

**ZINCK Caroline**

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**From:** [REDACTED]  
**Sent:** 29 December 2013 20:58  
**To:** O'REILLY Emily  
**Cc:** O'SULLIVAN Aidan; BUTLER Fintan; LOPEZ MARTIN Patricia  
**Subject:** Request for review of complaint  
**Attachments:** 0104-2013-JN-S2013-168414[1].pdf; Complaint with annexes[1].pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mrs O'Reilly,

I have been an official in the European Parliament since 1 January 2005, and was a temporary agent at the Court of Justice in 2012-2013 after having passed a competition. In view of the resignation of the former Ombudsman and the fact that the new staff regulations will enter into force on 1 January 2014, I would ask you to please review my attached complaint.

With the new staff regulations, any official having a grade above AD 12 will be considered outside of the normal career structure, and this means that some of the officials upgraded by the Parliament Bureau decision of 2006 therefore will be affected by this, as will my former colleagues from the Court of Justice, one of whom started working on the exact same day as me in 2002, also as temporary agent, and who is now AD 13 while I am AD 9.

The attached reply to my complaint could only be described as bad administration, not least considering the lack of substantiated justification of the Ombudsman's position following from the reference to my arguments as not being "solid". I would therefore ask you to make sure that my complaint is reviewed by someone who has not previously dealt with my complaint dating back to 2009, including Mrs Assimakopoulou (even if she were to receive this mail). I would also ask you to investigate whether any officials in the Ombudsman's office were upgraded during the reign of the former Ombudsman following the 2004 reform of the staff regulations and then not regraded back following the Court's ruling in the Mediavilla case, as was the case in the Parliament.

Please do not hesitate to ask for clarifications or previous documentation in this case. I'll be back in the office on 13 January 2014.

Yours sincerely,

[REDACTED]



**P. Nikiforos Diamandouros**  
European Ombudsman



Belgique



Strasbourg, 29 -01- 2013

Complaint 0104/2013/JN

Dear Mr 

I am writing in reply to your letter of 4 January 2013 in which you expressed the wish to renew your complaint of 26 February 2010 (543/2010/RT).

The Treaty on the Functioning of the European Union and the Statute of the European Ombudsman set certain conditions as to the opening of an inquiry by the Ombudsman. One of these conditions is:

Article 228 of the Treaty on the Functioning of the European Union:

*"In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds (...)"*

After a careful examination of your complaint, I have concluded that there are not sufficient grounds for opening an inquiry.

First, I would like to inform you that in spite of the fact that you only referred to the renewal of your complaint of 26 February 2010, I have considered your submissions also with respect to your complaint of 31 March 2010 (841/2010/RT).

Second, I note that your previous complaints have received an extensive and detailed response from the Ombudsman in the decision of 26 May 2010. That decision was later confirmed, on 2 September 2010, in the Ombudsman's detailed reply to your further correspondence. The reply also referred to paragraphs 6-7 of the Ombudsman's decision of 26 May 2010.

Finally and most importantly, your present submissions do not contain any solid arguments demonstrating that my previous assessment of your case



would have been erroneous. Moreover, these arguments are in substance the same as previously submitted. Therefore, your request for reassessment is not founded.

Yours sincerely,

P. Nikiforos Diamandouros



To the European Ombudsman, Strasbourg, France

Brussels, 3 January 2013

### **Renewal of complaint**

In line with the letter of the Ombudsman of 2 September 2010, I hereby renew my complaint of 26 February 2010, and again claim that the Ombudsman should instruct the Parliament to regrade me at AD 10 with effect from 1 January 2005, with payments of interest and reconstitution of my career from the same date. Please find a summary of the main arguments below.

1. The staff notice of 7 January 2009 was discriminatory since it did not treat the Bureau decisions of 13 February 2006 and 13 November 2006 in the same way. The officials who were upgraded by the former decision remain upgraded, whereas Parliament has not taken any action to correct the discriminatory situation for officials in a similar situation under the latter decision. My situation falls within this category and the Ombudsman must therefore apply its own decision 3770/2006/JF to my case, in particular by examining the arguments showing that I was in a situation similar to the upgraded colleagues and not in the same situation as those colleagues who had never worked for the institutions before the 2004 reform of the Staff Regulations.
2. According to Article 28 of the Staff Regulations, an official may be appointed only on condition that he has fulfilled any obligations imposed on him by the laws concerning military service. This means that successful candidates on the same or parallel reserve lists have been treated differently depending on whether they were in fact subject to such an obligation and thus were able to be recruited before the 2004 reform. I submit that the 10 months that I served in military service under the laws of my Member State of citizenship must therefore be deducted from the date of recruitment, which was 1 January 2005, and that my recruitment must be considered to have been made under the Staff Regulations in force before the 2004 reform. The laws in question have subsequently been abolished, on gender equality grounds, and if I had not been under an obligation to do the military service, all other variables constant, I would not have been affected by the date set for the 2004 reform, in the same way as those not subject to this obligation.<sup>1</sup> This

