

## **Decision of the European Ombudsman on complaint 2137/2002/(FA)MF against the European Commission**

Decision

**Case 2137/2002/(FA)MF - Opened on 17/01/2003 - Decision on 06/10/2004**

Strasbourg, 6 October 2004

Dear Mr Y.,

On 5 December 2002, you made a complaint to the European Ombudsman concerning the pensions of the language teachers working at the European Commission.

On 16 January 2003, the Ombudsman forwarded the complaint to the President of the European Commission.

On 6 March 2003, you provided me with further documents in relation with your complaint, which were forwarded to the Commission on 21 March 2003. On 7 April 2003, you sent me further documents. On 23 April 2003, I forwarded to the Commission these further documents.

Given that a second complaint also concerning the pensions of the language teachers working at the European Commission had been lodged with the Ombudsman in December 2002 and sent to the President of the Commission on 17 January 2003 (ref.: 2204/2002/MF), the European Commission sent a joint opinion on both complaints on 28 April 2003. In its letter, the Commission noted that it would send a supplementary opinion as regards the further documents that the Ombudsman had submitted to it by 31 May 2003.

On 5 and 15 May 2003, you sent me further documents, which were forwarded to the Commission on 22 May 2003.

On 3 June 2003, the Commission requested an extension of the deadline of one month for its reply because it was examining the supplementary documents, which I accepted. On 24 June 2003, the Commission sent me its further opinion.

On 15 July 2003, I forwarded to you the opinion of the Commission dated 28 April 2003 and its further opinion dated 24 June 2003, with an invitation to make observations, which you sent on 11 August 2003.

On 29 September 2003, I asked the Commission for further information in relation with your



complaint and complaint 2204/2002/MF. The Commission sent its reply on 4 December 2003. The Commission's reply was forwarded to you, with an invitation to make observations, which you sent on 2 February 2004.

On 29 June 2004, you sent me a further letter relating to your complaint.

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

I apologise for the length of time it has taken to deal with your complaint.

## **THE COMPLAINT**

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

The complainant is a Greek language teacher who was working for the European Commission. He retired on 1 October 2003.

The Belgian Ministry of Employment and Pensions had on several occasions indicated that a twenty-hour per week contract could be considered as a full-time teaching occupation provided that the employer made a declaration in this sense to the competent Belgian authorities.

However, the Commission made this declaration to the Belgian authorities for only part of the period from 1986 to 2002. This had serious repercussions on the calculation of the pensions of the teachers concerned since they would receive as little as half the pensions they should be entitled to for the years for which the declaration was not correctly made.

On several occasions, the complainant, in his function as one of the representative of the language teachers, contacted various persons of the Commission ranging from the Head of Unit to some European Commissioners. In two letters dated 18 February and 8 April 2002 sent to Directorate-General Personnel and Administration in the name of the language teachers, the representatives of the language teachers requested clarifications as regards the employer's obligations in relation to the declaration of 20 hours of teaching as full-time work to the Belgian authorities concerned.

On 5 December 2002, the complainant lodged a complaint with the European Ombudsman. He alleged that the European Commission had failed to declare to the Belgian authorities a 20-hour per week contract as a full time teaching occupation for all the period from 1986 to 2002.

He claimed that the pensions of the teachers who worked during this period should be calculated on the basis of a full time contract.

## **THE INQUIRY**

### **The Commission's opinion**



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

The admissibility of the complaint lodged by the complainant with the European Ombudsman was questionable. The Commission had, since September 1998, declared to the Belgian authorities a twenty-hour per week contract as a full-time teaching occupation. Therefore, the object of the complaint lodged with the European Ombudsman concerned declarations for the period from 1986 to 1998, i.e. beyond the two-year deadline laid down in Article 2(4) of his Statute.

