



Decision of the European Ombudsman closing the inquiry into complaint 1092/2012/OV against the European Parliament

Decision

Case 1092/2012/OV - **Opened on** 29/06/2012 - **Decision on** 27/08/2014 - **Institution concerned** European Parliament (No maladministration found) |

The complainant, who is French-Italian bilingual asked Parliament to allow him to take written tests in an internal competition in Italian despite the fact that, according to the competition notice, he should take tests in French, his main language registered as such in Parliament's relevant database. Parliament refused that request arguing that it was based solely on personal grounds of expediency. *The Ombudsman found no maladministration by Parliament, since its refusal was based on clear and acceptable reasons. She made two further remarks that Parliament could (i) make it possible for bilingual staff to declare both their languages in annual staff reports as their main languages and (ii) add to the annual staff reports, section "knowledge of languages", a note that the data in this section will serve for all HR purposes in the following year.*

The background to the complaint

- 1.** The complainant is a bilingual (Italian/French) AST official in Parliament. He was recruited as an auxiliary agent for Parliament in October 2000. He was then recruited as an official on 1 September 2006, following his successful participation in the internal competition AST/1/2005. When registering for that competition, the complainant indicated French as his main language. In the annex to his probationary report of 22 March 2007 concerning his linguistic knowledge, the complainant again indicated French as his " *main language* " (with Italian as his mother tongue, plus four other languages). On the basis of the complainant's indications, French was thus registered as his main language in Parliament's Streamline system (an HR database). The annex to the complainant's 2009 staff report again mentioned French as his main language.
- 2.** In 2011, the complainant wanted to participate in Parliament's internal competition AST/1/11. The notice of competition provided that the language registered as main language in Streamline would be considered as the candidate's language 1 (main language). The notice of competition also provided that the mandatory written tests had to be taken in language 2 which could be only German, English or French. Candidates could not sit these tests in their main language. This meant that the complainant had to sit the written tests either in German or English.
- 3.** On 18 March 2011, the complainant asked Parliament to change in the Streamline system



his main language from French to Italian. He indicated that the main reason for his request was to maximise his chances in the internal competition.

4. On 14 April 2011, Parliament refused to change the complainant's main language. Parliament pointed out that, both in his application for an auxiliary agent post in 2000 and in his application for the internal competition AST/1/2005, the complainant himself had indicated French, and not Italian, as his main language. Parliament also underlined that, since his recruitment, the complainant had never contested the indication of French as his main language when receiving all administrative acts concerning his situation. As a consequence of Parliament's refusal, the complainant registered for the internal competition in question indicating French as main language and English as language 2.

5. On 3 May 2011, the complainant submitted an Article 90(2) complaint to Parliament, asking for the main language in the Streamline system to be rectified from French to Italian (followed - in that order - by French, Spanish, English, Dutch and German). He pointed out that he had never received a decision on the determination of his main language in Streamline.

6. On 30 September 2011, Parliament rejected the Article 90(2) complaint. Parliament argued that the indication of French as the complainant's main language in Streamline was the result of the complainant's own choice in the enclosure to his probationary report. It stated that it is true that the registration of an official's main language in Streamline is not officially notified to the official. However, as the complainant was heard before the adoption of his probation report and could choose himself his main language, the choice of the complainant's main language was thus done on the basis of a procedure which was transparent and respected the rights of the defence. Parliament further argued that, by refusing the complainant's request which was based uniquely on reasons of opportunity in order to pass the internal competition, the administration had guaranteed equal treatment between candidates to the internal competition.

7. On 24 May 2012, the complainant turned to the Ombudsman. He pointed out that, in the meantime, the internal competition was closed. He was not successful in the written tests taken in English.

The inquiry

8. Following the analysis of the complaint, the Ombudsman opened an inquiry on 29 June 2012 by asking the complainant first for clarifications. The Ombudsman more particularly pointed out that, according to the complainant's own indications in his 2007 probationary report and his 2009 staff report, French was his main language. The registration of the complainant's main language in Streamline was thus correct and in line with the complainant's own indications. The Ombudsman also pointed out that Parliament's decision of 30 September 2011 appeared to be reasonable and correct. The Ombudsman therefore asked the complainant to clarify why he considered that there was an error as regards the mentioning of French as his main language in Streamline when he himself had indicated French as his main language in the 2007 probationary report and in the 2009 staff report.

9. In his reply, the complainant argued, among other things, that officials are not informed



of the implications, as regards their career, of the order of knowledge of languages. They are also not notified of the irreversibility of the decision concerning the order of knowledge of languages. Thus, officials do not know what consequences may result from their declarations in the staff report concerning their knowledge of languages.

