

Besluit van de Europese Ombudsman in zaak 1527/2016/LM over de afhandeling door het Europees Parlement van een klacht betreffende intimidatie

Besluiten

Zaak 1527/2016/LM - Geopend op 12/07/2017 - Besluit over 26/02/2018 - Betrokken instelling Europees Parlement (Geen verder onderzoek gerechtvaardigd) |

De zaak betrof een klacht over intimidatie (met inbegrip van “gewelddadige intimidatie”) op de werkplek, ingediend door een medewerker van een politieke groep bij het Europees Parlement. De medewerker wendde zich tot de Ombudsman met de klacht dat het Adviescomité van het Parlement betreffende intimidatie en voorkoming van intimidatie op de werkplek te veel tijd nam om zijn zaak te beoordelen. Het Adviescomité voltooide zijn beoordeling tijdens het onderzoek van de Ombudsman en oordeelde dat de klacht over intimidatie “ongegrond” was.

Het onderzoek van de Ombudsman betreft niet de conclusie van het Adviescomité dat de klacht over intimidatie “ongegrond” was. De Ombudsman richtte zich op procedurele aspecten en oordeelde dat het Adviescomité de tijdslimieten die zijn vastgelegd in zijn interne regels betreffende onderzoeken naar intimidatie niet in acht heeft genomen en dat dit verzuim heeft bijgedragen aan een uiteindelijk onaanvaardbare vertraging bij het afronden van de werkzaamheden van het Adviescomité.

De Ombudsman heeft het Parlement een aantal suggesties gedaan teneinde ervoor te zorgen dat de onderzoeken van het Parlement inzake klachten over intimidatie zo snel mogelijk worden afgerond, dat deze bij de omstandigheden van elk geval aansluiten, en in het bijzonder dat de specifieke tijdslimieten voor gesprekken met de klager en andere relevante personen in acht worden genomen.

De suggesties van de Ombudsman onderstrepen dat de Ombudsman erkent dat alle organen van de EU dienen te beschikken over solide en doeltreffende procedures voor de afhandeling van klachten over intimidatie. Tekortkomingen in de procedures van het Parlement kunnen – mogelijk ten onrechte – een negatieve impact hebben op de procedures ter bestrijding van intimidatie die in algemene zin voor ambtenaren van de EU gelden.

Background to the complaint



1. The complainant worked as a contract agent for a political group at the European Parliament from June 2015 to April 2016. In September 2015 he was informed by his political group that his contract would be terminated. The termination of his contract took effect in April 2016. On 8 December 2015, while he was still working for the political group, the complainant, along with two colleagues from the same political group, made complaints to the European Parliament's Advisory Committee on Harassment and its Prevention at the Workplace [1] (the Advisory Committee). The complainant claimed that he was being subjected to "harassment and racism in the workplace, including violent intimidation" being perpetrated by several staff members of the political group and primarily by a named senior person within the group.

2. On 11 December 2015, the complainant gave the President of the Advisory Committee permission to request authorisation from the political group to examine the harassment complaint [2]. On 18 December 2015, the President of the Advisory Committee asked the Secretary General of the political group for authorisation to deal with the three harassment complaints. The Secretary General of the group granted this authorisation on 22 December 2015.

3. On 6 January 2016, the complainant asked the President of the Advisory Committee for an update on the status of his harassment complaint. The President of the Advisory Committee informed the complainant that authorisation had been granted by the political group. The President of the Advisory Committee asked the complainant whether he preferred to be interviewed in Brussels, or in Strasbourg during the following plenary session (which was from 18 to 21 January 2016). The complainant replied that he wished to be interviewed in Brussels.

4. On 8 January 2016, the Secretary General of the political group suggested to the President of the Advisory Committee that a named senior person within the group, in charge of authorising annual leave and absences, was best placed to act as contact point for the harassment complaint investigation. This senior person was the same senior person identified by the complainant as being primarily responsible for the alleged harassment. On 26 February 2016, the President of the Advisory Committee sent an e-mail to this senior person asking the group to contact the staff members against whom the harassment complaints had been made and to invite the complainants to a meeting with the Advisory Committee in Brussels on 14 March 2016.

