

## **Decision of the European Ombudsman on complaint 660/2000/GG against the Committee of the Regions**

Decision

**Case 660/2000/GG - Opened on 30/05/2000 - Decision on 05/06/2001**

Strasbourg, 5 June 2001

Dear Mrs F.,

On 19 May 2000, you lodged a complaint with the European Ombudsman against the Committee of the Regions concerning the way in which the latter appeared to have filled the post of an administrator working under the authority of the President of the European Alliance Group.

On 30 May 2000, I forwarded the complaint to the Committee of the Regions.

On 14 July 2000, you sent me further information in relation to your case and made two further allegations in this regard. I forwarded this letter to the Committee of the Regions on 26 July 2000.

In a letter dated 11 August 2000, you provided further information in relation to your complaint.

The Committee of the Regions sent its opinion dated 30 November 2000 on 5 December 2000, and I forwarded it to you on 6 December 2000 with an invitation to make observations, if you so wished. On 28 January 2001, you sent me your observations on the Committee's opinion.

On 31 January 2001, I sent a request for further information to the Committee of the Regions. The Committee replied on 28 February 2001. However, an English translation of this reply was only provided on 11 April 2001, and I forwarded this translation to you on 19 April 2001, with an invitation to make observations. On 15 May 2001, you sent me your observations on the Committee's reply.

I am now writing to you to let you know the results of the inquiries that have been made.

## **THE COMPLAINT**

In May 1996, the Committee of the Regions published a notice of vacancy for the post of an



administrator who was to work under the authority of the President of the European Alliance Group. The notice specified that the successful candidate would be appointed as a temporary agent with grade A7 and continued: "Other candidates who have passed the selection examinations will be placed on a reserve list. Should further equivalent vacancies arise, these candidates will be taken into consideration." The complainant passed the competition but was not chosen for the post. Together with other successful candidates, she was put on the reserve list established in 1997. In its letter of 9 January 1997 informing the complainant of this decision, the Committee made the following statement: "However, we will certainly contact you as soon as a possibility for recruitment arises." The complainant was subsequently informed that there was no expiry date foreseen for this reserve list and that "her application would be reconsidered in the event that a new post is created for the European Alliance Group or in the event that [the] existing post becomes vacant." In this letter, the Committee referred to and confirmed its letter of 9 January 1997.

The complainant worked as an auxiliary agent for the Committee between October 1997 and October 1998.

In March 2000, the complainant learnt that the administrator who had been chosen had left her post. On 10 April 2000, she thus wrote to both the President of the European Alliance Group and to the Secretary-General of the Committee of Regions to express her interest in the post and to point out that she was on the reserve list. The complainant then discovered that the relevant post had been filled already by Mr O. whose name had not been on the reserve list.

On 19 May 2000, the complainant thereupon turned to the European Ombudsman who forwarded her complaint to the Committee of the Regions on 30 May 2000.

By letter dated 23 June 2000, the Secretary-General of the Committee of the Regions informed the complainant that the reserve list created in 1997 had expired on 20 June 2000 and that a new notice of vacancy had now been published with a view to occupying the position with effect from 16 October 2000. According to the new notice of vacancy (that was also dated 23 June 2000), applications had to be received by 12 July 2000 at the latest. The complainant submitted an application on 11 July 2000.

The complainant was invited for an interview on 25 July 2000. In a letter dated 3 August 2000, the Secretary-General of the Committee of the Regions informed the complainant that she had not been chosen for the post.

The complainant made the following allegations:

- The Committee of the Regions should have informed the candidates whose names had been placed on the reserve list that the post had been vacated
- The Committee of the Regions should have chosen the person to fill this post from the candidates whose names had been put on the reserve list
- The Committee of the Regions' choice of date for the expiry of the reserve list was arbitrary
- The Committee of the Regions should have informed those persons whose names were on the reserve list before the latter expired



## THE INQUIRY

The complaint was sent to the Committee of the Regions.

### **The opinion of the Committee of the Regions**

In its opinion, the Committee of the Regions made the following comments:

The Committee had not been under an obligation to inform the persons whose names were on the reserve list since the post had not been filled definitively but only on a provisional basis. Therefore the Committee had been free to choose a person whose name did not figure on the reserve list.

The choice of the date on which the reserve list was to expire belonged to the discretionary powers of the administration. The persons whose names had been on the reserve list could only be informed of the latter's expiry after the decision had been taken on 20 June 2000.

