainant noted that Parliament had not denied that it deliberately refused to provide him with a secretary who would be willing to produce transcripts of his tape records. He alleged that it had tried to justify this behaviour by accusing him, in a defamatory way, of misbehaviour without giving a single concrete example. His efforts to support and advise his superiors, for which he had gathered detailed evidence in his Article 90(2) complaint, had been rejected, which meant that his superiors had disregarded their own responsibility as laid down in Article 21(2), last sentence, of the Staff Regulations. Moreover, the complainant referred to Article 24 of the Staff Regulations, according to which the Communities had to assist their officials, " *in particular in proceedings against any person perpetrating threats, [* or *] insulting or defamatory acts or utterances* ".

The complainant also pointed out that he had already turned to the President of the "Committee on harassment and its prevention at the workplace", but without success. Therefore, he did not know what else he could have done in this respect. Against this background, the complainant

also maintained his allegation that the systematic hampering of his work constituted harassment pursuant to Article 12a(3) of the Staff Regulations.

The complainant added that, particularly in view of the high workload which was to be expected during the German Presidency of the Council and when a German citizen held the position of President of the European Parliament, completing his tasks in a reasonable time would no longer be possible for him. He argued that the voice recognition programme installed on his computer, which his superior had asked him to use, produced innumerable mistakes, which he would have to correct manually on the screen if he had no German-speaking secretary at his disposal. He added that he had tested this programme, on his own initiative, already a long time before it was introduced. According to the complainant, the software still needed significant improvement and was not yet suitable for every day use. He submitted that text production on the basis of this software took much more time than it took a secretary to produce transcripts of recorded tapes, a practice he had followed for more than 30 years in service.

Concerning his sixth allegation

The complainant maintained that he had proven on the basis of numerous pieces of evidence that his superior failed to meet even minimum standards of ability, performance and integrity. However, he noted that Parliament had not commented on these issues. Since, as Parliament had acknowledged, his superior did not speak German or even see the texts he had produced, the complainant asked how his supervisor could criticise him for " *transmitting his excellent (...) knowledge (...) in an abrupt manner* " (3) . He also failed to understand Parliament's reference to the language in which staff reports were drafted.

Additionally, the complainant mentioned that, due to his superior's "special relations", his superior was exempted from Parliament's obligatory internal mobility.

The complainant's letter of 14 February 2007

In a further letter of 14 February 2007, the complainant referred back to his suggestion that the Ombudsman could open an own-initiative inquiry in relation to his fourth allegation, which the Ombudsman had not taken up in his inquiry. He submitted new information in this context, namely, a timetable for the staff evaluation exercise for 2006, which, according to him, again did not provide for a sufficient period of time during which the assessee could apply for a meeting with the final assessor. He went on to add that this practice was in disregard of the currently applicable implementing provisions.

Further inquiries *The Ombudsman's considerations*

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

In relation to the complainant's allegation that it was unlawful for his immediate superior to have been appointed as his first assessor, the Ombudsman noted that Parliament's Bureau appeared to have made certain changes to the assessment and promotion system, which had been circulated in the 2003 Note. According to Parliament, this Note elaborated upon the existing GIP of 1999 and did not contradict them. However, the complainant stated that (1) he had not received such a communication and that (2) it would not be valid because it had not been submitted to the Staff Regulations Committee for an opinion. In his observations, the complainant argued that, since substantial changes bringing about a "shortening of the channel

of appeals" were at issue, a consultation of the Staff Regulations Committee would have been required.

The Ombudsman studied the documents in question and came to the conclusion that it indeed appeared that the GIP of 1999 required that three persons were to be involved in the establishment of an official's staff report, namely, his immediate superior, a first assessor and a final assessor. As far as the Ombudsman could see, the GIP of 1999 did not provide for an exception to that rule. However, the 2003 Note appeared to reduce the number of persons involved to two, given that the first assessor was to be the official's immediate superior.

Therefore, the Ombudsman decided to ask Parliament to explain why it considered that the 2003 Note constituted an elaboration of the GIP of 1999 and did not require the consultation of the Staff Regulations Committee.

In view of the complainant's submission that he had not received the 2003 Note, the Ombudsman also asked Parliament to inform him how it had ensured that its staff were informed about the content of the Note.

Parliament's reply

In its reply, Parliament stated that, in its rules governing the staff evaluation procedure, it had always emphasised the principle of involving two assessors and that the official's immediate superior in grade A took part in the procedure. Of the two assessors, the first had to be an official who was at least Head of Unit. In many cases, this person was not the assessee's immediate superior. For this reason, the GIP in force before 1999 required that the first assessor consult the assessee's immediate superior before drawing up the staff report, whereas the GIP of 1999 involved the immediate superior in the procedure itself by conferring on him or her the task of drawing up the staff report.

