



European Ombudsman

Emily O'Reilly
European Ombudsman

Mr Koen Lenaerts
President
Court of Justice
Plateau du Kirchberg
2925 LUXEMBOURG
LUXEMBOURG

Strasbourg, 27/08/2018

Complaint 2006/2017/██████████

Subject: Inspection¹ and meeting concerning the failure of the European Court of Justice to address the concerns of a former judge about various alleged instances of maladministration

Dear Mr President,

I have received a complaint from Mr ██████████ against the Court of Justice of the European Union. I have decided to open an inquiry into certain of the issues raised in this complaint.

I consider that the following issues raised by the complainant fall within my mandate and, at first sight, merit inquiry by my Office:

1. *Transparency and access to documents*

The complainant is dissatisfied with the Court's confirmatory decisions of 18 May 2017, 22 May 2017, 27 May 2017 and 16 November 2017 on his applications for reviews of its earlier decisions on his requests for public access to documents.

In the case of the confirmatory decisions of 18 May 2017 and 22 May 2017, the complainant has already brought an action for annulment before the General Court against these two decisions. His complaint in the case of these two decisions is, therefore, inadmissible, in accordance with Article 228(1)(2) of the Treaty on the Functioning of the European Union and Article 2(7) of the European Ombudsman Statute².

¹ Information gathering and inspections of documents are carried out on the basis of Article 3(2) of the Statute of the European Ombudsman (<http://www.ombudsman.europa.eu/en/resources/statute.faces#h12>) and Article 4 of the European Ombudsman's Implementing Provisions: <http://www.ombudsman.europa.eu/en/resources/provisions.faces#h13>

² Case ██████████ v Court of Justice of the European Union, ██████████



The complaint is admissible in so far as it concerns the Court's confirmatory decisions of 27 May 2017 and 16 November 2017 and I consider that there are grounds for me to inquire into these two decisions.

2a. *The Code of Conduct for members and former members of the Court of Justice (General)*

I note that the scope of the Code of Conduct for members and former members of the Court of Justice was extended on 1 January 2017 to include administrative matters as well as judicial matters³. I consider that it is important to ascertain - and have a better understanding of - the scope and origin of this extension, the broad application of which could have an important negative impact on the possibility of scrutinising the Court's administrative activities. I have decided therefore that this issue should be included in the inquiry.

I have decided, on the basis of the information currently available, that I should not inquire into the following issues raised by the complainant:

2b. *The application to a specific case of the Code of Conduct for members and former members of the Court of Justice*

The complainant alleges that the Consultative Committee met in order to discuss the statements made by him without informing him or respecting his right of defence. However, as this matter is included in his action for damages, pending before the General Court, this allegation is inadmissible in accordance with Article 228(1)(2) TFEU and Article 2(7) of the European Ombudsman Statute. The complainant has also raised an issue regarding the application of the Code of Conduct in the case of Judge ██████. As Judge ██████ himself has not raised this issue with my Office, I consider that an inquiry by my Office is not justified.

3. *The lack of efficiency in the parallel development and use of different IT systems*

The complainant has taken issue with the fact that the Court appears to have commissioned and to operate several similar IT applications and tools and that this duplication offends against the principle of sound financial management. I consider that the European Court of Auditors would be better placed to deal with this matter and that an inquiry by my Office is not, therefore, justified.

4. *The wasteful use of the judges' drivers at the CJEU*

Regarding this issue, as with the question of IT systems, this boils down to a question of efficiency in the allocation of funds for the judges' drivers and, as such, it is an issue that the European Court of Auditors is better placed to look into. Accordingly, I consider that an inquiry into the matter by my Office is not justified.

³ Code of Conduct for Members and former Members of the Court of Justice of the European Union, OJ 2016/C 483/01.



5. Appointments of senior officials without a proper procedure or transparency

(i) the role of the former President of the Court of Justice in selection procedures in which close associates were candidates;

On this issue and, more specifically, the appointment of members of Cabinet of the former President of the Court to other senior posts, other than reports in the press, no documentary evidence has been provided concerning the appointment of members of Cabinet of the former President of the Court of Justice. The only procedure that is well documented is that concerning the recruitment of the Legal Adviser for Administrative matters (AD14-15). Following an examination of the documents that have been partially disclosed to the complainant, I find that there are not sufficient grounds to inquire into a possible irregularity regarding the procedure followed in this case.

(ii) the appointment of former judge ██████████ as a special adviser on Brexit without any selection procedure;

On this issue, I note, based on the documents disclosed by the Court to the complainant, that the appointment was made under Article 123(2) of the Conditions of Employment of Other Servants (CEOS) that govern Special Advisers. Given the particular role of special advisers, which the CEOS recognises - a position to which the standard recruitment procedures do not apply - I consider that there is no breach of the relevant provision. In light of these considerations, I find that there are no grounds to inquire into this issue.

6. The Court's participation (a) in the revision of the Treaties and (b) in the special legislative procedure concerning the reform of its Statute

I consider that, regarding a), this is inadmissible as it may be safely presumed that the matter was known to the complainant for more than two years and any complaint must be raised with me within two years of the complainant becoming aware of the matter.. In any event and on the basis of the available documents, it appears that the issue concerns only technical changes to the Treaties, as the Court has argued, and therefore does not reveal any maladministration. Regarding b), it is clear that the complainant disagrees with the reform of the General Court leading to a gradual doubling of the number of judges. However, the decision on this was essentially legislative rather than administrative and, accordingly, not one which could be considered in terms of maladministration. Consequently, there are no grounds for inquiries into this issue.

7. The alleged conflict of interests concerning the role of the President of the General Court in the University of Luxembourg from 2011 to 2016

The complainant is dissatisfied with a) the procedure under which Mr ██████████ obtained authorisation from the Court, and b) the Court's inertia concerning a situation of a possible conflict of interests. Regarding a), it is clear from the information on the file that Mr ██████████ applied for permission to become a member of the Board of Directors of the University of Luxembourg (the President of the Board of Directors clearly being a member of that Board)



and that permission was given on 21 December 2011. Regarding b), taking into account the specific function of Mr [REDACTED] at the University of Luxembourg, and the fact that the complainant did not point to any specific issue of such an alleged conflict of interests, or put forward any convincing arguments to explain why heading an academic institution might in itself create a conflict of interests, I find that there are no grounds for an inquiry into this issue.

I have decided that, for the purposes of my inquiry **into the first and second issues**, as set out above, it is necessary to inspect the documents in the Court's file relating to the handling of its confirmatory decisions of 27 May and 16 November 2017 and the documents related to the amendment of the Code of Conduct for members and former members of the Court of Justice. Moreover, in order to obtain greater clarity about this complaint, I would kindly request the Court to arrange that, in the context of that inspection, my inquiry team also meets with the relevant officials of the Court.

I would be grateful if your office could contact Mr Lambros Papadias, Head of Inquiries Unit 3, to agree the arrangements for the inspection meeting to take place before 16 September 2018. Mr Papadias may be contacted at the following telephone number: 0032 2 284 [REDACTED] or by email at [REDACTED]

Information or documents that your institution considers to be confidential will not be disclosed to the complainant or any other person without the prior agreement of the Court of Justice. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended⁴.

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosures: Complaint 2006/2017 [REDACTED]

⁴ In accordance with Articles 4.8 and 9.4 of the European Ombudsman's Implementing Provisions: <https://www.ombudsman.europa.eu/en/resources/provisions.faces>