

Decision in case 693/2017/PB on the decision of the European Centre for Disease Prevention and Control (ECDC) to exclude staff in higher grades from promotion

Decision

Case 693/2017/PB - Opened on 15/06/2017 - Decision on 13/02/2019 - Institution concerned European Centre for Disease Prevention and Control (No maladministration found)

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The case concerned a decision taken by the European Centre for Disease Prevention and Control not to promote staff in higher grades in 2016, as it had insufficient budgetary resources that year.

The Ombudsman found that the issue fell within the scope of readjustment to organisational changes and that there had been no maladministration.

Background to the complaint

1. The European Centre for Disease Prevention and Control (ECDC) put in place and implemented a new staff appraisal and promotion [1] system between 2015 and 2016. Because of transitional issues, the ECDC found that staff who would normally be promoted in 2015 under the budget of that year could be promoted only under the 2016 budget. This meant that the ECDC promoted staff for both 2015 and 2016 under the budget of 2016. The ECDC was concerned about the strain that this put on the 2016 budget. It therefore decided not to consider staff in higher grades for promotion in the 2015 appraisal exercise. The complainant had a high grade, and as a result was not considered for promotion. He made an administrative complaint about this to the ECDC's management, who rejected his complaint.

2. The complainant then turned to the European Ombudsman, who opened an inquiry.

The inquiry

3. The Ombudsman inquired into whether it was consistent with principles of good administration for the ECDC to exceptionally not promote staff in specific higher grades.



4. The Ombudsman asked the ECDC to explain its decision. The complainant made comments on those explanations.

Decision not to promote staff in higher grades

Arguments presented to the Ombudsman

5. The complainant felt that it was discriminatory and at any rate unjust of the ECDC to exclude staff in higher grades entirely from the possibility of being promoted. Instead the ECDC could perhaps have *limited* the number of promotions per grade. The complainant felt that he had been the victim of poor budget management.

6. The ECDC explained its budgetary restraints at the time. Promotions in higher grades would have unfairly reduced the possibility to promote staff at middle and lower grades, which is what the ECDC had tried to avoid. The ECDC did not agree that this led to discrimination in any legal sense. It stated that the complainant had been treated equally with other staff in his grade.

7. The ECDC also pointed to the provisional nature of the measures it had taken for the year in question and noted that the complainant had in the meantime been promoted.

The Ombudsman's assessment

8. Staff should under all circumstances have their statutory rights respected, such as their remuneration, allowances, and working time rights. The present case does not, however, concern such a specific right. Instead, it concerns the wide discretionary power that management enjoys in deciding on staff promotions. There is nothing to suggest that the ECDC exceeded its wide margin of discretion in this case. The fact that organisational changes may cause certain administrative difficulties in a transitional period is not in itself maladministration.

9. Regarding the concern about possible discrimination, the principle of non-discrimination provides that persons who are in the same situation shall be treated equally. The ECDC points out that the complainant was treated equally with colleagues in the same grade and the complainant does not contest this. The Ombudsman therefore finds that there was no breach of the principle of non-discrimination.

10. With regard to the alleged poor budget management by the ECDC, the Ombudsman's role is not to determine whether there was poor budget management which led to a reduction in the number of promotions in 2016.

11. The Ombudsman does not consider that there was maladministration by the ECDC.



Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion :

There is no maladministration.

The complainant and the European Centre for Disease Prevention and Control will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 13/02/2019

[1] 'Promotion' will be used throughout instead of the technical term 'reclassification'.