Parliament pointed out that, although the superior should consult the assessee before drawing up the report, the GIP of 1999 did not provide for a formal meeting between them or for the transmission of a draft report to the assessee. Furthermore, the first assessor remained free to change or to complement the report. According to Parliament, the main responsibility thus lay with the higher ranking superiors, whereas the immediate superior only supported the assessors in their work.

Parliament stated that, according to the GIP of 1999, it was not excluded that the first assessor was the assessee's immediate superior, so that only two persons would be involved in the procedure. According to Parliament, this should be the case for assessees in grade A. Furthermore, the GIP of 1999 provided that, in very large administrative Units, the first assessor could be a Head of Unit, that is, a person in a grade lower than A3 and probably the immediate superior of all members of staff in his Unit. However, observance of the principle of two assessors was obligatory, which was why Article 3(6) of the GIP of 1999 provided that " *[s]taff reports drawn up by a single assessor shall be deemed null and void and shall be the subject of a fresh procedure* ".

Parliament went on to explain that, according to Article 2.2, third paragraph, of its 2003 Note,

the first assessor was in principle " *the immediate superior in category A (rank: N+1 where N represents the staff member being assessed)* ". Furthermore, the same Article provided that " *the notion of rank reflects the assessor's supervisory responsibility* ".

Parliament took the view that the 2003 Note did not constitute a departure from the GIP of 1999 and did not introduce substantial changes to the latter. It argued that, according to the case-law on prior consultation of the Community institutions and of the Staff Regulations Committee, changes to a legislative proposal or to a proposal for an amendment to the Staff Regulations were not to be considered substantial if they remained within the purposes of the proposal and did not affect its essential content (4) .

Parliament argued that, in the present case, the essential content of the evaluation system was to use a two-step procedure in the drafting of the staff report. The 2003 Note strengthened the role of the immediate superior. However, combining the preparatory function and that of the first assessor did not affect the essential content of the GIP of 1999. Therefore, Parliament had not considered it obligatory to consult the Staff Regulations Committee.

Furthermore, Parliament emphasised that the application of the 2003 Note had not been in any way disadvantageous for officials. Rather, officials were now evaluated by a person who, more than anyone else, was familiar with their achievements. At the same time, the principle of two assessors and the right of officials to turn to the Staff Evaluation Committee and to the Appointing Authority were guaranteed. Therefore, the possibilities to complain and the rights of defence had not been affected.

Parliament added that, in the complainant's case, neither his first nor his final assessor had changed between 1999 and 2006. His first assessor was the Head of Unit, his final assessor the Director.

On this basis, Parliament took the view that, in adopting the 2003 Note, it had in no way infringed essential procedural rules.

As to the communication of the 2003 Note, Parliament stated that it had, by internal mail, circulated this Note, together with an explanatory note signed by the Secretary-General, to all staff in their mother tongue. Furthermore, it had published the Note on its Intranet. Together with its opinion, Parliament attached a copy of this communication.

Additionally, Parliament also commented on the complainant's fourth allegation concerning the possibility of consulting the final assessor, which the Ombudsman had not taken up in his inquiry, but which the complainant had again mentioned in his observations. Parliament stated that it shared the view that this allegation was inadmissible. However, it emphasised that the GIP of 1999 as well as the new GIP of 2005 obliged the final assessor to meet the assessee if he wished to change the report in a negative manner or if the assessee asked for such a meeting. Parliament pointed out that there was no other provision obliging the final assessor to take action in this respect.

The complainant's observations

In his observations, the complainant challenged Parliament's position. According to him, under the GIP of 1999, the only case in which an official's immediate superior could, at the same time, be his first assessor occurred if the assessee were a Head of Unit himself or herself, the assessor then being his or her Director. The other exception to which Parliament had referred, namely, very large administrative Units, was so rare that there was not even an example for it.

The complainant also emphasised that not only Article 5 of the GIP of 1999 required the separation of the functions of immediate superior and first assessor, but that this separation was already unmistakeably defined in Article 3 of the GIP. He pointed out that the separation also manifested itself in the design of the standard evaluation form, which did not only provide space for the name and signature of the immediate superior but also for his own evaluation. The same could be deduced from the corresponding instructions for filling in the form.

The complainant took the view that the provisions concerning the persons to be involved in the evaluation exercise constituted the essence of the GIP. A reduction in the number of persons involved seriously limited the assessee's rights and thus led to a corruption of the rules.

The complainant also argued that a comparison of the GIP of 1999 and the GIP of 2005 confirmed his argument. According to him, the two GIPs were almost identical apart from the provisions concerning the persons involved in the evaluation procedure. However, the GIP of 2005 for the first time established the reduction from three to two persons involved in the evaluation, this time after consultation of the Staff Regulations Committee. However, since Parliament had been able to refer to established practice in this respect on the basis of the 2003 Note, it had concealed from the Staff Regulations Committee that the changes were substantial.