As far as the pension scheme applicable to language teachers was concerned, language teachers were engaged by the Commission under Belgian law contracts, namely permanent contracts corresponding to 20, 15, 10 or 5 weekly hours during 33 weeks. This type of contracts was concluded since 1984 and became the norm since 1995. The language teachers were affiliated to the Belgian social security and pension schemes since they were engaged under contracts governed by Belgian law. The Commission therefore declared the salaries to the Belgian administration and proceeded to the usual withholdings and transfers, for example as regards the contribution to the Belgian National Social Security Office. This declaration also referred to the number of working hours of the language teachers. The Belgian National Pension Office took into account the number of working hours in order to determine the pensions. The amount of the pensions was not only limited but also proportionally reduced in case of part-time work.

Until 1998, the Commission used to declare to the Belgian National Social Security Office the number of hours which appeared in the contracts of the language teachers, without any further details. The pensions of the language teachers working twenty hours per week were therefore calculated on the basis of a part-time teaching occupation.

In the mid-nineties, the first language teachers to retire had noted that their pensions were very low compared with their wages. The language teachers and the Commission had thereupon agreed that the latter should declare to the Belgian National Social Security Office the twenty-hour per week contract as being a full-time teaching occupation. The Commission stated that this has been the case since September 1998.

The language teachers had then requested the Commission to help them to obtain an increase of the amount of their pensions. It appeared that the Belgian National Social Security Office had accepted to regularise retroactively the situation of the language teachers up to five years. From the point of view of the Belgian National Social Security Office, a retroactivity for more than five years required the Commission or the persons concerned to make more formal approaches to the Belgian authorities, that is to say, to the Ministry of Employment and Labour, the Belgian National Social Security Office and the Belgian National Pension Office.

On 9 March 2000, the Commission had sent a declaration to the Belgian Ministry of Employment in which it requested the twenty-hour per week contract to be considered as a full-time teaching occupation. The Commission had pointed out that, as from September 1998, contracts for 20 hours a week were to be regarded as full-time contracts and that "for obvious



reasons of equity", the same should apply for the previous years as from 1986.

This declaration was also appropriate for the period from 1986 to 1998 given that it was for the employees, the language teachers, to make the relevant approaches to the Belgian authorities in order to obtain an increase in their pensions. The employer, the Commission, only had the duty to provide a declaration indicating the working time and the nature of the work.

Following the letter dated 9 March 2000, the Belgian authorities had informally informed the Commission that each of the pension files had to contain, in addition to the attestation of the employer that a twenty-hour per week contract was to be considered as a full-time teaching occupation, the full list of the number of hours worked by the teachers.

In November 2001, the Commission and the language teachers had drafted a declaration which was approved by the Commission's Legal Service. In this draft declaration, the Commission declared to the Belgian Ministry of Employment that a twenty-hour per week contract was to be considered as a full-time teaching occupation.

From the Commission's point of view, this declaration should have been transmitted to the Belgian authorities. However, the Commission had not in the end considered it appropriate to send the declaration to the Belgian authorities on the grounds that it might have contained false or incomplete information on the list of the number of hours worked by the teachers, as informally requested by the latter. Actually, this draft neither mentioned the work performed prior to 1986 nor the complementary work between 1986 and 1998.

The Commission did not rule out the possibility of sending a new declaration to the Belgian authorities. However, such a declaration required that the Belgian authorities should first reply to the declaration sent to them on 9 March 2000. It would then be necessary to clarify whether the work performed between the mid 1970's and 1986 and the work performed in addition to the basic contracts between 1986 and 1998 should also be declared. In such a case, there would be technical problems because work performed was not listed in its archives in a directly usable way and a reconstruction work on data would be necessary.

On 7 March 2003, the Commission had contacted the Belgian authorities in order to obtain a reply to its letter dated 9 March 2000. Until the date of its opinion on the complaint, the Commission had not received any reply.

In conclusion, the Commission expressed the view that it had taken measures to regularise the situation related to a file presenting poor management aspects and that it had acted in respect of the principle of good administration. It argued that the period of time that had elapsed since November 2001 was not excessive given the complexity of the matter.

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

In his observations, the complainant maintained his complaint and made the following further comments:

The Commission unfairly called into doubt the admissibility of the complaint.



