

Decision of the European Ombudsman on complaint 1376/2000/OV against the Committee of the Regions

Decision

Case 1376/2000/OV - Opened on 17/11/2000 - Decision on 22/08/2001

Strasbourg, 22 August 2001

Dear Mr I.,

On 22 October 2000 you made a complaint to the European Ombudsman concerning the appointment in the Committee of the Regions of an administrator for the European Alliance Group.

On 17 November 2000, I forwarded the complaint to the President of the Committee of the Regions. The Committee sent its opinion on 28 February 2001 and I forwarded it to you with an invitation to make observations, if you so wished. On 30 April 2001, I received your observations on the Committee's opinion.

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

THE COMPLAINT

According to the complainant, the relevant facts were as follows:

On 10 April 2000 the Committee of the Regions' Website mentioned the appointment of an administrator (temporary agent) for the European Alliance Group. The complainant however alleges that the appointed administrator did not figure on the reserve list which had been established for that post on 9 January 1997 for an undetermined period. Moreover, the candidates on the reserve list were not informed about the vacancy.

On 14 May 2000 the complainant wrote to the Secretary General of the Committee of the Regions, but received no reply. On 23 June 2000 the Secretary General wrote a letter to the complainant which did not refer to the complainant's letter of 14 May 2000, but indicated that the reserve list for the post in question had expired on 20 June 2000.

On 9 July 2000 the complainant wrote back to the Committee of the Regions alleging that its letter of 23 June 2000 gave no answer to his allegations of irregularities in the recruitment



procedure. The Committee of the Regions did not reply to the complainant's letter.

The complainant therefore wrote to the Ombudsman on 22 October 2000 alleging that:

- The Committee of the Regions appointed in April 2000 to the post of administrator for the European Alliance Group a person who did not figure on the reserve list for that post which was established in January 1997.
- The Committee of the Regions did not inform the complainant, who did figure on the reserve list (valid until 20 June 2000), of the said vacancy.
- The Committee of the Regions did not reply to his letters of 14 May and 9 July 2000.

THE INQUIRY

The Committee of the Regions' opinion

With regard to the first allegation, the Committee of the Regions stated that it was not obliged to inform the persons figuring on the reserve list of the said vacancy, because the post was not filled definitively, but only provisionally in the expectation of a definitive recruitment. Also, because it was not proceeding to a definitive filling of the post, the Committee was free to choose a person who did not figure on the reserve list.

With regard to the second allegation, the Committee observed that by letter of 9 January 1997 the complainant was informed that his name figured on the reserve list. The Committee secondly pointed out that its choice to close the reserve list was not an arbitrary measure, but fell within the discretionary power of the Appointing Authority which is recognised by both the Staff Regulations and the case-law. The Committee also stated that the information concerning the expiry of the reserve list (dated 23 June 2000) could only be given once the decision dated 20 June 2000 had been taken. The letter to the complainant of 23 June 2000 also indicated the publication of a new vacancy dated 23 June 2000 for which the recruitment should take place from 16 October 2000 onwards.

As regards the third allegation, the Committee considered that the new recruitment procedure would give the complainant possibilities for obtaining satisfaction. Therefore it did not wish to react to the complainant's letters of 14 May and 9 July 2000.

The complainant's observations

The complainant observed that the reasoning of the Committee concerning the fact that it was only a provisional recruitment was not convincing, as it was not reflected in the notice on the Website. The reasoning therefore rather seemed to be a post facto construction.

The complainant stated that, as the departure of the previous administrator was foreseeable, the vacancy was not an unexpected event. The Committee therefore had the necessary time to consult the reserve list and to respect the legitimate expectations of the persons on the reserve list. As regards the legitimate expectations, the complainant observed that in its letter of 9 January 1997, the Committee had stated that it would contact the complainant "as soon as a possibility for recruitment arises". The complainant also referred to similar legitimate expectations on basis of a letter from the Committee dated 17 July 1997 which stated that, as he figured on the reserve list, his application would be reconsidered in case a new post would



be created or a vacancy would arise.

