

Decision of the European Ombudsman closing his inquiry into complaint 2178/2011/KM against the European Parliament

Decision

Case 2178/2011/KM - Opened on 29/11/2011 - Decision on 09/04/2013 - Institution concerned European Parliament (Friendly solution) |

The complainant, a German national, participated in a competition for a position at the European Parliament. On 15 April 2011, after the written test, he was told that the invitations for the interviews would probably be sent in mid-June. He thus went on holiday, as planned, in May. However, on 13 May 2011, he received an e-mail (which he only read on 26 May 2011) inviting him to attend an interview in Brussels on 30 May 2011. He therefore had to book a flight from Rome at short notice.

He requested that he be reimbursed for the cost of this flight, that is, EUR 559.60. Parliament rejected his request. It argued that, since the complainant had not applied to have his address changed on Parliament's records, it could only reimburse him on the basis of the distance between his place of residence in Germany and Brussels, that is, EUR 221.08. The complainant turned to the European Ombudsman, who opened an inquiry.

In its opinion, Parliament maintained that it had correctly applied the relevant rules. Taking account of the particular facts of the case, the Ombudsman asked it to address the question of fairness. In reply, Parliament stated that it had treated the complainant fairly and underlined that it could not pay a higher sum because it had received no written notification from the complainant.

The Ombudsman agreed that the rules impose three conditions for a change of address to be acceptable: (i) the circumstances must be exceptional; (ii) the change must occur at least 15 days before the test; and (iii) a written request must be made. He was pleased that Parliament accepted that the first condition was fulfilled and showed some flexibility by choosing not to apply the second condition. However, Parliament insisted on the third condition. The Ombudsman considered that this position was unduly formalistic and did not take sufficient account of the complainant's specific situation. He therefore proposed that Parliament reconsider the complainant's request for full reimbursement.

Parliament accepted the Ombudsman's proposal and paid the complainant the remainder of his travel costs. The complainant expressed his satisfaction with this outcome and thanked the



Ombudsman for his efforts. The Ombudsman therefore closed the case.

The background to the complaint

1. The complainant, a German national, participated in a competition for the position of head of unit at the European Parliament. He passed the written test on 15 April 2011 and, on 13 May 2011, he was invited to attend an interview in Brussels on 30 May. The complainant was on holiday in Italy at the time and he therefore had to book a flight from Rome at short notice.
2. He requested that he be reimbursed for the cost of this flight, that is, EUR 559.60. However, Parliament rejected this request, noting that it could only reimburse the cost of travel from a candidate's place of residence to the place of the interview.
3. On 22 July 2011, the complainant thus complained to the Secretary-General of the European Parliament. This complaint was registered as a complaint under Article 90(2) of the Staff Regulations of Officials of the European Union. On 18 August 2011, the complainant received a reply from the head of the Competitions & Selection Procedures Unit rejecting his complaint. On 17 November 2011, the General Secretariat of Parliament issued a formal decision in which (i) it stated that it had treated the complainant's Article 90(2) complaint as having been directed against the decision of 18 August 2011 and (ii) it rejected that complaint.

The subject matter of the inquiry

4. In his complaint to the Ombudsman, the complainant submitted the following allegation and claim.

Allegation:

The European Parliament wrongly and unfairly rejected the complainant's request to reimburse the costs of travelling to a recruitment interview from the place where the complainant spent his holiday.

To support this argument, the complainant, who lives in Germany, argued that he had to fly to Brussels from his holiday resort in Italy at short notice because the interview took place earlier than had been indicated.

Claim:

Parliament should reimburse the complainant's travel expenses in total.



The inquiry

5. The complaint was submitted on 29 October 2011. On 29 November 2011, the Ombudsman opened an inquiry into the complaint and asked the European Parliament for an opinion on it. Parliament submitted its opinion on 13 March 2012.

6. On 26 March 2012, the Ombudsman forwarded this opinion to the complainant. At the same time, he asked Parliament for further information. Parliament replied to this request by letter dated 27 April 2012 which was forwarded to the complainant with an invitation to submit observations. The complainant submitted his observations on 23 May 2012.

7. On 7 September 2012, the Ombudsman made a proposal for a friendly solution, which the Parliament accepted by letter dated 11 October 2012. This letter was forwarded to the complainant with an invitation to submit observations, which he did on 7 November 2012.

