

## Decision of the European Ombudsman closing his inquiry into complaint 885/2009/MF against the European Parliament

Decision

**Case 885/2009/MF - Opened on 31/08/2009 - Decision on 17/12/2010**

### The background to the complaint

1. The complainant is a French citizen. From April 1977 to November 1981, he worked for the European Parliament as a printing operator during Parliamentary sessions in Strasbourg. On average, he worked 5 days per month. He was employed as a Parliamentary session auxiliary agent under Article 78 of the Conditions of Employment of Other Servants ('CEOS') [\[1\]](#) [\[Link\]](#).
2. In 2007, the complainant was about to retire. In order to obtain his full pension entitlement, he was required to draw up a detailed account of his past employment.
3. On 9 December 2007, pursuant to Article 90(1) of the Staff Regulations, he requested Parliament to provide him with a certificate showing Parliament's contributions to the French National Pension Scheme for the period from April 1977 to November 1981.
4. By letter dated 27 February 2008, Parliament's Pay Unit informed the complainant that it could not satisfy his request. He was informed that Parliament did not become affiliated to the French Social Security system until 1 September 1982. It was, therefore, only as of that date that the institution, became obliged to make contributions to the French Social Security system. Prior to that date, Parliament was affiliated to a private insurance broker, which provided accident cover for its staff. Parliament did not, therefore, pay contributions to the French Social Security system for the complainant during his years of employment.
5. On 7 July 2008, the complainant requested the French pension organisation *Union de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales* (URSAFF) to regularise the situation regarding his pension. URSAFF declared that it was not competent to do so on the grounds that, " *in accordance with French Decree no 75-109 of 24 February 1975, the situation of persons whose employers failed to contribute for certain period of time could only be regularised if they fulfilled the conditions of affiliation to the French General Pension scheme* " [\[2\]](#) [\[Link\]](#). The complainant also submitted the matter to the *Centre interministériel de*



*renseignements administratifs* (CIRA) [3] [\[Link\]](#) and to the *Centre de liaison européen et international* (CLEISS) [4] [\[Link\]](#), both of which also declared that they were not competent to deal with the matter.

6. On 6 April 2009, the complainant turned to the Ombudsman.

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

7. In his complaint, the complainant alleged that Parliament failed to give legal grounds for not paying contributions for him to the French National Pension Scheme during the time he worked for the institution prior to September 1982.

8. He claimed that Parliament should assist him in his dealings with the French authorities to now pay the contributions which would entitle him to a pension for the period during which he worked for the institution, namely, from 1977 to 1981.

## **The inquiry**

9. On 28 May 2009, the Ombudsman asked Parliament's relevant services to provide the complainant with a better explanation as to why it did not make contributions for its staff to the French Social Security scheme prior to 1982.

10. On 17 June 2009, Parliament wrote to the complainant, merely repeating the content of its letter to the complainant dated 27 February 2008 (see paragraph 4 above). A copy of the letter dated 17 June 2009 was also sent to the Ombudsman.

11. The Ombudsman considered that Parliament's letter did not provide the complainant with the requested explanation.

12. On 31 August 2009, the Ombudsman, therefore, asked Parliament to give an opinion on the complainant's above allegation and claim.

13. On 2 March 2010, Parliament sent its opinion. The Ombudsman forwarded it to the complainant with an invitation to make observations, which he sent on 31 March 2010.

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

**A. Parliament's alleged failure to give legal grounds for not paying the retirement contributions and related claim**



## Arguments presented to the Ombudsman

**14.** The complainant alleged that Parliament failed to give legal grounds for not paying the retirement contributions to the French authorities before September 1982. He claimed that Parliament should help him pay the contributions corresponding to the period from 1977 to 1981, during which he worked for Parliament. This would allow the time he worked for Parliament to be included in the calculation of his French pension.

**15.** In its opinion, Parliament first questioned the admissibility of the complaint. In this context, it referred to Article 2(8) of the Ombudsman's Statute [\[5\] \[Link\]](#). In Parliament's view, the complainant had not exhausted all the possibilities of internal remedies available to him. Although he had lodged a request pursuant to Article 90(1) of the Staff Regulations on 9 December 2007, he did not lodge a complaint pursuant to Article 90(2) of the Staff Regulations against the Pay Unit's reply dated 27 February 2008.