According to the complainant, even Parliament itself considered the provisions concerning the persons involved in the evaluation procedure to be essential. This was clear from the 2003 Note itself, which, when addressing possible derogations from the provisions in question, explicitly required the " *submission of the general implementing provisions to the Staff Regulations Committee* ".

Therefore, the complainant maintained his view that the changes introduced by the 2003 Note substantially changed the GIP of 1999 and thus, in the absence of a consultation of the Staff Regulations Committee, were void.

As regards the communication of the 2003 Note, the complainant insisted that he had only become aware of the Note in the framework of the Ombudsman procedure. He pointed out that the communication to staff was not dated. Furthermore, a publication on Parliament's Intranet - probably in English or French - was not sufficient, given that officials could not be expected to read complicated documents addressed to the Bureau. Furthermore, it had been made very difficult to spot the changes in question because (1) Parliament had always emphasised that the Note introduced ameliorations; (2) the changes only constituted four lines of text in a document of eleven pages mainly concerned with merit points; and (3) the changes were not marked as such.

Lastly, the complainant took the view that it was ironic that Parliament presented the changes as bringing about an increase in responsibility at the individual level and at the same time argued that the final assessor " *was not obliged (...) to take action* ".

THE DECISION

1 Preliminary remarks

1.1 The complainant, an official at the European Parliament, alleged maladministration in his working conditions, which, according to him, had had negative consequences on his staff report for the year 2004. Furthermore, the complainant alleged that this staff report was void for a number of procedural reasons. In summary, he made the following allegations:
- His staff report for 2004 was drawn up with excessive delay;
- His staff report for 2004 contained untruthful and defamatory statements;
- It was unlawful for his superior to be appointed as his first assessor;
- The procedure that allowed assessees to apply for a consultation with the final assessor was effectively not viable;
- His work had been hampered by his superior in a way that constituted harassment; and
- His superior failed properly to carry out his tasks and fulfil his functions.

1.2 Since the complainant had not drawn Parliament's attention to his fourth allegation internally before turning to the Ombudsman, the Ombudsman did not include it in his inquiry. Furthermore, given that his sixth allegation did not concern an action that had caused a grievance, the Ombudsman saw no grounds to open an inquiry into this allegation in the form it had been presented by the complainant. However, he decided to include the following modified sixth allegation in his inquiry:

(6) The complainant's staff report for 2004 was void because his superior allegedly lacked the necessary qualification and ability to evaluate his performance.

1.3 In his observations and in a further letter, the complainant submitted additional information concerning his fourth allegation, which the Ombudsman had not included in his inquiry. He emphasised that he considered the issue to be important and of general interest and suggested that the Ombudsman conduct an own-initiative inquiry in this respect. Parliament, despite sharing the Ombudsman's view that this allegation was inadmissible, made certain comments on the issue, which, however, did not appear to satisfy the complainant.

1.4 Given that the Ombudsman only rejected the complainant's fourth allegation because the complainant had not previously brought this issue to Parliament's attention, he emphasises that the complainant remains of course free to submit a new complaint to him, if he wishes to pursue this issue further. Furthermore, the Ombudsman is not aware of any further cases raising the same problem. In these circumstances, the Ombudsman considers that there are at present insufficient grounds for him to conduct an own-initiative inquiry into this aspect of the complainant's case.

1.5 The Ombudsman notes that, in his observations, the complainant also raised a number of

new issues. First, he alleged that Parliament's opinion contained defamatory comments concerning his behaviour. However, the complainant has not specified which comments he considered to have been defamatory and for what reason. Therefore, the Ombudsman considers that there are presently insufficient grounds for him to inquire into this new allegation.

1.6 Given that most of the other issues the complainant raised in his observations are closely related to the allegations the Ombudsman investigated in his inquiry, he will deal with these issues in connection with the corresponding allegations. However, it appears useful to address one further issue at this point. The complainant mentioned in his observations that his superior was exempted from Parliament's obligatory internal mobility thanks to his "special relations". The Ombudsman is not sure whether this point was meant to constitute a new allegation or whether it was merely intended as background information. In case it was meant as a new allegation, the Ombudsman notes that the complainant does not appear to have raised this issue within Parliament, or, if possible, made use of Parliament's internal remedies. Therefore, the Ombudsman would be unable to assess the above issue at this stage.

1.7 In the following, the Ombudsman considers it useful first to deal with the substantive problem that appears to underlie the complainant's difficulties in his working relationship with Parliament, namely, his allegation that his work was hampered by his superior in a way that constituted harassment (fifth allegation). He will then assess the problems relating to the complainant's staff report for the year 2004 (first, second, third and modified sixth allegations). On the basis of his assessment of these aspects of the case, the Ombudsman will finally address the complainant's view that his staff report for the year 2004 was void.