The Ombudsman's analysis and conclusions

A. Allegation of wrong and unfair rejection of the complainant's request for the reimbursement of his travel costs and related claim

Arguments presented to the Ombudsman

8. The complainant argued that, after the written test which had been held in April 2011, he was told that the results of that test would be available in mid-June and that invitations to an interview would then follow. He asked the official who made that statement to confirm it, as he had booked a holiday that was due to last from mid-May to the first week of June. The complainant submitted that he received this confirmation orally and thus went on holiday as planned. However, on 13 May, he received an invitation to attend an interview on 30 May. When the complainant checked his e-mails on 26 May and saw the invitation, he telephoned the relevant unit and was told that he could still attend the interview. He booked a flight from Rome at short notice and informed Parliament of his travel plans. On 22 June, he asked Parliament to reimburse the travel costs.

9. Parliament rejected this request, noting that, according to Article 3 of the "*Provisions governing part-payment of the travel and subsistence expenses of people invited to attend oral tests in connection with open competitions or notices of recruitment, interviews or medical examinations*" (the 'Provisions'), it could only reimburse the cost of travel from a candidate's place of residence to the place of the interview. The complainant was thus only entitled to a daily allowance of EUR 25. The complainant's first objection to this decision was rejected.



10. On 18 August 2011, the head of the Competitions & Selection Procedures Unit reviewed this decision. She referred to the Provisions and the "*Guide for candidates in selection procedures organised by the European Parliament*" (the 'Guide', which was published together with the notice of competition) and stated that only the cost of travel between Brussels and the place of residence of the applicant, as indicated on the application form, could be reimbursed. Once the invitations are sent, no change to the address is possible "*except on grounds involving force majeure or unforeseeable circumstances, which you must duly set out in writing and which Parliament's Administration accepts as being wholly exceptional*".

11. Candidates had been informed that the results would probably be known in June. However, the Selection Board then decided to speed up the selection process. Invitations to the interview as well as the rules on the reimbursement of travel costs were therefore sent on 13 May. According to Parliament, the complainant consulted these documents electronically on 24 May 2012.

12. Although the complainant asked for the reimbursement of his travel costs from Rome to Brussels, he nonetheless indicated his address in Germany. He did not set out in writing, as required by the rules, why his address should be changed to his holiday address. Nevertheless, given the announcement made after the written test as well as the information which the complainant claimed to have been given over the telephone and the confusion which this might have caused, the head of unit decided to grant the complainant a sum of money to cover the hypothetical travel costs between his place of residence in Germany and Brussels.

13. The complainant considered this offer of a part payment to be inappropriately low and asked the Ombudsman to help him obtain a full reimbursement.

14. In its opinion, Parliament first cited the relevant provision, point 5 of the Guide, which reads as follows:

"A contribution will be made towards the travel and subsistence expenses of candidates invited to the tests. ... The address indicated on the application form will be taken to be the place from which you set out to take the tests at the nearest test centre. Organisational reasons dictate that no change of address will be accepted once the invitations to the tests have been sent out, except on grounds involving force majeure or unforeseeable circumstances, which you must duly set out in writing and which Parliament's Administration accepts as being wholly exceptional. In no event will any such change be permitted from 15 days before the date on which the tests take place."

It explained that, since the complainant's residence, which was close to Berlin, was more than 500 km away from Brussels, he was, according to Article 2(5) of the Provisions, in principle entitled to reimbursement of the cost of an economy flight ticket, upon presentation of the ticket and boarding pass. Candidates who did not submit a train or air ticket would be reimbursed a sum calculated at the rate of EUR 0.12 per kilometre between their place of residence and the place of the interview.



15. However, when the complainant, who was aware of the applicable rules, realised that he had to travel from Rome to the place of the interview, he merely telephoned the relevant unit of Parliament's administration. He did not set out in writing his request for the reimbursement of his travel costs from Rome to Brussels. Parliament underlined that an e-mail would have been sufficient and that it was the standard practice of the relevant unit to try to accommodate candidates who advised it of such matters in advance and in writing.

16. Parliament noted that its authorising officers could only validate expenditure where they were sure that the relevant rules were complied with. It then referred to the judgment of the Court of Justice in *Burban v European Parliament* [1] in which the plaintiff claimed that he had been misled by information which a high level official had given him during a telephone conversation. The Court found that such information did not dispense candidates from their duty to read the notice of competition, and that where there were clear rules, erroneous information given by an official (who could not change the notice) could not, "*having regard to ... the principle of proper administration, either enable or a fortiori oblige a selection board or the appointing authority to act contrary to that notice of competition*".

17. In conclusion, Parliament considered that its officials had faithfully applied the relevant rules. Without a written request from the complainant to be reimbursed for his travel costs from a location that was different from his residence, it could not reimburse the travel expenses which the complainant claimed (the air fare for the Rome-Brussels flight). It thus did not consider that it had committed maladministration.

