

## Decision of the European Ombudsman closing his inquiry into complaint 2660/2009/(BU)RT against the Council of the European Union

Decision

**Case 2660/2009/(BU)RT - Opened on 02/12/2009 - Decision on 13/12/2010**

### The background to the complaint

1. The complainant submitted the present complaint in his capacity as President of the Staff Committee of the European Parliament and on the latter's behalf.

2. According to Article 13(3) of Annex VII to the Staff Regulations:

*" the Council shall review every **two years** the rates [of the daily subsistence allowances and hotel costs for missions] . This review shall take place in the light of a report by the Commission on the prices of hotels, restaurants and catering services, taking into account the indexes on the evolution of such prices. For the purpose of this review, the Council shall act on a proposal by the Commission by the qualified majority provided for in the first indent of the second subparagraph of Article 205(2) of the EC Treaty. " (emphasis added) .*

3. On 27 June 2006, the Council adopted Regulation (EC, Euratom) No 1066/2006 adjusting from 1 July 2006 the scale for missions by officials and other servants of the European Communities in the Member States [1] . The Regulation was adopted on the basis of the Commission's Proposal for a Council Regulation (EC, EURATOM) adjusting from 1 May 2006 the scale for missions by officials and other servants of the European Communities in the Member States [2] .

4. On 30 October 2008, the complainant wrote to Parliament's Secretary-General in relation to the biennial adjustments to the scale setting the daily subsistence allowances and hotel costs for missions. He drew his attention to the fact that the scale set in 2006 should have been reviewed in 2008. The complainant asked Parliament's Secretary-General to contact the Commission's Secretary-General, in order to initiate the review process without delay.

5. On 26 November 2008, the Director-General of Parliament's Directorate General for Personnel (DG Personnel) contacted the complainant by letter. He outlined that, on 21



November 2008, he sent a request to the Director-General of the Commission's Directorate-General for Personnel and Administration [3] (DG ADMIN) asking the Commission to submit to the Council the report under Article 13(3) of Annex VII to the Staff Regulations.

6. On 11 February 2009, the complainant sent a further letter to the Director- General of Parliament's DG Personnel stating that, apart from the above-mentioned reply of 26 November 2008, the Staff Committee had received no information on the matter. The complainant therefore requested the Director-General to contact the Commission once again.

7. On 17 February 2009, the Director-General of Parliament's DG Personnel informed the complainant that, on 22 December 2008, the Director-General of the Commission's DG ADMIN asked Parliament to provide all the necessary data for the Commission to produce its report. The Director-General of DG Personnel added that Parliament had provided the requested information and would follow closely any subsequent action taken by the Commission.

8. On 26 February 2009, the complainant reiterated his request to the Director-General of Parliament's DG Personnel.

9. On 28 October 2009, the complainant turned to the Ombudsman.

## **The subject matter of the inquiry**

10. In his complaint, the complainant made the following allegation and claim.

Allegation:

The Council failed to adopt, in a timely manner, a decision relating to the 2008 review, in accordance with Article 13(3) of Annex VII of the Staff Regulations.

Claim:

The Council should adopt a decision relating to the 2008 review, in accordance with Article 13(3) of Annex VII of the Staff Regulations. This decision should have retroactive effect, as from 1 July 2008.

## **The inquiry**

11. On 2 December 2009, the Ombudsman opened an inquiry and asked the Council to provide an opinion on complaint by 31 March 2010.

12. On 12 March 2010, the Council replied. The reply was forwarded to the complainant with an invitation to submit observations.



13. On 8 September 2010, the complainant asked for a copy of the entire file of his complaint.

14. On 27 September 2010, the Ombudsman provided the complainant with a copy of his complaint file. He also renewed his invitation to the complainant to submit observations on the opinion submitted by the Council by 31 October 2010. The complainant did not submit observations.

## **The Ombudsman's analysis and conclusions**

### **A. Allegation of failure to act in a timely manner**

#### **Arguments presented to the Ombudsman**

15. The complainant argued that the Council should have adopted a new scale with effect from 1 July 2008, or, at least, reviewed the rates at the beginning of 2008, based on a report from the Commission.