2 Alleged harassment

2.1 The complainant reported that he uses a voice recorder in order to dictate his correspondence on tape and that he asks a secretary to produce transcripts of the tape records. He submitted that this was a very efficient method, which he had been using for decades. According to him, it would be a lot more time-consuming and cumbersome for him to produce his texts in writing, as his superior requested. The complainant alleged that, when his secretary refused to produce transcripts of his tapes, his superior supported her refusal to work, which seriously hampered his own work. He also alleged that his work continued to be hampered because he was still not accorded a German-speaking secretary who was willing to produce transcripts of his tapes. The complainant alleged that the above situation constituted harassment.

2.2 In its opinion, Parliament submitted that every member of staff had the right to consult or to introduce a formal complaint to the "Committee on harassment and its prevention at the workplace". To date, Parliament had not been informed of any such complaint by the complainant. Parliament stated that, seen from its perspective, the complainant had repeatedly disregarded instructions of his immediate superiors and had thus violated the obligation to assist and advise his superiors, as laid down in Article 21 of the Staff Regulations. The instructions, confirmed by the higher hierarchical authority, had been fully within the scope of the duties assigned to the complainant. According to Parliament, there were no indications of harassment. Keeping up-to-date with modern technologies was an essential duty of an official of the highest standards of ability, efficiency and integrity.

2.3 In his observations, the complainant argued that his efforts to support and advise his superiors had been rejected, which meant that his superiors had disregarded their own responsibility. He also pointed out that he had already turned to the President of the "Committee on harassment and its prevention at the workplace", but without success.

2.4 The Ombudsman notes that there appears to be a disagreement between the complainant and Parliament as to whether the complainant has made proper use of the possibility of turning to the "Committee on harassment and its prevention at the workplace". On the basis of the information submitted to him, the Ombudsman is unable to ascertain whether, when approaching the President of the Committee, the complainant submitted a formal complaint to that Committee. However, the Ombudsman notes that Parliament has not based its argument in relation to the complainant's allegation of harassment on this issue but has commented on the substance of the complainant's allegation. Therefore, the Ombudsman considers that it is legitimate for him to deal with the substance of this allegation without resolving the above formal aspect of the matter.

2.5 The Ombudsman notes that the complainant's superior asked the complainant to use his computer in order to draft his correspondence, a request that does not appear to be unreasonable. Furthermore, the Ombudsman notes that, together with his complaint, the complainant attached copies of e-mail exchanges he conducted with certain colleagues and with his superiors. Therefore, there is nothing to suggest that the complainant would not be able to produce texts by using a word processing programme within a reasonable time.

2.6 In addition, the Ombudsman notes that it appears from the materials the complainant submitted with his complaint that his superior suggested that the complainant could use a voice recognition programme installed on his computer. To the Ombudsman, this appears to be a rather reasonable suggestion, even if, as the complainant argued, this programme produced mistakes which the complainant would then have to rectify on his computer.

2.7 In any event, the Ombudsman cannot see evidence of harassment in the requests of the complainant's superior concerning the complainant's working methods. He therefore considers that the complainant has not substantiated his fifth allegation.

3 Allegedly excessive delay in producing a staff report

3.1 The complainant alleged that his staff report for the year 2004 was drawn up half a year late and thus half way into the next reference period. He submitted that this constituted maladministration because, in case an official had to improve his performance in the next reference period, half of this period would already have passed, which meant that the official incurred the risk of being confronted with the same reproach in his next staff report.

3.2 In its opinion, Parliament pointed out that the " *General implementing provisions applicable to article 43 of the staff regulations and article 15 of the conditions of employment of other servants* " ("the GIP of 1999") did not establish an exact timetable for the annual assessment of merits. The " *Note to the members of the Bureau on the proposals for the improvements to Parliament's staff reports and promotion system* " of 2003 ("the 2003 Note") indicated a

timetable in its Annex I. According to this timetable, the assessed official should receive the draft staff report in January of the year following the relevant year of assessment. The interview should take place up to the end of February. The final assessor should sign the report by 15 March.

Parliament submitted that the complainant's draft staff report had been drawn up on 22 April 2005. The interview with the first assessor had been arranged for 13 May 2005. However, on that very date the complainant had requested "more time to consider". Thus, the interview had been rescheduled and had taken place on 23 May 2005. The report had been validated on 3 June 2005. It appeared from Parliament's opinion that the final assessor had signed the complainant's staff report on 8 June 2005.

Parliament argued that the fact that the procedure had been three months behind schedule did not constitute an excessive delay or render the assessment invalid. First, the timetable foreseen in the internal rules was only indicative. Second, the delay had not had any consequences on the complainant's career, especially not on the course of the promotion procedure.

