

Draft recommendation to the European Parliament in complaint 2819/2005/BU

Recommendation

Case 2819/2005/BU - Opened on 05/10/2005 - Recommendation on 29/01/2008 - Decision on 27/06/2008

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1))

THE COMPLAINT

The complainant is a former assistant to an MEP, for whom she worked on the basis of a *Contract for Provision of Services* entered into on 31 August 2004 for a period of one year (the "Contract"). The Contract entered into force on 1 September 2004.

On 1 February 2005, the MEP gave the complainant a verbal termination notice. The complainant insisted that, in accordance with the Contract, the MEP should have given her a written termination notice sent by registered post with acknowledgement of receipt a month and a half prior to termination. The MEP gave the written termination notice on 10 February 2005, and the complainant received it on 11 February 2005.

On 18 March 2005, that is, before the expiry of the period of notice counted from the date the complainant received the written termination notice, one of Parliament's security guards, acting upon the request of the MEP and in the presence of the MEP's new assistant, interrupted the complainant during her lunch in Parliament's canteen in Brussels and checked her accreditation card. He asked her to stop eating and immediately to leave the canteen with him. In spite of requesting twice that she be allowed to finish her lunch, the complainant was not allowed to do so and was "dragged" from Parliament's canteen in the presence of (astonished) diners who were having lunch at the same time. The complainant was forced to follow the security guard to the Security Unit's premises where she was required to return the accreditation card.

On 16 May 2005, the complainant sent a complaint (in English) to the President of Parliament, in which she described the above incident and requested to know Parliament's official position.

On 7 June 2005, the Head of Parliament's Security Unit answered on behalf of Parliament's President (in French) as follows:

- The MEP notified Parliament's Security Unit that she intended to terminate the Contract with the complainant on 10 February 2005. As a consequence, the complainant's electronic access



pass was to be deactivated, her accreditation card withdrawn and the keys to the MEP's offices returned. The complainant's electronic pass was deactivated immediately.

- On 18 March 2005, the security guard asked the complainant to return her accreditation card, observing that it was being fraudulently used since she was no longer authorised to use it. The complainant returned the accreditation card after having signed a statement confirming that she had done so. Immediately afterwards, the security guard led the complainant off Parliament's premises in conformity with the rules.

- The accreditation card (a) "*gives access to the European Parliament only with the Member's authorisation*"; (b) belongs to Parliament; and (c) is not linked to any contractual agreement or to any system of privileges or immunities.

In her complaint to the European Ombudsman, the complainant expressed her dissatisfaction with Parliament's reply both as regards its form and content.

She alleged that:

- Parliament's security services treated her improperly; and
- Parliament failed to give adequate reasons for that treatment and to reply to her letter of 16 May 2005 in the language of that letter.

The complainant claimed that Parliament should:

- pay her compensation for the treatment she received (she did not state how much); and
- provide her with a reply to her letter of 16 May 2005 in English, or, alternatively, in Slovak.

As regards her first allegation and claim, the complainant took the view that Parliament's reply constitutes a weak justification for forcibly taking her from Parliament's canteen and for withdrawing her accreditation card, in spite of the fact that her period of notice had not yet expired.

In support of her second allegation and claim, the complainant referred to Article 41 of the Charter of Fundamental Rights of the European Union, according to which every person may write to the institutions of the Union in one of the languages of the Treaties and must receive an answer in the same language.

THE INQUIRY

Parliament's opinion

Parliament's opinion was as follows:

- The personnel of the Security Unit proceeded with all due respect to ask the complainant to return her accreditation card as was required following the MEP's decision to terminate her Contract.
- The complainant received a full explanation of the situation in reply to her letter of 16 May 2005. There is no requirement for Parliament to respond to correspondence from staff in their own language.
- The complainant did not accept the consequences of the termination of her Contract following the decision of the MEP, which inevitably meant that her accreditation card would be withdrawn.



Consequently, there are no grounds for offering compensation to the complainant.