10. On the basis of the complainant's clarifications, the Ombudsman asked Parliament to reply to the following allegation and claims:

Allegation:

Parliament wrongly refused to change the complainant's " *main language* " from French to Italian.

Claims:

1) The order of the complainant's knowledge of languages should be revised as follows: IT, FR, ES, EN, NL, DE;

2) Parliament should organise a new internal competition.

11. The Ombudsman also asked Parliament to reply to two questions concerning the procedure of registering an official's main language.

12. In the course of the inquiry, the Ombudsman received the opinion of Parliament on the complaint and, subsequently, the comments of the complainant in response to Parliament's opinion. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegedly wrong refusal to change the complainant's main language and corresponding claims

Arguments presented to the Ombudsman

13. The complainant alleged that Parliament wrongly refused to change his "main language" from French to Italian. He argued that it should be the candidates to the competitions who decide themselves about their choice of languages and that there is no legal or administrative provision which allows the administration to impose a certain language as main language or mother tongue for a candidate. Thus, in the present case, the administration should grant the complainant the advantage of his bilingualism, instead of this becoming an obstacle. The complainant stated that, in the end, he had to sit the written tests in English (his fourth language), whereas other candidates were able to sit the tests in their second language.

14. In its opinion, Parliament first pointed out that the concept of "main language" is not mentioned in the Staff Regulations, but is widely used by the institutions and EPSO. However, the EU Civil Service Tribunal has defined the notion of main language as being the language of which the candidate has the best command (or "thorough knowledge") in the sense of



Article 28(f) of the Staff Regulations [1] . However, the Tribunal has not gone so far as to establish an automatic correlation between the main language and the mother tongue or the language in which candidates underwent their education. The Tribunal opted thus for a broader interpretation, leaving it up to all candidates in a competition to determine and justify the language which they consider to be that of which they possess a thorough knowledge, without limiting this choice simply to their language of nationality or education in the case of candidates from a Member State with more than one official language.

15. Parliament stated that it respects the official's choice when determining their main language in Streamline. However, in order to avoid unequal treatment between candidates in internal competitions, Parliament requires from each candidate that he/she abides by the choice previously entered in Streamline.

16. In the complainant's case, Parliament had no legitimate reason to believe that the complainant's thorough knowledge of French had changed, since it was the complainant himself who indicated that French was his main language in the annex to the probationary report. Parliament in no way limited the complainant's choice of his main language, but allowed the complainant himself to determine the language of which he felt he possessed a thorough knowledge and which would become his main language in Streamline.

17. In reply to the Ombudsman's *first question* concerning the implications of the declaration by an official of his/her main language [2] , Parliament stated that, on the basis of the relationship of trust between the official and his/her institution, such declaration, like all statements by an official in his/her personal file, is likely to have statutory consequences. Parliament in this respect argued that it is not possible to impose an obligation on the administration to inform officials about the implications of any statements they may be required to make, since these statements are truthful and accurate.

18. Parliament pointed out that the Staff Regulations and case-law do not set a general obligation for the administration to inform officials about the possible consequences of their statements. Such an obligation would mean that the administration has to anticipate all sorts of situations. This is impossible to implement, in particular when - like in the present case - considerations of expediency come into play. The implications of the choice of main language are multi-fold and not all of them can be assessed, particularly the repercussions of determining a second and third language with regard to the first promotion or the possibilities for internal transfer.

19. Parliament further argued that, if the administration were required to act in this way, its effect would be contrary to all principles of sound administration. Indeed, rather than committing an official to respect his/her obligation to give truthful and accurate information to the institution, it would on the contrary encourage the official to indulge in all sorts of strategic or opportunistic calculations. Parliament thus considered it legitimate and in the interest of the service for the administration not to be under an obligation to provide information that would bring it outside its field of competence. Rather, the administration should seek to prevent any changes to the main language requested solely on grounds of expediency or opportunism.



20. In reply to the Ombudsman's *second question* [3] concerning the existence of a procedure that allows an official to request the change of his/her main language in Streamline, Parliament stated that the Secretary-General's decision of 26 March 2010 on modifying the allocation of Appointing Authority powers gives the Director-General for Personnel explicit competence when it comes to attesting the capacity to work in a third language. Therefore, any change affecting the language order (main, second and third language) falls within the powers of the Director-General who may change the main language on the basis of proven and consistent supporting documents and in response to a duly substantiated request from the official.

