

## Decision of the European Ombudsman on complaint 1479/99/(OV)MM against the European Commission

Decision

**Case 1479/99/MM - Opened on 14/12/1999 - Decision on 28/11/2000**

Strasbourg, 28 November 2000 Dear Mr S., On 18 October 1999, you made a complaint to the European Ombudsman concerning the unjustified delay suffered in your career since 1994 and the lack of reply to your appeal made under Article 90 of the Staff Regulations on 19 August 1998. On 14 December 1999, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 2 March 2000 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you. I am writing now to let you know the results of the inquiries that have been made.

### THE COMPLAINT

The complainant had been working since 1988 as a temporary agent at the Joint Research Centre (JRC) in Ispra, which forms an integral part of the European Commission. Aged 42, he was promoted to grade B3 in 1994. In 1998, he was still in the same position and the oldest in this grade in the whole Environment Institute (EI). On 19 August 1998, he made an appeal concerning his stagnated career in line with Article 90 of the Staff Regulations. The complainant made the following allegations to the Ombudsman: (1) he suffered an unjustified delay in his career since 1994; (2) the administration has not replied to his appeal made under Article 90 of the Staff Regulations on 19 August 1998.

### THE INQUIRY

**The Commission's opinion** In its opinion, the Commission made the following comments: In September 1988, the complainant started to work as temporary agent (grade B4) at the European Commission, concretely at the EI of the JRC. In 1994, the complainant was promoted to grade B3, step 6. In January 1995, he worked at the UO2 unit for the database REM (Radioactivity Environment Monitoring) and in 1996 he was awarded an additional step according to Article 97 of the Staff Regulations. According to his request, the complainant was transferred to unit U10 - ECB (European Chemical Bureau) of the EI, which was subject to restructuring and was annexed in October 1998 to the newly created Institute for Health and Consumer Protection (IHCP). For the year 1999, the complainant was proposed for a promotion, which was not considered in the end. According to the Commission, the complainant thus benefited of an additional step in 1996. Hence, it would be incorrect to state that his position remained unchanged since 1994. The Commission further remarked that, in



general, a career has a slower progress in a category with only 5 grades (B5-B1). The average seniority in the grade B3 in the JRC is of 5,37 years. Thus, the career of the complainant could not be considered as unjustly delayed. Concerning the lack of reply to the complainant's appeal in accordance with Article 90 of the Staff Regulations, the Commission stated that it violated neither the complainant's rights nor a regulation. According to Article 90 of the Staff Regulations, a lack of reply constitutes an implied decision rejecting the appeal. Therefore, the Commission could not be held responsible for any maladministration towards the complainant.

## THE DECISION

**1 Unjustified delay in the complainant's career progression** 1.1 The complainant alleges that in spite of all his merits his situation remained unchanged since 1994 and that he was the oldest person in this grade in the Environment Institute (EI). 1.2 The Commission put forward that in 1996 the complainant was awarded an additional step and therefore it was incorrect to state that his situation remained unchanged since 1994. Furthermore, the average seniority in the grade B3 is of 5,37 years within the Joint Research Centre (JRC), so that the delay in his career could not be considered as exceptional. As well, he was proposed for promotion in 1999, which was finally not taken into consideration. 1.3 The Ombudsman considers that the complainant had not provided the necessary evidence to support his allegation. In its opinion, the Commission stated the reasons, why it did not consider the delay in the complainant's career as exceptional. On the basis of the above, there appears to have been no maladministration on the part of the Commission in so far as the first allegation put forward by the complainant is concerned. **2 No reply to the complainant's appeal under Article 90 of the Staff Regulations** 2.1 The complainant alleged that he received no reply to his appeal made under Article 90 of the Staff Regulations on 19 August 1998. 2.2 The Commission considers that the lack of reply did not constitute an act of maladministration, as according to Article 90 of the Staff Regulations, no response within four months after lodging a complaint implied a rejection of the complaint. The Commission is of the view that an explicit lack of reply is foreseen within the Staff Regulations and therefore it violated neither the rights of the complainant nor a regulation. 2.3 According to Article 90 §1 of the Staff Regulations: *"The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph"*. According to this provision, the authority shall notify the person concerned of its reasoned decision within four months. This is in line with the principles of good administration. If the authority fails to act in this way, that is it does not follow the principles of good administration, the person concerned is protected from further delay by the rule that the lack of reply constitutes a negative decision. This last rule is meant to establish a possibility of a legal remedy for a citizen, even when an authority does not follow its legal obligations. It does not in any way give the right to the authority to omit from its obligation to follow a good administrative behaviour. 2.4 In these circumstances, the Ombudsman concludes that the failure by the Commission to react to the complainant's appeal according to Article 90 of the Staff Regulations dated 19 August 1998 constitutes an instance of maladministration. In its opinion, the Commission disclosed the reasoning for the rejection of the complainant's appeal, but did not apologise for having omitted to reply at an earlier stage. The Ombudsman therefore considers it necessary to make a critical



remark in this regard. **3 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark: According to Article 90 of the Staff Regulations, the authority shall notify the person concerned of its reasoned decision within four months. This is in line with the principles of good administration. If the authority fails to act in this way, that is it does not follow the principles of good administration, the person concerned is protected from further delay by the rule that the lack of reply constitutes a negative decision. This last rule is meant to establish a possibility to a legal remedy to a citizen, even when an authority does not follow its legal obligations. It does not in any way give the right to the authority to omit from its obligation to follow a good administrative behaviour. 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 therefore closes the file. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob SÖDERMAN