- The complainant received a reply to her letter of 16 May 2005 in French which was regrettable. Parliament's current policy, as far as internal correspondence is concerned, is to offer its staff the choice of English or French.

The complainant's observations

In her observations, the complainant took the view that Parliament's opinion contains no relevant argument concerning the above-mentioned incident, and maintained her allegations and claims. She made the following comments on each of Parliament's points:

- There were no grounds for Parliament's security services to drag the complainant from Parliament's canteen and to ask her to return her accreditation card since she was still within the legal period of notice and was thus entitled to wear the accreditation card. The security services did not act with full knowledge of the facts as they did not verify whether the complainant was entitled to wear the accreditation card. Moreover, the manner in which the member of Parliament's security services interrupted the complainant's lunch and dragged her away in the presence of other diners harmed the complainant's personal reputation and constitutes the most humiliating experience of her life. If the security services were really obliged to intervene against the complainant, they could have done so outside the canteen and in a more appropriate manner.
- The complainant, in her capacity as an EU citizen, wrote an English-language complaint to Parliament's President, and expected an answer in English, or, alternatively, in Slovak.
- The complainant maintained her claim that Parliament should pay her compensation for the treatment she received.
- The complainant recommended that Parliament consider her complaint of 16 May 2005 to Parliament's President as external correspondence, and maintained her claim to receive a reply in English, or, alternatively, a Slovak translation of Parliament's reply to the complaint.

Further inquiries

After a careful study of Parliament's opinion and the complainant's observations, the Ombudsman was concerned that Parliament's opinion did not respond in sufficient detail to the complainant's serious allegations concerning the circumstances in which the security services removed her from the canteen and from Parliament's premises, and considered that further inquiries were necessary.

Therefore, the Ombudsman asked Parliament to: (i) provide statements by the members of the Security Unit who removed the complainant from the canteen and from Parliament's premises describing in detail what happened; and (ii) comment on whether the actions and methods of the Security Unit on that occasion were in accordance with Parliament's policies.

The Ombudsman also noted that Parliament's opinion did not refer to its *Rules governing the accreditation of assistants and their work in the European Parliament* (2). Since these rules contain, in the Ombudsman's view, provisions that could be relevant, in particular Articles 2 (3) and 4 (4), he requested that Parliament give an explanation as regards how they were applied in the present case or, if they were not applied, the reasons why not. The Ombudsman added that Parliament could address, in particular, the question of respect for the complainant's fundamental right to be heard before a decision having adverse consequences for her was made.



Finally, given that, on the date of her complaint to Parliament's President, the complainant was no longer an assistant, the Ombudsman suggested and requested that Parliament provide an English translation of its reply to the complainant's complaint of 16 May 2005. In this regard, the Ombudsman pointed to the third indent of Article 21 of the EC Treaty and Article 41(4) of the Charter of Fundamental Rights which appear to give the complainant the right to receive an answer to that complaint in the language of that complaint.

The further opinion of Parliament

In summary, Parliament replied to the further inquiries as follows:

First, Parliament drew attention to its *Rules Governing the Payment of Expenses and Allowances to Members* (the "PEAM Rules") and Annex VI thereof, namely, the *Rules governing the accreditation of assistants and their work in the European Parliament* (the "Rules Governing Accreditation"), which the Ombudsman referred to in his further inquiries to Parliament, and provided a copy of the PEAM Rules. Parliament noted that, as stated in the PEAM Rules, as well in the individual model contracts used by MEPs, every assistant is selected, recruited and employed under the exclusive responsibility of the MEP who remains his/her sole employer. Parliament does not, in any way, enter either formally or in substance into a contractual relationship with the assistants. Consequently, when an assistant is employed, it is exclusively at the request of the MEP concerned that the Security Unit establishes an accreditation card, and, when the contract ceases, it is also exclusively on the instructions of the MEP concerned that an accreditation card shall be withdrawn. Therefore, when an MEP informs the relevant services that, as from a particular date, an assistant is no longer employed, the accreditation card loses its *raison d'être* and is consequently invalid.

As regards the Ombudsman's suggestion that Parliament address the question of respect for the complainant's fundamental right to be heard before a decision having adverse consequences for her was made, Parliament referred to Article 7 of Annex VI of the PEAM Rules (5). Parliament emphasised, however, that this rule applies only to assistants "*in activity*" and not to a former assistant who was no longer contractually employed by the MEP and no longer in possession of a valid accreditation card. Parliament added that there would be no grounds to hold a prior hearing by a Parliament body on an issue relating to the contractual relationship between an MEP and his/her assistant and the right of these parties to bring the employment to an end (a right with respect to which Parliament would have no say).

Parliament added that the complainant had been properly informed by its services and made fully aware of the fact that, as she was no longer employed by her MEP, the latter could no longer assume responsibility for her presence on Parliament's premises. Moreover, the rules on access to Parliament's premises had been explained orally to the complainant by the Security staff in her mother tongue.

Parliament concluded that the complainant was fully aware and fully informed of the legal and factual situation in which she found herself at the moment when her contract was terminated. When the Security staff, on instructions from the Head of the Security Unit, asked the complainant to leave Parliament's premises, this was carried out in full compliance with



Parliament's internal rules and without any incident leading to formal statements by the staff involved.

Following the Ombudsman's request, Parliament provided an English translation of its reply of 7 June 2005 to the complainant's complaint of 16 May 2005 addressed to Parliament's President.

The complainant's further observations

In her reaction to Parliament's further opinion, the complainant reiterated that she received the MEP's written termination notice on 11 February 2005 and that, from this date, the period of notice of a month and a half started to run. The complainant went on to say that the period of notice lapsed on 25 March 2005 and, until that date, her Contract was still in force. As a result, she was still the MEP's assistant and thus entitled to access Parliament's premises using her accreditation card. In the complainant's view, it follows from the above that, on the day of the incident of 18 March 2005, the statement in Parliament's further opinion "*when the contract ceases*" was not applicable to her situation. For the same reasons, the complainant added that Parliament repeatedly commits a serious error when it considers that, on 18 March 2005, she was "*a former assistant*".

As regards Parliament's statement that "*the complainant was fully aware and fully informed of the legal and factual situation in which she found herself at the moment when her employment contract was terminated*", the complainant stated that the only facts that she was fully aware of were that her period of notice was still running and that her accreditation card was still valid. The complainant also contested Parliament's statement according to which she "*had also been properly informed by Parliament's services*", stating that this was not the case.

According to the complainant, the fact that, as an MEP's assistant, she was entitled to access Parliament's premises using her accreditation card, was confirmed by Parliament's security services who allowed her to enter Parliament's premises with that accreditation card. Any other understanding would mean that Parliament's security services allowed her to enter Parliament's premises with an allegedly invalid accreditation card.

The complainant concluded by reiterating that she considers the treatment given to her by Parliament's security services as a violation of her human rights, and maintained her claim for financial compensation for the treatment she received.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinions and the observations, the Ombudsman was not satisfied that Parliament had responded adequately to the complainant's first allegation and claim concerning the circumstances in which the personnel of the Security Unit removed her from the canteen and from Parliament's premises.

The proposal for a friendly solution

Article 3(5) of the Statute of the Ombudsman (6) directs the Ombudsman to seek, as far as possible, a solution with the institution concerned in order to eliminate the instance of



maladministration and satisfy the complainant.

The Ombudsman therefore made the following proposal for a friendly solution to Parliament:

" Parliament could consider offering the complainant apologies for the treatment given to her on 18 March 2005, and paying her a reasonable financial compensation for the same treatment. "

In this proposal, the Ombudsman set out, among others, the following provisional conclusions:

- It clearly follows from Article 4 of the Rules Governing Accreditation, which are contained in Annex VI of the PEAM Rules that: (i) a valid accreditation card, *per se* , gives the assistant the right to access Parliament's premises (including the canteens); and (ii) the MEP's authorisation is required only for the assistant's work in the employing MEP's office. Therefore, Parliament appears to have disregarded this provision by stating, in its reply of 7 June 2005 to the complainant's complaint of 16 May 2005, that the accreditation card "*gives access to the European Parliament only with the Member's authorisation* " (point 1.4 of the proposal).
- Given that the written termination notice dated 10 February 2005 was received by the complainant on 11 February 2005, the period of notice of one and a half months could not start running before the latter date and could not, consequently, expire before 25 March 2005. Therefore, the Ombudsman considers that the complainant succeeded in proving that, until 25 March 2005, her Contract with the MEP was still in force and she was thus still an assistant to the MEP (point 1.8 of the proposal).
- On the basis of Article 2 of the Rules Governing Accreditation (7) , it must be concluded that, on the date of the above incident, the complainant's accreditation card was certainly valid. Consequently, it follows from Article 4 of the Rules Governing Accreditation that, on the date of the incident of 18 March 2005, the complainant, who was in possession of a valid accreditation card, was fully entitled to access Parliament's premises, including the canteen. Parliament's application of its own rules to the complainant's situation was therefore not correct (points 1.9 and 1.11 of the proposal).
- The Ombudsman notes that Article 41 of the Charter of Fundamental Rights enshrines the fundamental right of "*every person* " to be heard. The Ombudsman is, therefore, seriously concerned by the fact that Parliament did not refer to the above rule during the present inquiry. Parliament only referred to the special provision of Article 7 of the Rules Governing Accreditation which regulates the assistant's right to be heard in the specific situation where the Quaestors consider that the assistant's actions or conduct are detrimental to the interests of the Institution. As stated by Parliament, this provision was not applied to the complainant's case. Therefore, Parliament, in its further opinion, could be understood to have admitted that the complainant's fundamental right to be heard, as enshrined in the Charter of Fundamental Rights, was not respected (point 1.13 of the proposal).
- On the basis of the above arguments, the Ombudsman considers that Parliament did not provide any valid argument to justify the treatment accorded to the complainant, either as



regards her removal from Parliament's premises and the withdrawal of her accreditation card, or as regards the respect of her fundamental right to be heard. In these circumstances, the Ombudsman arrives at the preliminary conclusion that Parliament's treatment of the complainant on 18 March 2005 could constitute an instance of maladministration (point 1.14 of the proposal).

Parliament's opinion on the proposal for a friendly solution

In its opinion, Parliament made the following comments:

First, Parliament reiterated its view that the personnel of its Security Unit proceeded in an appropriate manner when it asked the complainant to return her accreditation card following the termination of her Contract by the MEP. According to Parliament, the complainant agreed to sign the relevant paperwork and return the card.

Parliament went on to note that "*[t]he European Parliament's rules state that the holder of a pass granting a specific form of access must meet the requirements laid down in the rules drawn up by the Parliament's Secretary-General; Assistants passes are issued to persons who have a direct professional or private link with a Member.*"

According to Parliament, the private law Contract concluded between the complainant and the MEP on 31 August 2004, which terminated on 15 March 2005, is, legally speaking, a service provider contract, and Parliament may under no circumstances be deemed to be an employer under or a party to it.

Parliament further stated that, in view of the direct relationship between the assistant and the MEP, the latter is totally free, once the Contract is terminated, to request that the assistant not return to the office to work during the notice period. Parliament added that the period of notice is intended to protect the assistant solely in terms of salary, but it is to be decided exclusively by the signatories of the Contract whether the assistant is to work during the period of notice. Therefore, the complainant has no basis for requiring the MEP to let her continue to work during that period.

Therefore, given that the MEP wished the complainant to stop work immediately and an assistant's accreditation card is issued solely on the ground that there is a private law contract between the assistant and the MEP, the complainant had no grounds for justifying her presence on Parliament's premises on the day of the incident of 18 March 2005.

Parliament concluded that, given the above circumstances, it "*is in no position to offer any apology to the complainant.*" Parliament added that it "*assumes no responsibility as an employer and cannot offer financial compensation in a situation where the contract is a private law contract duly concluded in accordance with the national law applicable.*"

The complainant's observations

In summary, the complainant pointed to Parliament's statement according to which the personnel of its Security Unit proceeded in an appropriate manner when it asked her to return the accreditation card following the termination of her Contract by the MEP. The complainant stated that, by having made this statement, Parliament (i) knowingly ignored the Ombudsman's



finding that it treated an EU citizen improperly; and (ii) ignored the fact that the termination of the Contract is linked to the acknowledgement of receipt (of the termination notice) of 11 February 2005 and did not take into account that, on 18 March 2005, the complainant was still within the period of notice and thus entitled to use the accreditation card.

The complainant also wondered on what basis Parliament arrived at the conclusion that, given that the MEP wished her to stop work immediately and an assistant's accreditation card is issued solely on the ground that there is a private law contract between the assistant and the MEP, she had no grounds for justifying her presence on Parliament's premises on 18 March 2005. In this regard, the complainant pointed out, once again, that her Contract was in force until 25 March 2005 and that, according to Article 4 of the Rules Governing Accreditation, an assistant in possession of a valid accreditation card, which was the complainant's case, does not need his/her MEP's authorisation for staying in Parliament's premises.

The complainant further expressed her disagreement with Parliament's statement that she agreed to sign the relevant paperwork and return the accreditation card. She stated that the accreditation card was forcibly taken away from her, and the statement attesting that she had returned it was issued to her only following her request to receive such a statement.

Finally, the complainant noted that Parliament did not address the "scandalous manner" in which the personnel of the Security Unit escorted her off Parliament's premises, and found therefore striking Parliament's conclusion that it is in no position to offer her an apology.

The Ombudsman's appraisal

On the basis of Parliament's opinion and the complainant's observations, the Ombudsman concludes that no friendly solution could be achieved.

Additional correspondence dated 14 and 15 November 2007

By e-mails of 14 and 15 November 2007, the MEP informed the Ombudsman of legal proceedings which the complainant has initiated against her before the competent national court concerning the termination of the Contract.

THE DECISION

1 The relevant facts and the Ombudsman's assessment

1.1 The complainant, a former assistant to an MEP, stated that, on 18 March 2005 (that is, before the expiry of the period of notice) and in the presence of other diners, a member of Parliament's Security Unit interrupted her during her lunch in Parliament's canteen in Brussels, and asked her to stop eating and immediately to leave the canteen with him. The complainant was forced to follow the guard to the Security Unit's premises where she had to return her accreditation card. She was then asked to leave Parliament's premises. The complainant alleged that Parliament's security services treated her improperly, and claimed compensation for the treatment she received.

1.2 In its opinion, Parliament took the view that the personnel of its Security Unit asked the complainant, with all due respect, to return her accreditation card. She was, in Parliament's view, required to do so on the basis of the MEP's decision to terminate her Contract. According



to Parliament, the complainant did not accept the consequences of the termination of her Contract. This meant, inevitably, that her accreditation card would be withdrawn. Therefore, Parliament considered that there are no grounds for offering compensation to the complainant.

In its answer to the Ombudsman's further inquiries, Parliament referred to (i) the *Rules Governing the Payment of Expenses and Allowances to Members* (the "PEAM Rules"); (ii) the *Rules governing the accreditation of assistants and their work in the European Parliament* (the "Rules Governing Accreditation") contained in Annex VI of the PEAM Rules; and (iii) the individual model contracts used by MEPs. Parliament noted that every Parliamentary assistant is selected, recruited and employed under the exclusive responsibility of the MEP concerned, and that Parliament does not interfere with the MEPs' contractual relationships with their assistants. Consequently, when an assistant is employed, it is exclusively at the request of the MEP concerned that the Security Unit issues an accreditation card. When the contract ceases, it is exclusively on the instructions of the MEP concerned that an accreditation card shall be withdrawn. Therefore, when an MEP informs the relevant services that, as from a particular date, an assistant is no longer employed, the accreditation card loses its *raison d'être* and is consequently invalid.

As regards the Ombudsman's suggestion that Parliament address the question of respect for the complainant's fundamental right to be heard before a decision having adverse consequences for her was made, Parliament referred to Article 7 of Annex VI of the PEAM Rules, but emphasised that this rule applies only to assistants "*in activity*" and not to former assistants without a valid accreditation card. Parliament added that there would be no grounds to hold a prior hearing by a Parliament body on an issue relating to the contractual relationship between an MEP and his/her assistant and the right of these parties to bring the employment to an end (a right with respect to which Parliament would have no say).

On the basis of the above, Parliament concluded that the complainant was fully aware and fully informed of the legal and factual situation in which she found herself at the moment when her Contract was terminated.

1.3 On 5 February 2007, the Ombudsman arrived at the preliminary conclusion that Parliament's treatment of the complainant on 18 March 2005 could constitute an instance of maladministration. The Ombudsman's grounds for reaching such a preliminary conclusion were that Parliament did not provide any valid argument to justify the treatment accorded to the complainant, either as regards the withdrawal of her accreditation card and her removal from Parliament's premises, or as regards the respect of her fundamental right to be heard.

Therefore, the Ombudsman made the following proposal for a friendly solution to Parliament:

"Parliament could consider offering the complainant apologies for the treatment given to her on 18 March 2005, and paying her a reasonable financial compensation for the same treatment."

1.4 In its reply to the proposal for a friendly solution, Parliament reiterated its view that the personnel of its Security Unit proceeded in an appropriate manner when it asked the



complainant to return her accreditation card following the termination of her Contract by the MEP.

Parliament also stated that "*[t]he European Parliament's rules state that the holder of a pass granting a specific form of access must meet the requirements laid down in the rules drawn up by the Parliament's Secretary-General; Assistants passes are issued to persons who have a direct professional or private link with a Member*".

It also pointed out that it may, under no circumstances, be deemed to be an employer under, or a party to, the private law Contract concluded between the complainant and the MEP.

Parliament went on to state that, in view of the direct relationship between the assistant and the MEP, the latter is totally free, once the Contract is terminated, to request that the assistant not return to the office to work during the notice period, which is why the complainant had no basis for requiring the MEP to let her continue to work during that period. Parliament also took a view that, given that the MEP wished the complainant to stop work immediately and an assistant's accreditation card is issued solely on the grounds that there is a private law contract between the assistant and the MEP, the complainant has no grounds for justifying her presence on Parliament's premises on the day of the incident of 18 March 2005.

Parliament concluded that, given the above circumstances, it "*is in no position to offer any apology to the complainant.*" It added that it "*assumes no responsibility as an employer and cannot offer financial compensation in a situation where the contract is a private law contract duly concluded in accordance with the national law applicable.*"

1.5 At the outset, the Ombudsman recalls that Articles 4 (Lawfulness) and 7 (Absence of abuse of power) of the European Code of Good Administrative Behaviour, which Parliament has instructed the Ombudsman to apply in examining whether there is maladministration (8) , provide respectively as follows:

" *The official shall act according to law and apply the rules and procedures laid down in Community legislation. The official shall in particular take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.* "

" *Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.* "

In this context, the Ombudsman finds it regrettable that, in spite of having been requested to do so, Parliament did not take a stance in the course of the present inquiry on how Articles 2 and 4 of its Rules Governing Accreditation (9) were applied to the complainant's case or, if they were not applied, the reasons why not. Although Parliament mentioned, in its reply to the proposal for a friendly solution, that "*[t]he European Parliament's rules state that the holder of a pass granting a specific form of access must meet the requirements laid down in the rules drawn up*



by the Parliament's Secretary-General ", it neither specified to which rules it refers, nor mentioned, in the course of the present inquiry, any specific legal provision on the basis of which it could justify the treatment accorded to the complainant on 18 March 2005.

1.6 The Ombudsman notes that, in the course of his inquiry, he was informed that legal proceedings concerning the termination of the Contract have commenced before the competent national court.

