

Decision of the European Ombudsman closing his inquiry into complaint 310/2009/ELB against the European Parliament

Decision

Case 310/2009/ELB - Opened on 17/03/2009 - Decision on 22/12/2009

THE BACKGROUND TO THE COMPLAINT

1. The complainant is the President of an association entitled X. Each year, X organises a training programme in European matters.
2. Until 2008, training sessions took place in one of Parliament's conference rooms (EAS 300). In 2008, Parliament refused to renew the authorisation granted to X to use this conference room, or any conference room in Parliament's buildings. It also withdrew access badges from members of X.
3. The complainant then turned to the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY

4. The complainant alleged that Parliament wrongly refused to grant his request to use its rooms and wrongly withdrew access badges from members of X.

In support of this allegation, the complainant argued that:

- (a) Parliament's decisions were inappropriate because they were not reasoned;
- (b) Parliament failed to indicate a legal basis for such action and to identify possibilities for appeal;
- (c) Parliament's decisions were disproportionate;
- (d) Parliament did not request further clarification from the complainant and never replied to his request for a meeting;



(e) Parliament abused its power, notably by making incorrect accusations against him; and

(f) Parliament breached his legitimate expectations, since X had used Parliament's rooms without any problems for several years.

5. The complainant claimed that Parliament should apologise and that X should be authorised to use Parliament's rooms and get access badges to Parliament's buildings.

THE INQUIRY

6. On 5 February 2009, the complainant addressed his concerns to the Ombudsman. On 17 March 2009, the Ombudsman opened an inquiry and forwarded the complaint to Parliament, which sent its opinion to the Ombudsman. The opinion was forwarded to the complainant, who then submitted his observations.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation of wrongful refusal to grant the complainant's request to use Parliament's rooms and withdrawal of access badges from members of X

Arguments presented to the Ombudsman

7. In February 2008, Parliament informed the complainant that X would no longer be granted the use of conference room EAS 300. It based its decision on the fact that X charges admission fees from participants taking part in its courses, whereas the use of the room is free of charge. It agreed that X could, on an exceptional basis, use the room for all activities already planned for the 2007-2008 academic year. In July 2008, X requested the renewal of the authorisation to use conference room EAS 300 for the 2008-2009 academic year. Parliament did not change its position. In November 2008, replying to the complainant's requests, Parliament added that, despite its refusal to grant X a room in its buildings, the complainant disregarded the applicable rules and reserved rooms within Parliament's buildings in November 2008. Parliament noted that X was still charging fees to those attending its conferences and that this was against Parliament's rules. Consequently, Parliament withdrew all access badges from members of X.

8. The complainant considered that Parliament's decision not to grant his request was taken too quickly and was not well-founded. If Parliament had requested clarification from the complainant and agreed to meet him, its decision would not have been incorrect. He explained that all conferences organised by X were public and free. In effect, two thirds of the participants take part free of charge. The remaining third is composed of registered members. The management of their files is partially covered by a registration fee and these members receive a degree at the



end of the training. He also clarified that the rooms for the conferences in November 2008 were reserved in accordance with the applicable rules and with the support of two MEPs.

9. Parliament failed to comply with Article 4 of the Code of Good Administrative Behaviour ('the Code'), since it did not refer to a legal basis for its decisions. According to him, Parliament reacted disproportionately, breaching Article 6 of the Code. Moreover, Parliament abused its power (Article 7 of the Code) by preventing training which was compliant with the public interest from taking place. It also made incorrect accusations that the complainant had disregarded the rules. Moreover, the complainant argued that Parliament did not comply with Article 10 of the Code, since X used Parliament's rooms for several years without any problems. Finally, he argued that Parliament failed to reason its decisions (Article 18 of the Code) by giving only short and incorrect reasons. It also failed to mention the possibilities of appeal (Article 19). The complainant considered that Parliament should apologise and claimed that X should be authorised to use Parliament's rooms and be granted access badges to Parliament's buildings.

10. In its opinion, Parliament explained that the use of its premises by external bodies is governed by the Rules on the use of Parliament's premises by external bodies [1] ('the Rules'). Conference room EAS 300 is managed by the Information Bureau. The Head of the Information Bureau informed X that Parliament would no longer authorise it to use conference room EAS 300. This decision was taken to put an end to any difference in treatment as regards conditions for using rooms and to comply with the Rules, notably Article 4(e) [2]. Parliament further explained that X requests fees from those wishing to take part in its training programme and to obtain a diploma. Therefore, it did not meet the condition set in Article 4(e) of the Rules. This decision was later confirmed by the Secretary-General of Parliament. Parliament did authorise X to use conference room EAS 300 until the end of academic year 2007-2008. However, despite Parliament's refusal, X advertised its next training programme on Parliament's notice boards and invited the Secretary-General to attend the opening ceremony in Parliament's premises. Given the complainant's disregard for the Secretary-General's decision and the Rules, the Secretary-General decided to withdraw access badges from X members.