3.3 In his observations, the complainant maintained that the delay constituted maladministration. He stated that the period between 13 and 23 May 2005 had been meant as a reflection period for his first assessor, with a view to trying to avoid the subsequent complaint procedure, and not for himself. Furthermore, he submitted that the delay of half a year had had far-reaching consequences for his career, which still persisted, as evidenced by his complaint to the Ombudsman.

3.4 It is good administrative practice for an Appointing Authority to complete the periodic evaluation of its staff within the time frame foreseen by the relevant rules. In his decision on complaint 1319/2003/ADB (5) , the Ombudsman dealt with the question whether a delay in the Commission's drawing up of a staff report constituted maladministration. In line with the relevant case-law of the Community Courts (6) , he found that the Commission's failure to abide by the precise timetable adopted by the Commission itself when drawing up the complainant's staff report constituted an instance of maladministration.

3.5 In the present case, the relevant timetable is contained in Annex I of the 2003 Note. Parliament accepted that this Note is applicable in the present context, but submitted that the timetable was only indicative. However, the Ombudsman considers that the wording of Annex I does not give the impression that the timetable is to be considered indicative. On the contrary, the Note also contains the following consideration under point 1:

" *If the entire staff reports and promotions exercise is to be completed within one calendar year, a much tighter timetable, which is kept (...) by everyone involved, is needed. (...) The timetable seeks to define all stages clearly (...) with a view to ensuring that the relevant deadlines are met (...).* "

The Ombudsman also recalls that, in the course of its changes in the rules on staff evaluation and promotion, Parliament included the same timetable in Annex A of the new version of its

"General implementing provisions", adopted on 6 July 2005 ("the GIP of 2005"). Therefore, the Ombudsman considers that there is nothing to show that Parliament did not intend to adhere to the deadlines provided for in Annex I of the 2003 Note.

3.6 Parliament acknowledged that the complainant's staff evaluation procedure for the year 2004 was nearly three months behind schedule. Therefore, the delay would have been substantial even without taking into account the additional delay that occurred due to the rescheduling of the complainant's interview. The Ombudsman therefore does not need to assess whether this additional delay has to be attributed to the complainant or not.

3.7 As to Parliament's argument that the delay did not have any consequences on the complainant's career, particularly not on the course of the promotion procedure, the Ombudsman notes that, as the complainant correctly pointed out, an important function of staff reports drawn up in Parliament's annual staff evaluation exercise is for the official concerned to be informed about his superiors' appraisal of his work and, potentially, about ways in which he could improve his performance in the following year. A delay in the schedule for the drawing up of the staff report reduces the amount of time the official concerned has for such improvement.

3.8 It has to be noted that, in his complaint to the Ombudsman, the complainant alleged that the delay in the procedure was "excessive". Whereas it has not been contested that a delay occurred, the Ombudsman takes the view that this delay cannot be considered to be excessive. However, he also considers that a delay in an administrative procedure constitutes maladministration, even when it is not excessive, and that an allegation of "excessive delay" should be interpreted as containing the implicit and more limited allegation that a delay has occurred.

3.9 Therefore, the Ombudsman considers that the delay in the drawing up of the complainant's staff report for the year 2004 constitutes maladministration. A critical remark will be made below.

4 Allegedly untruthful and defamatory statements in staff report

4.1 In relation to the complainant's allegation that his staff report for the year 2004 contained untruthful and defamatory statements, Parliament stated that this staff report contained several critical remarks concerning the complainant's ability, efficiency and conduct. It argued that assessors had considerable discretion when judging the work of persons on whom they had to report. According to the case-law of the Community Courts, it was not for the courts to interfere with staff assessments, except in the case of error or manifest exaggeration (7) . According to Parliament, the aim of staff reports was to provide a complete picture of the performance of the official concerned. It insisted that the assessments in the complainant's staff report reflected his professional performance and were thus not untruthful or defamatory.

4.2 In his observations, the complainant maintained his allegation. He argued that the individual remarks Parliament had referred to raised a number of questions. He also argued that his staff report was so negative that any responsible final assessor would have become suspicious. Therefore, the final assessor would have had to take the initiative and consult with the first assessor, especially given that the final assessor did not have any immediate contact with the assessees. The complainant took the view that the opinion sent by Parliament even made

matters worse because it showed that Parliament as a whole had now adopted the same position on his professional performance without any examination thereof and without having heard him on the matter. According to him, this constituted a new instance of harassment against him, which he wished to pursue as a further instance of maladministration.

4.3 In relation to staff assessment and promotion in the Community institutions and bodies, the Ombudsman has taken the view, in line with the case-law of the Community Courts, that the Appointing Authority possesses wide discretion, so that his review should be confined to the question whether, having regard to the various considerations which have influenced the administration in making its assessment, the latter has remained within reasonable bounds and has not used its power in a manifestly incorrect way (8) .

