

Decision of the European Ombudsman on complaint 1275/99/(OV-MM-JSA)/IJH against the European Commission

Decision

Case 1275/99/JSA/IJH - Opened on 13/12/1999 - Decision on 11/05/2001

Strasbourg, 11 May 2001

Dear X,

On 15 October 1999, a lawyer of the firm X lodged a complaint on your behalf against the Commission. The complaint concerned the circumstances of your compulsory early retirement from the Commission, the Commission's recovery from you of certain expenses of a Medical Committee and the failure of the Commission to reply to three letters which you sent to it.

Your complaint contains medical information about you. In view of the nature of that information, I decided to treat the complaint confidentially.

On 29 November 1999, your legal representative sent further information in relation to your complaint. On 13 December 1999, I wrote to inform your legal representative that the Ombudsman could deal with only certain aspects of your complaint. On the same date, I forwarded the complaint to the President of the European Commission. On 24 January 2000, your legal representative wrote to me again. The Commission sent its opinion on 27 March 2000. I forwarded the opinion to your legal representative, with an invitation to make observations. On 15 May 2000, you sent observations to me directly. You wrote to me again on 9 October 2000.

On 26 October 2000, I wrote to the Commission to propose a friendly solution to one aspect of your complaint. On the same date, I informed you of this action by letter. On 6 November 2000, you acknowledged receipt of my letter to you of 26 October 2000 and enclosed further information.

In December 2000, your legal representative informed my services by telephone that the firm X no longer represents you in this case.

On 21 December 2000, the Commission replied to the proposal for a friendly solution. I forwarded the Commission's reply to you on 18 January 2001 and you answered on 12 February 2001. I wrote to you again on 23 February 2001 and you answered on 3 March 2001.



I regret the length of time which it has taken to deal with your case. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complaint was lodged with the Ombudsman on 15 October 1999. The facts as presented in the complaint are as follows:

From 1964 to 1979, the complainant worked for the Commission services in Brussels and Luxembourg as a LA 5 official. Between 1965 and 1977, he suffered from depression, which caused frequent absence from work. On 1 March 1979, he was compulsorily retired due to invalidity. On 30 May 1980, the complainant appealed in order to have the occupational character of his illness recognised. At his request, a Medical Committee was convened to evaluate his case. On 23 December 1988, the Medical Committee concluded that his illness had a non-occupational character. On 13 January 1989, the Appointing Authority made a decision accordingly. The complainant contested this decision by means of a complaint under Article 90 of the Staff Regulations. This complaint, as well as subsequent appeals to the Court of First Instance and to the Court of Justice were unsuccessful.

On 3 April 1998, almost ten years after the final decision of the Appointing Authority on the non-occupational character of his disease, the Commission made a recovery decision against the complainant requiring him to reimburse 149.982 BEF to the Commission in respect of fees incurred for the medical expert chosen by the complainant and half of the costs for the third expert invited by the Medical Committee who had examined his case. The complainant introduced a complaint against the recovery decision in accordance with Article 90 of the Staff Regulations. The Commission rejected this complaint by a decision of 4 March 1999. The recovery decision was implemented by deductions from the complainant's pension.

In his complaint to the Ombudsman, the complainant presented the following allegations:

- (i) Between 1965 and 1975, he was a victim of psychological harassment by his then superior at the Commission. His illness resulted from this psychological harassment.
- (ii) As a Hungarian dissident following the revolution of 1956, he was under observation by the Hungarian secret services between 1960 and 1970. His then superior in the Commission was also a communist agent, who was in contact with the Hungarian secret services.
- (iii) The Commission failed to reply to his letters of 3 March 1999, 16 March 1999 and 15 April 1999, addressed to (ex-) Director General Mr Steffen SMIDT and the head of unit of DG IX (Personnel and Administration), Mr G. KAHN. In these letters, the complainant put forward new elements in order to obtain a re-examination by the Commission of his case and withdrawal of the recovery decision.



