

Decision of the European Ombudsman on complaint 1209/2000/JMA against the European Commission

Decision

Case 1209/2000/JMA - Opened on 26/10/2000 - Decision on 31/10/2001

Strasbourg, 31 October 2001

Dear Mr. X,

On 14 September 2000, you lodged a complaint with the European Ombudsman against the Commission. Your complaint concerned the lack of transparency and undue delays in the process followed by the Commission to declare your total permanent invalidity as a result of the accident you suffered within the Commission's premises on 15 May 1998.

On 26 October 2000, I forwarded the complaint to the President of the European Commission. I received the Commission's opinion on 9 January 2001, which I forwarded to you, with an invitation to make observations. On 26 February 2001, I received your observations. On 30 April 2001, I wrote to the President of the European Commission in order to seek a friendly solution. The Commission sent its reply on 18 July 2001, which I forwarded to you. On 28 August 2001, you sent me additional information. I received your observations on the Commission's reply on 5 September 2001.

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

THE COMPLAINT

According to the complainant, the facts were as follows:

The complainant joined the Commission in November 1987 as a C1 official. On 15 May 1998 X fell down in the Commission premises allegedly due to the slippery condition of the floor. As a result of the accident, X suffered severe spine injuries which left him unable to work.

On 3 June 1999, Mr H, Head of the Commission's Medical Service, and Chairman of the Invalidity Committee which had been set up to review the complainant's condition, informed him of their findings. At its meeting of 17 May 1999, the Invalidity Committee, which also included Dr D and Dr M, concluded that the complainant suffered a total permanent invalidity. This condition prevented X from performing the tasks of an EC official. As regards the nature of the accident,



the committee did not reach any conclusion. A manuscript note, however, had been included in the committee's opinion stating that this point shall be decided in the future by the competent body (1) .

As a result of these findings, the complainant was moved to a retirement status, and the regular salary as an EC official was replaced by an invalidity pension from 1 June 1999. Since the Invalidity Committee had not yet decided on the nature of the complainant's invalidity, X was only entitled to a retirement pension corresponding to 120% of the minimum subsistence allowance. This sharp reduction in the monthly income forced the complainant to reconsider living in Brussels. X decided to move back to the country of origin with the family on 24 September 1999.

The complainant submitted an appeal to the Commission under Art. 90 § 2 of the Staff Regulations, requesting that his active status as a C1 official with the Commission be kept until the Invalidity Committee reach a conclusion on the nature of the invalidity. The institution implicitly rejected the request by not replying to the appeal.

On 29 August 2000, the complainant was invited to take part in a meeting organized by the responsible Commission services with a view to assessing his health condition. X had to undergo a complete X-ray analysis, despite the negative advice of his personal physician. No conclusions had apparently been reached as a result of the meeting and the ensuing medical tests.

The complainant pointed out that 29 months after the accident, his medical condition had already been reviewed by ten different doctors and the responsible Commission services. Nevertheless, no decision has been taken on the nature of the accident for the purposes of the invalidity pension, neither on the amount of the lump sum to compensate the total or partial permanent invalidity.

In summary, in the complaint to the European Ombudsman the complainant alleged that,

1. the decision to declare his incapacity for work was taken in a hasty manner and without due consideration to the complainant's interests; and,
2. X had not been entitled to receive any payments corresponding to a work-related total permanent invalidity since the responsible Commission services have not yet been able to take a decision on the nature of the accident.

THE INQUIRY

The Commission's opinion

The Commission, in its opinion of 22 December 2000, first outlined the allegations made by the complainant. It then quoted the relevant provisions applicable to the case, namely Art. 78 of the Staff Regulations, and Art. 13 of its Annex VIII.



The Commission explained that the complainant had already written to its services on 14 May 1998, and at his own initiative had requested that his health condition be reviewed by an Invalidity Committee. Shortly after, on 15 May 1998, the complainant suffered an accident in the Commission's premises for which filed a claim on 25 May 1998, and submitted a medical report on 5 June 1998.

On 10 June 1998, Dr H (appointing authority in this type of procedures), asked the complainant to designate a doctor of his choice to represent him in the Invalidity Committee. Due to the complainant's failure to appoint a doctor, the Committee could not be set up but until 15 April 1999. At that time Dr H also informed the complainant that since the accident had allegedly taken place in connection with the performance of his duties, the procedure set out in Art. 73 of the Staff Regulations had to be set in motion to determine the degree of invalidity resulting from the accident.

On 17 May 1999, the Invalidity Committee agreed on the complainant's total permanent incapacity to perform duties. On the basis of these findings and in line with Art. 78 § 3 of the Staff Regulations the appointing authority decided on 3 June 1999 to have him retired, and granted him an invalidity pension as of 1 July 1999. No decision was taken concerning whether the accident had occurred in the course or in connection with the complainant's duties. The Invalidity Committee decided to postpone its decision on this matter until the degree of invalidity had been determined. The institution explained that if the accident were to be related to the complainant's duties as an official, the pension X would be entitled to on the basis of Art. 78 § 2 of the Staff Regulations would be more advantageous than the one the complainant had been originally granted under Art. 78 § 3.