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<sup>1</sup> In the Judgment of the Court of Justice (Grand Chamber) of 1 March 2011 in Case C-236/09, *Association belge des Consommateurs Test-Achats ASBL v. Conseil des ministres*, the Court reiterated its consistently held position, in the context of gender equality, that the principle of equal treatment requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified.

argument is also supported by the position of the Civil Service Tribunal, which has stated that it was indeed possible for the Parliament to inform applicants of the practical implications of the 2004 reform.<sup>2</sup> When, in September 2003, Parliament first offered me the position that I was ultimately recruited to, it did not inform me that I would be recruited under different conditions if I were to be recruited following completion of the master programme in which I was then enrolled.

The attached decision of the Secretary-General of 2 February 2011 does not contain any reasoned answer to the issues that I have raised and is therefore clearly irrelevant, not least having regard to the fact that I am bringing this case to the Ombudsman and not before the Court of Justice.

The way that this case has been handled is therefore clearly in breach of the principle of good administration, and I call on the Ombudsman to carefully review all of the submissions made in this case, in particular in paragraphs (a)-(e) of my original complaint to the Ombudsman of 26 February 2010 and the attached complaint of 12 October 2010 under Article 90(2) of the Staff Regulations.

Please do not hesitate to contact me for any further information or clarifications. I look forward to hearing from you.

Yours sincerely,

A large black rectangular redaction box covering the signature and name of the sender.

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<sup>2</sup> Order of the President of the Second Chamber of the Civil Service Tribunal of 11 September 2009 in Case F-90/05, Zelenková v. Parliament, at paragraph 12.



ЕВРОПЕЙСКИ ПАРЛАМЕНТ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET  
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT  
PARLEMENT EUROPÉEN PARLAIMINT NA HEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS  
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT  
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EURÓPSKY PARLAMENT EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

Der Generalsekretär

**REGISTERED LETTER WITH**  
**ACKNOWLEDGMENT OF RECEIPT**

101402 02.02.2011

Mr [REDACTED]

Dear Mr [REDACTED]

By mail of 12 October 2010, registered by the Official Mail Unit on 13 October 2010, you lodged a complaint, pursuant to Article 90(2) of the Staff Regulations, against an alleged Decision of 13 July 2010 not to grant you the information that you had requested on 12 July 2010.

In your complaint, you explain that the information you have asked for would enable you to check whether the European Ombudsman's decision of 26 May 2010 not to open an inquiry into your complaint 841/2010/RT could be based on an incorrect assessment of your case.

After a detailed examination of all the elements of your file, I regret to inform you that I am obliged to reject your complaint as inadmissible.

Firstly, in view of the information already communicated to you on 16 October 2009 by Ms PITT in her reply to your request and on 29 March 2010 in my reply to your previous complaint, I consider that you have received motivated decisions which thoroughly informed you of your situation and your rights.

In this regard I stress 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 (cf. the Court judgement of 8 March 1988 in case Leslie Brown vs. Court of Justice).

Secondly, under Article 90, paragraph 2, of the Staff Regulations, complaints have to be directed against "*an act adversely affecting*" the complainant. Under the Case Law of the Civil Service Tribunal, an act adversely affecting a complainant's situation is an act, which may encroach upon that complainant's interests, so that complaining against it may result in a profit for the complainant (cf. the Court judgement of 1 July 1994 in case 26/63, Pistojs vs Commission and the CST judgement of 13 December 2007 in joint cases

F-51/05 and F-18/06, Duyster vs. Commission, point 80). Or the information emailed to you on 13 July 2010 is not adversely affecting you within the meaning of Article 90 of the Staff Regulations, the more so since the sender of the email did not act in any capacity of Appointing Authority.

Thirdly, on the basis of the duty of care I remind you that in my reply of 29 March 2010 to your previous complaint, I drew your attention to the fact that you had never been a temporary staff member in Parliament before being appointed as an official on 1 January 2005. Moreover you had not even been employed by any Institution of the European Community between 16 February 2003 and 31 December 2004. As a result, you have obviously never qualified for an upgrading under the Bureau decision of 13 February 2006.