On the basis of these allegations, the complainant made the following claims:

(a) The Commission should afford him moral and financial rehabilitation by recognising the occupational nature of his illness and reconsidering its decision in 1979 to retire him compulsorily;

(b) The Commission should withdraw the recovery decision made against him in respect of expenses relating to the work of the Medical Committee in 1988.

On 13 December 1999, the Ombudsman informed the complainant that he considered allegations (i) and (ii) above and claim (a) to be inadmissible according to Article 2 (4) of the Statute of the Ombudsman, taking into account that the alleged facts dated back to the years 1960-1975.

The Ombudsman's inquiry therefore concerned only allegation (iii) and claim (b) above.

THE INQUIRY

The Commission's opinion

In summary, the Commission's opinion made the following points:

As regards the complainant's claim concerning the recovery of expenses relating to the work of the Medical Committee ten years previously:

A check made by the Commission's Medical Service in 1998 had revealed that the complainant had not paid for the medical expenses which he owed according to Article 23 of the Rules on the Insurance of Officials of the EC. The complainant had appealed against the decision to recover the amount involved from him. His appeal was rejected by decision dated 4 March 1999. The Commission considered this decision to be an appropriate and sufficient answer to the complainant's letter of 3 March 1999.

As regards the allegations of failure to answer the complainant's other letters:

The letter addressed by the complainant to the Director General of Personnel and Administration on 16 March 1999 contested the decision of 4 March 1999 and requested an extension of the time limit for contesting the decision of 4 March 1999 before the Court of First Instance. The Commission stated that it was not in its power to alter the time-limit and pointed out that, on 12 May 1999, the Commission's internal staff mediator had informed the complainant by letter that she could not intervene in his case and had suggested that he appeal to the Court of First Instance before the expiry of the time-limit on 4 June 1999.

According to the Commission, the letter dated 15 April 1999 addressed to Mr Kahn, and containing an annexed letter from the Hungarian Ministry of Defence, did not contain any information relevant to the question of the occupational character of the complainant's disease. The Commission acknowledged its failure to reply to this letter and corrected its omission by



sending a reply to him on 21 March 2000.

The Commission annexed to its opinion a copy of its letter to the complainant dated 21 March 2000.

The complainant's observations

In his observations, the complainant criticised the Ombudsman's decision that his first and second allegations and second claim were inadmissible. He argued that the Office of the European Ombudsman was created only recently, so that he was unable to complain beforehand. Furthermore, psychiatric knowledge had made considerable progress in recent years. The complainant also provided what he considered to be evidence of alleged neglect of duty by the Medical Service in medical check-ups carried out between 1970 and 1974.

THE OMBUDSMAN'S ATTEMPT TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman wrote to the Commission on 26 October 2000, with a view to seeking a friendly solution to the claim concerning the recovery decision.

The Ombudsman's proposal for a friendly solution referred to the reasons which the Commission gave to the complainant for rejecting his Article 90 complaint against the recovery decision. The Commission had acknowledged that it had paid the whole amount of the fees of the Medical Committee experts in 1988 and regretted that it was only ten years later that it realised that these fees should have been charged to the complainant. The Commission justified its decision to ask for the reimbursement after a ten-year delay with the following arguments:

- (i) According to Article 23 of the applicable regulations, the Commission was obliged to charge the fees to the complainant.
- (ii) The complainant had introduced an appeal before the Court of First Instance, and then before the Court of Justice and the Commission therefore postponed the decision to charge the fees to the complainant.

As regards the first argument, the Ombudsman pointed out that Article 23.2, paragraph 4 of the applicable regulations provides a discretionary power for the institution to pay the whole costs of the Medical Committee even when, as in the present case, the Medical Committee's opinion confirms the draft decision of the appointing authority (1) .

