

Decision of the European Ombudsman on complaint 1319/2003/ADB against the European Commission

Decision

Case 1319/2003/ADB - Opened on 05/09/2003 - Decision on 13/09/2004

The complainant is a Commission official who submitted fifteen letters or notes to the Commission, including a number of requests or complaints based on Article 90 of the Staff Regulations for officials of the European Communities. Part of this correspondence concerned the drawing up of the complainant's staff report. According to Article 43 of the Staff Regulations officials shall be subject to such a report at least once every two years.

In her complaint to the Ombudsman, the complainant alleged that with only few exceptions, all her requests or complaints had not been dealt with in a satisfactory way. She also alleged that there were delays in drawing up her staff report which according to her should have been finalised by 31 December 2001.

The Commission took the view that it had replied to all the complainant's communications within the statutory time limits and there was no evidence of systematic delay and incompetence. As regards the drawing up of the staff report the Commission admitted that there had been a slight delay. However, according to the judgement of the Court of First Instance in case *Liao v. Council*, the Appointing Authority could not be held responsible for any further delay in drawing up a staff report which may result from the official's appealing to the Joint Committee on Staff Reports. In the present case, the complainant had made use of this possibility.

The Ombudsman noted that from the documents at his disposal the Commission had failed to reply to several letters and replied with significant delay to others. This constituted an instance of maladministration. Furthermore the Ombudsman also noted that the staff report had been actually finalised nearly 7 months after the deadline foreseen in the implementing provisions as regards article 43 of the Statute of 15 May 1997. As held by the Court of First Instance in its judgement of 7 May 2003, *Lavagnoli v Commission*, the Commission was bound by the precise timetable set in the implementing provisions. The judgement cited by the Commission, *Liao v. Council*, was only to be understood in cases where no timetable had been set. The Commission's failure to abide by the precise timetable therefore constituted an instance of maladministration.

The Ombudsman shall, when he finds that there has been maladministration, as far as possible seek a solution with the institution or body concerned to eliminate the instance of



maladministration. However, in the present case this possibility was expressly excluded by the complainant. The Ombudsman therefore closed the case by addressing two critical remarks to the Commission.

In reaction to these critical remarks, the Commission informed the Ombudsman that it had taken note of his decision, that in the future it shall not treat its staff differently from any other citizen and that the timetable foreseen for the drawing up of a staff report shall be respected.

Strasbourg, 13 September 2004

Dear Ms S.,

On 18 July 2003, you made a complaint to the European Ombudsman concerning the European Commission's alleged failure to reply to correspondence.

On 5 September 2003, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 11 December 2003. I forwarded it to you with an invitation to make observations, which you sent on 8 February 2004. On 14 May 2004, you informed me that you did not want your complaint to be confidential anymore.

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

THE COMPLAINT

Background

According to Article 45 of the Staff Regulations of officials of the European Communities, promotion shall be granted "after consideration of the comparative merits of the officials eligible for promotion and of the reports on them". Article 43 of the Staff Regulations provides that officials shall be subject to a periodic report on their ability, efficiency and conduct in the service at least once every two years.

The Commission's implementing provisions as regards article 43 of the Staff Regulations regarding the drawing up of the staff report as well as a communication to the staff by the Commission's Director General for Personnel of 7 June 2001 contained a timetable for the staff report procedure for the Commission's staff in 2001. The timetable was shorter for staff eligible for promotion in 2001.

The complainant is a Commission official. Believing that she was eligible for promotion in 2001, she was concerned by the fact that the staff report procedure in her case had not been started in accordance with the foreseen timetable. The complainant therefore contacted the Appointing Authority.

The complainant also wished to draw the Commission's attention to alleged infringements of the legislation on the protection against radiation and on the legislation on dangerous goods by the Institute for Transuranium Elements (1) in Karlsruhe (hereafter ITU) and therefore addressed further correspondence to the Commission.



The complainant submitted fifteen letters or notes to the Commission, including a number of requests or complaints based on Article 90 (2) of the Staff Regulations for officials of the European Communities (hereafter article 90).

According to the complainant, her correspondence with the Commission included letters of 26 September 2001 (request based on article 90), 25 October 2001, 26 October 2001 (request based on article 90), 23 November 2001 (request based on article 90), 29 November 2001, 13 December 2001 (complaint based on article 90), 14 December 2001, 7 January 2002, 12 March 2002 (complaint based on article 90), 18 March 2002 (complaint based on article 90), 16 September 2002 (complaint and request based on article 90), 16 October 2002 (request based on article 90), 27 February 2003 (request based on article 90), 28 February 2003 (two complaints and one request based on article 90) and 14 July 2003.