18. The Ombudsman considered that he needed more information from Parliament in order to assess the matter. In a letter to Parliament, he therefore set out his understanding of the relevant facts as follows: (i) all candidates in the competition were told that the results of the first round would probably be known in June; (ii) the complainant sought and received confirmation of this timetable; (iii) in order to comply with the rule requiring 15 days' notice of a change of address, he would have had to open the e-mail sent to him on 13 May on 15 May, at a time when he was on holiday. The Ombudsman asked Parliament, taking account of the particular facts of the complainant's case, also to address the question of fairness raised in the complaint.

19. In reply to this question, Parliament stated that, in its view, it had treated the complainant fairly and underlined that it had reimbursed him the sum of EUR 221.08. It understood the Ombudsman's letter to imply that it had refused payment because the complainant had not informed it 15 days before the test that his address had changed. In reality, Parliament was "*not unduly bothered by the complainant not having respected this 15 day notice period*". Rather, the reason why it was unwilling to pay the sum was that it received no written notice from the complainant, as the rules required, even though an e-mail would have been sufficient. It had thus properly applied those rules, which were similar to those followed by other institutions. It had however made a partial payment and it had therefore treated the complainant fairly.

20. In his observations, the complainant noted that Parliament again simply referred to the applicable rules without taking due account of the extraordinary circumstances of his case. He



emphasised again that it was due to the wrong information provided to him by a member of Parliament's staff that he was unable to travel to the test from his home town. In fact, had the official not provided that information, he would never have gone on holiday at that time. Parliament had ignored this misinformation which was at the root of the problem. He therefore maintained his complaint.

The Ombudsman's preliminary assessment leading to a friendly solution proposal

21. The rules on the reimbursement of travel expenses for candidates participating in a selection procedure on which Parliament relied foresee that, if a candidate needs to change the place from which he or she travels to the place where the selection test will be held, three conditions must be fulfilled: first that the circumstances must be exceptional; second that no change can be made after the expiry of the 15 day time limit before the relevant test; and third that the candidate must make his request in writing.

22. The Ombudsman was pleased to note that Parliament accepted that the first condition was fulfilled and that, as a consequence, it showed flexibility towards the complainant by partly reimbursing his costs on the basis of the distance between his place of residence and Brussels. In doing so, Parliament also decided not to insist, in this specific case, on the rule that a change of address is not permissible after the expiry of the 15 day time limit before the interview. However, it continued to maintain that it could not reimburse the costs actually borne by the complainant because he failed to meet the third requirement, which is that a change of address must be communicated in writing.

23. The Ombudsman considered this position to be unduly formalistic. The complainant appeared to have informed Parliament of his travel plans in the course of a telephone conversation he had with Parliament's relevant services before travelling for the interview. What is more, both in his complaint of 22 June 2011 and throughout the present inquiry, he clearly explained this issue, as well as the reason for his having to travel to the interview from Rome. In this regard, the Ombudsman noted that the rule on which Parliament relied did not seem to stipulate a specific deadline for providing it with the relevant information. To be sure, it did exclude changes of address occurring any later than 15 days before the interview. However, and as mentioned above, Parliament did not consider that this rule prevented the complainant from asking for the reimbursement of his flight from Rome. In fact, Parliament stressed that a simple e-mail would have been considered sufficient. Given that the complainant only found out that the date of the interview had been brought forward on 26 May 2011 (according to the complainant, or on 24 May 2011 according to Parliament), any such e-mail would necessarily have been sent less than 15 days before the interview.

24. In light of the above, the Ombudsman reached the preliminary finding that Parliament did not sufficiently take into account the specific situation in which the complainant found himself in this case, when dealing with his request for the reimbursement of his travel costs. He considered that this could amount to an instance of maladministration. The Ombudsman



therefore proposed that, in order to find a friendly solution, Parliament could reconsider the complainant's request for a full reimbursement of his travel costs.

The arguments presented to the Ombudsman after his friendly solution proposal

25. In its reply, Parliament maintained its position that it had acted correctly. Nonetheless, it decided to accept the Ombudsman's proposal to reconsider the complainant's request for a full reimbursement of his travel costs, and therefore instructed the relevant services to pay the complainant the difference between the contribution he had already received (which was based on the distance between his place of residence in Germany and Brussels) and the cost of the Rome - Brussels return flight.

26. In his observations, the complainant stated that he was happy to accept Parliament's decision and thanked the Ombudsman for his efforts.

The Ombudsman's assessment after his friendly solution proposal

27. The Ombudsman is pleased to note that Parliament has accepted his proposal for a friendly solution and has settled the case to the complainant's satisfaction.

C. Conclusion

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

Parliament has accepted the Ombudsman's friendly solution proposal.

The complainant and Parliament will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 9 April 2013

[1] Case C-255/90 P *Burban v European Parliament* [1992] ECR I-2253.