

## **Decision of the European Ombudsman on complaint 160/2003/ELB against the European Commission**

Decision

**Case 160/2003/ELB - Opened on 18/02/2003 - Decision on 27/11/2003**

Strasbourg, 27 November 2003

Dear Mr X.,

On 20 January 2003, you made a complaint to the European Ombudsman concerning your complaint to the Commission against France concerning the conditions affecting the health of the personnel in the swimming pool of a French town where you were working.

On 18 February 2003, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 16 May 2003. I forwarded it to you with an invitation to make observations, which you sent on 27 June 2003.

You sent additional documentation on 12 February 2003, 4 March 2003, 13 March 2003, 29 March 2003, 16 April 2003, 6 May 2003, 19 June 2003, 11 August 2003 and 16 October 2003.

You contacted my services by phone on 3 February 2003, 2 June 2003, 16 June 2003, 30 June 2003 and 16 July 2003.

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

### **THE COMPLAINT**

According to the complainant, the facts are, in summary, as follows :

The complainant worked as swimming instructor in the public swimming pool of a French town. He contracted an occupational disease because of the poor state of the swimming pool.

On 11 March 2002, he addressed a complaint to the Commission against France about the conditions affecting the health of the personnel of the swimming pool.

The complainant contacted the Commission on several occasions, notably on the following dates :



- On 24 April 2002, the complainant sent a letter to the Commission in which he drew attention to the direct or indirect involvement of a Commissioner in his case.

- On 2 May 2002, the complainant wrote to Commissioner W. requesting his help to find a solution to his situation.

- On 26 June 2002, the complainant wrote to the Commission explaining that his case was not isolated.

- On 12 August 2002, the complainant informed the Commission that he had brought an action before the European Court of Human Rights. He also informed the Commission that the Mayor of the French town had recognised, in a letter addressed to the complainant on 26 June 2002, his responsibility, as well as that of the Region, the European Commission, French administrative services and the Ministry of Justice.

- On 20 September 2002, the complainant sent additional evidence that his case was not isolated and asserted that the Commission is involved and that by refusing to open an infringement procedure it deprives swimming instructors of the means to be cured and of the possibility that their illness can be recognised as an occupational disease.

- On 4 March 2003, the complainant lodged a complaint against a Commissioner for non-compliance with the Code of Good Administrative Behaviour.

- On 13 March 2003, the complainant expressed his dissatisfaction with the letter from the Commission of 5 February 2003. He considers that illnesses due to chloramines should be prevented rather than compensated for.

On 20 January 2003, the complainant lodged a complaint with the European Ombudsman against the Commission, alleging that the Commission failed to deal properly with his complaint because of the role of Commissioner W. in the case.

## **THE INQUIRY**

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

The Commission's opinion can be summarised as follows :

A letter was sent to the complainant on 12 April 2002 regarding the complainant's allegations on the widespread nature of an infringement by France concerning health protection and security of workers in swimming pools, notably the non-recognition as occupational diseases of illnesses linked to chloramines. It announced the Commission's intention to close the case unless new elements were presented, because the facts transmitted by the complainant to the Commission were subject to a legal action before French courts.

On 22 April 2002, the complainant sent additional information to the Commission and indicated



that the case had been dismissed by the French court.

On 24 April 2002, the complainant wrote to President of the Commission.

On 30 April 2002, the Commission acknowledged receipt of the complainant's letter of 22 April 2002.

On 7 May 2002, the complainant sent additional information.

On 28 May 2002, the Commission replied to the complainant's letters of 18, 22 and 24 April 2002 confirming the letter of 12 April 2002.

On 13 June 2002, the Commission replied to the complainant's letter of 7 May 2002.

On 19 July 2002, the Commission acknowledged receipt of the complainant's letter of 26 June 2002.

On 29 July 2002, the Commission acknowledged receipt of the complainant's letter of 6 June 2002.

On 26 August 2002, the Commission requested that the complainant confirm the nature of annex 6 to his letter of 6 July 2002.

On 12 August 2002, the complainant wrote to the President of the Commission and received a reply on 12 September 2002.

On 20 September 2002, the complainant wrote to the Commission drawing attention to the widespread nature of this problem in France. The Commission replied on 21 October 2002 stating that additional information would be requested from France. The Commission wrote to this effect to the Permanent Representation of France on 25 October 2002 and 22 January 2003.

