

Decision in case 1173/2019/UNK on the European Commission's Medical Service alleged use of genetic data in a recruitment procedure

Decision

Case 1173/2019/UNK - Opened on 29/07/2019 - Decision on 16/12/2019 - Institution concerned European Commission (No maladministration found) |

The complainant complained to the Ombudsman that the European Commission's Medical Service had collected and used his genetic data during a recruitment procedure.

The Ombudsman found that the Medical Service did not collect the complainant's genetic data.

The Ombudsman closed the inquiry with a finding that there was no maladministration.

Background to the complaint

1. The complainant applied for a contract agent post at the European Commission.
2. The EU Staff Regulations [1] require that a candidate undergo a medical examination before the candidate can be employed as an EU civil servant. The purpose of the examination is to verify if the candidate has any conditions that may affect his or her ability to work. The examination also serves to identify any pre-existing conditions that may have insurance implications (the work insurance for EU staff may not cover, at least for a period of time, illnesses or conditions that pre-date the person's employment as an EU civil servant). If the Medical Service identifies a relevant medical issue, the institution in question can adopt a 'medical reserve'. [2]
3. The Commission's Medical Service examined the complainant and recommended that the Commission adopt a 'medical reserve' on the basis of two pre-existing medical conditions.
4. The complainant complained to the Ombudsman that the Medical Service had collected and used his 'genetic data' to adopt a medical reserve.

The inquiry



5. The Ombudsman opened an inquiry into the allegation that the Commission's Medical Service collected and used 'genetic data' to adopt a medical reserve.

6. In the course of the inquiry, the Ombudsman's inquiry team met with the Commission's representatives in order to discuss the complaint. The Ombudsman also received the Commission's written reply and, subsequently, the complainant's comments in response to the meeting report and the Commission's written reply. The Ombudsman's inquiry team also inspected the Commission's file on this case.

Issue

Arguments presented to the Ombudsman

7. The Commission stated that, during pre-recruitment medical examinations, its Medical Service carries out certain medical tests and asks candidates to fill in a questionnaire. The Commission stated that the Medical Service does not collect 'genetic data'. Rather, the questionnaire asks for information on any major diseases or causes of death suffered by the candidate's closest blood relatives.

8. The Medical Service then issues an opinion on the candidate's fitness to work. It may find the candidate to be: 1) unfit for work, 2) fit for work, or 3) fit for work with the recommendation of a medical reserve. The Medical Service recommends the adoption of a medical reserve when it identifies a current pathology or a past pathology that may result in a relapse. The Commission emphasised that the Medical Service does not base its medical reserve on 'genetic data'.

The Ombudsman's assessment

9. EU data protection rules [3] impose strict conditions as regards the gathering and the use of *any* medical data of persons. If the Commission ever considered it necessary to use genetic data of a candidate, for example to evaluate a specific medical issue, the Commission should inform the person concerned of the need to collect that data, of the nature of the tests, of how that data will be used and of the person's right to object.

10. EU data protection rules [4] defines genetic data as personal data relating to the inherited or acquired genetic characteristics of a natural person **which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained** .

11. The Ombudsman has examined the file carefully and can confirm that the Medical Service did not collect 'genetic data'. More generally, the Commission has affirmed that it does not



collect 'genetic data' of any candidate. Nor does the Commission conduct medical tests (for example, blood tests) to investigate a candidate's 'genetic profile'.

12. As regards the questionnaire, in accordance with its standard procedures, it merely asks candidates to fill in the questionnaire with information on his or her family health history. On the basis of the questionnaire the Medical Service determines which additional medical tests are necessary to assess the candidate's fitness to work. This information does not constitute 'genetic data'.

13. The Ombudsman thus finds that the complainant's genetic data were not collected or used by the Medical Service.

Conclusion

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

There was no maladministration by the European Commission.

The complainant and the European Commission will be informed of this decision .

Fergal Ó Regan

Head of Inquiries - Unit 2 Strasbourg, 16/12/2019

[1] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community. Available at the following link:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> [Link].

[2] Medical reserves are covered in Article 100 of the Conditions for the employment of other servants, which states that: "*where the medical examination made before a servant is engaged shows that he is suffering from sickness or invalidity, the authority referred to in the first paragraph of Article 6 may, in so far as risks arising from such sickness or invalidity are concerned, decide to admit him to guaranteed benefits in respect of invalidity or death only after a period of five years from the date of his entering the service of the institution*". The Medical Service recommends the adoption of a 'medical reserve' in its opinion to the Appointing Authority.

[3] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the



free movement of such data. Available at the following link:
<https://eur-lex.europa.eu/eli/reg/2016/679/oj> [Link].

[4] Article 4(13) of Regulation 2016/679.