



COMPLAINT: 0104/2013/JN

NO GROUNDS

NOTE: This summary template is for inadmissible, no grounds, or dropped before an inquiry cases. It is currently in a test phase. We therefore invite you to send any comments how to improve it to sg@ombudsman.europa.eu or to contact Philipp directly. A summary template for opening all types of inquiry is currently being drafted. Until it is ready, please use an existing template on LOIS.

CONFIDENTIAL: ☐ YES; ☒ NO

If confidential, please state reason:

☐ Confidential at request of complainant, or

☐ Confidential following EO decision (Implementing Provisions, Article 10(1)):

☐ To protect the interests of the complainant

☐ To protect the interests of a third party

Please explain:

1. INSTITUTION, BODY, OFFICE, OR AGENCY COMPLAINED AGAINST:

☐ European Commission

☐ EPSO

☒ European Parliament

☐ Council of the European Union

☐ Court of Justice of the European Union

☐ [Select from list]

☐ Other (please specify):

2. SUMMARY

Concerning (please also specify the complainant's name):

Duties and rights of civil servants

The complainant's name is Magnus Nordanskog.

Facts and relevant points (only to the extent necessary):

Background of the case

In the past, the complainant submitted to the EO two other complaints relating to the same matter (543/2010/RT, 841/2010/RT: The first case was closed as inadmissible because the complainant had not exhausted all available internal remedies. The second (after exhaustion of internal remedies) was closed on 26/05/2010 with a no grounds decision.). Both complaints concerned in substance a decision of Parliament to upgrade members of Parliament staff who had been recruited as temporary agents prior to 01/05/2004, who had succeeded in an internal or an open competition published prior to 01/05/2004, and who had been subsequently appointed officials in the same category but at a lower grade than that which they would have been awarded prior to 01/05/2004. In the EO's understanding this decision of Parliament to upgrade certain members of its staff was intended to correct the discriminatory treatment of its officials and temporary staff following the entry into force of the new Staff Regulations. The complainant challenged however Parliament's refusal to upgrade him to grade AD10 with effect as of 01/01/2005 considering in substance that this decision had been discriminatory.



The ultimate response to this issue was given by the EO on 26/05/2010 when the complainant was provided with a no grounds decision containing a detailed reasoning. On 02/09/2010, the EO replied in a very detailed manner to the complainant's critical FC. The response stated *inter alia* that insofar as the complainant complained about Parliament's refusal to provide him with additional information, he should lodge an Article 90 § 2 SR complaint before possibly turning to the EO again [NB The issue of request of additional information had not been part of the object of the two first complaints but came up for the first time in the FC above.].

Procedure having led to the present complaint

Before sending his above FC to the EO, the complainant had turned, on 12/07/2010, to Parliament asking several questions.¹ The purpose of this request was to verify whether the statements in paragraphs 6 and 7 of the EO's decision of 26/05/2010 were correct.²

On 13/07/2010, Parliament responded that its administration had replied both to the complainant's "request of information (Article 90.1) and to [his] complaint (Article 90.2) "with very detailed, precise and founded information." The EO confirmed that Parliament had correctly treated the case. The response pursued that the complainant was manifestly dissatisfied with the EO's response and was asking more in order to challenge the EO's response. Parliament was however not entitled to question the EO's decision and the complainant was to address these issues directly to the EO. The complainant was informed that his complaint was definitely closed by Parliament.

After having received the EO's response to his FC above, the complainant submitted, on 12/10/2010, a complaint under Article 90 § 2 of the Staff Regulations claiming to be granted access to the information in question (i.e. to receive a response to his questions). He concluded that should it turn out that the EO's statements were incorrect and that the upgraded colleagues remained upgraded he reiterated his original request that he should be upgraded to AD10 with effect from 01/01/2005, with interest and reconstitution of his career from the same date.

On 02/02/2011, the European Parliament (apparently the Secretary General) replied to the complainant that his complaint was inadmissible. First, the response stated that the complainant had received, on 16/10/2009 and 29/03/2010 [i.e. Parliament's response to his initial request for re-grading and to his initial Article 90 § 2 SR complaint that were object of the complainant's previous complaints to the EO], motivated decisions which thoroughly informed him of his situation and rights. In this regard, it was

¹ 1) Were the effects of the Bureau's decision of 13 February 2006 suspended on 23 November 2006, and have those colleagues who were upgraded thus subsequently been downgraded to their original grades? Could you please provide the text of a decision to this effect?

2) Was the decision to upgrade colleagues taken in accordance with the transitional measures foreseen in Annex XIII of the Staff Regulations, contrary to what is stated by the Parliament in the Ombudsman's decision of 7 April 2008? Could you please provide the notes from the Secretary-General of 8 February 2006 (PE 368.645/BUR./REV) and 11 October 2006 (PE 380.037/BUR), mentioned in the PV from the Bureau's meetings of 13 February 2006 and 13 November 2006?

3) Is it perhaps the case that the Bureau in fact only suspended (on 13 November 2006, and not 23 November 2006 as stated by the Ombudsman) the effects of its decision of 13 February 2006 when it comes to "discriminatory elements of a similar nature" mentioned in the final paragraph of the decision, and that the upgraded colleagues in fact remain upgraded?

² Paragraph 6 reads as follows: "On 13 February 2006, the Bureau of Parliament decided to upgrade those members of Parliament staff who were recruited as temporary agents prior to 1 May 2004, who succeeded in an internal or open competition published prior to 1 May 2004, and who were subsequently appointed as officials in the same category, but at a grade lower than that which they would have been awarded prior to 1 May 2004. This was done in accordance with the transitional measures foreseen in Annex XIII of the new Staff Regulations."

Paragraph 7 reads as follows: "On 23 November 2006, Parliament suspended the effects of the above decision until the Court's ruling in the case of *Centeno Mediavilla and others v. Commission*."



stressed that "an official cannot reopen the period for lodging an appeal provided for in Article 91 of the Staff Regulations by lodging a complaint about a matter which has already been settled by an individual decision which has become final (...)" Second, the response of 13/07/2010 was not adversely affecting the complainant, the more so since the sender of the email was not the Appointing Authority. Third, in the reply of 29/03/2010 the complainant had been informed that he had never been a temporary staff member in Parliament before being appointed as an official on 01/01/2005. He had not even been employed by any EU institution between 16/02/2003 and 31/12/2004. Thus he had never qualified for an upgrading under the decision of 13/02/2006. Therefore, he was clearly in the same situation as any person having been recruited as official after the entry into force of the modified Staff Regulations on 01/05/2004.

Allegation (as identified)

The refusal to re-grade the complainant is contrary to the principles of good administration.

Supporting arguments (as identified):

1. The staff notice of 07/01/2009 was discriminatory since the complainant was in a similar situation to the upgraded colleagues and not to the colleagues that had never worked for the EU institutions before the 2004 reform of the Staff Regulations.
2. 10 months of the complainant's military service should be deducted from the date of recruitment and thus the recruitment should be deemed to have been made under the previous Staff Regulations.
3. When Parliament first offered the complainant the position in September 2003, he was not informed that he would be recruited under different conditions if he were recruited after the completion of the master programme in which he was then enrolled.
4. The decision of 02/02/2011 does not contain any reasoned answer and is therefore irrelevant.

Claim (as identified):

Parliament should re-grade the complainant as AD 10 with effect from 01/01/2005 with payments of interest and reconstitution of the complainant's career from the same date.

3. ANALYSIS

If inadmissible, tick one or more of the following reasons:

- ☐ Complainant not identified (Art. 2.3)
- ☐ Object not identified (Art. 2.3)
- ☐ Being dealt with or already dealt with by a court (Arts. 1.3 and 2.7)
- ☐ Time limit exceeded (2 years limit) (Art. 2.4)
- ☐ No prior administrative approaches made (Art. 2.4)
- ☐ Internal remedies not exhausted in staff cases (Art. 2.8)

If no grounds (Art. 228), tick one of the following:

Dealt with or being considered by another competent body (please specify):

- ☐ PETI Committee (EP); ☐ OLAF; ☐ EDPS; ☐ Other (specify):

Other:

First of all, it should be noted that the object of the complaint is not entirely clear. In fact, while the relevant part of the procedure having led to the present complaint concerned the refusal to provide the complainant with the additional information requested by him, his statements in the present complaint appear to refer exclusively to the substance of his previous complaints (i.e. the alleged discrimination). Notably, the complainant does not specify that his allegation and claim would be that Parliament wrongly refused to provide him with the information requested and that Parliament should do so.



Therefore, it can be considered that the complainant in fact merely renews his previous two complaints (although he explicitly refers only to his first complaint) and asks in substance for their reassessment by the EO.

However, the complainant already received an extensive and detailed response from the EO on 26/05/2010 which was confirmed in the EO's extensive and detailed response to the complainant's critical FC on 02/09/2010.¹ Nothing in the present complaint suggests that the EO's assessment was erroneous. The complainant has not submitted any solid arguments which would cast doubt on the previous assessment of his case by the EO. It can also be taken into consideration that paragraphs 6-7 of the EO's decision in the case 841/2010/RT were part of the statement of facts and were not fundamental, if they had any importance at all, for the EO's assessment exposed in paragraphs 21-26.² Therefore, the "renewal" of the complaint, which is to be read as a request for reassessment, is not founded.

Moreover, the complainant clearly seeks to circumvent basic procedural rules. In fact, the advice addressed by the EO to the complainant to introduce an Article 90 § 2 SR before possibly "renewing his complaint" to the EO was intended to mean that the complainant could introduce a new complaint about these new facts (i.e. the refusal to provide additional information) and not that the EO's decision of 26/05/2010 could be reviewed (especially not on the basis of a procedure having a different object). The subject matter of the complainant's complaints to the EO has already received a final response from the EO. The complainant cannot reopen a case before the EO merely by filing a second Article 90 § 2 SR complaint *a fortiori* relating to a different object.

☐ Dropped by complainant before inquiry

Additional text, if appropriate:

4. PROPOSAL FOR ACTION

Information/advice?

☐ YES - What? [SELECT FROM LIST]

More detail(s), if needed:

☒ NO - Please state reason(s): Given the content of the complaint, no advice can be given.

Transferred? (Tick only, if transferred)

☐ YES - Where? [SELECT FROM LIST]

More detail(s), if needed:

¹ The response covered also the complainant's criticism of paragraphs 6-7 of the EO's decision of 26/05/2010 that the complainant sought to challenge by his request for information filed with Parliament (see pages 2 and 4 of the EO's response).

² The complainant was informed in this sense already in the EO's response to his FC of 02/09/2010 which states inter alia: "I would like to inform you that paragraph 6 of my decision was intended to give a general overview of your case (the paragraph was part of the background of the decision, which gave a factual presentation of the context of the complaint) and did not constitute my assessment of your complaint. (...) it may be relevant to repeat that paragraph 7 of my decision to which you refer was also part of the background of the complaint, which was intended to give a factual presentation of the context of the complaint and did not contain my assessment of your case. Its content is factual and undisputed." (see page 4 of the EO's response)



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5. APPROVAL CIRCUIT (For LOs to fill out. A copy of the email approving the final version should be included in the signataire for dispatch.)

If inadmissible or dropped before inquiry:

HCIU:	[SELECT FROM LIST]	Date:
SG:	<input type="checkbox"/>	Date:

If no grounds (note: only no ground decisions require language check):

HCIU:	HCIU 1	Date:	24/01/2012
Director:	DIRECTORATE A	Date:	25/01/2012
Language:	<input type="checkbox"/>	Date:	
SG:	<input checked="" type="checkbox"/>	Date:	29/01/2012

☒ YES, this summary has been saved in the relevant complaints' summaries folder on the common drive. (This allows the document to be searched on SISTEO. It should be done as soon as possible after the necessary approval(s) have been given and before the signataire is handed to the Registry).



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CONFIDENTIAL: ☐ YES; ☒ NO

Complaint date:	03/01/2013	Complainant's name:	
Date registered:	04/01/2013	Represented by (if applicable):	N/A
Summary date(s):	22-23/01/2013	Country of address:	Belgium
Language:	English	Nationality:	N/A

KIND OF COMPLAINANT

Physical person: <input checked="" type="checkbox"/> Man	If applicable, <input type="checkbox"/> MEP
<input type="checkbox"/> Woman	If applicable, <input checked="" type="checkbox"/> EU staff
Legal Person: <input type="checkbox"/> Company; <input type="checkbox"/> Lawyer's office; <input type="checkbox"/> Association/ Non-profit/ NGO	
<input type="checkbox"/> Other (specify):	

TRANSMISSION

☒ Directly; ☐ by MEP; ☐ by PETI Committee; ☐ other (specify):

KEYWORDS

Keyword(s) 1- Eurovoc:



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- | | | |
|---|--|--|
| <input type="checkbox"/> Object not identified - only use for inadmissible/outside mandate (not in the official EUROVOC list) | <input type="checkbox"/> European School | <input type="checkbox"/> Political parties |
| <input type="checkbox"/> Administrative competition [Institution/Agency/Body] | <input type="checkbox"/> European symbol | <input type="checkbox"/> Pollution |
| <input type="checkbox"/> Administrative transparency | <input type="checkbox"/> Europol | <input type="checkbox"/> Press |
| <input type="checkbox"/> Adoption law | <input type="checkbox"/> Extradition | <input type="checkbox"/> Prices |
| <input type="checkbox"/> Aid to agriculture | <input type="checkbox"/> Foreign policy | <input type="checkbox"/> Prisons |
| <input type="checkbox"/> Air transport | <input type="checkbox"/> Fraud | <input type="checkbox"/> Promotion |
| <input type="checkbox"/> Banking system | <input type="checkbox"/> Free movement of capital | <input type="checkbox"/> Protection of animals |
| <input type="checkbox"/> Border control | <input type="checkbox"/> Free movement of goods | <input type="checkbox"/> Psychological harassment |
| <input type="checkbox"/> Child protection | <input type="checkbox"/> Free movement of persons | <input type="checkbox"/> Public services |
| <input type="checkbox"/> Climate | <input type="checkbox"/> Freedom to provide services | <input type="checkbox"/> Racism and xenophobia |
| <input type="checkbox"/> Competition law | <input type="checkbox"/> Grant | <input type="checkbox"/> Rail transport |
| <input type="checkbox"/> Construction policy | <input type="checkbox"/> Health care | <input type="checkbox"/> Real property |
| <input type="checkbox"/> Consumer protection | <input type="checkbox"/> Health policy | <input type="checkbox"/> Recognition of diplomas |
| <input type="checkbox"/> Cooperation policies | <input type="checkbox"/> Humanitarian aid | <input type="checkbox"/> Refugee |
| <input type="checkbox"/> Corruption | <input type="checkbox"/> Immigration | <input type="checkbox"/> Research |
| <input type="checkbox"/> Courts and tribunals | <input type="checkbox"/> Insurance | <input type="checkbox"/> Road transport |
| <input type="checkbox"/> Data protection | <input type="checkbox"/> Intellectual property | <input type="checkbox"/> Sea transport |
| <input type="checkbox"/> Disabled person | <input type="checkbox"/> Leave | <input type="checkbox"/> Sexual harassment |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Libel and slander | <input type="checkbox"/> Social policy |
| <input type="checkbox"/> Divorce | <input type="checkbox"/> Member of Parliament | <input type="checkbox"/> Social security |
| <input type="checkbox"/> Driving licence | <input type="checkbox"/> Migrations | <input type="checkbox"/> Structural funds |
| <input checked="" type="checkbox"/> Duties and rights of civil servants | <input type="checkbox"/> National implementing measure | <input type="checkbox"/> Subsidy |
| <input type="checkbox"/> Employment | <input type="checkbox"/> National/Regional Ombudsmen and similar bodies (not in the official EUROVOC list) | <input type="checkbox"/> Supervision of medicinal products |
| <input type="checkbox"/> Environmental policy | <input type="checkbox"/> OLAF | <input type="checkbox"/> Taxation |
| <input type="checkbox"/> Equal treatment | <input type="checkbox"/> Organisation of elections | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> EU charter of fundamental rights | <input type="checkbox"/> Pay | <input type="checkbox"/> Terrorism |
| <input type="checkbox"/> European citizenship | <input type="checkbox"/> Payment | <input type="checkbox"/> Trans-European networks |
| <input type="checkbox"/> ECHR | <input type="checkbox"/> Pensions | <input type="checkbox"/> Unemployment |
| | <input type="checkbox"/> Petitions | <input type="checkbox"/> Use of languages |
| | <input type="checkbox"/> Police | <input type="checkbox"/> Visa policy |
| | | <input type="checkbox"/> Waste |
| | | <input type="checkbox"/> Working time |

NOTE: Keywords "2", "3" and "4" are only necessary for no grounds complaints. It is possible to select several key words in each list.

Keyword(s) 2 - Field of law:

- | | | |
|--|--|---|
| <input type="checkbox"/> Agriculture | <input type="checkbox"/> Energy | <input type="checkbox"/> Law relating to undertakings |
| <input type="checkbox"/> Area of freedom, security and justice | <input type="checkbox"/> Environment, consumers and health protection | <input type="checkbox"/> People's Europe |
| <input type="checkbox"/> Common Foreign and Security Policy | <input type="checkbox"/> External relations | <input type="checkbox"/> Regional policy and coordination of structural instruments |
| <input type="checkbox"/> Competition policy | <input type="checkbox"/> Freedom of movement for workers and social policy | <input type="checkbox"/> Right of establishment and freedom to provide services |
| <input type="checkbox"/> Customs Union and free movement of goods | <input type="checkbox"/> Fisheries | <input type="checkbox"/> Science, information, education and culture |
| <input type="checkbox"/> Economic and monetary policy and free movement of | <input checked="" type="checkbox"/> General, financial and institutional matters | <input type="checkbox"/> Taxation |
| | <input type="checkbox"/> Industrial policy and internal | |