5. The Advisory Committee interviewed the complainants on 14 March 2016. It also interviewed witnesses and other staff members concerned between March and September 2016 (in total, it interviewed nine people).

6. The Advisory Committee concluded its assessment of the three complaints on 4 October 2016. The Advisory Committee's conclusion on the complainant's harassment complaint - which was that the harassment claim was "unfounded" - was forwarded to the Secretary General of the political group on 12 October 2016. The Secretary General of the political group endorsed the report on 27 October 2016. The Advisory Committee sent the report to the complainant on 1 December 2016.



7. On 19 October 2016, that is, before the complainant had been informed of the outcome of the harassment investigation, the complainant turned to the Ombudsman.

The inquiry

8. The Ombudsman opened an inquiry into the complainant's position that it was taking the Advisory Committee too long to carry out its investigation of the harassment complaint.

9. When, in the course of this inquiry, he was informed of the outcome of the investigation, the complainant also put forward the position that it was wrong for the Advisory Committee not to have finalised the investigation while he was still working for the European Parliament and that the Advisory Committee was wrong not to have provided him with the full final report on the investigation, but merely a summary. The Ombudsman decided to include these issues in her inquiry.

10. In the course of the inquiry, the Ombudsman received Parliament's reply to a number of specific issues raised by her.

11. The Ombudsman's decision takes into account the arguments and views put forward by the parties.

The Advisory Committee's handling of the investigation

Arguments presented to the Ombudsman

12. Parliament expressed the view that the overall duration of the procedure (seven months from the first interview to the final conclusion) was not unreasonable, considering the large number of documents that the Advisory Committee had to examine, the interrelationship with the two other complaints from the same political group (it was advisable to interview all three complainant on the same date), as well as the procedural implications of having to seek authorisation from the political group to deal with the matter.

13. According to Parliament, due to the fact that the Advisory Committee had to obtain authorisation from the political group, the length of the proceedings did not breach the Internal Rules for the Advisory Committee [3] (the Internal Rules). Parliament also argued that the Advisory Committee assesses each case thoroughly and independently of whether the complainant is still a Parliament employee. The Advisory Committee had no influence over the decision to dismiss the complainant and that decision had no impact on its findings.

14. The Ombudsman asked whether Parliament would consider it useful for the Internal Rules to set out additional procedural deadlines for the Advisory Committee's investigations, for the finalisation of a case and for informing complainants (in addition to the initial deadlines to hear



the complainant and other relevant staff members). Parliament replied that it could be counterproductive to oblige the Advisory Committee to finalise its examination within a particular deadline, considering the demanding nature of its duties. The Advisory Committee has an obligation to examine thoroughly all arguments and documents provided by a complainant. It also has to guarantee the rights of defence of the person accused of harassment and, often, to hear other staff members in order to obtain a full picture. The Advisory Committee may adopt provisional measures if needed to protect one of the parties to a dispute. The Advisory Committee may issue such a recommendation to the appointing authority at any stage of the procedure. Parliament stated that it considers the Advisory Committee's resources to be adequate, in the light of its role and caseload.

15. Finally, Parliament stated that the document with the Advisory Committee's conclusions, which was communicated to the complainant, is the same as the document communicated to the Secretary General of the political group.

The Ombudsman's assessment

16. Harassment is a very serious matter. Its existence damages victims, in many cases seriously. Persons who feel they have been harassed, and who have had the courage to bring their concerns to the competent authorities in their institutions, are vulnerable. They must be immediately reassured that their allegations will be dealt with seriously and in good time. Any failure to deal with harassment allegations seriously and in good time damages the institutions where allegations of harassment are made.

17. The Ombudsman understands that, depending on the complexity of the case, including the number of documents to examine and the number of witnesses to hear, the time taken to deal with harassment complaints will vary from case to case. An institution should not limit the scope or completeness of an investigation simply in order to finish it quickly. In this particular case, the Ombudsman will examine if the deadlines set by the Internal Rules on harassment investigations have been complied with and if the specific steps taken in the inquiry were taken in a reasonable period of time.

18. According to the Internal Rules, the Advisory Committee shall hear the complainant, the person accused of harassment and possibly other staff members concerned [4] . It *must* see the complainant within ten working days from his or her request and it *must* hear the other staff members within a month from the meeting with the complainant [5] . The use of the word "must" in the Internal Rules does not leave any room to doubt the peremptory nature of these time-limits.