The Commission wrongly stated that it had fulfilled all its obligations as an employer. In the complainant's view, it was for the employer, that is to say the Commission, to make the appropriate approaches to the Belgian authorities in order to help the language teachers to obtain a retroactive regularisation of their situation and an increase of the amount of their pensions.

The Commission had not considered it appropriate to send the draft joint declaration to the Belgian authorities on the grounds that it might have contained false or incomplete information. However, this declaration had been drafted by the Commission itself after careful consideration.

Between its declaration to the Belgian authorities dated 9 March 2000 and its letter of 7 March 2003, the Commission had not shown concern for the question of the pensions of the language teachers. The Commission failed to deal diligently with the issue at hand.

**Further inquiries** *The request for information to the Commission*

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The European Ombudsman therefore asked the Commission to provide him with information on the following points:

- In its letter to the Belgian authorities of 9 March 2000, the Commission pointed out that, as from September 1998, contracts for 20 hours a week were to be regarded as full-time contracts and that "for obvious reasons of equity", the same should apply for the previous years as from 1986. It appeared that the Belgian authorities did not consider this declaration to be sufficient. The Commission noted that it had subsequently and orally been informed by the Belgian authorities that they also needed a complete list of the hours worked by the teachers. The Commission did not appear to have reacted to this information. The Ombudsman asked the Commission to explain why it considered, in the light of these circumstances, that it had fulfilled all its obligations in this matter.
- The Ombudsman further asked the Commission to explain what steps it had taken to obtain a reply from the Belgian authorities to its letter of 9 March 2000.
- Finally, the Ombudsman asked the Commission whether it had given a follow-up to the draft joint declaration of the teachers and the Commission established in 2001.

*The Commission's reply*

In its reply, the Commission made in summary the following statements:

It was not true that the Commission had not reacted to the information of the Belgian authorities following which the latter also needed a complete list of the hours worked by the teachers. A draft declaration had been made in this sense at the end of 2001. However, as mentioned in its opinion, the Commission had not considered it appropriate to send the declaration to the Belgian authorities on the grounds that it might have contained false or incomplete information.

Concerning the steps the Commission had taken to obtain a reply from the Belgian authorities to its letter of 9 March 2000, a meeting had been held with the latter on 30 March 2000. This meeting had been followed by oral contacts and e-mails between the Commission and the Belgian authorities until May 2001.



A further meeting had been held on 17 July 2003 between the Commission and the Belgian authorities during which a common procedure to be followed had been decided. The Commission had namely proposed, for the period before 1992, to refer to the "*person of reference*" (1) already defined for 2003 and for the period from 1992 to 2003. The Belgian authorities had accepted this proposal provided that the Commission forwarded an official request in this sense.

The Commission had followed its commitments by letters dated 3 and 29 October 2003 to the Belgian authorities in which it had enclosed all the documentation at its disposal. By letter to the Belgian authorities dated 11 November 2003, it had made a further declaration for the period before 1992 following which, when calculating the pension of the language teachers, Belgian authorities should refer to the "person of reference" as defined for 2003 and for the period from 1992 to 2003. The Commission recognised a full-time occupation on the basis of 20 hours a week during 33 weeks, that is to say 660 hours per year for the language teachers.

The Commission had not given a follow-up to the draft joint declaration of the teachers and the Commission established in 2001. As mentioned above, contacts with the Belgian authorities had shown that the draft declaration was likely to mislead the Belgian administration when calculating pensions, to the detriment of the Belgian State.

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

In his further observations, the complainant maintained his allegation. He made the following additional comments:

During the meeting held on 17 July 2003 between the Commission and the Belgian authorities, the Commission had recognised a full-time teaching occupation on the basis of 20 hours a week during 33 weeks, that is to say 660 hours per year for a teacher by taking into consideration the "person of reference". The Belgian authorities had committed themselves to calculating the pension of a teacher on the basis of a full-time occupation if he had worked during 660 hours per year.

However, the Commission had failed to inform him of the further steps it had taken. Despite the meeting of 17 July 2003, no formal modification had taken place as regards the calculation of the language teachers' pensions. The complainant expressly requested that his complaint should not be closed until a formal modification had taken place as regards the calculation of his pension.