As regards the second argument, the Ombudsman pointed out that the Commission did not appear to have notified the complainant that its payment of the whole amount of the fees was a preliminary decision, awaiting a final judgement by the courts. According to the Commission's opinion, it was only after carrying out a check ten years later that the Medical Service of the Commission discovered that the part of the expenses which could have been charged to the



complainant had not been so charged.

The Ombudsman's provisional conclusion, therefore, was that the Commission had not adequately justified its decision of 3 April 1998 to recover the expenses from the complainant ten years later. He therefore proposed to the Commission a friendly solution in which the Commission would withdraw the recovery decision and reimburse the complainant with the amounts deducted from his pension.

In its reply dated 21 December 2000, the Commission submitted new evidence to show that the complainant had been formally notified by letter dated 20 February 1989 that the administration would not support all the expenditure related to the Medical Committee. Furthermore, the Commission considered the recovery decision which it had adopted in April 1998 to be legally and administratively incontestable. However, the Commission declared itself prepared as an exceptional act of goodwill and without creating a precedent to withdraw its recovery decision and to reimburse 149.982 BEF to the complainant.

The Ombudsman informed the complainant that the Commission had agreed to accept a friendly solution which would meet his claim that the recovery order should be withdrawn. He also forwarded a copy of the Commission's reply to the complainant. In his answer, the complainant thanked the Ombudsman for his efforts in the case, but noted that the Commission stated that the reimbursement was an exceptional act of goodwill. The complainant disagreed with this approach and proposed that the Ombudsman should investigate his secret file as a step on the way to a more general inquiry into communist activities in the Commission during the cold war. As an alternative, the complainant proposed that the Commission should instead pay the 149.982 BEF to the College of Europe, Bruges and that he should receive a letter of apology signed by the President of the European Commission. In reply to a further letter from the Ombudsman, the complainant confirmed that he did not accept the friendly solution, although he was grateful for the efforts of the Ombudsman and his services.

THE DECISION

1 The admissibility of the first and second allegations and first claim.

1.1 The complainant alleged that between 1965 and 1975, he was a victim of psychological harassment by his superior at the Commission; that his illness resulted from this psychological harassment; and that his superior in the Commission was a communist agent, who was in contact with the Hungarian secret services. He claimed that the Commission should afford him moral and financial rehabilitation by recognising the occupational nature of his illness and reconsidering its decision in 1979, to retire him compulsorily.

1.2 The Ombudsman informed the complainant that he considered the above-mentioned allegations and claim to be inadmissible according to Article 2 (4) of the Statute of the Ombudsman (2) , taking into account that the alleged facts date back to the years 1960-1975.

1.3 In his observations, the complainant argued that the Office of the European Ombudsman was created only recently, so that he was unable to complain beforehand. Furthermore,



psychiatric knowledge has made considerable progress in recent years.

1.4 The Ombudsman acknowledges that his office has only functioned since September 1995. However, it is clearly the intention of Article 2 (4) of the Statute of the Ombudsman, which is a decision of the European Parliament, to restrict claims based on facts of which the complainant has been aware for more than two years. The Ombudsman maintains his decision that the above-mentioned allegations and claim, which are based on alleged facts dating back to the years 1960-1975 are inadmissible under Article 2 (4) of the Statute.

2 The alleged failure to reply to the complainant's letters

2.1 The complainant alleged that the Commission failed to reply to his letters dated 3 March 1999, 16 March 1999 and 15 April 1999.

2.2 In its opinion, the Commission considered that the letter dated 3 March 1999 was answered by its decision dated 4 March 1999, received by the complainant on 12 March 1999. Concerning the letter dated 16 March 1999, the Commission stated that it was not in its power to alter the time-limit for judicial proceedings as requested by the complainant and pointed out that, on 12 May 1999, the Commission's internal staff mediator informed the complainant by letter that she could not intervene in his case and suggested that he appeal to the Court of First Instance before the expiry of the time-limit. The complainant did not contest these points in his observations.