4.4 The Ombudsman considers it to be clear that an Appointing Authority is entitled to criticise the performance of an official in clear terms if this is necessary, as Parliament pointed out, in order to provide a complete picture of this official's performance. In the present case, Parliament submitted that the assessments the complainant contested reflected his performance and were thus not untruthful or defamatory. The Ombudsman has carefully studied the materials submitted to him and, on that basis, considers that the complainant has not presented sufficient evidence to show that Parliament has not acted within reasonable bounds or has used its powers in a manifestly incorrect way.

4.5 Therefore, the Ombudsman considers that the complainant has not substantiated his allegation that his staff report contained untruthful and defamatory statements.

4.6 In view of these findings, it does not appear necessary to examine the additional allegations raised by the complainant in his observations, namely, that his final assessor neglected his duties and that, in its opinion, Parliament wrongfully adopted the same position as regards his evaluation as his assessors.

5 Allegedly wrongful appointment of the complainant's immediate superior as his first assessor

5.1 The complainant submitted that, according to Article 5 of the GIP of 1999, a distinction had to be drawn between the hierarchical superior and the first assessor. He argued that this distinction had not been observed in relation to the drawing up of his staff report for the year 2004. Since his report had therefore been signed by an official who was not competent to sign it, that report was void.

5.2 In its opinion, Parliament argued that the GIP of 1999 demanded that the staff report be prepared by the staff member's superior in category A/LA and signed by two assessors, the first assessor being the Head of Unit or the Director of the assessed official, the final assessor being the Director-General or a Director designated by him or her. The 2003 Note specified that, in principle, the " *first assessor is the staff member's immediate superior in category A* ". According to Parliament, this rule elaborated on the existing GIP and did not contradict them. Parliament explained that the Head of the complainant's Unit was his immediate superior in 2004. Thus, his appointment as first assessor complied with the applicable internal rules. The final assessor was the Director. The principle of involving two assessors had thus not been violated. In addition,

Parliament submitted that the same two assessors had been signing the complainant's staff reports from 1999 to 2003, in accordance with the GIP of 1999.

5.3 In his observations, the complainant submitted that, since the 2003 Note introduced substantial changes concerning a "shortening of the channel of appeals", the changes were invalid because they had not obtained the approval of the Staff Regulations Committee. Furthermore, he submitted that he had never received a copy of the 2003 Note.

5.4 In its reply to the Ombudsman's request for further information in this respect, Parliament stated that, in its rules governing the staff evaluation procedure, it had always emphasised the principle of involving two assessors and the fact that the official's immediate superior in grade A took part in the procedure. Parliament stated that, according to the GIP of 1999, it was not excluded that the first assessor was the assessee's immediate superior, so that only two persons were involved in the procedure. According to Parliament, this should be the case for assessees in grade A. Furthermore, the GIP of 1999 provided that, in very large administrative Units, the first assessor could be a Head of Unit, that is, a person in a grade lower than A3 and probably the immediate superior of all members of staff in his Unit. Parliament took the view that, whereas the GIP of 1999 conferred on the immediate superior the task of drawing up the staff report, the main responsibility remained with the higher ranking superiors.

Parliament also submitted that the 2003 Note did not constitute a departure from the GIP of 1999 and did not introduce substantial changes to the latter. It argued that, according to the case-law, changes to a legal text were not considered substantial when they remained within the purposes of the original text and did not affect its essential content. According to Parliament, the essential content of the evaluation system was a two-step procedure in the drafting of the staff report. The 2003 Note strengthened the role of the immediate superior. However, combining the preparatory function with the function of first assessor did not affect the essential content of the GIP of 1999. Therefore, Parliament had not considered that it was obliged to consult the Staff Regulations Committee. According to Parliament, the possibilities to complain and the rights of the defence had not been affected.

As to the communication of the 2003 Note, Parliament stated that it had circulated this Note to all staff in their mother tongue by internal mail. Moreover, it had published it on the Intranet.

5.5 In his observations, the complainant took the view that the only situation in which an official's immediate superior was at the same time his first assessor was when the assessee himself was a Head of Unit, the assessor then being his Director. The exception of very large administrative Units was extremely rare. The complainant also emphasised that the separation of the functions of immediate superior and first assessor was required by Article 3 and Article 5 of the GIP of 1999, as well as by the very design of the standard evaluation form. The complainant argued that the provisions concerning the persons to be involved in the evaluation exercise constituted the essence of the GIP. A reduction of the number of persons involved seriously limited the assessee's rights and thus led to the corruption of the rules.

The complainant also compared the GIP of 1999 with the GIP of 2005. According to him, these

two GIPs were almost identical. However, the GIP of 2005 for the first time established the reduction from three to two persons involved in the evaluation, this time after consultation of the Staff Regulations Committee. However, since Parliament had been able to refer to established practice in this respect on the basis of the 2003 Note, it had concealed from the Committee that the changes were substantial. According to the complainant, even Parliament itself considered the provisions in question to be essential, given that, when addressing possible derogations from the provisions in question, the 2003 Note explicitly required the " *submission of the general implementing provisions to the Staff Regulations Committee* ". Therefore, the complainant maintained that the changes introduced by the 2003 Note, in the absence of a consultation of the Staff Regulations Committee, were void.