19. In this case, the complainant was heard for the first time more than **three months** after he had made his harassment complaint to the Advisory Committee. In addition, not all the other staff members were heard within one month from the Advisory Committee's meeting with the complainant. Some of them were heard as much as **four months** after the meeting with the complainant.



20. The Ombudsman notes that the Advisory Committee sought the authorisation of the political group before it proceeded to deal with the issue. The basis for this is not clear as the Internal Rules do not have any such provision. However, the complainant agreed, within three days of his complaint, to the Advisory Committee approaching the political group and the political group gave its authorisation within four days (two of which were over the weekend). This procedural step caused a delay of five working days in total; but it does not explain why it then took the Advisory Committee more than three months to meet with the complainant.

21. Parliament has argued that more time was needed to organise the interview with the complainant as it was desirable to hear all three complainants on the same date. The Ombudsman notes in this context that the Internal Rules set out that the Advisory Committee shall *listen sympathetically* to any person who considers that he or she is the victim of harassment and shall *give him or her all the necessary time and attention*. [6] The purpose of this provision, clearly, is to ensure that a person who feels harassed also feels that he or she is being taken seriously and that he or she is being listened to. That is why the Advisory Committee should see a person who feels harassed within a short period of time (namely ten working days); the earlier the persons involved are heard, the fresher their memory is of the events. Parliament has provided no explanation as to how the Advisory Committee's preference to hear all three complainants together would have outweighed the complainant's legitimate right to be listened to immediately.

22. Parliament has not explained why more than six weeks went by, following the authorisation from the political group being received, before the President of the Advisory Committee began contacts to organise the meeting with the complainants. Nor has the Parliament explained why it took the Advisory Committee so long to hear the other staff members concerned, potentially to the detriment of their recollection of events.

23. Moreover, it is not apparent why it was necessary to organise the meetings through the senior person designated by the political group. Importantly, this senior person was the staff member primarily accused of harassment. This fact clearly puts into question the appropriateness of using that person as a contact point for arranging meetings with the Advisory Committee. The Advisory Committee should have refused the contact point suggested by the political group. Instead, it could have asked for another contact person or it could have simply contacted the staff members concerned directly, thus avoiding putting the complainant into the uncomfortable situation of having to liaise with one of the alleged harassers.

24. The Ombudsman understands that the Advisory Committee needs a certain amount of time, after having seen everyone concerned, to assess the information at its disposal in order to make a finding. The amount of time that it took the Advisory Committee to do its final assessment (from the last interview on 13 September 2016 to finalising its position on 4 October 2016) was not unreasonably long. However, the Advisory Committee then sent its report to the political group seeking its endorsement of the report. It is not clear why the Advisory Committee took this step given that the Internal Rules require that it "work with complete autonomy, independence and confidentiality".



25. It took the political group about three weeks to endorse the Advisory Committee's report; it communicated its position to the Advisory Committee on 27 October 2016. However, it is not clear why the outcome of the procedure was thereafter not communicated to the complainant until 1 December 2016.

26. On the basis of the above, it is clear that the time limits within which the Advisory Committee should have heard the complainant, and other staff members, were clearly breached. There was nothing in the particular circumstances of this case which justified a departure from these time limits. Non-compliance with the time limits set out in the Internal Rules on harassment investigations undermines the importance of those rules in the eyes of Parliament staff, conveying the message that prompt action will not be taken to investigate harassment allegations. Such non-compliance also leads to harassment investigations which are, overall, unreasonably long and which have the consequence of leaving the complainant (whatever the ultimate conclusion on the harassment issue) in a state of uncertainty about a very serious issue.

27. The Ombudsman agrees that it might not be advisable to set out a defined time limit within which the Advisory Committee has to finalise its overall assessment of an issue brought to its attention. Clearly, the Advisory Committee should proceed as rapidly as possible with its overall assessment. There is little point in setting specific time limits for the completion of the earlier stages of the procedure if avoidable delays are allowed to occur later on. It would be helpful for the Advisory Committee to have guidelines in this regard. Such guidelines should emphasise the urgent character of harassment investigations and the need for them to be carried out with the vigour, "rapidity and solicitude" required by the circumstances of the case [7] . The Ombudsman will make a suggestion for improvement in this regard.

