

## **Decision of the European Ombudsman on complaint 922/2000/IP against the European Commission**

Decision

**Case 922/2000/IP - Opened on 26/07/2000 - Decision on 13/06/2001**

Strasbourg, 13 June 2001

Dear Mr D.,

On 17 July 2000, you sent a complaint to the European Ombudsman against the European Commission, concerning the suspension of your entry permit to the Joint Research Centre (hereinafter JRC) of the European Commission in Ispra.

On 26 July 2000, I forwarded the complaint to the President of the European Commission. On 31 July 2000, you sent me further information on the complaint, which I transmitted to the Commission on 30 August 2000. The Commission sent its opinion on 7 December 2000, which I forwarded to you with an invitation to make observations, if you so wished. On 31 January 2001, I received your observations on the Commission's opinion.

In order to pursue my inquiry into the case, I asked the Commission for further information on 13 February 2001. On 3 April 2001, the Commission sent its reply, which I forwarded to you with an invitation to make observations, if you so wished. On 4 May 2001, I received your observations.

### **THE COMPLAINT**

On 28 April 1999, the complainant was appointed as a consultant by the European Space Agency. On 17 February 2000, his contract was renewed until the end of July 2000.

He carried out his work at the Joint Research Centre of the European Community (JRC) in the framework of a technical co-operation agreement between ESA and the JRC concerning "Improved Exploitation of ocean colour data and products of European coastal waters."

The complainant was provided with an "external firm" entry permit allowing him to enter the JRC premises in Ispra.

On 27 March 2000, the complainant was prevented from entering the JRC premises and his entry permit was confiscated. As a consequence, he was unable to carry out his work and had



difficulties in justifying to the European Space Agency his absence from his office.

In subsequent correspondence with the JRC authorities, the complainant was informed that his entry permit had been withdrawn in application of the rules contained in JRC Internal Directive 1291.

In his complaint to the Ombudsman, the complainant objected both to the way in which the entry permit had been withdrawn without prior notice or explanation and to the reason given subsequently, since Internal Directive 1291 only entered into force two months after he was denied entry to the JRC.

The complainant claimed a full explanation and justification of the JRC's suspension of his entry permit; appropriate compensation for the professional and moral damage he had suffered; a formal apology for the behaviour of the responsible authorities of the JRC; assurance that that his personal file at the JRC would be completed by an unambiguous statement explaining that he was not at fault; and to have access to the JRC in order to retrieve personal belongings left in his office.

## **THE INQUIRY**

### **The European Commission's opinion**

The Commission's opinion made the following points, in summary:

Following an internal audit carried out by the JRC, it appeared that the complainant had been at the JRC, under different statuses, for longer than allowed by Commission rules. Even when an entry permit is issued for a fixed period of time, the Commission is entitled, for justified reasons, to withdraw it before the date of expiration. This was what happened in the complainant's case.

Following indications given by the Court of Auditors, the Director General of the JRC instructed his department to be more rigorous in ensuring that persons other than officials and temporary staff are present at the JRC only for the limited periods allowed.

As regards the complainant's allegation that the Commission had retroactively applied to his case an Internal Directive that entered into force two months after his entry permit was withdrawn, the Commission stated that, even if the said Directive was formally adopted only at a later stage, the new rules were already followed at the time of the withdrawal of the complainant's entry permit. Since the complainant was working at the JRC, he should have been aware of this fact.

As regards the procedure for withdrawal of the complainant's entry permit, the Commission recognised that the administration did not notify the complainant and failed therefore to act in accordance with the principles of good administration. Furthermore, the JRC services failed to act properly when they did not expressly invite the complainant to collect his personal belongings.



To remedy this situation, the Commission sent a letter of apology to the complainant on 8 November 2000, a copy of which was forwarded to the Ombudsman as an attachment to the Commission's opinion. The letter contained the following:

*" (...) It is with great regret that I have to recognise that the JRC services did not carry out their duties with the diligence that European citizens are entitled to expect from the European institutions in the manner they withdrew your access card without prior notice or explanation.*

*This unfortunate lapse was repeated when you were not invited to retrieve belongings left in the JRC premises and I apologise for this. I wish to assure you that I am taking the necessary measures to ensure that this situation does not recur and I hope that you accept my sincere apologies for these regrettable occurrences. The appropriate procedures are now in hand for you to receive authorisation to enter the site in order to retrieve belongings. You are kindly requested to (...) inform of the most suitable date for you (...).*

*Please be assured that your scientific value and professionalism has at no point been questioned and that, as requested, a copy of the present will be kept in your file."*

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

The complainant confirmed that he had received the Commission's letter in which it recognised and apologised for its errors. He also stated that, on the basis of this letter, he had finally been able to prove to the European Space Agency that he was not responsible for the enforced hiatus in his work.

However, the complainant argued that the Commission had still failed to give grounds for the suspension of his entry permit. The complainant stated that he had never denied that the Commission could withdraw an entry permit. He contested the way in which the Commission had withdrawn his entry permit without proper explanation.