As regards the communication of the 2003 Note, the complainant insisted that he had only become aware of the Note in the framework of the Ombudsman procedure. He pointed out that the communication to staff was not dated. Furthermore, a publication on Parliament's Intranet - probably in English or French - was not sufficient.

5.6 The Ombudsman recalls that he has already addressed the question of the appointment of the complainant's immediate superior as his first assessor in his decision on a prior complaint from the same complainant. In this decision, the Ombudsman found that the designation appeared to have been in conformity with the applicable rules. In this context, it has to be noted that the complainant's earlier complaint related to his staff report for the years 1997 and 1998. Therefore, the Ombudsman cannot rely on his findings in that decision, but has to make a new assessment on the basis of the complainant's and Parliament's submissions in the framework of the present complaint.

5.7 Article 3 of the GIP of 1999 provides:

" *The staff report shall be prepared by the staff member's superior in category A or LA (...) to whom he or she is answerable and signed by two assessors using the form attached thereto. The first assessor shall be the head of unit in grade A3-A4/LA3-LA4 or the director in grade A2 to whom the staff member is answerable. (...) He or she shall be designated in accordance with the structure of the departments and the category of staff to be assessed: (...) Staff reports drawn up by a single assessor shall be deemed null and void and shall be the subject of a fresh procedure. (...)* ".

Article 5 of the GIP of 1999 provides:

" *During the December which precedes the staff reports exercise, (...) the superior in category A to whom the staff member concerned is answerable shall prepare a draft staff report after holding the requisite consultations. The first assessor shall forward the draft report to the staff member concerned, stating the date and time of the interview. (...). His or her immediate superior may also be present at the interview, at the request of the first assessor. (...) The staff report shall be forwarded to the final assessor, who shall have ten working days in which to endorse or modify it. (...)* ".

Point 2.2 of the 2003 Note provides:

" *(...) The assessors must be chosen from among the superiors of the staff members they will be required to assess. (...) In principle, the first assessor is the staff member's immediate superior in category A (rank: N+1 where N represents the staff member being assessed). (...) In principle, the final assessor is the staff member's superior in category A with rank N+2.* "

This point was taken up in Parliament's amendment of the GIP. Article 4(1) of the GIP of 2005 provides:

" *The staff report shall be prepared by the first assessor, who shall be the staff member's immediate superior, with rank NOT+1 in function group AD, who is directly responsible for supervising the staff member's work.* "

5.8 The Ombudsman notes that the GIP of 1999 seem to require that three persons are to be involved in the preparation of an official's staff report. This is suggested by the wording of Article 3 and Article 5, particularly where the latter provides that the " *immediate superior may* also *be present at the interview* " (emphasis added). However, the GIP of 1999 do not explicitly establish a requirement for three persons to be involved, but rather focus on the necessity of involving two assessors, for example by providing, in Article 3, that a staff report drawn up by a single assessor is to be considered void. Thus, the question as to how many persons are to be involved in the staff evaluation appears to have depended, according to Article 3, on the designation of the assessors, which was to be determined " *in accordance with the structure of the departments and the category of staff to be assessed* ". Therefore, it seems possible that, depending on these factors, two or three persons were being involved.

5.9 As the above considerations show, the GIP of 1999 are far from clear in relation to the contested issue, a defect which was eliminated first by the 2003 Note and, subsequently, by the introduction of the amended GIP of 2005. The Ombudsman considers that the complainant has brought forward arguments to support his interpretation of the GIP of 1999 that do not appear to be without merit. However, the Ombudsman considers that Parliament's interpretation of the same rules cannot be seen as unreasonable. Therefore, the Ombudsman considers that the complainant has not conclusively shown that, under the GIP of 1999, his immediate superior was wrongly appointed as his first assessor.

5.10 The Ombudsman also notes that the complainant has not contested Parliament's submission that his staff reports from 1999 to 2003, during which time the GIP of 1999 were applicable, were drawn up by the same two assessors. Given that, therefore, the application of the 2003 Note does not seem to have led to any changes in the complainant's evaluation procedure for the year 2004, the Ombudsman does not need to decide on the question whether the Staff Regulations Committee ought to have been consulted before the adoption of the Note.

5.11 In this context, the Ombudsman also recalls that, in his second set of observations, the complainant submitted that Parliament concealed from the Staff Regulations Committee that substantial changes had been made to the GIP of 1999, when it consulted it in relation to the

GIP of 2005. If this submission were to be interpreted as a new allegation, the Ombudsman would note that the complainant does not appear to have raised this issue directly with Parliament.