11. Parliament further stated that the Rules should ensure the good functioning of Parliament's premises and equal treatment between external bodies. According to Article 1 of these Rules, Parliament's premises shall be reserved for parliamentary business and related events organised by Parliament. Third parties have no right to use Parliament's premises for professional or commercial activities of a private nature, especially profit-making activities. It is obvious that the possibility, granted to X, to use room EAS 300 for free does not comply with Article 4(e) of the Rules, since only the payment of fees can lead to the issuance of a diploma at the end of the academic year. X's disregard for Parliament and its abusive use of its access badges constituted a breach of trust and led the Secretary-General to withdraw X's access badges.

12. In his observations, the complainant explained that MEPs no longer use conference room EAS 300 and that the procedure to request use of that room is more flexible than the procedure to use other rooms in Parliament (he stated that the use of other rooms requires the support of at least one MEP). He stated that the conferences organised by X in room EAS 300 were open



to everybody and were free. In contrast, any fees requested by X covered administrative and educational costs, notably logistics, educational and IT equipment costs. These fees were never linked to the use of rooms. According to the complainant, Parliament misinterpreted Articles 1 and 4(e) of the Rules. It mixed up, on the one hand, conference fees paid for access to the conference rooms, with registration fees for the academic year on the other (the complainant argued that it charged no fee for access to the conference rooms). The complainant made reference to X's difficult financial situation, which should have led the institutions to help it.

13. As regards the conference organised in November 2008, and the presence of posters advertising it in Parliament, the complainant stated that this conference had been organised with the support of one MEP, in accordance with the Rules. The withdrawal of the access badges from the members of X prevented them from taking part in the work of committees and from following up the interinstitutional dialogue, which is X's institutional "*raison d'être*".

14. On 22 October 2009, the complainant informed the Ombudsman that Parliament had again refused access to its premises to hold a conference, organised by the complainant and two of its partners. Parliament informed the complainant's partners that no meeting room was available on the date in question and that there had been a series of problems with X in November 2008. According to the complainant, this was damaging its reputation.

The Ombudsman's assessment

15. The Ombudsman first points out that, according to settled case-law, the European Parliament, like other Community institutions, has extensive discretionary powers to organise its internal affairs [3]. He considers that access to Parliament's premises, and especially the allocation and use of its conference rooms, fall within Parliament's power of internal organisation [4].

16. The use of Parliament's premises by outside bodies is governed by the Bureau Decision of 14 March 2000. The Bureau's Decision thus constitutes the appropriate legal basis for Parliament's decision concerning the use of its rooms by X.

17. Article 1 of the Bureau's Decision states that Parliament's premises shall be reserved for parliamentary business and related events organised by Parliament. The Bureau Decision also sets out a number of conditions for using these premises. One of these conditions is that:

" All organising bodies shall formally undertake not to charge any registration fees for events held on Parliament's premises ". (emphasis added)

18. The Ombudsman notes that conference room EAS 300 is managed by Parliament's Information Bureau and that Parliament's intention was to put an end to differences in treatment as regards the conditions for using its rooms. He agrees that this policy is reasonable.

19. The complainant organised a training programme each year, which included a number of conferences taking place in Parliament's premises. Even if some of the attendees of these



conferences may not have paid fees, students who wished to obtain a diploma following attendance at this training programme paid registration fees. In this context, the Ombudsman concludes that Parliament was entirely right to refuse X access to its rooms. It also provided coherent and reasonable explanations as to why it withdrew its authorisation to X to use the rooms in its buildings. Accordingly, he finds no maladministration as regards this aspect of the complaint.

20. The Ombudsman notes that, despite Parliament's refusal to authorise the complainant to use one of its rooms, the latter placed posters in Parliament about the inauguration of the 2008-2009 training programme, which indicated that the event would take place in Parliament. He also sent an invitation to the Secretary-General of Parliament, who, as a result, became aware of this event.

21. The Ombudsman notes that, according to the rules governing security that were adopted by the Bureau on 3 May 2004, where the interests of Parliament so dictate, the President or the Secretary-General may refuse persons access to Parliament's buildings. In the present case, Parliament considered that the complainant ignored its decision and thus breached its trust. As a result, it decided to withdraw access badges from the complainant and his collaborators. The Ombudsman fully understands Parliament's reaction. He takes the view that Parliament's decision was coherent and reasonable and that sufficient explanations were provided for its decision to withdraw access badges from X members. He finds no maladministration as regards this aspect of the complaint.