**16.** Second, as regards the substance of the complaint, Parliament observed that the complainant did not at any time contest either the terms of his successive contracts as auxiliary agent for the parliamentary sessions, nor the pay slips relating to his remuneration for each month of service rendered. The complainant's payslips did not contain any mention of pension insurance payments for work carried out during the parliamentary sessions. Parliament enclosed with its opinion a copy of the payslip relating to the session of May 1978. Therefore, the complainant should have been aware of the fact that the only cover provided was accident and sickness insurance. The complainant did not raise this issue until more than 25 years after the end of his employment relationship with Parliament. In this respect, Parliament referred to case-law, which establishes that requests pursuant to Article 90(1) of the Staff Regulations have to be filed within a reasonable time limit [\[6\] \[Link\]](#).

**17.** Parliament pointed out that the complainant was recruited pursuant to Article 78 of CEOS. At the time of the complainant's recruitment, this provided as follows:

"By way of derogation from the provisions of this Title, auxiliary staff engaged by the European Parliament for the duration of the work of its sessions shall be subject to the conditions of recruitment and remuneration laid down in the agreement between the Parliament, the Council of Europe and the Assembly of Western European Union in respect of engagement of such staff."

**18.** However, Parliament stated that no such an agreement was concluded for auxiliary staff other than auxiliary interpreters. This implied that Parliament was not obliged to pay pension contributions to the French social security system for auxiliary staff other than interpreters. The complainant's request thus lacked any legal basis.

**19.** Parliament communicated this aspect of the file to the complainant, first in the Pay Unit's letter dated 27 February 2008, and then in the Director of Administration's letter dated 17 June 2009, which was sent in response to the Ombudsman's request.



**20.** Finally, Parliament stated the following in its opinion: "[i]n order to comply with the principle of good administration, Parliament's administration is willing to meet Mr [name of the complainant] and to examine more precisely his file. If he wishes so, he can have an appointment with Ms [...], the member of the Private Office of the Secretary General in charge of staff matters. "

**21.** In his observations, the complainant maintained his claim that Parliament should help him to pay the pension contributions for the period from 1977 to 1981, during which he was employed by Parliament.

#### The Ombudsman's assessment

**22.** At the outset, the Ombudsman notes Parliament's remarks concerning the applicability of Article 2(8) of the Ombudsman's Statute in the present case. The Ombudsman agrees with Parliament that the admissibility of the complaint as such is questionable. However, the Ombudsman considers that the case raises a general issue, which could be of public interest, concerning the responsibility of Parliament as regards the pension entitlements of former employees. Moreover, in view of Parliament's opinion on the substance of the complaint, the Ombudsman considers that no further inquiries into the matter are needed at this stage (see paragraph 24 below). It is therefore unnecessary for the Ombudsman to take a position on the admissibility of the complaint.

#### *The complainant's social security benefits for the period between 1977 and 1981*

**23.** In its opinion, Parliament referred to Article 78 of the CEOS, which was in force at the time of the complainant's employment with Parliament ('the relevant CEOS '), namely, from April 1977 to November 1981. This Article provided for a derogation from the normal provisions of the CEOS concerning the conditions of recruitment and remuneration of auxiliary staff. According to the said Article, "... auxiliary staff engaged by the European Parliament for the duration of the work of its sessions shall be subject to the conditions of recruitment and remuneration laid down in the agreement between the Parliament, the Council of Europe and the Assembly of Western European Union in respect of engagement of such staff."

**24.** The Ombudsman understands from Parliament's explanation provided in its opinion, that the complainant's contract with Parliament was not governed by the latter's Agreement with the Council of Europe and the Assembly of Western Union ('the Agreement') concerning social security payments for its auxiliary staff in Strasbourg. The contract was not so governed because the Agreement related only to interpreters. Moreover, the Agreement was not concluded until 1982, that is, one year after the complainant stopped working for Parliament.

**25.** Since the derogation in Article 78 of the relevant CEOS [\[7\] \[Link\]](#) was not, therefore, applicable to the complainant's situation, it follows that the complainant's conditions of recruitment and remuneration should have been established in accordance with the normal provisions of the CEOS.



**26.** On the basis of Parliament's opinion, the Ombudsman's understanding is that, although the complainant's contract dated 1978 was entitled "*contrat temporaire*", Parliament considers that he was, in fact, an auxiliary agent. Therefore, his conditions of recruitment and remuneration were covered by Title III of the relevant CEOS, which related to auxiliary staff.

**27.** Article 70 of Title III of the relevant CEOS foresaw, in summary, that the Institution shall be responsible for the employer's contributions in full if affiliation to the national social security scheme was compulsory under either the national law of the servant's country of origin, or the country to whose scheme the servant was last affiliated. The Institution shall be responsible for two thirds of the social security contributions if the servant was voluntarily affiliated to the national scheme. If affiliation to a national scheme was not compulsory or voluntary, auxiliary staff were to be insured for the provision of a retirement pension at the expense of the Institution, up to the amount of two thirds of the relevant contribution [\[8\]](#) [\[Link\]](#).

