

## Decision of the European Ombudsman on complaint 1536/99/GG against the European Commission

Decision

**Case 1536/99/GG - Opened on 03/01/2000 - Decision on 19/05/2000**

Strasbourg, 19 May 2000 Dear Mr H., On 12 December 1999 you lodged a complaint with the European Ombudsman against the Commission of the European Communities concerning the terms of reference for invitations to tender for certain contracts financed by the European Development Fund. On 3 January 2000, I forwarded the complaint to the Commission for its comments. A letter with further information in relation to the complaint dated 2 January 2000 was received by me on 3 January 2000. On 6 January 2000, I forwarded a copy of this letter to the Commission. On 10 January 2000, you sent a letter to me in which you informed me that it was very important for you to find work soon and that you therefore suggested that I should contact the Commission's services in charge of the matter directly in order to mediate. On 26 January 2000, I informed you that according to the rules applicable, the Commission had three months for the submission of its opinion and that I therefore could not intervene as requested by you. The Commission sent its opinion on your complaint on 21 March 2000. I forwarded this opinion to you on 27 March 2000 with an invitation to make observations, if you so wished. On 30 March 2000, you sent me your observations on the Commission's opinion. I am writing now to let you know the result of the inquiries that have been made.

### THE COMPLAINT

The European Development Fund ("EDF") finances certain contracts for technical assistance to third countries which concern the supervision of road works in Africa. The terms of reference for these contracts are worked out by the beneficiary countries and approved by the Commission. The complainant is a French national who considers himself to be a self-trained ("autodidacte") engineer although he does not possess a university diploma. He has worked in Africa for nearly thirty years. Amongst other things, he has worked as a supervisor of road projects in Africa financed by the EDF. The complainant claims that the terms of reference concerned are discriminatory since they require a university diploma and thus disadvantage self-trained candidates. The complainant also claims that the relevant requirements differ from one third country to another.

### THE INQUIRY

**The Commission's opinion** In its opinion, the Commission made the following comments: The preparation of the terms of reference, including the qualitative selection criteria for candidates, was the responsibility of the ACP countries. It was therefore for the authorities of



those countries to determine whether an engineer was needed for a particular project. On a more general note, the title "engineer" was linked, in all the member states of the EU and in most other countries, to the possession of a diploma certifying that its holder had received an education the contents and the quality of which had been in conformity with criteria set by public authorities. In these circumstances, there could not be any issue of discrimination, given that there was an objective difference between an engineer holding a diploma and a self-trained person. **The complainant's observations** In his observations, the complainant explained that he understood the Commission's position. He claimed, however, that the EC delegations in the ACP countries should advise the latter and that they were able to suggest modifications of the terms of reference. According to the complainant, the qualitative criteria had evolved over the years and had become more demanding. He insisted that he had been working in that very field of activity for a long time and that most of the persons concerned were known to the EC delegations in the ACP states. In his view, these delegations and the authorities of the ACP states should be more flexible in this area.

## THE DECISION

**1 Discrimination of self-trained engineers** 1.1 The complainant claims that the terms of reference for invitations to tender for certain contracts financed by the EDF relating to the supervision of road works in Africa are discriminatory since they require a university diploma and thus disadvantage self-trained candidates. 1.2 The Commission replies that the preparation of the terms of reference, including the qualitative selection criteria for candidates, for the invitations to tender is the responsibility of the ACP countries. It is therefore for the authorities of those states to determine whether an engineer is needed for a particular project. On a more general note, the Commission points out that the title "engineer" is linked, in all the member states of the EU and in most other countries, to the possession of a diploma certifying that its holder has received an education the contents and the quality of which had been in conformity with criteria set by public authorities. In these circumstances, there could not be any issue of discrimination, given that there is an objective difference between an engineer holding a diploma and a self-trained person. 1.3 The arguments put forward by the Commission appear to be reasonable. The complainant has admitted that he understands the Commission's position. In these circumstances, the Ombudsman concludes that there appears to have been no maladministration on the part of the European Commission. **2 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. 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