

## **Decision of the European Ombudsman on complaint 903/99/ADB against the European Commission**

Decision

**Case 903/99/ADB - Opened on 16/09/1999 - Decision on 08/11/2000**

Strasbourg, 15 November 2000 Dear Mrs M., On 8 July 1999, you lodged a complaint with the European Ombudsman concerning the handling of the Commission of two requests sent by your husband, Mr. C. The Commission allegedly neither acknowledged receipt of the letters, nor took any decision regarding their merit. On 16 September 1999, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 7 January 2000 and I forwarded it to you with an invitation to make observations, if you so wished. I received your observations on 4 February 2000. I am writing now to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

The complainant's husband is a civil engineer contractor who carried out works for an Italian Municipal body. A dispute arose and he asked for an arbitration procedure as foreseen by the applicable Italian law. Both the administrative and the judicial authorities failed to convene the arbitration college. The complainant's husband therefore brought an action against Italy at the European Commission for Human Rights of the Council of Europe. On 17 November 1995, the Committee of Ministers of the Council of Europe decided that Italy had infringed article 6 of the European Convention on Human Rights. Italy however did not comply with the aforementioned decision and in particular did not pay the amounts owed to the complainant's husband. On 15 November 1998, he therefore lodged a complaint with the European Commission and requested that the EU funds be transferred to Italy be seized. The complainant claims that the Commission neither registered nor answered the complaint. On 16 February 1999, the complainant therefore went to Brussels to inquire about the situation. She was informed that the complaint had been registered under the name of the lawyer who presented the case and not under the plaintiff's name. Furthermore, it had been attributed to Directorate General XXIV (Consumer Policy and Consumer Health Protection) which was not competent. Finally the Secretariat General transferred the case to the European Court of Human Rights although this institution had already definitely judged the case. The complainant claims that, according to what she was told by an official of the Legal Service of the Commission, the case should have been attributed to a Directorate General in charge of public procurement (DG Markt). On 8 March 1999, the complainant's husband therefore sent a new complaint referring to the first one. This second complaint was not registered and the plaintiff did not receive any answer on its merit. On 8 July 1999, the complainant therefore asked the European Ombudsman to



investigate the matter, and made following allegations: 1. The Commission failed to register the complaints sent on 15 November 1998 and 8 March 1999 by Mr. C. They were mislaid within the Commission or sent to a wrong addressee. 2. The Commission failed to take action against Italy, although it would have been within its mandate. 3. The Commission failed to seize the money to be paid to Italy by the EU and to pass it to the complainant.

## THE INQUIRY

**The Commission's opinion** The opinion of the European Commission on the complaint was in summary the following: 1. The complaint of 16 November 1998 sent by Mr. T., representing Mr. C. had been attributed to DG XXIV. The examination of the letter showed that it referred to an infringement of article 6 of the European Convention on Human Rights presented by a professional lawyer. It was therefore transferred to the European Court of Human Rights. On 16 February 1999, the complainant met an official of Directorate General Markt B2. After a cursory analysis of the file, this official informed the complainant that it did not reveal any infringement of community law on public procurement or of any other legislation monitored by DG Markt. The other departments of the Commission were informed as well. On 16 March 1999, the Commission's mail department registered the complainant's second letter. The mail department had been informed that the issue did not fall within the Commission's competence. Thus no further action was taken and the second letter was filed together with the first one. The Commission apologised for the fact that due to the lack of coordination between the Commission's departments, no reply had been prepared to Mr. T.'s and Mr. C.'s letters. The complainant had however been personally informed of the file's transfer to the European Court of Human Rights and that the Commission was not competent to deal with it. 2. The examination of the file revealed no infringement of community law and in particular of the directives on public procurement as alleged by the complainant. These directives only concern procedures leading up to the signing of a public works contract. Mr. C.'s problem originated in the payment of the works once the contract was signed and carried out. This was not covered by Community law provisions. 3. Finally, there is no international procedure which would allow individuals to seize the property of a Member State. The only remedy for the complainant is at a national level. **The complainant's observations** The European Ombudsman forwarded the European Commission's opinion to the complainant with an invitation to make observations. In her reply, the complainant made in summary the following observations. The complainant maintained her allegations. She disagreed with the Commission's opinion which she considers to be tainted by omissions, untruths and mockeries. The documents sent to the Commission were not simple letters but formal complaints in which the Commission was urged to act against Italy. Mr. C.'s formal complaint was based on the violation of Human Rights ascertained by a decision of the Committee of Ministers of the Council of Europe. According to article 6 of the Treaty on the European Union, the Commission was therefore competent to investigate the matter. The complainant indeed met with an official of DG Markt. The latter asked the complainant to resend the first complaint. Without the original complaint, he was obviously not in a position to deliver an authoritative statement on the Commission's competence regarding the issue. The complainant claims that the Commission once again misunderstood the object of the complaints sent by her husband. She considers that the complaints have never been thoroughly read. Finally the complainant considered that by virtue of the principle of subsidiarity (art. 5 of the Treaty establishing the European Community) and of the principle of respect of Human



rights and fundamental freedoms (art. 6 of the Treaty on the European Union) the Commission should have acted against Italy.

## THE DECISION

**1 The Commission's failure to register the complaints** 1.1 The complainant alleged that her husband twice submitted a complaint to the European Commission but that none of them was ever registered nor received a reply. 1.2 The Commission apologised for the failure to reply due to an internal lack of coordination. It however explained that the complainant had been personally informed that the Commission was not competent to deal with the complaint and that the file had been sent to the European Court of Human Rights. 1.3 According to the information contained in the opinion of the Commission as regards its own procedures for dealing with complaints (sent to the Ombudsman in the framework of his own initiative inquiry ref.

303/97/PD): *"All complaints which reach the Commission are registered in the Secretariat-General. No exceptions are made. (...) When it receives a complaint, the first thing the Commission does is to acknowledge receipt. The letter acknowledging receipt is accompanied by an annex setting out the purpose and giving details of the infringement proceeding."* 1.4 The

Ombudsman notes that the complaints sent by the complainant's husband were never registered as formal complaints nor received a written reply. The fact that in the present case the complainant was given oral information by a Commission official could not reassure her that her husband's complaint had been thoroughly read and examined. 1.5 According to the Commission's own observations in the frame of the Ombudsman's own initiative inquiry 303/97/PD, no exceptions are made to the rule that all complaints received by the Commission are registered and a acknowledgement of receipt is sent. The failure to do so therefore constitutes an instance of maladministration. **2 The Commission's failure to act against Italy**

2.1 The complainant alleged that the Committee of Ministers of the Council of Europe ascertained that Italy had infringed her husband's human rights. The Commission should therefore have acted against Italy to enforce the Committee's decision. 2.2 The Commission explained that the case submitted by the complainant's husband was not covered by any community law provision which would allow the Commission to intervene. The complainant had been personally informed of it. 2.3 The Committee of Ministers of the Council of Europe or the European Commission/Court of Human Rights are independent international bodies established by the European Convention of Human Rights which is an international agreement concluded by Member States of the Council of Europe in 1950. These bodies are not created under the Treaty establishing the European Community (as amended by the Treaty on European Union) but are part of the Council of Europe. The Council of Europe and the European Union are two separate organisations. 2.4 The European Commission, which is part of the European Union, does not have responsibility in enforcing decisions or sentences made in the framework of the Council of Europe. Furthermore, the explanations given by the Commission as to why it could not examine the case in accordance with Community law appear to be reasonable. As regards this aspect of the case no instance of maladministration has been found. **3 The Commission's failure seize the funds to be paid to Italy**

3.1 The complainant's husband requested that the EU funds to be transferred to Italy be seized and paid to him. 3.2 The Commission explained that no procedure of this kind exists. 3.3 The Ombudsman therefore concludes that there is no evidence of maladministration as regards this aspect of the case. **4 Conclusion** On the basis of the Ombudsman's inquiries into this complaint, it appears necessary to make the following



critical remark: According to the Commission's own observations in the frame of the Ombudsman's own initiative inquiry 303/97/PD, no exceptions are made to the rule that all complaints received by the Commission are registered and a acknowledgement of receipt is sent. The failure to do so therefore constitutes an instance of maladministration. Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob Söderman