28. On the issue of the Advisory Committee procedure not having been finalised while the complainant was still working in Parliament, the Ombudsman notes that there is no such obligation on the Advisory Committee. If a staff member considers that his or her dismissal is itself a reflection of harassment, the staff member will have to bring this issue up as part of the substantive harassment complaint (either before the Advisory Committee or in a request for assistance under the Staff Regulations).

29. The complainant believed that he had not been sent a full copy of the report of the investigation by the Advisory Committee. However, the Ombudsman is satisfied that the full copy of the report of the investigation sent to the political group was the same as the report sent to the complainant.

30. The Ombudsman is conscious of the need for all EU bodies to be seen to have strong and effective procedures in place for dealing with harassment complaints. The EU civil service has to be seen as a role model in how it deals with harassment complaints. Shortcomings in Parliament's procedures in this regard, as illustrated in this inquiry, could reflect negatively on anti-harassment procedures across the EU civil service generally. Accordingly, it is very important that Parliament addresses these shortcomings, both for the protection of its own staff



and also to avoid creating a more general, and perhaps unfair, perception that the EU civil service is not taking harassment issues seriously.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman finds that the Advisory Committee failed to respect the specific time limits prescribed for meeting with the complainant and other relevant persons and that this failure contributed to an overall unacceptable delay in concluding the work of the Advisory Committee. As it is clear from the Internal Rules that these time limits must be respected, there is no need to make a recommendation in this regard and no further inquiries are justified.

Suggestions for improvement

The European Parliament should make sure that a person who has made a harassment complaint receives, at the earliest possible moment, the report on the outcome of the investigation carried out by the Advisory Committee on harassment and its prevention at the workplace.

The European Parliament should draw up guidelines regarding the overall timescale within which the Advisory Committee should seek to conclude its work in individual cases. Such guidelines should emphasise the urgent character of harassment investigations and the need for them to be carried out with the vigour, rapidity and solicitude required by the circumstances of the case.

The European Parliament should ensure, given the sensitive nature of its work, that the Advisory Committee will avoid using intermediaries when arranging meetings with persons concerned.

Emily O'Reilly European Ombudsman

Strasbourg, 26/02/2018

[1] The role of Parliament's Advisory Committee is to listen to anyone who considers that they have been the victim of harassment. The Committee is autonomous and acts exclusively in an advisory capacity to the appointing authority (the political group, in this case). The Committee has no authority to take administrative or disciplinary measures with regard to anyone within



Parliament. The Advisory Committee has six members of whom two are appointed by the Staff Committee, one appointed by the Medical Service, one must have expertise in “equal opportunities” and the composition must be “balanced in terms of gender”.

[2] Article 4 of the decision of the Bureau of the European Parliament on the Delegation of the Powers of the Appointing Authority and of the Authority Empowered to Conclude Contracts of Employment prescribes that the powers conferred under the Staff Regulations on the Authority Empowered to Conclude Contracts, in respect of temporary staff, is exercised by the authority designated by each political group. This provision is interpreted by Parliament as meaning that the Advisory Committee is competent to examine complaints concerning harassment of temporary staff working in political groups only if the Authority designated by the group so agrees.

[3] Decision adopted by the Secretary-General of the European Parliament on 21 February 2006. Parliament referred in particular to Article 11 of the Internal Rules.

<https://epintranet.in.ep.europa.eu/files/live/sites/epintranet/files/human-resources/rules-rights/advisory-committees/n>

[4] Article 10 of the Internal Rules

[5] Article 11 of the Internal Rules

[6] Article 6 of the Internal Rules.

[7] See, in this respect, judgement of the Civil Service Tribunal of 11 July 2013, *Tzirani v. Commission*, F-46/11, ECLI:EU:F:2013:115, paragraph 108, which states that “ *the administration, when faced with an incident which is incompatible with the good order and tranquillity of the service, must intervene with all the necessary vigour and respond with the rapidity and solicitude required by the circumstances of the case with a view to establishing the facts (...)* ”.