The complainant observed that, when the said post became vacant in March 2000, the reserve list was still valid and he should therefore have been consulted. The complainant concluded that the whole sequence of events showed that the Committee did not want to follow the normal procedure, because it wanted to give the post to someone who had not participated in the original selection procedure.

THE DECISION

1 The alleged appointment of a candidate not figuring on the reserve list

1.1 The complainant alleged that the Committee of the Regions appointed in April 2000 to the post of administrator for the European Alliance Group a person who did not figure on the reserve list for that post which was established in January 1997. In its opinion, the Committee of the Regions observed that the post was not filled definitively, but only provisionally in the expectation of a definitive recruitment. Because it was not proceeding to a definitive filling of the post, the Committee was thus free to choose a person who did not figure on the reserve list.

1.2 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 argued that it was urgent to fill the post, and that, as it was not proceeding to a definitive filling of the post, the Committee was free to choose a person who did not figure on the reserve list. In the Ombudsman's view, the Committee has thus put forward a reasonable explanation 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 his own appraisal.

1.3 The complainant alleged that the whole sequence of events showed that the Committee did not want to follow the normal procedure, because it wanted to give the post to someone who had not participated in the original selection procedure. The Ombudsman considers, however, that the complainant has not produced evidence that would support this claim. On the basis of the above, there appears to have been no maladministration by the Committee of the Regions.

2 The alleged failure to inform the persons figuring on the reserve list

2.1 The complainant alleged that the Committee of the Regions did not inform him of the vacancy, although he figured on the reserve list (valid until 20 June 2000). In its opinion, the Committee stated that it was not obliged to inform the persons figuring on the reserve list of the said vacancy. The Committee secondly pointed out that its choice to close the reserve list was not an arbitrary measure, but fell within the discretionary power of the Appointing Authority which is recognised by both the Staff Regulations and the case-law.

2.2 Principles of good administration require that the Community institutions and bodies respect the promises which they make to citizens. In the present case, the Committee informed the complainant in its letter of 9 January 1997 that it would contact him as soon as a possibility for recruitment would arise. In its letter of 17 July 1997 the Committee again stated that the complainant's application would be reconsidered in case a new post would be created or a



vacancy would arise. Therefore, by not having informed the complainant of the vacancy, the Committee failed to comply with the promise it made. This constitutes an instance of maladministration and the Ombudsman makes the critical remark below.

3 The alleged failure to reply to the complainant's letter of 14 May and 9 July 2000

3.1 The complainant alleged that the Committee of the Regions did not reply to his letters of 14 May and 9 July 2000. The Committee of the Regions, considering that the new recruitment procedure would give the complainant possibilities for obtaining satisfaction, did not wish to react to the complainant's letters of 14 May and 9 July 2000.

3.2 Principles of good administration require that the Community institutions and bodies reply to the letters of citizens. In the present case, the Committee of the Regions did not reply to the complainant's letters of 14 May and 9 July 2000. The argument raised by the Committee about a possible satisfaction in a future recruitment procedure cannot justify failure to reply to the complainant's letters. This failure to reply therefore constitutes an instance of maladministration and the Ombudsman makes the critical remark below.

4 Conclusion

On the basis of the European Ombudsman's inquiries into parts 2 and 3 of this complaint, it appears necessary to make the following two critical remarks:

Principles of good administration require that the Community institutions and bodies respect the promises which they make to citizens. In the present case, the Committee informed the complainant in its letter of 9 January 1997 that it would contact him as soon as a possibility for recruitment would arise. In its letter of 17 July 1997 the Committee again stated that the complainant's application would be reconsidered in case a new post would be created or a vacancy would arise. Therefore, by not having informed the complainant of the vacancy, the Committee failed to comply with the promise it made. This constitutes an instance of maladministration.

Principles of good administration require that the Community institutions and bodies reply to the letters of citizens. In the present case the Committee of the Regions did not reply to the complainant's letters of 14 May and 9 July 2000. The argument raised by the Committee about a possible satisfaction in a future recruitment procedure was not a valid reason for not having replied to the complainant's letters. This failure to reply therefore constitutes an instance of maladministration.

Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman has therefore decided to close the case.

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

Yours sincerely



Jacob SÖDERMAN