### **The complainant's observations**

In her observations, the complainant expressed her surprise at the fact that the post had allegedly been filled only on a temporary basis. She further claimed that the Committee of the Regions had had ample time to consult the reserve list instead of appointing a person who had not passed the initial competition. The complainant pointed out that she would have been able to take up the post from the day it had been vacated. In her view, the Committee had acted arbitrarily when deciding to close the reserve list. The complainant claimed that since the list was still valid when the post had become vacant towards the end of March 2000, the Committee ought to have consulted it and informed the persons whose names were on it that a vacancy had arisen.

According to the complainant, the second recruitment procedure had been hastily organised following her objections to the appointment of Mr O. and had been perfunctory by comparison with the initial procedure, given that it was based on a single interview. The complainant's interview had taken place on 25 July 2000, and this had been the only day allocated for these interviews. However, in the afternoon of the same day interviews were held for another position with the European Alliance Group, and the person who had been appointed in March 2000 was a member of the appointing panel.

The complainant concluded that the second recruitment procedure had been artificially implemented in order to legitimise an appointment that had already been made some months previously.

### **Further inquiries** *Request for further information*

In view of the above, the Ombudsman concluded that he needed further information in order to deal with the complaint. He therefore asked the Committee of the Regions to explain the reasons why it had decided to fill the relevant post on a provisional basis, to specify how and when this appointment was actually carried out, to submit copies of the relevant documents and to inform the Ombudsman as to who had been appointed as a result of the vacancy notice published in June 2000.



### *The Committee's reply*

In its reply, the Committee of the Regions provided the following information:

The relevant post had been filled on a provisional basis in response to the wishes of the President of the European Alliance Group. At the time, the group's needs had substantially increased in view of the lengthy gap between the drawing up of the reserve list (1997) and the vacancy for the post of administrator (2000). The group had therefore decided to reappraise its administrative requirements and in the meanwhile to recruit on a short-term basis a staff member who would immediately be operational.

The administration of the Committee of the Regions was in no way entitled to interfere with the discretionary choices made by a political group for the purpose of recruiting an administrator solely on a contractual basis and for a fixed period.

The temporary staff member of the European Alliance group had been recruited for the period from 16 March until 15 October 2000 on the basis of a normal contract. Despite the speed of recruitment, the statutory procedures had been scrupulously respected.

The person who had been appointed as a result of the vacancy notice published on 23 June 2000 was Mr O.

The Committee included copies of the documents requested by the Ombudsman. It emerged from these documents that an application to appoint Mr O. for the period between 16 March and 15 October 2000 had been made on 21 February 2000 and approved by the Committee on 23 February 2000, that the post had been offered to Mr O. on 1 March 2000 and that Mr O. had accepted this post on 7 March 2000.

### *The complainant's observations*

The Committee's reply to the Ombudsman's request for further information was forwarded to the complainant. In her observations, the complainant maintained her complaint. The complainant pointed out in particular that when Mr O. was appointed with effect from 16 October 2000, the President of the European Alliance Group had requested that his contract should be for an indefinite period, given that he had already completed a sufficient probationary period since 16 March 2000. In the complainant's view, this confirmed that Mr O. had been appointed as the temporary agent from that date.

## **THE DECISION**

### **1 Failure to inform about vacancy**

1.1 In May 1996, the Committee of the Regions published a notice of vacancy for the post of an administrator who was to work under the authority of the President of the European Alliance Group. The notice specified that the successful candidate would be appointed as a temporary agent with grade A7 and continued: "Other candidates who have passed the selection examinations will be placed on a reserve list. Should further equivalent vacancies arise, these candidates will be taken into consideration." The complainant passed the competition but was not chosen for the post. Together with other successful candidates, she was put on the reserve



list established in 1997. She was subsequently informed that the Committee would contact her "as soon as a possibility for recruitment arises". She was further informed that there was no expiry date foreseen for this reserve list and that "her application would be reconsidered in the event that a new post is created for the European Alliance Group or in the event that [the] existing post becomes vacant." However, when the same post became vacant again, the Committee appointed, in March 2000, Mr O. whose name had not been on the reserve list. The complainant claims that the Committee failed to inform her of the vacancy.

1.2 The Committee of the Regions claims that there was no obligation to inform the persons whose names were on the 1997 reserve list since it only filled the post on a provisional basis in March 2000.