1.7 In this regard, the Ombudsman recalls that the termination of the Contract is not, as such, the matter under his investigation within the meaning of Article 10(3) of the Implementing Provisions for the Ombudsman's Statute (10) , but one of the alleged facts within the meaning of Article 195 of the EC Treaty (11) and Article 2(7) of the Ombudsman's Statute (12) .

Therefore, the Ombudsman does not consider it appropriate to close the present case as a whole, but will terminate his assessment of Parliament's application of Articles 2 and 4 of the Rules Governing Accreditation to the complainant's situation, because the facts relating to the termination of the Contract, which became the subject of legal proceedings, are relevant for that assessment.

1.8 As regards Article 7 of the Rules Governing Accreditation, the Ombudsman noted Parliament's statement, made in reply to his further inquiries, that it was not applied to the complainant's case. This provision deals with a situation whereby the Quaestors consider that the assistant's actions or conduct are detrimental to the interests of the Institution. In light of the above, it follows from Parliament's statement that it did not consider the complainant's presence in its premises to be detrimental to its interests as an Institution.

1.9 In his letter addressing further inquiries to Parliament, the Ombudsman requested that Parliament address the question of the respect for the complainant's fundamental right to be heard before a decision having adverse consequences for her was made.

In its reply, Parliament referred to Article 7 of Annex VI of the PEAM Rules (13) , but emphasised that this Article applies only to assistants " *in activity* " and not to former assistants without a valid accreditation card. Parliament added that there would be no grounds to hold a prior hearing by it on an issue relating to the contractual relationship between an MEP and his/her assistant and the right of these parties to bring that employment to an end.

1.10 In his proposal for a friendly solution, the Ombudsman therefore expressed his serious concern with regard to the fact that Parliament did not refer to Article 41 of the Charter of Fundamental Rights of the European Union (14) . According to Article 41 " [e]very person *has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union* ". This right also includes " *the right of every person to be heard, before any individual measure which would affect him or her adversely is taken (...)* " (emphasis added). The Ombudsman noted that Parliament thus could be understood to have admitted that the complainant's fundamental right to be heard, as enshrined in the Charter of Fundamental Rights, was not respected.



In light of the above, the Ombudsman regrets to note that Parliament did not refer to the above provision of the Charter of Fundamental Rights in its reply rejecting the proposal for a friendly solution either, thereby confirming the Ombudsman's provisional conclusion that the complainant's fundamental right to be heard was not respected.

1.11 In the above context, the Ombudsman finds unconvincing Parliament's statement that there would be no grounds for it to hear the complainant on an issue relating to the contractual relationship between her as a parliamentary assistant and the MEP concerned and to their respective rights to bring the employment to an end.

First, the Ombudsman emphasises that the absence of a contractual relationship between Parliament and the complainant, as a parliamentary assistant, which has never been questioned either by the Ombudsman or the complainant in the present case, does not relieve Parliament of the duty correctly to apply its own rules as well as the principles of good administration to the complainant and to respect her fundamental rights.

Second, the Ombudsman recalls that the issue of the termination of the Contract had a direct impact on whether, on the day of the incident, the complainant's accreditation card was still valid and thus whether Parliament had the right to remove her from its premises (which, within the meaning of Article 41 of the Charter of Fundamental Rights, was certainly a measure affecting the complainant adversely).

Therefore, it was incumbent on Parliament, in accordance with Article 41 of the Charter of Fundamental Rights, to hear the complainant on the issue of the termination of the Contract before removing her from its premises. Parliament's failure to do so constitutes an instance of maladministration.

1.12 The Ombudsman further recalls that Article 6(1) (Proportionality) of the European Code of Good Administrative Behaviour provides that, "*[w]hen taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.*"

Therefore, even in a hypothetical situation where the complainant would have accessed Parliament's premises after the expiry of her period of notice and thus without a valid accreditation card, and the personnel of the Security Unit had to intervene, it would have to do so in strict respect of the above principle of proportionality.