You are therefore clearly in the same situation as any person who has been recruited as official after the entry into force of the modified Staff Regulations on 1 May 2004. For this reason, the Court judgement of 22 December 2008 in case C-443/07P, Centeno Mediavilla vs. Commission, is fully relevant to your situation, irrespective of the fact that you were not a party to the case. Indeed, this does not leave any room for a different application to your situation, which is identical to the situation of the applicants, of the provisions of the Staff Regulations as interpreted by the Court.

Lastly, may I draw your attention to your right under the Staff Regulations to lodge a legal appeal against the present Decision to reject your complaint. Any appeal must be filed within three months with effect from the date of notification of this Decision, pursuant to Article 91(3) of the Staff Regulations. You may also submit a complaint to the European Ombudsman, although such a step has no bearing on the time-limit for lodging the appeal. By virtue of Article 228(1) of the Treaty on the functioning of the European Union, the Ombudsman does not investigate a complaint where the alleged facts are or have been the subject of legal proceedings.

Yours sincerely,



Klaus WELLE



To the Office of the Secretary-General of the European Parliament

Brussels, 12 October 2010

**Complaint pursuant to Article 90(2) of the Staff Regulations**

I made a request in my staff report for 2008 to be upgraded to AD 10 with effect from 1 January 2005 by application of the Bureau's decision of 13 February 2006. This request was refused by the Parliament on 16 October 2009, and a complaint pursuant to Article 90(2) was refused on 29 March 2010 after I had introduced on 26 February 2010 a complaint for maladministration to the Ombudsman against the Parliament. The Ombudsman decided on 26 May 2010 not to open an inquiry into my case.

The Ombudsman claimed in his decision that the Bureau's decision of 13 February 2006 on the upgrading of colleagues was done in accordance with the transitional measures foreseen in Annex XIII of the Staff Regulations and that the Bureau suspended the effects of its decision on 23 November 2006.

By referral from the Bureau secretariat I therefore requested on 12 July 2010 that the Appointing Authority provide the following information:

- 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?*



The administration on 13 July 2010 refused this request by claiming that it had already responded to my previous submissions with "*very detailed, precise and founded information*", that I would be "*introducing new elements*" and that the Parliament "*will not reply anymore to further questions about this issue*" and that the issue "*is judged*", and they referred me to the Ombudsman.

After having contacted the Ombudsman, I received on 2 September 2010 the advice to introduce a complaint in accordance with Article 90(2) of the Staff Regulations against this refusal to provide the requested information.

I informed the administration on 4 October 2010 of my intention to introduce such a complaint and invited it to provide a substantial justification for its refusal.

Having received no such justification I hereby introduce a complaint pursuant to Article 90(2) of the Staff Regulations and would like to refer to the following in support of my claim to be granted access to the information:

The Parliament's assertion that it has responded with "*very detailed, precise and founded information*"

In the administration's refusal of 16 October 2009 in response to my original request in my staff report for 2008 it claimed among other things that the "*period of application*" of the Bureau's decision of 13 November 2006 had ended by the time of that request, that the Parliament could not be held responsible for failing to furnish information about the consequences of the new Staff Regulations and that internal AD 9 competitions would eventually be held.

The assertion that the period of application of the decision had ended was not substantiated, and against the background of the Ombudsman's claim that the Bureau suspended its effect in November 2006 one could hardly claim that this constitutes detailed and precise information. Furthermore, in my complaint for maladministration I referred to an order of the Civil Service Tribunal in a case against the Parliament in which it was found that it was indeed possible for it to furnish information about the consequences of the new Staff Regulations, which supports that the administration's assertion to the contrary therefore was incorrect. Moreover, I am not eligible to apply to the AD 9 competitions which in the meantime have been announced. In the normal course of my career I will however be promoted to AD 9 myself with effect from 1 January 2011, i.e. less than three months from now, with the consequence that even more people with less experience from working in the EU institutions than myself will gain better career prospects than I currently have.

It is therefore obvious that the administration's refusal of 16 October 2010 could not be said to amount to the alleged "*very detailed, precise and founded information*".

Furthermore, in the administration's refusal to my complaint of 29 March 2010 it essentially claimed that the above-mentioned Bureau decision of 13 February 2006 could not be applied to me because I was not in the same situation as the upgraded colleagues, in particular by referring to the "*preparatory work*" to the decision, and that I did not supply any "*elements of actual proof*" in support of unequal treatment in relation to former colleagues from the Court of Justice.

