

Decision of the European Ombudsman on complaint 425/2001/ADB against the European Commission

Decision

Case 425/2001/ADB - Opened on 28/05/2001 - Decision on 05/02/2002

Strasbourg, 5 February 2002

Dear Mr. X,

On 16 March 2001, you made a complaint to the European Ombudsman concerning the final adoption of your Staff Report for 1995-1997. You considered that it was based on an illegal opinion of the Joint Committee on Staff Reports (JCSR). You had already complained to the European Ombudsman because of the late adoption of the aforementioned Staff Report (complaint 1564/99/(XD)ADB). This complaint was closed on 12 November 2001.

On 28 May 2001, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 23 July 2001. I forwarded it to you with an invitation to make observations, which you sent on 28 September 2001. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant is a European Commission official. The complainant's Staff Report for 1995-1997 was finalised with 27 months delay. This issue was dealt with by the European Ombudsman in a previous complaint (1564/99/(XD)ADB). During the Staff Report procedure, the complainant had appealed against the draft Staff Report and the issue was dealt with by a Joint Committee on Staff Reports (JCSR). The complainant considers that this committee acted illegally and that the Staff Report which was adopted is illegal.

On 3 July 2000, the complainant lodged an appeal under article 90 of the Staff Regulations to complain about the situation. The Appointing Authority did not reply within the foreseen four-month deadline and the appeal was implicitly rejected.

On 16 March 2001, the complainant therefore lodged a complaint with the European Ombudsman and made following allegations :

1. The JCSR failed to take into consideration the complainant's arguments when he appealed to



it in accordance with the General Provisions for Implementing article 43 of the Staff Regulations.

2. The JCSR abused its powers by taking a position on the complainant's promotion to a higher grade.

The complainant claimed that the Commission should recognise the failure of the new Staff Report system, to change it and to compensate the damages suffered by the victims.

THE INQUIRY

The Commission's opinion

The opinion of the European Commission on the complaint was in summary the following:

Further to the rejection of his appeal made under article 90 of the Staff Regulations, the complainant could have appealed to the Court of Justice. By not doing so within the compulsory deadline, the complainant deprived himself of this possibility. The Commission also stated that :

1. The JCSR shall ensure that the report is produced with due respect for the necessary spirit of fairness and objectivity and that the procedures have been correctly applied. The Committee may not take the place of the assessor in evaluating the work of the official assessed. The JCSR could therefore not take a stand on the assessments made by the assessor or the appeal assessor.

2. The JCSR found a discrepancy between the marks obtained by the complainant in his Staff Report, which were below the average marks obtained in this grade, and the fact that the complainant was proposed for a promotion. Given that promotion is foreseen for the most deserving officials, the JCSR invited the appeal assessor to consider this discrepancy. The JCSR's opinion is not binding and the appeal assessor did not change the marks.

The complainant's observations

The European Ombudsman forwarded the European Commission's opinion to the complainant with an invitation to make observations. In his reply, the complainant maintained his complaint, considered that the Commission did not reply to his arguments and stated the following:

The complainant's decision to lodge a complaint with the Ombudsman instead of appealing to the Court of First Instance is deliberate.

1. The complainant is perfectly aware of the role of the JCSR. In view of the latter's mandate regarding the control of the procedure, he wonders why the JCSR did not note that the complainant's former superiors have not been consulted or that the whole procedure was 27 months late. Furthermore, as guardian of the fairness and objectivity of the procedure, the complainant wonders why the JCSR did not note the discrepancy between the laudatory remarks and the low marks awarded in the Staff Report. The marks are among the worst throughout all Commission officials.

2. The JCSR has no mandate in promotion matters and should therefore not have made any



comments in relation to that issue. Furthermore, if the deadlines had been respected in the Staff Report procedure, the JCSR should have delivered its opinion in 1997 and could therefore not have taken a position on the complainant's promotion for 1999. Finally, the complainant considers that there is no legal basis for the Commission's statement according to which the JCSR's opinion has no binding character.

THE DECISION

1 The JCSR's alleged failure to take into consideration the complainant's arguments

1.1 The complainant alleged that the JCSR failed to take into consideration his arguments when he appealed to it in accordance with the General Provisions for Implementing article 43 of the Staff Regulations.

1.2 The Commission argued that the JCSR shall ensure that the report is produced with due respect for the necessary spirit of fairness and objectivity and that the procedures have been correctly applied. The JCSR could therefore not take a stand on the assessments made by the assessor or the appeal assessor.

1.3 The Ombudsman notes that in his appeal lodged with the JCSR, the complainant appears to have mainly presented arguments relating to the assessments made about his work and for which the JCSR had no mandate. Furthermore, the complainant did not appear to have raised the procedural issues put forward in his observations delivered during the present inquiry.

1.4 In the observations, the complainant also argued that he had noted a difference between the awarded marks and the corresponding general remarks. According to the complainant, this casts doubts on the fairness and objectivity of the procedure. After a thorough examination of the complainant's Staff Report, the Ombudsman however considers that there is no reason to consider that the JCSR should necessarily have detected an irregularity on the basis of this argument.

1.5 In view of the complainant's appeal lodged with the JCSR and the latter's opinion, the Ombudsman considers that there is no reason to consider that the JCSR failed to act in accordance with its mandate and to take into consideration the complainant's arguments which fell within this mandate. The Ombudsman therefore considers that there is no instance of maladministration as regards this aspect of the case.

2 Alleged abuse of power by the JCSR

2.1 The complainant alleged that the JCSR abused its powers by taking a position on his promotion to a higher grade in 1999.

2.2 The Commission argued that the JCSR pointed out a discrepancy between the marks obtained by the complainant in his Staff Report, which were below the average marks obtained in this grade, and the fact that the complainant was proposed for a promotion.

2.3 The Ombudsman notes that the JCSR shall ensure that the Staff Report is produced with due respect for the necessary spirit of fairness and objectivity. In the present case, the JCSR



assessed the Staff Report which is submitted to its control in the light of a positive fact which is the complainant's promotion in the year 1999.

2.4 In view of the JCSR's opinion the Ombudsman does not consider that the JCSR took a position on the complainant's promotion but rather used the promotion to assess the Staff Report. The JCSR does appear to have acted within its legal authority. The Ombudsman therefore considers that there is no instance of maladministration as regards this aspect of the case.

3 Conclusion

On the basis of the 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