1.13 The Ombudsman notes the complainant's statements, which Parliament had never contested in the course of the present inquiry, that the personnel of the Security Unit approached her in the canteen during lunch, in the presence of other diners, and without even allowing her to finish her meal asked to leave immediately. In this regard, the Ombudsman draws Parliament's attention to the complainant's observation that the manner in which the security guard interrupted her during lunch and "dragged" her from the canteen in the presence



of the other diners harmed her personal reputation and constitutes the most humiliating experience of her life.

The Ombudsman considers that such a humiliating course of action could only be seen as proportionate if the complainant's conduct were to be considered to be detrimental to Parliament's interests. However, it follows from point 1.8 above that this was not the case. Therefore, the Ombudsman considers that the intervention by the personnel of the Security Unit against the complainant was not proportionate, and constitutes another instance of maladministration.

1.14 The Ombudsman noted that, in its reply rejecting his proposal for a friendly solution, Parliament refused even to offer an apology to the complainant. The Ombudsman regrets that Parliament thus failed to avail itself of the possibility to resolve the case in a manner that would have been both simple and citizen-friendly.

2 Conclusion

In view of the above, the Ombudsman (i) terminates his assessment of Parliament's application of Articles 2 and 4 of the Rules Governing Accreditation to the complainant's situation on 18 March 2005; and (ii) concludes that Parliament's treatment of the complainant on the day in question involved instances of maladministration consisting of a violation of her fundamental right to be heard and a violation of the principle of proportionality. The Ombudsman will therefore make the following draft recommendation to Parliament concerning point (ii) above, in accordance with Article 3(6) of his Statute:

The draft recommendation

Parliament should apologise to the complainant for its treatment of her on 18 March 2005. To underline the sincerity of its apology, Parliament should consider offering the complainant an *ex gratia* payment. The Ombudsman takes the view that EUR 1000 would be an appropriate amount for such a payment.

Parliament and the complainant will be informed of this draft recommendation. In accordance with Article 3(6) of the Statute of the Ombudsman, Parliament shall send a detailed opinion by 30 April 2008. The detailed opinion could consist of the acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 29 January 2008

P. Nikiforos DIAMANDOUROS

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, p. 15.

(2) Annex VI to the *Rules Governing the Payment of Expenses and Allowances to Members* .



(3) Article 2: " *This [accreditation] card shall be valid for the duration of the contract between the Member and the assistant (...) The card must be returned to the issuing department upon termination of the assistant's contract. "*

(4) Article 4: " *The accreditation card shall entitle the assistant to:*

- *access to the European Parliament's premises, such as the library, restaurants, garages and the document distribution centre,*
- *work in the employing Member's office, subject to his or her authorisation (...).".*

(5) " *The Quaestors may decide, at any time, to withdraw the accreditation card if they consider that the assistant's actions or conduct are detrimental to the interests of the Institution. The Quaestors shall hear the assistant and the Member(s) concerned before taking their decision. "*

(6) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, p. 15.

(7) According to this provision, the accreditation card " *shall be valid for the duration of the contract between the Member and the assistant (...) The card must be returned to the issuing department upon termination of the assistant's contract. "*

(8) Report of 13 July 2001 on the annual report on the activities of the European Ombudsman for the year 2000 (2001/2043(COS)), point 7.

(9) See notes 3 and 4 above.

(10) " *If legal proceedings are instituted in relation to matters under investigation by the Ombudsman, he closes the case. The outcome of any inquiries he has carried out up to that point is filed without further action. "*

(11) " *In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds (...) except where the alleged facts are or have been the subject of legal proceedings. "*

(12) " *When the Ombudsman, because of legal proceedings in progress or concluded concerning the facts which have been put forward, has to declare a complaint inadmissible or terminate consideration of it, the outcome of any enquiries he has carried out up to that point shall be filed definitively. "*

(13) " *The Quaestors may decide, at any time, to withdraw the accreditation card if they consider that the assistant's actions or conduct are detrimental to the interests of the Institution. The Quaestors shall hear the assistant and the Member(s) concerned before taking their decision. "*

(14) OJ 2000 C 364, p. 1.