As regards the compensation foreseen in Art. 73 of the Staff Regulations, the Commission explained that its implementation has been carried out by a Regulation applicable to all EC institutions. Art. 19 of the Regulation indicates that the nature of the accident and the degree of permanent invalidity should be defined in the light of the conclusions reached by the doctors appointed by the institutions, or on the basis of the opinion of a medical committee, if so requested by the official.

The Commission pointed out that Dr L, an orthopedist chosen by the appointing authority to review the case, had reviewed the case, and stated his conclusions in September and December 1999. He concluded that the partial permanent invalidity of the complainant had been consolidated in July 1999, and that its degree could be estimated at 8%. On 10 January 2000, the Commission informed the complainant of its decision to set his partial permanent invalidity at a degree of 8%. The complainant contested this conclusion and asked for the constitution of a medical committee. At its first meeting on 29 August and 1 September 2000, the complainant was subject to further radiological tests. The committee requested some additional tests which the complainant refused to undertake. In the absence of these tests, the committee was unable to reach a conclusion at its meeting of 7 November 2000. The chairman of the committee, Dr Lannoy, reiterated the requests for further tests to the complainant on 14 November 2000.

The Commission explained that as long as the degree of invalidity were not established, the



Invalidity Committee could not complete its work.

Under these conditions, the Commission insisted that a conclusion of the two parallel procedures would be possible only with the cooperation of the complainant.

The complainant's observations

The complainant's observations of 20 February 2001, repeated the arguments put forward in the complaint, and contested some of the statements made by the Commission in its opinion.

X explained that the letter to the Commission of 14 May 1998 calling for the establishment of an Invalidity Committee had been suggested by Dr M, from the Commission Medical services, and that it had in fact been written under duress. The complainant believed that as a result of the nature of the injuries suffered a day after, this initial request should have been annulled as the complainant had allegedly suggested by telephone to Doctors H and P on 30 May 1998, and by letter to Dr. P on 4 September 1998. X explained that the terms of a letter from Dr P dated 15 September 1998 led him to believe that this procedure had been put off until the complete recovery.

The complainant pointed out that the invalidity pension which had been initially granted corresponds to the minimum 120% of the minimum subsistence figure, as set out in Art. 78 § 5, instead of the retirement pension foreseen in Art. 78 § 3 of the Staff Regulations, as suggested by the Commission.

As for the additional tests X has been asked to undertake, namely a CT scan and a neurological test, the complainant agreed to undergo a CT-scan but provided that this test be performed in an open area. As for the neurological test, the complainant indicated that a complete exam had already been made by Dr D in October 1999.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinion and observations, the Ombudsman did not consider that the Commission had responded adequately to the complainant's claims.

The Commission, although claiming that the medical and Invalidity Committee's proceedings had been carried out in parallel, had in fact subordinated the completion of the Invalidity Committee's work to the findings on the complainant's degree of invalidity by the medical committee. By doing so, the Commission had failed to observe the provisions of Article 78 of the Staff Regulations in that it did not properly consider the complainant's request to be granted a work-related total permanent invalidity. The Ombudsman's provisional conclusion was therefore that such failure constituted an instance of maladministration on the part of the Commission.

The Ombudsman therefore proposed by letter dated 30 April 2001 that the Commission reconsider its position in order to ensure that the Invalidity Committee reached, without delay, a clear and precise finding as to whether the complainant's invalidity was caused in the course or



in connection with the performance of his duties. He also noted in his letter that the complainant had seemingly agreed to undergo the medical tests suggested by the medical committee, but under certain conditions. The Ombudsman also suggested that the Commission consider the proposal made by the complainant.

After having requested an extension of the deadline on 2 July 2001, the Commission sent its reply on 20 July 2001. The institution explained that following the receipt of the complainant's radiological assessment on 29 May 2001, the Invalidity Committee had met on 11 June 2001, and decided that the complainant's invalidity was not related to an accident. Since the committee had based its findings on the conclusions of the radiological report, the Commission explained that there was no need for further medical tests.

On the basis of the findings of the committee, the appointing authority wrote to the complainant on 22 June 2001, confirming that his service had been terminated by retirement, and that X was entitled to a pension calculated on the basis of Art. 78 § 3 of the Staff Regulations.

On 28 August 2001, the complainant sent a letter explaining that following the nature of the decision finally adopted by the appointing authority, X had introduced an appeal under Article 90 §2 of the Staff Regulations dated 18 July 2001. In a subsequent letter of 5 September 2001, the complainant commented on some of the issues already mentioned in the complaint, namely the hasty way in which the invalidity committee had been conveyed, the many different medical tests X had to undertake, or the duress under which his retirement had been requested. The complainant expressed his gratitude for the intervention of the Ombudsman which was instrumental for the final decision of the invalidity committee regarding the nature of his invalidity. X alleged, however, that the proceedings of the committee suffered from procedural and substantive flaws which rendered its final decision invalid.

The complainant also explained in detail the economic difficulties encountered due to his sudden and compulsory retirement.

THE DECISION

1 Expediency in declaring the complainant's incapacity for work

1.1 The complainant alleged that the Commission's decision to declare his incapacity for work was taken in a hasty manner and without due consideration to his interests.