1.3 The Ombudsman notes that the Committee had informed the complainant that her application would be reconsidered if the relevant post should become vacant again and that she would be informed "as soon as a possibility for recruitment arises".

1.4 The Committee argues that it was not obliged to inform the complainant since the appointment was only made on a provisional basis. However, the Committee's letter of 9 January 1997 clearly stated that the Committee would "contact you as soon as a possibility for recruitment arises". The Ombudsman considers that such a possibility for recruitment also arises where a post is filled on a provisional basis. The possible urgency to fill the post should not have prevented the Committee from informing the complainant, given that the latter lived in Brussels and that her address was known to the Committee.

1.5 On the basis of the above, the Ombudsman concludes that by omitting to inform the complainant as soon as the post of administrator with the European Alliance Group had become vacant, the Committee of the Regions has failed to comply with a promise to that effect that it had made to the complainant. It is good administrative practice for the administration to comply with commitments it has taken upon itself vis-à-vis citizens. The Committee's failure to do so thus constitutes an instance of maladministration. The Ombudsman therefore considers it necessary to make a critical remark in this regard.

## **2 Failure to choose candidate from reserve list**

2.1 The complainant claims that the Committee ought to have chosen the person to fill the vacant post from the reserve list drawn up in 1997.

2.2 The Committee argues that the post was only filled on a provisional basis in March 2000, that the reserve list expired in June 2000 and that a new selection procedure was carried out in July 2000 that led to the definitive filling of the vacancy.

2.3 The Ombudsman considers that the appointing authority is entitled to fill a post on a provisional basis where there are good reasons for doing so. In the present case, the Committee argues that it was urgent to fill the post and that the needs of the relevant group had substantially changed in the more than three years since the reserve list had been drawn up. In the Ombudsman's view, the Committee has thus put forward valid reasons for filling the relevant post on a provisional basis. Since this decision belongs to the discretionary powers of the



administration, the Ombudsman is not entitled to substitute the latter's appraisal by his own.

2.4 The complainant argues that the first appointment was not merely made on a provisional basis and that the second recruitment procedure was artificially implemented in order to legitimise an appointment that had already been made some months previously. The Ombudsman considers, however, that his inquiries have not produced sufficient evidence that would support this claim. It has to be noted in particular that Mr O.'s contract of March 2000 was limited to a duration of six months, a fact which is compatible with the Committee's claim that the appointment was made on a provisional basis.

2.5 On the basis of the above, there appears to have been no maladministration on the part of the Committee in so far as the complainant's second allegation is concerned.

### **3 Choice of date for expiry of reserve list**

3.1 The complainant claims that the choice of date for the expiry of the reserve list established in 1997 was arbitrary.

3.2 The Committee takes the view that this decision belongs to the discretionary powers of the administration.

3.3 The Ombudsman considers that the choice of the date on which a reserve list is to expire is indeed a decision that belongs to the discretionary powers of the administration. The Committee would arguably have exceeded the limits of its discretion in the matter if its only purpose had been, as the complainant claims, to proceed to a second recruitment procedure in order to legitimise an appointment that had already been made some months previously. However, and as noted above, the Ombudsman considers that his inquiries have not produced sufficient evidence to support this claim. 3.4 On the basis of the above, there appears to have been no maladministration on the part of the Committee in so far as the complainant's third allegation is concerned.

### **4 Failure to inform before expiry of reserve list**

4.1 The complainant claims that the Committee ought to have informed the persons whose names were on the 1997 reserve list before deciding to let the list expire.

4.2 The Committee takes the view that it could only inform these persons once the decision had been taken.

4.3 The Ombudsman is not aware of any obstacles that would have prevented the Committee from informing the persons concerned before deciding to let the reserve list expire, and it may well have been courteous to do so. However, the Ombudsman is not aware of any rule that would oblige the administration to inform the persons whose names are on a reserve list before letting this list expire.

### **5 Conclusion**

On the basis of the European Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

By omitting to inform the complainant as soon as the post of administrator with the European



Alliance Group had become vacant, the Committee of the Regions has failed to comply with a promise to that effect that it had made to the complainant. It is good administrative practice for the administration to comply with commitments it has taken upon itself vis-à-vis citizens. The Committee's failure to do so thus 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 therefore closes the file.

The President of the Committee of the Regions will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN