

## Decision of the European Ombudsman on complaint 1139/2000/JMA against the European Commission

Decision

**Case 1139/2000/JMA - Opened on 26/10/2000 - Decision on 15/05/2001**

Strasbourg, 15 May 2001

Dear Y,

On 12 September 2000, you lodged a complaint with the European Ombudsman against the European Commission on behalf of the complainant. The complaint concerned the decision of the Commission services to change the personnel status of her alleged husband, X, from married to divorced, and the ensuing action by the Joint Sickness Insurance Scheme to exclude the complainant from its coverage.

On 26 October 2000, I forwarded the complaint to the President of the European Commission. I received the Commission's opinion on 12 February 2001, which I forwarded to you on 15 February 2001, with an invitation to make observations if you so wished. I received your observations on 29 March 2001.

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

### THE COMPLAINT

The complainant, originally born in Africa, moved to Luxembourg in 1986 in order to work for X, a Commission official from Luxembourg. They married in Africa in February 1994, and soon after they formalised the marriage before the Luxembourg authorities. Following a request from X to the responsible Commission services, his wife's social security coverage was taken over by the Joint Sickness Insurance Scheme from June 1994.

On 12 March 1999, at the request of X, an African court declared his marriage with the complainant void. On appeal, however, the court reversed the first judgement on 16 February 2000, and declared that the marriage was valid. The dispute was still at the time before the courts, since this last ruling had also been appealed.

On the basis of the first court ruling of 12 March 1999, X wrote to the responsible Commission services on 29 April and 3 May 1999 informing them of his change of status, and requesting that



his former spouse be excluded from the Community Joint Sickness Insurance Scheme. On 21 June 1999, the Commission services informed him that they had taken note of his change of status, and that the social security benefits of his former wife would expire as of 1 April 1999. They requested, however, some further information concerning the inscription of the divorce in the relevant Registry Office, and evidence of his change of status in Luxembourg. The complainant pointed out that she had been excluded from the Community Joint Sickness Insurance Scheme, even though X had not provided additional evidence.

The complainant wrote to the Commission on several occasions, and informed its services of the valid status of her marriage as recognised by the responsible African courts. As a result of this situation the complainant was forced to take a personal insurance policy with the Luxembourg social security.

In her complaint to the Ombudsman, the attorney acting on behalf of the complainant requested that the Commission,

- reconsider its position to exclude the complainant from coverage by the Joint Sickness Insurance Scheme with effect from July 1999;
- compensate the complainant for the expenses incurred as a result of that exclusion, and reinstate her to all her statutory rights as spouse of a Community official.

## THE INQUIRY

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

The Commission explained that the letter from X dated 3 May 1999 had led its services erroneously to believe that his married status had changed. They therefore proceeded to change their records, although only provisionally since some additional documents were still needed. Until now, X has not submitted the requested documents, and thus the Commission concluded that the complainant should still be considered as X's spouse.

As a results of this situation, the Commission decided to revert the status of X as married, and accordingly to reinstate the complainant to all her statutory rights as spouse of a Community official with effect from 1 April 1999, in particular as regards social security benefits with the Joint Sickness Insurance Scheme.

The Commission also agreed to reimburse her for all contributions paid to the Luxembourg Social Security, provided that these expenses were properly accredited.

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

On 28 December 2000, the attorney acting on behalf of the complainant wrote to the Ombudsman, enclosing with her letter a copy of the ruling given by a court of appeal, which upheld the decision of the lower court and declared the marriage valid. The complainant underlined her wish to have the Commission reinstate her as of June 1999 in all her statutory rights as spouse of a Community official.

In her observations to the Commission's opinion dated 23 March 2001, the complainant's attorney expressed her satisfaction to the Ombudsman for the successful resolution of the case.



She raised in the letter, however, a number of questions to be addressed to the Commission, namely, whether the institution had forwarded information on the complainant's change of status (i) to the Community Joint Sickness Insurance Scheme, and (ii) to the institution's concerned services; (iii) whether the retroactive change of status would affect X's statutory rights, in particular as regards the payment of certain allowances; and (iv) whether the institution was considering instituting disciplinary proceedings against X.

The Ombudsman considers, however, that it is not pertinent to ask the Commission for comments on the questions raised by the complainant. As regards questions (i) and (ii), the Ombudsman notes that the Commission has formally agreed to reinstate the complainant to all her statutory rights as spouse of a Community official with effect from 1 April 1999. This is a formal undertaking made by the Commission, and thus it should be binding for all its services. As for questions (iii) and (iv), the Ombudsman takes the view that they raise new issues which do not belong to the subject-matter of this case, as set out in the original complaint. Hence, it is not appropriate to pursue any inquiry in connection to these issues. These questions should first be addressed to the responsible services in the Commission, as an appropriate administrative approach in accordance with Article 2 § 4 of the Statute of the European Ombudsman.

## THE DECISION

On the basis of the information provided by the complainant and the observations submitted by the European Commission, the Ombudsman concludes that the case has been settled by the European Commission to the complainant's satisfaction.

Against this background, the European Ombudsman decides therefore to close the case.

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

Yours sincerely,

Jacob SÖDERMAN