22. As regards the alleged lack of reasoning behind Parliament's decisions and the failure to mention a legal basis, the Ombudsman notes that, in its e-mails of 27 and 28 February 2008, 27 and 29 September 2008 and its letters of 24 September 2008 and 6 November 2008, Parliament provided explanations to the complainant regarding its decision. Reference was made to the Rules, notably in its e-mail of 27 September 2008 and its letter of 6 November 2008 (although the text of the Rules was not attached or quoted). The Ombudsman considers that Parliament reasoned its decisions appropriately. He also notes that Parliament attached the Rules to its opinion. He therefore takes the view that no further inquiries into this aspect of the complaint are justified.

23. As regards the alleged failure to act proportionally, the Ombudsman does not agree with the complainant that Parliament reacted disproportionately, since it authorised him to use the room for the already planned activities for 2007-2008. He points out that, according to Article 4(j) of the Rules, Parliament has the right to cancel a reservation at any time, should the event fail to comply with one or more of the conditions set out in the Rules.

24. As regards the alleged fact that Parliament did not request further clarification or agree to meet the complainant, the Ombudsman notes that the complainant wrote on numerous occasions to Parliament, notably on 9 July 2008, 28 August 2008, 18, 25, 27, 29 and 30 September 2008 and 6 November 2008. In this correspondence, the complainant had the opportunity to provide clarifications to Parliament, which may explain why no meeting was organised.



25. As regards the complainant's argument that Parliament abused its power by preventing a course which was in the public's interest from taking place, the Ombudsman points out that, according to Parliament's Rules, any initiative taking place in Parliament must have a European dimension, be related to the activities of the European Union and be of direct interest to the institution. Even if the complainant's training programme were to meet this condition (which has not been demonstrated), it does not fulfil the condition relating to the absence of registration fees (Article 4(e) of the Rules).

26. The complainant considers that Parliament did not respect X's legitimate expectations given that the use of room EAS 300 had been granted to X for several years. The Ombudsman recalls that, according to the established case-law of the Court of First Instance, three conditions must be satisfied in order to claim entitlement to the protection of legitimate expectations. First, precise, unconditional and consistent assurances originating from authorised and reliable sources must be given to the person concerned by the Community authorities. Second, those assurances must be such as to give rise to a legitimate expectation on the part of the person to whom they are addressed. Third, the assurances given must comply with the applicable rules [5]. In the present case, and without any need to examine the first two conditions, it is clear that the third condition is not met.

27. As regards the alleged failure to indicate an appeals mechanism to the complainant, Article 19 of the European Code of Good Administrative Behaviour states the following:

" A decision of the Institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time-limits for exercising them.

Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under the conditions specified in, respectively, Articles 230 and 195 of the Treaty establishing the European Community. "

28. In his e-mail of 27 September 2008, the Head of Cabinet of the Secretary-General stated that no appeal was possible against the decision refusing the use of Parliament's rooms. According to Article 3 of the Rules, appeals may be lodged with the Bureau, which shall take a decision on a proposal from the Secretary-General. The Ombudsman notes that the complainant was never informed of this procedure. He also notes that, on his own initiative, the complainant addressed his request to the Secretary-General and later decided to turn to the Ombudsman. This shows that he had some knowledge of the appeal possibilities. In light of the above, the Ombudsman will, in this context, make a critical remark below.

B. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following



conclusions:

The Ombudsman found no maladministration as regards Parliament's decision to withdraw its authorisation to X to use the rooms in its buildings and withdraw access badges from X members.

The Ombudsman made the following critical remark as regards Parliament's failure to identify possibilities for appeal:

Parliament should have informed the complainant of the possibilities of appeal provided for in Article 3 of its Rules on the use of Parliament's premises by outside bodies.

The complainant and Parliament will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 22 December 2009

[1] Decision of the Bureau, dated 14 March 2000.

[2] Article 4(e) states that " *all organising bodies shall formally undertake not to charge any registration fees for events held on Parliament's premises* ".

[3] Case C-58/94 *Netherlands v Council* [1996] ECR I-2169, paragraph 37; Case C-301/02 P *Tralli v ECB* [2005] ECR I-4071, paragraph 58.

[4] See decision on complaint 1250/2000/(JSA)IJH.

[5] See Case T-203/97 *Forvass v Commission* [1999] ECR-SC I-A-129 and II-705, paragraph 70; Case T-199/01 *G v Commission* [2002] ECR-SC I-A-217 and II-1085, paragraph 38; and Case T-347/03 *Branco v Commission* [2005] ECR II-2555, paragraph 102.