

Decision of the European Ombudsman closing the inquiry into complaint 415/2014/FOR against the European Parliament

Decision

Case 415/2014/FOR - Opened on 08/05/2014 - Decision on 01/06/2015 - Institution concerned European Parliament (No maladministration found) |

The complainant is a temporary agent with the European Parliament. She fell ill while on annual leave. The case concerned Parliament's refusal to convert the complainant's annual leave into sick leave. The Ombudsman inquired into the issue and found no maladministration as the complainant was required to provide a current address at the time, or soon after, she submitted her medical certificate for the sick leave. That requirement was not met.

The background to the complaint

1. The complainant works at the European Parliament. She made a request for holiday leave running from 3-12 April 2013. This was approved and the complainant departed to France for those holidays. She fell ill while on holiday.
2. On 2 April 2013, she obtained a medical certificate from a doctor in France covering the period 2-14 April 2013 (the 'medical certificate'). The medical certificate did not contain her address in France (it contained her home address). The medical certificate was submitted to Parliament, via e-mail, by the complainant's husband on 4 April 2013.
3. On 29 May 2013 the complainant's head of personnel rejected the request for medical leave on the grounds that the complainant: (i) impeded Parliament from conducting a medical examination of her by providing a wrong address on the medical certificate; and (ii) did not advise her management of her medical absence, which was her duty under the second paragraph of Article 59(1) of the Staff Regulations.
4. On 19 June 2013, the complainant submitted a complaint against this decision under Article 90(2) of the Staff Regulations.
5. On 3 October 2013, the Secretary-General of Parliament responded to the complainant rejecting her complaint on essentially the same grounds relied upon by the head of personnel.



6. On 27 February 2014, the complainant wrote to the European Ombudsman.

The inquiry

7. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

Allegation:

Parliament wrongly considered that the medical certificate was inadmissible.

Claim:

Parliament should recommend that the complainant's absence of 2-14 April 2013 be regarded as an authorised absence and rescind the decision of 29 May 2013 on the medical certificate.

8. In the course of the inquiry, the Ombudsman received the opinion of the 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.

Failure to accept the medical certificate

Arguments presented to the Ombudsman

9. The complainant argued that Parliament could have contacted her if it had wished to carry out its own medical examination, because her GSM number and email were known to the administration. The complainant noted that while she was easily contactable by telephone or e-mail, no attempt was made to contact her for a medical examination. She also argued that it was the obligation of the doctor treating her to fill out the medical certificate accurately. In any event, she stated that the doctor's stamp conveyed her location at the time.

10. The complainant further argued that she had informed her superiors of her absence, in accordance with Article 59(1) of the Staff Regulations.

11. In its opinion, Parliament commented that in accordance with Article 59(1) of the Staff Regulations, where a staff member is unable to work because of illness, the staff member must notify the Institution of his/her address at that point. Parliament continued that, under its additional rules, the official must notify his or her superior [1] of the absence.

12. Parliament noted that the complainant's address in the city in which she worked was stated



on the medical certificate. It is not disputed that this was not the place where she was staying during her leave. Parliament noted that as the complainant failed to comply with her obligations to notify Parliament of the precise place where she was staying, it made it impossible for it to organise a medical examination.

13. Parliament added that Article 59(1) of the Staff Regulations requires the official to notify the Institution of an illness as soon as possible. Article 2 of the Internal Rules on Medical Examinations specifies that the official must inform his/her immediate superior or the colleague whom the superior designated for the purpose, of the reason for the absence. The Guide at Title I, point 11 states that, in the event of illness during annual leave, the official must provide the Institution's service responsible for managing sick leave with certain information at the start of his illness, and, at all events, within 48 hours. Parliament noted that the complainant did not inform her immediate superior of her state of health. When the complainant's husband sent the certificate by e-mail to the Medical Absences service, he did not, at any point, mention where exactly the complainant was.

14. Finally, Parliament noted that the complainant's failure to notify Parliament of her whereabouts during her sick leave is sufficient in itself to justify the decision that the medical certificate of 2 April 2013 could not be taken as the basis for converting the annual leave into sick leave.

The Ombudsman's assessment

15. The Staff Regulations are rules governing the rights and obligation of EU officials. Given that they are adopted as a legislative act, the EU institutions and their staff are required to ensure their full application.

16. The Ombudsman notes that the second paragraph of Article 59(1) of the Staff Regulations, which deal with absences due to illness or accidents, states:

" The official concerned shall notify his institution of his incapacity as soon as possible and at the same time state his current address..." (Emphasis added)

17. The Ombudsman notes that the applicable rules explicitly state that the staff member should inform Parliament of the staff member's **current** address. The use of the word **current** implies that the staff member will not comply with these rules if he/she provides his/her home address in circumstances where he/she is not present at that address during the illness.

18. Since the rules, set out in legislation, explicitly require the complainant to inform Parliament of her current address, it is not relevant that the complainant was contactable by e-mail or GSM.

19. The Ombudsman notes that it would only be possible for staff to ignore the specific legal obligation on them to inform their institutions of their whereabouts during medical absences if there were circumstances, not attributable to the staff members, which made it impossible to



communicate their whereabouts (such as if the seriousness of a medical condition was such as to make it impossible to communicate that information).

20. The Ombudsman notes that the complainant does not argue that her state of health impeded her from complying with the procedural requirements of Parliament as regards notifying sick leave.

21. The Ombudsman also notes that every member of staff is required and understood to be familiar with the provisions of the Staff Regulations. The Ombudsman further agrees with Parliament that the complainant, given the specific service where she worked in Parliament, should have had even greater knowledge of procedures on sick leave than the average employee of Parliament.

22. In light of the above, the Ombudsman finds that there was no maladministration by Parliament.

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.

Emily O'Reilly

01/06/2015

[1] The Secretary General's Decision of 4 June 2010 laying down internal rules on medical examinations in connection with absence from work on medical grounds and periodic medical examinations of persons claiming the invalidity allowance ('Internal Rules on Medical Examinations').