16. The Council did not submit any arguments on the substance of the present case, but rather challenged the admissibility of the complaint.

17. The Council refused to submit an opinion on the complaint because it considered it to be inadmissible. In this respect, the Council took the view that the complainant's complaint to the European Ombudsman did not comply with the conditions specified in Article 2(4) of the European Ombudsman's Statute. The Ombudsman should therefore not have considered the complaint to be admissible. In this respect, the Council pointed out that the complainant did not make any prior administrative approaches to the Council in relation to the subject-matter of his complaint. Moreover, the Council emphasised that, in accordance with the provisions of Article 228 TFEU, the Ombudsman is empowered to receive complaints concerning instances of maladministration in the activity of the EU institutions, bodies, offices or agencies. The Council took the view that the adjustment to the scale setting the daily subsistence allowances and hotel costs for missions, in accordance with the provisions of Article 13(3) of Annex VII of the Staff Regulations, forms part of the legislative activity of the Council and thus falls outside of the Ombudsman's mandate.

#### **The Ombudsman's assessment**

18. The Ombudsman does not agree with the Council's view. He finds the complaint admissible for the following reasons.

19. Article 228 TFEU does not state that the Ombudsman cannot receive complaints from organisations such as staff committees of the EU institutions. The Ombudsman emphasises



that, although the present complaint was submitted by an official, this was done on behalf of the Staff Committee . The Ombudsman considers, therefore, that this complaint is an *actio popularis* complaint defending a collective interest of officials for their mission expenses to correspond to the real local costs which the missions involve.

**20.** Article 2(4) of the Ombudsman's Statute requires indeed that any complaint made to the Ombudsman must be preceded by appropriate prior administrative approaches to the institution concerned. He takes the view, however, that prior administrative approaches are not considered appropriate for *actio popularis* complaints if the institution is aware of the issue concerned and has already taken an opportunity to define its position. In the present case, it is obvious that the Council was aware of the issue.

**21.** The Ombudsman further recalls that, according to the definition provided in its 1997 Annual report, " *maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it* ". He has consistently taken the view that maladministration is a broad concept and that good administration requires, among other things, compliance with legal rules and principles . The Ombudsman notes that the present complaint does not concern the merits of the provisions concerning the rates of daily subsistence allowances and hotel expenses for missions, but rather the Council's failure to comply with its obligation to respect the legal deadlines to legislate on the above rates, as established in Article 13(3) of Annex VII of the Staff Regulations. The complaint referred to the Council's obligation to legislate on the specific matter foreseen in Article 13(3) of Annex VII of the Staff Regulations. If a complaint relates to the organisation of legislative activity, the Ombudsman's review is not necessarily excluded in accordance with Article 228 TFEU.

**22.** In light of the above, the Ombudsman decided that the complaint was admissible.

**23.** The Ombudsman regrets that the Council refused to submit its view on the substance of the present case. Nevertheless, he notes that, according to Article 13(3) of Annex VII to the Staff Regulations, the Council should act on the basis of a proposal submitted by the Commission. In this respect, it appears that the Commission has not yet submitted such a proposal to the Council [4] . In these circumstances, the Ombudsman considers that no further inquiries are justified as regards the present complaint. Accordingly, he closes the case.

## B. Conclusions

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

**No further inquiries are justified.**

The complainant and the Council will be informed of this decision.



P. Nikiforos Diamandouros

Done in Strasbourg on 13 December 2010

[1] OJ 2006 L 194, p. 1.

[2] COM(2006) 143 final - of 29/03/2006.

[3] The Commission's Directorate-General for Personnel and Administration (DG ADMIN) is now the Directorate-General for Human resources and Security. However, in the present decision reference will be made to 'DG ADMIN', which was the correct name at the time of the relevant facts.

[4] See the Ombudsman's decision in complaint 2659/2009/(BU)RT, available on his website.