5.12 As regards the communication of the 2003 Note to Parliament's staff, the Ombudsman considers that, as far as can be seen from its reply to the Ombudsman's request for further information, Parliament appears to have made an effort in order to ensure that all staff receive this Note in their mother tongue. The complainant has not shown that Parliament can be held responsible for the possibility that he did not receive the communication by internal mail. In view of the distribution by internal mail, the publication on Parliament's Intranet can be seen as having constituted only an additional means of distributing the Note. Therefore, the Ombudsman considers that it would be irrelevant for his assessment whether, as the complainant alleged, the Note was only published in English or French on the Intranet. The Ombudsman concludes that the complainant has not substantiated his view that Parliament failed to communicate the Note to him in a proper way.

6 Alleged inability of superior to assess the complainant's performance

6.1 In relation to the complainant's allegation that his superior lacked the necessary qualification and ability to evaluate his performance, and that this rendered his staff report for 2004 void, Parliament submitted that the superior in question had had substantial experience as a Head of Unit. It was true that he did not speak German. However, this did not render him unable to assess the complainant's ability, efficiency and conduct. Parliament argued that the main features of the complainant's working performance were evident even without looking at the content of the documents he drafted in German. In a multinational environment such as the one that exists in the institutions of the European Communities, it is difficult to avoid a situation where a superior does not speak the language of his or her subordinate.

6.2 In his observations, the complainant argued that he had proven, on the basis of numerous pieces of evidence, that his superior failed to meet minimum standards of ability, performance and integrity. Since, as Parliament had acknowledged, his superior did not speak German and since his superior had not even seen the texts he had produced, the complainant submitted that he wondered how his superior could criticise him for " *transmitting his excellent (...) knowledge (...) in an abrupt manner* ".

6.3 The Ombudsman considers that the latter comment mentioned by the complainant could indeed beg the question whether this specific aspect of the complainant's performance could be assessed by a person who does not speak the language in which the complainant produced his correspondence. However, this in no way calls into question the general ability of superiors to assess their subordinates' work, even when such assessment is carried out in a language the superior does not speak. As Parliament correctly pointed out, it would be difficult for it to avoid such a situation.

6.4 The Ombudsman has carefully studied all the materials the complainant submitted in order to support his view that his superior lacked qualification and ability to assess his performance. However, on the basis of these materials, he does not see sufficient evidence to support the complainant's view.

6.5 Therefore, the Ombudsman considers that the complainant has not substantiated his allegation that his superior was unable to assess his performance.

7 The alleged nullity of the complainant's staff report

7.1 The complainant submitted that, due to several alleged shortcomings in the production of his staff report for the year 2004, his staff report was void. The Ombudsman recalls that he only found maladministration in relation to the delay in the production of the report. Parliament submitted that this delay had not had any consequences on the complainant's career, particularly as regards the course of the promotion procedure. The complainant took the view that the delay had in fact had far-reaching consequences for his career. However, he has not specified in what way he considers this to be the case. Therefore, the Ombudsman considers that the complainant has not established that the delay in the production of his staff report was such as to render it null.

7.2 In view of the above, and since the Ombudsman has not found any maladministration in relation to the other aspects of this case, he considers that the complainant has not substantiated his view that his staff report for the year 2004 was void.

8 Conclusion

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

It is good administrative practice for an Appointing Authority to complete the periodic evaluation of its staff within the time frame foreseen by the relevant rules. In the present case, the complainant's staff report was completed nearly three months behind schedule. This delay constitutes maladministration.

Given that the complainant has not specified in what way he considers that the delay in the production of his staff report had consequences on his career and since he has not made any claims in this respect, the Ombudsman does not consider it justified to pursue the matter further in order to try to achieve a friendly settlement.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) It appears that this note was contained in the Communication of 25 September 2003, to which Parliament and the complainant referred.

(2) Case T-23/91 *Maurissen v Court of Auditors* [1992] ECR II-2377, paragraph 40.

(3) The relevant comment in the complainant's staff report reads: " *Le noté possède*

d'excellentes bases (...), mais les traduit parfois de façon abrupte (...). "

(4) Parliament referred to Case T-164/97 *Busacca and others v Court of Auditors* [1998] ECR II-1699.

(5) The Ombudsman's decision is available on his website (http://www.ombudsman.europa.eu/decision/en/031319.htm [Link]).

(6) Case T-327/01 *Lavagnoli v Commission* [2003] ECR II-691.

(7) Parliament referred to Case T-23/91 *Maurissen v Court of Auditors* [1992] ECR II-2377.

(8) See, for example, the Ombudsman's decision on complaint 1634/2003/(ADB)GG, which is available on his website (http://www.ombudsman.europa.eu/decision/en/031634.htm [Link]).