



## Decision of the European Ombudsman on complaint 345/2003/OV against the European Commission

Decision

**Case 345/2003/OV - Opened on 04/03/2003 - Decision on 03/11/2004**

Strasbourg, 3 November 2004

Dear Mrs B.,

On 13 February 2003, you made a complaint to the European Ombudsman against the Commission concerning the pensions of language teachers working at the European Commission. Your complaint raises the same facts as complaints 2137/2002/MF and 2204/2002/(FA)MF made by other language teachers.

On 4 March 2003, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 28 April 2003, referring to its opinion in case 2137/2002/(FA)MF. I forwarded it to you with an invitation to make observations, which you sent on 26 June 2003.

On 29 September 2003, I asked the Commission for further information in relation to your complaint and the two other complaints. 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 30 January 2004.

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 case.

### THE COMPLAINT

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

The complaint concerns the pension of language teachers working for the Commission under a Belgian contract of employment of indeterminate duration. The complainant herself has been a language teacher at the Commission since 1978 and has worked under the above contract since 1984. The complainant works 20 hours per week.

The Belgian Ministry of Employment and Pensions has on several occasions indicated that an occupation of teaching 20 hours per week can be considered as a full-time employment on the condition that the employer makes a declaration to this effect to the competent Belgian authorities. The situation concerning the pensions of the language teachers at the Commission has been on the agenda for several years. However, the Commission has not taken any clear decision on the matter.



As a representative of the teachers, the complainant has raised this matter since 1997 in several internal and inter-institutional meetings. The new representatives of the teachers have brought the matter to the attention of the cabinets of Commissioners Diamantopoulou and Kinnock.

In July 2001, the Commission representatives confirmed that the Commission was ready to regularise the situation. They drafted a declaration for the attention of the Director General of the Belgian Ministry of Employment. Notwithstanding this undertaking, the Commission never sent the said declaration to the Belgian Ministry.

On 13 February 2003, the complainant lodged the present complaint with the Ombudsman:

1. The complainant alleged that the Commission has failed to submit to the Belgian Ministry of Employment a declaration according to which a twenty-hour week is considered as a full-time teaching occupation.
2. She claims that the Commission should rectify the situation concerning her pension by recognising her 20 hours weekly working load as a full-time contract since 1992 and as a 75 % part-time contract for the period 1986-1992.

#### THE INQUIRY **The Commission's opinion**

In its opinion, the Commission observed that the complaint concerned exactly the same facts as complaint 2137/2002/(FA)MF which had been submitted by Mr Y. in the name of all language teachers of the Commission. The Commission therefore referred to its opinion in this case which 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 in 1984 and became the norm in 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 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 sent a declaration to the Belgian Ministry of Employment in which it requested that the twenty-hour per week contract 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 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 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. 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. Up to 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**

The complainant observed that, although her complaint is identical to the case submitted by Mr Y. (2137/2002/(FA)MF) on behalf of all the language teachers, she wanted to bring it to the Ombudsman's attention as she will retire in June 2004. For the rest, the complainant aligned her observations on those made by Mr Y. which were, in summary, as follows:

The Commission remained vague in its opinion on the complaint. 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 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.

The complainant herself made the following additional remark about the Commission's comment that the language teachers had to contact on an individual basis the Belgian authorities in order to obtain an increase in their pension. The complainant contacted the legal department of the Belgian National Social Security Office which answered that only the employer can intervene.

#### **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. 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 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*

The complainant observed that the Commission remained ambiguous in its position and



therefore again referred to the further observations made by Mr Y. in case 2137/2002/(FA)MF which were, in summary, as follows:

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 the complainant 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 reiterated that she will retire on 1 June 2004 and that she will be in a critical financial situation if the rectification of her pension calculation is not quickly settled. She asked the Ombudsman not to close the case.

#### 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, she decided to turn to the European Ombudsman and lodged a complaint with him on 13 February 2003. The European Ombudsman therefore considers that the complaint was lodged within the period of time set out in Article 2 (4) of the Statute.

#### **2 The alleged failure 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 has failed to submit to the Belgian Ministry of Employment a declaration according to which a twenty-hour week is considered 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 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 her observations, the complainant submitted, with regard to the Commission's comment that the language teachers have to contact on an individual basis the Belgian



authorities in order to obtain an increase in their pension, that she had contacted the legal department of the Belgian National Social Security Office which had replied on the contrary that only the employer could intervene.

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 had 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 her further observations, the complainant observed that, despite the meeting of 17 July 2003, no formal modification had taken place as regards the calculation of the language teachers' pensions. The complainant reiterated that she will retire on 1 June 2004 and that she will be in a critical financial situation if the rectification of her pension calculation is not quickly settled.

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 her 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 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 claim for rectification of the complainant's pension situation**

3.1 The complainant claims that the Commission should rectify the situation concerning her pension by recognising her 20 hours weekly working load as a full-time contract since 1992 and as a 75 % part-time contract for the period 1986-1992.

3.2 The Commission did not comment on this claim.

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 her further observations, it is not





appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The President of the 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.