#### *The complainant's letter dated 29 June 2004*

On 29 June 2004, the complainant sent a further letter to the European Ombudsman in which he informed him that, on 18 June 2004, the Commission had laid off all the language teachers without any notice. The complainant put forward that this mass lay-off prevented the language teachers from implementing the agreements made between the Commission, the Belgian authorities and the language teachers as regards the calculation of the pensions of the latter

## **THE DECISION**

### **1 Introductory remarks**



1.1 As regards the question of the admissibility of the complaint, it should be noted that Article 2 (4) of the Statute of the European Ombudsman provides that *"a complaint shall be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint (...)"*

1.2 The Ombudsman notes that the complainant alleged that the Commission had failed to declare to the Belgian authorities a 20-hour per week contract as a full-time teaching occupation as regards the period prior to 1998. The Ombudsman understands that there were contacts between the Commission and the language teachers which led to a draft joint declaration in November 2001. The complainant could thus reasonably expect that such a declaration would be sent to the Belgian authorities. When the complainant found out that this had not happened, he decided to turn to the European Ombudsman and lodged a complaint with him on 13 December 2002. The European Ombudsman therefore considers that the complaint was lodged within the period of time set out in Article 2 (4) of the Statute.

1.3 On 29 June 2004, the complainant sent a further letter to the European Ombudsman in which he informed him that, on 18 June 2004, the Commission had laid off all the language teachers without any notice. The complainant put forward that this mass lay-off prevented the language teachers to implement the agreements taken between the Commission, the Belgian authorities and the language teachers as regards the calculation of the pensions of the latter.

1.4 Pursuant to Article 195 of the Treaty establishing the European Community, *"the European Ombudsman shall conduct inquiries for which he finds grounds"*. The European Ombudsman considered that the complainant had not supplied enough supporting evidence concerning his further allegation. Therefore, the European Ombudsman did not consider it appropriate to extend his inquiry so as to cover this further allegation. The complainant could consider renewing his complaint with the European Ombudsman as regards the issue raised in this further letter, after having made the relevant prior administrative approaches to the Commission and if he should not receive a satisfactory reply from the latter within a reasonable time.

## **2 The failure of the European Commission to declare to the Belgian authorities a 20-hour per week contract as a full time teaching occupation**

2.1 The complainant alleged that the Commission had failed to declare to the Belgian authorities a 20-hour per week contract as a full-time teaching occupation.

2.2 The Commission stated that on 9 March 2000, it had sent a declaration to the Belgian Ministry of Employment in which it requested the 20-hour per week contract to be considered as a full-time teaching occupation. The Commission argued that this declaration was also appropriate for the period from 1986 to 1998 and that it had therefore fulfilled all its obligations.

2.3 In his observations, the complainant argued that the Commission wrongly stated that it had fulfilled all its obligations as an employer. In the complainant's view, it was for the employer, that is to say the Commission, to make the appropriate approaches to the Belgian authorities in order to help the language teachers to obtain a retroactive regularisation of their situation and an increase of the amount of their pensions.



2.4 In September 2003, the European Ombudsman asked the Commission to explain why it considered that it had fulfilled all its obligations in this matter. The Ombudsman further asked the Commission to explain what steps it had taken to obtain a reply from the Belgian authorities to its letter of 9 March 2000.

2.5 In its further opinion, the Commission stated that a meeting had been held with the Belgian authorities concerned on 30 March 2000. On 7 March 2003, the Commission contacted the Belgian authorities in order to obtain a reply to its letter dated 9 March 2000. A further meeting had been held on 17 July 2003 during which a common procedure to be followed had been agreed. The Commission considered to have followed its commitments by letters dated 3 and 29 October 2003 to the Belgian authorities in which it had enclosed all the documentation at its disposal. By letter to the Belgian authorities dated 11 November 2003, it had made a further declaration for the period before 1992.

2.6 In his further observations, the complainant recognised that during the meeting held on 17 July 2003 between the Commission and the Belgian authorities, the Commission had declared that a 20 hour per week contract corresponded to a full-time teaching occupation, that is to say 660 hours per year. He pointed out, however, that no modification had intervened as regards the calculation of his pension.