21. In general, the Recruitment Unit checks the correlation between the language skills indicated by the candidate when sitting a competition and the first language subsequently recorded in Streamline at the time of the final recruitment. In principle, when the official or agent reports that data are inaccurate, the Recruitment Unit takes direct action to correct any errors in the recording of language skills details. However, if the Recruitment Unit is faced with a request to change the main language which is not linked to a material error, the file is sent to the Director-General for Personnel who assesses it on the basis of the supporting documents and decides whether or not to authorise the requested change.

22. In the present case, no authorisation was given to accept the complainant's request to replace French with Italian as main language, for the following reasons: The main language registered in Streamline is based on information provided by the official when the probationary report is drawn up. In the complainant's case, French has been recorded as his main language in his staff reports since 2002 and the complainant has never questioned this. The option available to the official to request a change of the main language, either during the annual staff report exercise or by referring the matter directly to the competent service, constitutes sufficient evidence that appropriate procedures exist. However, when organising internal competitions, the Appointing Authority considers that it is in the interest of the service and in accordance with the principle of equal treatment between candidates that a restrictive approach should be taken to the possibility to change data. The administration should only authorise changes which are based on objective grounds and supported by proper documentary evidence. On the other hand, any request for change which - like the complainant's one - is based solely on personal grounds of expediency in order to be successful in an internal competition, and does not show how the main language that was confirmed in several consecutive annual assessment exercises should suddenly become the official's second language when an internal competition is organised, is inadmissible. Parliament concluded that there was no instance of maladministration. Parliament therefore also rejected the complainant's claim to organise a new internal AST competition.

23. In his observations, the complainant pointed out that Parliament justified its position by invoking the principle of equal treatment of candidates, but had ignored the inequality of treatment he was a victim of as a result of the fact that he had to sit the written tests in his fourth language (English) whereas other candidates who declared the knowledge of only two languages could sit the tests in their second language. The complainant argued that he was penalised for his broad linguistic knowledge in comparison with those other candidates.



24. The complainant did not deny that the reason for his request to change his main language was to maximise his chances in the internal competition, but stated that this was legitimate. He pointed out that his main language and mother tongue were in fact on equal footing since he had a thorough knowledge of both (Italian and French). The complainant pointed out that Article 28 of the Staff Regulations does not exclude the possibility that an official (like the complainant) can have a thorough knowledge of two EU languages, thus with the main language and the mother tongue on equal footing.

25. The complainant argued that the conditions of the internal competition were absurd and against the interest of the service: Had the complainant, for instance, had English as his mother tongue and French as his main language, then he would have had to sit the tests in German (his fifth language).

26. The complainant pointed out that the Civil Service Tribunal had opted for a broad definition leaving the choice of the language of which a candidate to a competition has a thorough knowledge to the candidate. The complainant therefore argued that he should have been able to choose the language for sitting the competition.

27. The complainant further argued that Parliament never informed him of the **repercussions** of his choice of main language in his personal documents and also never informed him that this choice was irreversible. Parliament also never indicated that Streamline was an official tool of reference with regard to an official's career. The complainant argued that Streamline is such a big and complex database that it is impossible for an official to check all the data that the administration puts into it (without the official being aware of it). Parliament has thus taken a decision on the basis of deductions which it has put into Streamline, and the official then discovers them by chance. The complainant argued that he has thus not determined his main language in full knowledge of its consequences.

28. The complainant agreed with Parliament that all statements made by an official can have statutory consequences, but underlined that there was a legal vacuum as regards the definition of an official's knowledge of languages and that this runs against legal certainty. He underlined that the Staff Regulations and the institutions have never defined the notions of "mother tongue", "main language", "language 1)", "language 2)", etc. Parliament also has not defined those notions and their implications for internal competitions. The main problem is thus that there are no rules of reference allowing officials to understand the implications of their declarations concerning their knowledge of languages. There is thus a lack of solicitude and transparency. The complainant stated that he did not attach importance to the rectification of his main language in Streamline which - unless being duly informed about this consequence - cannot constitute a database for irreversible declarations.

29. In relation to the procedure to change the main language, the complainant argued that Parliament had indicated that this was the Director General's power, but had not set out the procedure or indicated the relevant rules. The rules have never been communicated to the staff. There is thus again a lack of transparency and care.



The Ombudsman's assessment

30. At the outset, the Ombudsman recalls that, in its judgment in *Angioi v Commission*, which concerned an EPSO contract staff selection procedure with similar linguistic requirements as the internal competition in question, namely that the pre-selection tests had to take place in the second language (English, French, or German) which had to be different from the main language, the Civil Service Tribunal found that this language condition did not constitute an infringement of the principle of non-discrimination [4]. Therefore, the complainant's argument that the linguistic conditions of the internal competition in question were absurd cannot be sustained.