1.2 The Commission explained that the proper procedure had been followed in this case. After the complainant, at his own-initiative, had submitted a request on 14 May 1998, the Commission started the procedure to set up an Invalidity Committee on 10 June 1998. The decision of the appointing authority to have the complainant retired as of 1 July 1999 had been taken in accordance with the findings made by the Invalidity Committee on 17 May 1999.

1.3 The procedure which the administration has to follow in order to have an official retired due to permanent invalidity consists of a number of different stages. The procedure is triggered by the existence of a sickness or accident which prevents the official from performing his duties. In



such event, the appointing authority can call for the establishment of an Invalidity Committee which should assess the health condition of the official and its causes. On the basis of the findings made by the Invalidity Committee, the appointing authority shall decide whether or not the official should be retired, and the type of pension he or she should be entitled to.

Although not foreseen by the governing rules, this procedure can also be set in motion at the official's own-initiative.

1.4 The rules governing that procedure are laid down in Arts. 53, 59 and 78 of the Staff Regulations. As set out in Art. 59, the appointing authority may refer a case to the Invalidity Committee only in the following cases: (i) when the official's cumulated sick-leave totals 12 months or more in a period of three years, (ii) when the official concerned challenges his being required to take leave on the institution's initiative after examination by the institution's medical officer, and (iii) when the administration challenges the medical certificates produced by the official concerned.

1.5 As Community courts have held, this power of the appointing authority should be strictly limited and expressly circumscribed due to the serious consequences which referral to the Invalidity Committee may have for an official's professional career (2) .

1.6 The Ombudsman notes that on 14 May 1998, the complainant requested , with no apparent reason, that an Invalidity Committee be set up to consider his health condition. As a consequence of his accident within the Commission premises on 15 May 1998, the complainant informed the Commission medical services on 30 May, and 4 September 1998 of his intention not to pursue his request. Nevertheless, on 10 June 1998, only a few weeks after the accident, Dr H, on behalf of the Commission, wrote to the complainant requesting him to designate a doctor so that the Invalidity Committee could be set up.

1.7 From the evidence available, it appears that, at the time the Commission sought to convene the Invalidity Committee, the complainant had requested the withdrawal of his request. Still, the Commission pursued its course of action, on the grounds that the complainant had formally demanded the establishment of an Invalidity Committee. In view of the complainant's change of mind, it seems that it would have been reasonable for the Commission to reconsider its position.

Nevertheless, the Ombudsman notes that his inquiry has not revealed that the Commission had infringed existing rules governing the procedure to retire an official due to permanent invalidity. The Ombudsman has therefore concluded that there appears to be no maladministration as regards this aspect of the case. It should be recalled, however, that the Court of Justice is the highest authority on interpretation of Community law.

2. Commission's failure to decide if the complainant's invalidity was due to X's work-related accident

2.1 The complainant stated that he had not received any payments corresponding to a work-related total permanent invalidity since the responsible Commission services had not been able to take a decision in the matter.



2.2 The Commission explained that no decision had been taken as to the cause of the accident, since the Invalidity Committee postponed its decision on this matter until the complainant's degree of invalidity had been established.

2.3 In the Ombudsman's view the Commission had failed to observe the provisions of Article 78 of the Staff Regulations in that it did not properly consider the complainant's request to be granted a work-related total permanent invalidity. Thus, in order to seek a friendly solution, in accordance with article 3(5) of his statute, the Ombudsman proposed that the Commission ensure that the Invalidity Committee reach, without delay, a clear and precise finding as to whether the complainant's invalidity was caused in the course or in connection with the performance of his duties.

2.4 In response to the Ombudsman's proposal, the Commission informed that the Invalidity Committee had met on 11 June 2001, and decided that the complainant's invalidity had not been a work-related accident. On the basis of this finding, the appointing authority established, on 22 June 2001, that the complainant should be retired from service with a pension to be based on Art. 78 § 3 of the Staff Regulations.

The complainant expressed his gratitude to the Ombudsman for his intervention, which was instrumental in ensuring that a final decision was taken on the matter. X considered, however, that the decision adopted by the appointing authority on the basis of the findings made by the Invalidity Committee is vitiated by procedural and substantive flaws, and has therefore contested it through the means provided for in Art. 90 § 2 of the Staff Regulations.

2.5 The Ombudsman notes that the allegation made in the complaint referred to the failure of the Commission to take a decision on the nature of his accident. By adopting a decision on this matter dated 22 June 2001, the institution has in fact settled this aspect of the case.

Therefore, a further inquiry of the decision or the procedure is not needed.

3. 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 therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) *"Cette décision sera prise ultérieurement par l'instance compétente"*

(2) *"[T]o allow the appointing authority a discretion enabling it to refer a case to the Invalidity"*



Committee at any time for reasons other than those expressly provided for in Art. 59 of the Staff Regulations would run counter to the principle of legal certainty underlying the spirit of that article, and would render nugatory the procedural guarantees which that article confers on the official concerned; see case T-84/98, C v Council , [2000] ECR SC IA-0113; II-0497, p.67.