2.7 The Ombudsman notes that the complainant alleged that the Commission had failed to declare to the Belgian authorities a 20-hour per week contract as a full-time teaching occupation. The Ombudsman further notes that the complainant recognised that the Commission had declared that a 20 hour per week contract corresponded to a full-time teaching occupation during the meeting held on 17 July 2003 between the latter and the Belgian authorities. The Commission thus appears to have done what the complainant had wished it to do. The Ombudsman notes that the Belgian authorities do not yet appear to have adjusted the calculation of the complainant's pension accordingly. The complainant has therefore asked the Ombudsman not to close his inquiry before a formal modification has taken place as regards the calculation of his pension. However, the Ombudsman considers that it is for the Belgian authorities to calculate the complainant's pension on the basis of the information provided by the Commission. The Ombudsman would not be in a position to examine the relevant activities of the Belgian authorities, given that his mandate only covers Community institutions and bodies. He considers that this matter could fall within the field of competence of the Belgian Ombudsmen. The Ombudsman therefore concludes that there is no need to pursue further inquiries into this aspect of the complaint.

2.8 However, principles of good administration require that the Commission should deal diligently and within a reasonable period of time with requests of this nature. In the present case, the Ombudsman notes that on 9 March 2000, the Commission sent a declaration to the Belgian Ministry of Employment in which it requested the twenty-hour per week contract to be considered as a full-time teaching occupation. Following its letter, the Commission was informally informed that the Belgian authorities did not consider this declaration to be sufficient and that each of the pension files had to contain, in addition to the attestation of the employer that a twenty-hour per week contract was to be considered as a full-time teaching occupation,



the full list of the number of hours worked by the teachers. A meeting was held on 30 March 2000 with the Belgian authorities. According to the Commission, this meeting was followed by oral contacts and e-mails between the Commission and the Belgian authorities until May 2001. On 7 March 2003, the Commission had contacted the Belgian authorities in order to obtain a reply to its letter dated 9 March 2000. A further meeting was held on 17 July 2003 between the Commission and the Belgian authorities during which a common procedure to be followed was decided.

2.9 The Ombudsman notes that the Commission has not provided any specific information on the meeting dated 30 March 2000, the oral contacts and e-mails exchanged between it and the Belgian authorities until May 2001 and the letter dated 7 March 2003 in which it had contacted the Belgian authorities in order to obtain a reply to its letter dated 9 March 2000. However, even on the assumption that the approaches described by the Commission could be regarded as sufficient in the present context, the fact remains that the Commission has not given any explanation as regards its lack of action between May 2001 and March 2003. In these circumstances, the Ombudsman concludes that the Commission has failed to deal diligently and within a reasonable period of time with the issue at hand. This constitutes an instance of maladministration, and a critical remark will be made in this regard.

### **3 The complainant's claim**

3.1 The complainant claimed that the pensions of the teachers who worked during this period should have been calculated on the basis of a full time contract.

3.2 The Commission did not comment on these claims.

3.3 As far as the calculation of the complainant's pension is concerned, the Ombudsman considers (as mentioned above) that this is the responsibility of the Belgian authorities. The complainant should therefore refer to the Belgian National Pension Office in relation to this claim.

### **4 Conclusion**

4.1 On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

Principles of good administration require that the Commission should deal diligently and within a reasonable period of time with requests of this nature. In the present case, the Commission has not given any explanation as regards its lack of action between May 2001 and March 2003. In these circumstances, the Ombudsman concludes that the Commission has failed to deal diligently and within a reasonable period of time with the issue at hand. This constitutes an instance of maladministration.

4.2 In the light of the Ombudsman's conclusion as regards the complainant's claim (see point 3(3) above) and given that the Commission has made the declaration to the Belgian authorities, which the complainant recognised in his further observations, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

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



Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Under Belgian Law, a "person of reference" is the person who works on a full-time basis in the same firm or branch of activity, at the same post as the worker concerned, and who is supposed to work the same number of days as the worker concerned.