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## **REPORT**

on the Special Report by the European Ombudsman to the European Parliament following his Draft Recommendation to the European Commission in Complaint 185/2005/ELB (2009/2016(INI))

Committee on Petitions

Rapporteur: Miguel Angel Martínez Martínez

**CONTENTS**

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT .....	3
RESULT OF FINAL VOTE IN COMMITTEE.....	3

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the Special Report by the European Ombudsman to the European Parliament following his Draft Recommendation to the European Commission in Complaint 185/2005/ELB**

**(2009/2016(INI))**

*The European Parliament,*

- having regard to the Special Report from the European Ombudsman to the European Parliament,
  - having regard to Article 195(1), second subparagraph, of the EC Treaty,
  - having regard to Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties<sup>1</sup>, particularly Article 3(7) thereof,
  - having regard to the Charter of Fundamental Rights of the European Union, particularly Article 21 thereof,
  - having regard to the European Code of Good Administrative Behaviour, particularly Article 5(3) thereof,
  - having regard to Rule 195(2), first sentence, of its Rules of Procedure,
  - having regard to the report of the Committee on Petitions (A6-0201/2009),
- A. whereas according to the Court of Justice the principle of non-discrimination on grounds of age as enshrined in Article 21 of the Charter of Fundamental Rights of the European Union constitutes a general principle of Community law,
- B. whereas a difference in treatment on grounds of age constitutes discrimination on those grounds, unless that difference in treatment is objectively justified and the means to achieve it are appropriate and necessary,
- C. whereas according to the Ombudsman the Commission has failed to justify adequately its treatment of freelance auxiliary conference interpreters (ACIs) over 65 years of age, and continues to adhere to its current policy on hiring ACIs,
- D. whereas the Ombudsman considers that this constitutes an instance of maladministration,
- E. whereas Parliament's responsibility as the Union's sole elected body is to safeguard and protect the independence of the European Ombudsman in the conduct of his duties towards European citizens and to monitor the implementation of his recommendations,

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<sup>1</sup> OJ L 113, 4.5.1994, p. 15.

1. Endorses the critical remarks of the European Ombudsman and his recommendation concerning the Commission's policy on hiring ACIs over 65 years of age;
2. Calls on the Commission to change its current policy of imposing an effective ban on the recruitment of ACIs over 65 years of age; does not, however, consider that compensation is warranted in the circumstances of this case;
3. Notes that Parliament, after receiving a similar draft recommendation from the Ombudsman, acted immediately to change its practice as regards the hiring of ACIs over 65 years of age and interpreted the applicable rules in a manner that does not lead to discrimination;
4. Considers that changing the applicable rules and removing age discrimination from the hiring process does not place a European institution under any obligation to recruit ACIs over 65 years of age, but would, if such a change were implemented, bring the Commission's rules into line with a general principle of European Union law; in addition, considers that, given the shortage of interpreters in specific official languages, it would enhance the institution's ability to secure the best possible service, as has been proven in the Parliament;
5. Calls on the Commission to work together with Parliament in reviewing the rules applicable to hiring ACIs and other staff, so as to ensure that discrimination of any kind is avoided;
6. Instructs its President to forward this resolution to the Council, the Commission and the European Ombudsman.

## EXPLANATORY STATEMENT

On 16 January 2005 the complainant in complaint 186/2005/ELB submitted a complaint to the European Ombudsman.

The complainant worked for the European institutions for more than 35 years as a freelance auxiliary conference interpreter ('ACI'), translating into French from Dutch, English, German, Italian and Spanish. Freelance interpreters are hired for specific conferences and meetings.

In 2004, when he turned 65, he stopped receiving job offers from the two EU institutions. He turned to the Ombudsman, complaining that he was being discriminated against. The Ombudsman opened an inquiry.

The Commission confirmed that it treated freelance conference interpreters over 65 differently because it needed to give opportunities to new, young interpreters. The Ombudsman was not convinced. He accepted that different treatment on grounds of age can sometimes be justified under specific circumstances, for instance when there is a shortage of interpreters available in any given language. In this case, therefore, a complete ban on giving any work to interpreters over 65 is disproportionate and counterproductive to good administrative practice.

According to Article 21 of the Charter of Fundamental Rights, any discrimination, based on any ground, such as discrimination based on age, shall be prohibited. Moreover, according to the European Court of Justice, the principle of non-discrimination on grounds of age, embodied in Article 21 of the Charter of Fundamental Rights<sup>1</sup>, constitutes a general principle of Community law. According to the principle of non-discrimination, the Commission may not treat citizens differently on the basis of their age, unless it shows that such treatment is objectively justified and the means to achieve it are appropriate and necessary.

The Commission rejected the Ombudsman's assessment that it practiced discrimination and therefore refused to implement his recommendations. The Ombudsman maintained that the Commission had failed adequately to justify its ban on recruiting interpreters over 65 years of age. This constituted an instance of maladministration. As a result, the Ombudsman made a draft recommendation.

In a similar inquiry the Ombudsman conducted into the practices of the European Parliament concerning the hiring of ACIs over 65 years of age, he made a similar draft recommendation to Parliament, as a result of which Parliament accepted his position and changed its practice as regards the hiring of ACIs over 65. It now bases its hiring policy solely on the professional ability of interpreters and the requirements of the service. It should be noted that changing the rules for hiring of ACIs over the age of 65 in this sense does not mean that institutions are under an obligation to hire such ACIs, but it should be done to remove any form of discrimination from the hiring process, to implement a general principle of European Union law and to ensure the best possible service of interpretation in all official languages of the EU.

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<sup>1</sup> Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

The Commission, meanwhile, continued to disagree with the Ombudsman's view that it breached the principle of non-discrimination when it did not recruit ACIs over 65 years of age. It pointed out that, according to Article 119 of the CEOS<sup>1</sup> the employment of contractual staff shall cease when the agent reaches the age of 65 years. In these circumstances, and for purely legal reasons, the Commission stated that it could not change its recruitment policy.

As the Commission failed to respond to the Ombudsman's efforts in a positive way, the Ombudsman confirmed his recommendation to the Commission, stating that:

"The Commission should change its current policy of imposing a ban on the recruitment of ACIs over 65 years of age and should compensate the complainant for the losses he incurred due to the application, in his case, of that policy."

The Ombudsman considers that this case raises an important issue of principle. He takes the view that the Commission infringes the principle of non-discrimination on the basis of age, by imposing an absolute ban on hiring freelance auxiliary conference interpreters over 65 years of age. This constitutes an instance of maladministration, the importance of which justifies the submission of a Special Report to Parliament.

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<sup>1</sup> Conditions of Employment of Other Servants of the Communities.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	31.3.2009
<b>Result of final vote</b>	+: 16 -: 0 0: 0
<b>Members present for the final vote</b>	Sir Robert Atkins, Victor Boştinaru, Michael Cashman, Proinsias De Rossa, Carlos José Iturzaiz Angulo, Marcin Libicki, Miguel Angel Martínez Martínez, Manolis Mavrommatis, Mairead McGuinness, Willy Meyer Pleite, Diana Wallis, Rainer Wieland
<b>Substitute(s) present for the final vote</b>	Margie Sudre, Tatjana Ždanoka
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Elsbeth Attwooll, Ian Hudghton