Moreover, the complainant challenged the Commission's claim that he should have been aware that the rules in Internal Directive 1291 were already followed at the time his entry permit was withdrawn. At the relevant time, the Directive was not in force and therefore the complainant could not accept the Commission's reasoning.

#### **Further inquiries**

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary.

By letter of 13 February 2001, the Ombudsman asked the Commission to give reasons for the suspension of the complainant's entry permit before the entry into force, on 1 June 2000, of Internal Directive 1291 on which, according to the institution, the contested decision was based.

In its reply, the Commission pointed out that, in connection with the preparation of the Special report n° 10/2000 by the Court of Auditors, the Director General of the JRC, instructed his department to ensure a more rigorous observation of the limited period of presence at the Centre of persons other than officials or temporary agents. The withdrawal of the complainant's entry permit was based on these internal management rules.



In observations on the Commission's reply, the complainant stated that the Commission had again failed to provide acceptable reasons for the withdrawal of his entry permit on 27 March 2000. According to the complainant, the Commission had arbitrarily applied to his case rules that were not in force at the time.

The complainant also thanked the Ombudsman for his efforts during the inquiry.

## **THE DECISION**

### **1. The withdrawal of the complainant's entry permit**

1.1 The complainant alleged that his entry permit to the Joint Research Centre in Ispra had been withdrawn without prior notice or explanation and that the reason subsequently given for withdrawal was inadequate, since JRC Internal Directive 1291 only entered into force two months after he was denied entry to the JRC.

1.2 The Commission firstly stated that, even though Internal directive 1291 was formally adopted at a later stage, the new rules were already followed at the time of the withdrawal of the complainant's pass. Since the complainant was working at the JRC, he should therefore have been aware of it.

1.3 Afterwards, the institution pointed out that, following an internal audit carried out by the JRC, it appeared that the complainant had been at the JRC, under different statuses, for longer than allowed by Commission rules. His entry permit was therefore withdrawn.

1.3 Furthermore, it pointed out that, following indications given by the Court of Auditors, the Director General of the JRC instructed his department to be more rigorous in ensuring that persons other than officials and temporary staff are present at the JRC only for the limited periods allowed.

1.4 Principles of good administration require that every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision (1) .

In this case, it is certain that Internal Directive 1291 entered into force on 1 June 2000, whereas the complainant's entry permit was withdrawn on 27 March 2000. The Ombudsman therefore cannot accept that the Commission justifies the withdrawal of the complainant's entry permit on the basis of rules which were not in force when applied.

Moreover, it appears that in its correspondence with the complainant and during the inquiry carried out by the Ombudsman, the Commission has given different reasons for its actions. The failure by the Commission to provide consistent reasons constitutes an instance of maladministration.

### **2. The complainant's claims**

2.1 The complainant claimed that, as a consequence of the Commission's decision to suspend



his entry permit to the JRC he could not efficiently carry out his work, having difficulties to justify to his professional contacts the reasons for his absence from the office.

He therefore asked to receive a full explanation and justification of the measures adopted by the JRC, and of the modalities used for their implementation regarding the suspension of his entry permit; an adequate redress for the professional and morale damage; formal excuses for the behaviour of the responsible Authorities of the JRC; that his personal file at the JRC would be completed by a statement exonerating him for the reported facts, leaving no space for erroneous interpretation or speculation; to have access to the JRC in order to retrieve his personal belongings left in his office.

2.2 As regards the complainant's first claim, the Ombudsman refers to point 1 of this decision.

2.3 As regards the procedure for withdrawal of the complainant's entry permit, the Commission recognised in its opinion to the Ombudsman that the JRC administration did not notify the complainant and failed therefore to act in accordance with principles of good administration. Furthermore, the JRC services failed to act properly when they did not expressly invite the complainant to collect his personal belongings.

2.4 Concerning the complainant's request for compensation for professional and morale damages occasioned by the Commission's behaviour, the Ombudsman notes that the complainant himself has confirmed in his observations' that, on the basis of the letter sent by the Commission on 8 November 2000, which included apologies for the complainant, he could prove to his employer that he was not responsible for the enforced hiatus in his work for the agency.

The Ombudsman is aware of the difficulties that the Commission's behaviour caused to the complainant. However, in view of the Commission's letter of apology, further inquiries into this matter do not appear to be necessary.

### **3. Conclusion**

On the basis of the European Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark, as far as the first aspect of the case is concerned:

Principles of good administration require that every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

In this case, it is certain that Internal Directive 1291 entered into force on 1 June 2000, whereas the complainant's entry permit was withdrawn on 27 March 2000. The Ombudsman therefore cannot accept that the Commission justifies the withdrawal of the complainant's entry permit on the basis of rules which were not in force when applied.

Moreover, it appears that in its correspondence with the complainant and during the inquiry carried out by the Ombudsman, the Commission has given different reasons for its actions. The failure by the Commission to provide consistent reasons 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 President of the European Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) The European Ombudsman stated this principle in article 18 (1) of his Code of good administrative behaviour, of 28 July 1999. This principle has also been expressed in point 3 of the Commission's Code of Good Administrative Behaviour for staff of the European Commission in their relation with the public, which entered into force on 1° November 2000.