First of all, the very fact that a reference is made to the "*preparatory work*" of the decision without actually quoting it or making it available for consultation contradicts the administration's claim of having provided sufficient information. On the substance of this assertion, it needs to be emphasised that the administration misrepresented my complaint by claiming that I wanted to be covered by the part of the decision in which temporary agents of the Parliament were upgraded. My complaint referred on the contrary to the part of the decision which dealt with colleagues in a similar situation, and I provided explicit arguments showing that I indeed was in such a situation. Furthermore, in my complaint for maladministration I also asked that the same examination be done in my case as was done in the case of the complainant in a recent Ombudsman decision<sup>1</sup>, but neither the Parliament nor the Ombudsman took my reasoning that I was in a similar situation into consideration. Moreover, they also both misrepresented my claim as to unequal or discriminatory treatment, believing that I claimed this in relation to former colleagues from the Court when I explicitly claimed it in relation to the upgraded colleagues. Finally, the claim that I did not provide proof is incorrect; this is not a question of evidence, but rather of fact on public record as it is available to the administration on request.

However, in order to clarify this aspect of my complaint of 27 October 2009 (whether it is proof or fact on public record), I would like to give the following background: The former Secretary-General Julian Priestly introduced in 2003 a reform of the Parliament administration which was called "*Raising the Game*". One part of this reform, which was implemented mainly by Harald Rømer and Eva Dudzinska at the Parliament in the following years, consisted of raising the number of lawyer-linguists at the Parliament from a mere 11 before the 2004 enlargement to close to a hundred a couple of years later. A large number of these lawyer-linguists were recruited from the Court of Justice, myself included, and I have therefore worked with the same lawyer-linguist colleagues both at the Court and at the Parliament. If you consider it necessary for the proper understanding of this part of my complaint, in which this claim was originally made, I would be able to provide you with a list of names of the former colleagues from the Court referred to in that complaint.

It is therefore also obvious that the administration's refusal to my complaint of 29 March 2010 could not be said to amount to the alleged "*very detailed, precise and founded information*".

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<sup>1</sup> The reference was to the following paragraph of the Ombudsman's decision of 7 April 2008 on complaint 3770/2006/JF:

*"3.11 The Decision was therefore designed to remedy situations that could be reasonably perceived as unfair for certain categories of Parliament's staff due to the entering into force of the new Staff Regulations. The complainant however was not a Parliament official receiving, on 1 May 2004, a compensatory allowance, nor was he recruited by Parliament, prior to that date, as a temporary agent. Parliament's position that, in summary, the complainant's and his two colleagues' situations cannot be compared appears therefore to be reasonable. Furthermore, the Ombudsman considers that the complainant did not advance, during the present inquiry, any arguments showing that, for the purposes of application of the Decision, he was in a situation similar to that of his two colleagues. The Ombudsman thus finds no maladministration by Parliament as regards the allegation that Parliament failed to comply with the applicable rules by failing to upgrade the complainant to grade AD 10. Consequently, the complainant's claim that Parliament should upgrade him to grade AD 10, as far as the Decision is concerned, cannot be sustained."*

Finally, the very fact that the administration on 12 July 2010 refused to provide the requested information concerning the Bureau's decisions of 13 February 2006 and 13 November 2006 is in itself an example of not having provided sufficient information.

The Parliament's assertion that I would be "introducing new elements"

On this point I can honestly say that I do not understand what these new elements would consist of. All the information referred to in my request of 12 July 2010 is also clearly indicated already in my original request in my staff report for 2008. I consider it intellectually dishonest by the person replying on behalf of the administration to make this assertion in the first place, since it is clearly unsubstantiated.

The Parliament's position that it "will not reply anymore to further questions about this issue" and that the issue "is judged"

With regard to the assertion that the issue "is judged" I again have major difficulties understanding exactly what is meant. If this is supposed to be a reference to the judgements in the so-called *Mediavilla* case on regrading, I would prefer it if the administration would elaborate on exactly how this case would have any bearing on the different treatment of colleagues in the Bureau's decision of 13 February 2006 as opposed to its decision of 13 November 2006.

Allow me to elaborate on my view on this: I was never a party to the case, and since the case was against the Commission and not the Parliament, and did not deal with the issue of the discrepancies between the Bureau's decisions I would not be barred from raising my claim to be upgraded neither on *res judicata* nor on collateral estoppel grounds. In short: the parties, the claims and the issues are all different.

The assertion that the Parliament will not reply to further questions is outrageous in the way that it is arbitrary and capricious. I will therefore not acknowledge it more than to say that it is obviously contrary to any acceptable notions of the rule of law and due process that could be imagined for the fair running of public administration.

Conclusion

Against this background I request access to the above-mentioned information concerning the two decisions of the Bureau, and should the claims made by the Ombudsman concerning the decisions turn out to be incorrect — and the upgraded colleagues indeed do remain upgraded — I reiterate my original request in my staff report for 2008 that I should be upgraded to AD 10 with effect from 1 January 2005, with interest and reconstitution of my career from the same date.