31. Furthermore, the complainant admits himself that his request to have his main language changed from French to Italian was triggered by his wish to maximise his chances in the internal competition. His request was not motivated by his wish to have, for the rest of his career and for all purposes, Italian instead of French indicated as his main language in Streamline. In other words, the complainant implicitly admits that, had the internal competition with the specific language conditions not presented itself, he would not have made the request.

32. The Ombudsman agrees with Parliament's explanation that such reasons put forward by the complainant for the change of his main language are not sufficient to accept his request. In particular, she notes from Parliament's reply to the Ombudsman's *first question* that, when officials have indicated their main language in their staff report, they always have the possibility to change it afterwards in the framework of the annual staff report exercise, more particularly in the context of the interview with the first assessor. In the complainant's case for instance, the annex to his 2007 probationary report - which set out his career and his linguistic knowledge - mentions that the table concerning the linguistic knowledge is filled in by the first assessor. However, it also mentions that the information contained in it is "à vérifier/compléter par le noté". The complainant thus had the possibility at all times to change his main language if he wished. Parliament however pointed out that the complainant had never requested to change his main language since it was mentioned in his staff reports from 2002 onwards.

33. In light of the foregoing, the Ombudsman does not find an instance of maladministration as regards the allegation and the claim cannot be sustained.

34. However, the Ombudsman considers that the present complaint has repercussions that go beyond the complainant's individual case, since it touches upon the link between the indication of an official's main language in Streamline and the choice of languages for taking tests in internal competitions. That was also the reason why the Ombudsman asked Parliament to reply to two questions which go beyond the complainant's individual case.

35. The Ombudsman first underlines that the "main language" ("langue principale") is not a relative concept which could be adapted every time to the situation of the moment, like an



internal competition for instance. It is clear from the case-law that the "main language" has to be assimilated to the language of which an official has a *thorough knowledge* [5] . The main language - as a general rule - corresponds to the language of the official's nationality or his/her education [6] . However, the Civil Service Tribunal also stated that the possibility exists that a person may have a thorough command of two languages.

36. Indeed, the Ombudsman emphasises that bilingualism is nowadays a quiet common situation. She therefore takes the view that it would be a wise administrative measure for Parliament to allow its bilingual officials to declare in the relevant documents of their personal file both their main languages as such. For instance, the complainant who is an Italian-French bilingual needed to choose one of these two languages as his main language in the staff reports and this information was then recorded in Parliament's HR Streamline database. If the complainant would have received the possibility to provide correct information in his staff reports, namely that he has two main languages, any speculation on his part would not have been possible and the present dispute would have not arisen.

37. In connection to this, Parliament could add to the section "knowledge of languages" in annual staff reports a one sentence note that the information provided in that section would serve for all HR purposes in the following year. This would be a fair measure towards the staff.

38. In light of the above considerations in points 36-38, the Ombudsman will make a further remark below.

Conclusion

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

There was no maladministration by Parliament.

The complainant and Parliament will be informed of this decision.

Further remarks

Parliament could consider making it possible for its staff with two main languages to declare in the relevant documents both main languages instead of only one.

Moreover, Parliament could add to the annual staff report, section "knowledge of languages", a note that the data of this section will serve for all HR purposes in the following year.

Emily O'Reilly

Done in Strasbourg on 27 August 2014

[1] Case F-7/07 *Angioi v Commission* , judgment of 29 June 2011, not yet published, paragraph 73. Note : This case did not concern an internal competition, but an (external) competition for contract staff.



[2] "The notice of internal competition AST/1/11, under point A.3.c) stated that the candidates' " *main language* " for the purposes of the competition would be the language indicated as such in Streamline. In the annexe to the staff report concerning the knowledge of languages, there is no indication that the language which staff members indicate to be their " *main language* " will be used for internal competitions. In these conditions, does Parliament consider that it could decide on the choice of candidates' main language for the internal competition on the basis of a declaration made by candidates without them being informed of the implications of such a declaration?"

[3] "Could Parliament explain if a procedure exists that allows an official to request the change of his/her main language in Streamline?"

[4] Case F-7/07 *Angioi v Commission* , judgment of 29 June 2011, paragraph 104-105.

[5] in the sense of Article 28(f) of the Staff Regulations.

[6] Case F-7/07 *Angioi v Commission* , judgment of 29 June 2011, paragraphs 68 and 73.