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capital

market

☐ Transport policy

If useful, legal act(s):

Keyword(s) 3 - Type(s) of (mal)administration:

- | | | |
|--|--|--|
| <input type="checkbox"/> Lawfulness (incorrect application of substantive and/or procedural rules) [Article 4 ECGAB] | <input type="checkbox"/> Reply to letters in the language of the citizen, indicating the competent official [Articles 13 and 14 ECGAB] | <input type="checkbox"/> Data protection (includes failure to grant access to one's file) [Article 21 ECGAB] |
| <input checked="" type="checkbox"/> Absence of discrimination [Article 5 ECGAB] | <input type="checkbox"/> Obligation to transfer to the competent service of the Institution [Article 15 ECGAB] | <input type="checkbox"/> Requests for information [Article 22 ECGAB] |
| <input type="checkbox"/> Proportionality [Article 6 ECGAB] | <input type="checkbox"/> Right to be heard and to make statements [Article 16 ECGAB] | <input type="checkbox"/> Requests for public access to documents [Article 23 ECGAB] (OBLIGATORY and only used for complaints concerning the application of Regulation 1049/2001) |
| <input type="checkbox"/> Absence of abuse of power [Article 7 ECGAB] | <input type="checkbox"/> Reasonable time-limit for taking decisions [Article 17 ECGAB] | <input type="checkbox"/> Duty of care |
| <input type="checkbox"/> Impartiality, independence and objectivity [Articles 8 and 9 ECGAB] | <input type="checkbox"/> Duty to state the grounds of decisions and the possibilities of appeal [Articles 18 and 19 ECGAB] | <input type="checkbox"/> Other rights and duties resulting from the Staff Regulations and not covered by the above list |
| <input type="checkbox"/> Legitimate expectations, consistency and advice [Article 10 ECGAB] | <input type="checkbox"/> Notification of the decision [Article 20 ECGAB] | <input type="checkbox"/> Other rights and duties resulting from the Charter of Fundamental Rights and not covered by the above list |
| <input type="checkbox"/> Fairness [Article 11 ECGAB] | | |
| <input type="checkbox"/> Courtesy [Article 12 ECGAB] | | |

Keyword(s) 4 - Subject matter of the case:

- ☐ The Commission as Guardian of the treaties: Article 258 of the TFEU (ex Article 226 of the EC Treaty)
- ☐ Dealing with requests for information and access to documents (Transparency)
- ☐ Award of tenders or grants
- ☐ Execution of contracts
- ☐ Competition and selection procedures (including trainees)
- ☒ Administration and Staff Regulations
- ☐ Institutional and policy matters



TRANSMISSION DATA:

ANNEX(ES): [If applicable, please insert here the reference(s) of document(s) enclosed with the outgoing letter(s). This information is needed by the Registry. Also specify what exact pages are concerned, where applicable.]

☒ Letter of inadmissibility

Attachment(s): ☒ EO leaflet

☐ Committee on Petitions of the European Parliament leaflet

☐ Other:

☐ Original complaint (copy the complaint for the EO's file - Send by registered post)

☐ No grounds decision/simple letter

☐ Original Decision to the complainant

☐ Letter to President of the Institution

☐ Copy of the decision in EN

☐ (cc:)

☐ Transfer of a complaint

☐ Letter to Institution + Original of the complaint (send by registered post)

☐ Letter to inform the complainant

☐ (Copy the complaint for the EO's file)

NEJEDLY Josef

From: EO-Secretariat General
Sent: 29 January 2013 11:00
To: NEJEDLY Josef
Subject: RE: 0104/2013/JN ADMISSIBLE NO GROUNDS (SIMPLE LETTER)
Follow Up Flag: Follow up
Flag Status: Red

Dear Josef,

Thank you for these drafts, which are fine.

Best wishes,

Philipp

From: NEJEDLY Josef
Sent: 29 January 2013 10:11
To: EO-Secretariat General
Subject: 0104/2013/JN ADMISSIBLE NO GROUNDS (SIMPLE LETTER)

Dear colleague,

Please find enclosed a draft decision following an admissible no grounds case (simple letter).

Best wishes,

Josef