



Decision on the time taken by the European Commission to handle an appeal concerning the decision to apply a 'medical reserve' on a newly recruited staff member (case 1609/2021/VS)

Decision

Case 1609/2021/VS - **Opened on** 29/11/2021 - **Decision on** 15/07/2022 - **Institution concerned** European Commission (Settled by the institution) |

The case concerned the time taken by the European Commission to deal with an appeal concerning its decision to apply a 'medical reserve' on a newly recruited staff member.

The Ombudsman wrote to the Commission reminding it that principles of good administration require EU institutions to take decisions within a reasonable time frame and that this is particularly important when the decision is related to the health of the person concerned and to social security cover.

Following updates from the Commission and the complainant showing that the Commission took a final decision on the appeal in March 2022, the Ombudsman closed the inquiry with the conclusion that the substantive matter has been settled. The Ombudsman expects the Commission in future to handle similar procedures in a timely manner.

Background to the complaint

1. The complainant is a staff member of the European Commission. Upon recruitment in 2019, he underwent a medical examination. Following that, the Commission informed him that, due to the outcome of the examination, it would be applying a 'medical reserve' to him, meaning that for the first five years of his employment at the Commission he would not be covered against the risks of invalidity or death [1] .

2. In December 2019, the complainant filed an appeal against the decision.

3. In January 2020, the Commission acknowledged receipt of the appeal and provided information on the appeal procedure.

4. The complainant wrote to the Commission on various occasions in January and February 2020 with questions about the procedure and with information about the doctor he wanted to nominate to the Invalidity Committee, which would consider his appeal. He received no replies and was not informed of any progress regarding the appeal procedure.



5. In September 2021, the complainant turned to the Ombudsman.

The inquiry

6. The Ombudsman opened an inquiry into the time taken by the Commission to deal with the complainant's appeal.

7. The Ombudsman wrote to the Commission, reminding it that principles of good administration require EU institutions to take decisions within a reasonable time frame and that this is particularly important when the decision is related to the health of the person concerned and to social security cover.

8. The Ombudsman asked the Commission to provide detailed explanation about the delays incurred in the procedure and to provide a detailed timeline of the next steps, with a clear commitment to finalise the procedure within a reasonable time frame.

9. In the course of the inquiry, the Ombudsman received updated information from the Commission and the complainant.

Arguments presented to the Ombudsman

10. The Commission explained that appeals against a medical reserve are handled by an Invalidity Committee consisting of three doctors. The institution appoints the first doctor and the staff member concerned chooses the second one. The third one is selected by common agreement between the first two doctors. The Commission's Medical Service initiated this procedure by identifying a doctor to represent the institution and signing a decision to open the procedure on 18 February 2020. That decision was revised in October 2020 in order to appoint a German-speaking doctor, as the doctor appointed by the complainant was German-speaking.

11. On 23 September 2021, the Commission sent an e-mail to the complainant informing him that the procedure would be pursued and that the delay was mainly due to the COVID-19 pandemic because the Commission's Medical Services were fully dedicated to manage the pandemic through tracing of COVID-19 cases, providing medical support to staff, SARS-CoV-2 testing and organising the vaccination of staff.

12. While the Commission recognised that the duration of the complainant's appeal procedure was excessively long, this was because the Medical Service had to deal with the pandemic as a priority.

13. The Commission said that the Invalidity Committee met on 2 February 2022. Subsequently it finalised its report. On 18 March 2022, the Commission sent the complainant the decision on his appeal.

14. The complainant provided the Ombudsman with a copy of the decision. According to it, the Commission lifted the application of the medical reserve.



The Ombudsman's assessment

15. In this case, the appeal procedure started in December 2019 and concluded only in March 2022. As the Commission itself acknowledged, this represented an excessively long time.

16. The Ombudsman reiterates that principles of good administration require EU institutions to take decisions within a reasonable time frame, and that this is particularly important when the decision is related to the health of the person concerned and to social security cover. She expects the Commission in future to handle similar procedures in a timely manner.

17. As the Commission has now taken a decision on the appeal, whereby it lifted the medical reserve, the Ombudsman considers the substantive matter settled.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [2] :

The matter has been settled.

The complainant and the European Commission will be informed of this decision .

Tina Nilsson

Head of the Case-handling Unit

Strasbourg, 15/07/2022

[1] Annex VIII, Article 1, para. 1 of the Staff Regulations:

"Where the medical examination made before an official takes up his duties shows that he is suffering from sickness or invalidity, the appointing authority may, in so far as risks arising from such sickness or invalidity are concerned, decide to admit that official to guaranteed benefits in respect of invalidity or death only after a period of five years from the date of his entering the service of

the Union.

The official may appeal against such decision to the Invalidity Committee."

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A01962R0031-20160101>



[2] This complaint has been dealt with under delegated case handling, in accordance with the Decision of the European Ombudsman adopting Implementing Provisions