2.3 The Commission has acknowledged and apologised to the complainant for its failure to reply to his letter of 15 April 1999 and has corrected that failure by its letter dated 21 March 2000. In these circumstances, no critical remark by the Ombudsman is necessary.

3 The claim that the Commission should withdraw the recovery decision.

3.1 The complainant claimed that the Commission should withdraw a recovery decision for 149.982, - BEF, made against him in 1998 in respect of expenses relating to the work of a Medical Committee which examined his case ten years previously. The recovery decision was executed by withholding part of the complainant's pension.

3.2 In its opinion, the Commission stated that a check made by its Medical Service in 1998 had revealed that the complainant had not paid for the medical expenses which he owed according to Article 23 of the Rules on the Insurance of Officials of the EC. The complainant had appealed against the decision to recover the amount involved from him. His appeal was rejected by a decision dated 4 March 1999. The Commission justified that decision by stating that according to Article 23 of the applicable regulations, it was obliged to charge the fees to the complainant. The Commission explained that it had not done so in 1988, because the complainant had introduced an appeal before the Court of First Instance, and then before the Court of Justice and the Commission had therefore postponed charging the fees to the complainant.

3.3 The Ombudsman noted that Article 23.2, paragraph 4 of the applicable regulations provides a discretionary power for the institution to pay the whole costs of the Medical Committee even when, as in the present case, the Medical Committee's opinion confirms the draft decision of the appointing authority (3) . The Ombudsman also noted that the Commission did not appear to have notified the complainant that its payment of the whole amount of the fees was a



preliminary decision, awaiting a final judgement by the courts.

3.4 On the basis of the above, the Ombudsman's provisional conclusion was that the Commission had not adequately justified its decision of 3 April 1998 to recover the expenses from the complainant ten years later. In accordance with Article 3 (5) of the Statute (4) , the Ombudsman therefore proposed to the Commission a friendly solution in which the Commission would withdraw the recovery decision and reimburse the complainant with the amounts deducted from his pension.

3.5 In its reply, the Commission submitted evidence to show that the complainant had been formally notified by a letter of 20 February 1989 that the administration would not support all the expenditure related to the medical committee. Furthermore, the Commission considered the recovery decision which it had adopted in April 1998 to be legally and administratively incontestable. However, the Commission declared itself prepared as an exceptional act of goodwill and without creating a precedent to withdraw its recovery decision and to reimburse 149.982 BEF to the complainant.

3.6 The complainant did not accept the approach of the Commission in considering the withdrawal of the recovery decision and reimbursement to be an "exceptional act of goodwill." He proposed that the Ombudsman should investigate his secret file as a step on the way to a more general inquiry into communist activities in the Commission during the cold war. As an alternative, the complainant proposed that the Commission should instead pay the 149.982 BEF to the College of Europe, Bruges and that he should receive a letter of apology signed by the President of the European Commission.

3.7 The Ombudsman does not consider that any grounds have been presented for a more general inquiry of the kind proposed by the complainant. The Ombudsman considers that the Commission's undertaking to withdraw the recovery decision and to reimburse to the complainant the amounts deducted from his pension are sufficient to satisfy the claim which was the subject of the Ombudsman's inquiry and to put an end to any possible instance of maladministration.

4 Conclusion

The Commission has undertaken to withdraw its recovery decision and to reimburse 149.982 BEF to the complainant. On the basis of the Ombudsman's inquiries into this complaint and the undertaking mentioned above, there appears to be no maladministration by the Commission. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN



(1) *"However, in exceptional cases and by a decision taken by the appointing authority after consulting the doctor appointed by it, all the expenditure referred to in the proceeding paragraph may be borne by the institution."*

(2) *"A complaint shall be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint and must be preceded by the appropriate administrative approaches to the institutions and bodies concerned."*

(3) *"However, in exceptional cases and by a decision taken by the appointing authority after consulting the doctor appointed by it, all the expenditure referred to in the proceeding paragraph may be borne by the institution."*

(4) *"As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint."*