**28.** Therefore, in accordance with Article 70 of the relevant CEOS, Parliament's auxiliary staff should have been insured against sickness, accident, invalidity and death. In order for them to be able to build up a retirement pension, they should have been affiliated to a compulsory social security scheme, preferably that of the country to whose scheme they were last affiliated, or that of their country of origin. However, on the basis of the complainant's communications with the relevant French authorities, copies of which were attached to his complaint and forwarded to Parliament, the Ombudsman understands that there appears to have been no compulsory or voluntary affiliation of the complainant to the general French scheme. The complainant was not, therefore, affiliated to a retirement pension scheme funded by Parliament. This could hardly be justified by the fact that the complainant worked for Parliament on a part-time basis only, or the fact that there was no mention in his contract as to whether Parliament had or had not affiliated him to any particular pension scheme. The Ombudsman does not, therefore, understand why, in its opinion, Parliament did not address the question of whether the Institution should have paid contributions to a social security scheme in order to provide the complainant with a retirement pension, pursuant to Article 70 of the relevant CEOS.

**29.** The Ombudsman notes that, in the opinion submitted by Parliament, the Institution offered to meet the complainant in order "*to examine more precisely his file.*" The Ombudsman welcomes this initiative and trusts that Parliament might find an appropriate way in which to help the complainant in his dealings with the French authorities in order to have his retirement pension take into account the four years he worked for Parliament. The Ombudsman considers that the interests of the complainant could best be served by such a meeting and therefore encourages the complainant to contact Parliament to arrange a meeting. In these circumstances, the Ombudsman considers that it is unnecessary to pursue the present inquiry any further. He will, however, make a further remark below.

## D. Conclusions

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



**There are no grounds for further inquiries into the complainant's allegation and claim.**

The complainant and Parliament will be informed of this decision.

## Further remark

**The Ombudsman encourages Parliament to explore all possibilities to help the complainant in his dealings with the French authorities so that the period of time he worked for the Institution can be taken into account in the calculation of his pension rights.**

P. Nikiforos Diamandouros

Done in Strasbourg on 17 December 2010

[1] [\[Link\]](#) This provision was amended in 2004.

[2] [\[Link\]](#) See the original French version: " *En réponse, je vous informe qu'en application des dispositions du décret no 75-109 du 24 février 1975, la possibilité de régulariser les cotisations prescrites est ouverte aux personnes qui remplissaient les conditions d'assujettissement **au régime général des salariés de la sécurité sociale** pour les périodes non déclarées pour lesquelles l'employeur a omis de verser le s cotisations.* "

[3] [\[Link\]](#) "CIRA" is a French public authority dealing with requests for information on administrative issues.

[4] [\[Link\]](#) "CLEISS" is a French public authority ensuring liaison between French and international social security organisations.

[5] [\[Link\]](#) Article 2(8) of Ombudsman's Statute provides that " *No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90(1) and (2) of the Staff Regulations, have been exhausted by the person concerned and the time limits for replies by the authority thus petitioned have expired.* "

[6] [\[Link\]](#) Case T-45/01, Stephen G. Sanders and Others v Commission of the European Communities [2004] ECR SC page II-1183: " *There is an obligation to act within a reasonable time in all cases where, in the absence of any statutory rule, the principles of legal certainty or*



*protection of legitimate expectation preclude Community institutions and natural persons from acting without any time limits, thereby threatening, inter alia, to undermine the stability of legal positions already acquired. (...)The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties. "*

[7] [\[Link\]](#) Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 1962 P 45, p. 1385).

[8] [\[Link\]](#) Article 70 of Title III of the CEOS states the following:

*" 1. So that auxiliary staff are insured against sickness, accident, invalidity and death and can build up a retirement pension, they shall be affiliated to a compulsory social security scheme, preferably that of the country to whose scheme they were last affiliated or that of their country of origin.*

*The institution shall be responsible for the employer's contributions required under the legislation in force where the servant is compulsorily affiliated to such a social security scheme, or for two thirds of the servant's contributions where he remains voluntarily affiliated to the national social security scheme of which he was a member before he entered the service of the Communities or where he voluntarily joins a national social security scheme.*

*2. Where it is not possible to apply the provisions of paragraph 1, auxiliary staff shall be insured against sickness, accident, invalidity and death and for the provision of a retirement pension, at the expense of the institution which employs them, up to the amount of two thirds of the contribution as in paragraph 1.... "*