On 10 December 2002, the Commission replied to the complainant's letter of 23 October 2002, informing him of the request addressed to the French authorities.

On 21 January 2003, the Commission acknowledged receipt of the four letters sent by the complainant on 20 December 2002 and 6 January 2003 and summarised its position as follows. Regarding the particular case of the complainant, notably his health problems and his professional situation, the Commission is not competent. It is for the French national authorities to make the appropriate decisions. Regarding the widespread nature of the problem which may be due to a bad enforcement of Community law, the Commission requested additional information from France.

On 3 February 2003, the Commission replied to the complainant's letter dated 6 January 2003.



On 28 February 2003, the Commission replied to the complainant's letter of 4 February 2003.

On 5 March 2003, the Commission informed the complainant of the reply of the French authorities. They stated that steps had been taken to recognise illnesses linked to chloramines as occupational diseases giving an entitlement to compensation. A decree of 11 February 2003 modified the lists of occupational diseases. The Commission also explained to the complainant its intention to close the case.

In conclusion, the Commission considers that it replied to every letter of the complainant and that he was kept informed of the ongoing process with the French authorities. The last letter of 5 March 2003 sent by the Commission to the complainant shows that the steps taken by the Commission led to the recognition of illnesses linked to chloramines as occupational diseases.

Regarding the complainant's allegation that the Commission failed to deal appropriately with his complaints because of the role of Commissioner W., the Commission points out that the Commissioner replied on 3 June 2002 to a letter of 2 May 2002 from the complainant and explained that the national authorities were competent for implementing European Communities Directives.

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

In his observations, the complainant made, in summary, the following points.

The steps taken by the Commission with the French authorities show that there is bad enforcement of Community law. Moreover, the complainant draws attention to the fact that the recognition of an occupational disease does not lead to compliance with the Directives. The handling of his complaints shows many weaknesses. He still has no means to be cured. Furthermore, he received no reply from the Commission following a letter dated 12 April 2002 from OLAF. OLAF informed the complainant that it was not competent and had transferred the file to the competent service of the Commission.

## **THE DECISION**

### **1 Preliminary remarks**

1.1 In the observations on the opinion sent by the Commission, the complainant makes a new allegation. In substance, he alleges that the Commission failed to reply following a letter from OLAF to the complainant, whereby OLAF informed the complainant that the file had been transferred to the competent service of the Commission.

1.2 The Ombudsman notes that this allegation was not included in the original complaint. The Ombudsman considers that it would not be justified to delay a decision on the original complaint in order to inquire into this new allegation.

1.3 The complainant could make a new complaint to the Ombudsman concerning the new allegation, if he considers it useful to do so.

1.4 In a letter dated 16 October 2003, the complainant wishes that the European Ombudsman



request from the French Ombudsman the organisation of a mediation in his case. However, it appears that the French Ombudsman could already have been contacted concerning this case following a letter sent by a Member of Parliament to the departemental Delegate of the French Ombudsman. In view of the particular circumstances of the present case, the Ombudsman takes the view that the procedure initiated with the Delegate of the French Ombudsman is the most appropriate for the complainant.

## **2 Alleged failure by the Commission to deal properly with the complaint**

2.1 The complainant alleges that the Commission failed to deal properly with his complaint because of the role of Commissioner W. in the case.

2.2 The Commission argues that it replied to every letter from the complainant and kept him informed of the ongoing process with the French authorities. Furthermore, the steps taken by the Commission led France to recognise illnesses linked to chloramines as occupational diseases. Moreover, the Commissioner replied on 3 June 2002 to the complainant's letter of 2 May 2002 and explained that the national authorities were competent for implementing European Communities Directives.

2.3 The Ombudsman recalls that, in accordance with the Commission Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (1), the Commission undertook to inform the complainant of the action taken in response to a complaint and of the outcome of the investigation.

2.4 The Ombudsman notes that there was an extensive correspondence between the complainant and the Commission and that the latter kept the complainant informed about the action taken and the outcome of the investigation. The Ombudsman also notes that the steps taken by the Commission led to the recognition in France of illnesses linked to chloramines as occupational diseases. Furthermore, the Ombudsman's inquiry has revealed no evidence to justify the complainant's allegations concerning the role of Commissioner W. Therefore, there appears to have been no maladministration in the way the Commission dealt with the complainant's complaint.

## **3 Conclusion**

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) COM(2002)141 final, OJ 2002 C 244, p. 5.