

## **Decision of the European Ombudsman on complaint 1914/2002/BB against the Court of Justice of the European Communities**

Decision

**Case 1914/2002/BB - Opened on 05/12/2002 - Decision on 22/10/2003**

Strasbourg, 22 October 2003

Dear Mr H.,

On 5 November 2002, you made a complaint to the European Ombudsman concerning alleged misleading information supplied by the Finance Department of the Court of Justice of the European Communities.

I would like to inform you that Mr Jacob Söderman, with whom you have previously corresponded concerning your complaint, has retired and that, from 1 April 2003, I am his successor as European Ombudsman.

On 5 December 2002, the Ombudsman forwarded the complaint to the President of the European Court of Justice. The Court of Justice sent its opinion on 25 March 2003. The opinion of the Court of Justice was forwarded to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

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

### **THE COMPLAINT**

The complainant was employed as a temporary agent for nearly six years at the Court of Justice. According to Article 39 of the Conditions of Employment of Other Servants, on leaving the service a temporary agent shall be entitled to a severance grant calculated in accordance with Article 12 of Annex VIII of the Staff Regulations.

According to the complainant, the relevant facts are as follows. In 1997, before his departure from the Court's service, the complainant discussed his pension rights with an official in the Court's Finance Department, who advised him that by leaving his severance grant "on ice" he would earn an interest rate of 3 % per annum. The complainant does not wish to name the official concerned.



In 2001, the complainant was told that the Staff Regulations contain no provisions for paying interest on cash balances arising from unpaid severance grants.

The complainant alleges that the Finance Department of the Court of Justice provided him with misleading information and that he has suffered substantial financial loss as a result. He claims compensation.

## **THE INQUIRY**

### **The opinion of the Court of Justice**

The Court of Justice made the following remarks in its opinion:

It is settled case law that Community legal measures which create a right to financial benefits must be given a strict interpretation (1) . It follows from the wording of Article 12 of Annex VIII that the interest rate referred to in that provision applies to the sum which is due at the time of termination of the agent's service and is calculated per annum until the benefit is due. There is no indication that interest should accrue after termination of service where the agent, for whatever reason, does not apply for the benefit he/she is entitled to.

This is known by the staff of both the Finance Department and the Personnel Department. No official in these Departments has any recollection of having provided any diverging information in this regard to anyone, notably to the complainant. There is no record of any kind which might suggest that a Court official provided erroneous or wrongful information to the complainant.

According to the Personnel Department's practice, the staff entitled to a severance grant are informed thereof and the allowance is paid without delay. In the present case, the complainant instructed the Personnel Department not to pay the allowance because he expected to get another position in an European institution and so acquire further pension rights. Had the complainant questioned the Personnel Department on the relevant provisions and asked whether the allowance produced interest, he would have been informed thereof in a reasonable time. As is clear from the Annexes to the complaint, it was not until 2 July 2002 that the complainant made any inquiry whatsoever to the Personnel Department regarding provisions of the Staff Regulations applicable to the severance grant. He received an answer on 8 July 2002, with the indication of a phone number should further information be needed.

The Personnel Department did not know for how long the allowance would be left "on ice" and could not assess whether the complainant would suffer a significant financial loss and whether this would matter for him. It cannot be the task of a public administration to follow the evolution of the career of a temporary agent who has left the institution and take care of his individual interests depending on this evolution.

For all these reasons, it must be concluded that there is no instance of maladministration in the present case.

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



The complainant appears not to have sent any observations.

## THE DECISION

### 1 Alleged misleading information

1.1 The complainant alleges that the Finance Department of the Court of Justice supplied him with misleading information. According to the complainant, an official in the Finance Department of the Court of Justice advised him that by leaving his severance grant "on ice" he would earn an interest rate of 3 % per annum. The complainant does not wish to name the official concerned.

1.2 In its opinion, the Court of Justice stated that it is settled case law that Community legal measures which create a right to financial benefits must be given a strict interpretation. It follows from the wording of Article 12 of Annex VIII that the interest rate referred to in that provision applies to the sum which is due at the time of termination of the agent's service and is calculated per annum until the benefit is due. There is no indication that interest should accrue after termination of service where the agent, for whatever reason, does not apply for the benefit he/she is entitled to.

1.3 According to the Court of Justice, no official neither in the Finance Department nor in the other Departments of the Court of Justice has any recollection of having provided any diverging information in this regard to anyone, notably to the complainant. There is no record of any kind which might suggest that a Court official provided erroneous or wrongful information to the complainant.

1.4 The Ombudsman notes that the Court of Justice appears to have made an internal investigation into the allegation that misleading information was supplied to the complainant and that no evidence has been found to support the allegation. The Ombudsman also notes that the Court has sent a prompt reply to the complainant's written inquiry about the applicable Staff Regulations.

1.5 In the light of the above, the Ombudsman considers that the complainant's allegation that an official of the Finance Department supplied him with misleading information cannot be regarded as having been established. Therefore, the Ombudsman finds no maladministration in relation to this aspect of the case.

### 2 Alleged financial loss and claim for compensation

2.1 The complainant alleges that he has suffered substantial financial loss as a result of the misleading information and he claims compensation.

2.2 In view of the conclusion in point 1.5 of the present decision, the Ombudsman considers that the complainant's claim cannot be sustained.

### 3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Court of Justice. The Ombudsman therefore closes the case.



The President of the Court of Justice will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Judgment of the Court in Joined Cases 146, 192 and 193/81 Baywa v. Balm, 1982 [ECR] p. 1503, paragraph 10; judgment of the Court of First Instance in Case T-41/89, Schwedler/Parliament, 1990 [ECR] p. II-79, paragraph 23.