Complaint

In her complaint to the Ombudsman, the complainant alleged that with only few exceptions, all her requests or complaints had not been dealt with in a satisfactory way. She made the following allegations:

- 1 The complainant's letters received either a late reply or no reply at all;
- 2 The handling of the complainant's requests or complaints revealed systematic delay and incompetence;
- 3 There were delays in drawing up the complainant's staff report and these delays were considered as normal.

The complainant claimed that the Commission should remedy this situation.

In her complaint, the complainant submitted two further allegations, numbered 4 and 5 on the complaint form, namely:

- 4 The high officials' failure to abide by regulations was neither noticed nor sanctioned by the administration;
- 5 Officials who do not speak French were systematically discriminated against by the Directorate General Personnel and Administration.

Allegation 4 appeared to be unclear. Regarding allegation 5, it appeared that no prior administrative approaches to the Commission had been made by the complainant. The Ombudsman therefore informed the complainant and the Commission that allegations 4 and 5 would not form part of his inquiry.

THE INQUIRY

The Commission's opinion



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

The complainant's requests and complaints sent to the Commission concerned three different aspects:

- I. the complainant's own administrative position;
- II. the alleged infringement of radiation protection legislation or dangerous goods legislation by the ITU staff;
- III. the allegations related to what the complainant called "the Sellafield case".

The deadlines foreseen in article 90 did not concern the so-called "whistleblowing" which would appear to apply to aspects II. and III. The Commission's decision as regards "whistleblowing" (3) foresees that the official has to inform the Commission of possible wrongdoings before informing the Ombudsman or the European Parliament. The Commission should be given sufficient time to take the appropriate measures in respect of the alleged facts. No definite period of time for the reaction is foreseen for this procedure. It may vary from one case to another because of the complexity of the facts alleged.

1. Alleged delays in replying or failure to reply to letters.

The complainant's requests of 26 September 2001, 26 October 2001, 23 November 2001 and the correspondence of 13 December 2001, described as a complaint by the complainant, were linked to the drawing up of her staff report for the period July 1999 to June 2001 and to the promotion procedure to grade A5 in 2001. In view of the fact that the issues at stake in the complainant's requests and complaint were closely related, the reply of 9 January 2002 to the supposed complaint of 13 December 2001 also constituted a reply posted in due time for the complainant's three requests.

Two complaints of 12 and 18 March 2002 were dismissed on 3 June 2002, i.e. within the four-month time limit. The latter decision also made reference to the complainant's letters of 26 September 2001, 26 October 2001, 23 November 2001 and 13 December 2001 and as a matter of courtesy gave a reply on their substance.

A complaint of 16 September 2002 was dismissed on 7 February 2003, i.e. 13 days after the expiry of the four-month deadline which started to run on the date of registration, the 26 September 2002.

2. Alleged systematic delay and incompetence in the handling of requests and complaints.

Requests of 26 September 2001, 26 October 2001 and 23 November 2001

In her request of 26 September 2001, the complainant considered that the Commission was late in drawing up her staff report for 1999-2001 and that this delay would have negative consequences for her promotion prospects in 2001. The request of 26 October 2001 concerned a note sent by Directorate-General Environment to Directorate-General Taxation and Customs Union. Finally, the request of 23 November 2001 repeated the previous requests.

However, since the deadline for the drawing up of staff reports was 31 December 2001 and the



complainant was for statutory reasons not eligible for promotion in 2001 (the complainant had not completed the minimum period in her grade that would allow her to be promoted, see Article 45 of the Staff Regulations (4)) the request of 26 September 2001 was premature and unfounded.

Since the Appointing Authority had four months to reply to the requests of 26 September 2001 and 26 October 2001, the request of 23 November 2001, which repeated the previous requests, was also premature and unfounded.

The subject matter of these requests being closely related to a subsequent complaint dated 13 December 2001, the reply to the latter also constituted a reply to the requests of 26 September 2001, 26 October 2001 and 23 November 2001. The complainant's requests therefore received a reply within the four-month time limit foreseen by the Staff Regulations. Abiding by the time limits foreseen by the Staff Regulations cannot be considered as maladministration by the European Commission.

Complaint of 13 December 2001

This letter described as a complaint by the complainant concerned the complainant's position on the list of promotion for 2001.

However, in 2001 the complainant was not eligible for promotion. Due to an unfortunate error, which should not have misled a diligent official who is deemed to know the Staff Regulations, the Commission's SYSPER data bank indicated the opposite. On 9 January 2002, the supposed complaint of 13 December 2001 received a reply and it was acknowledged that the data bank contained wrong information.

Complaints of 12 and 18 March 2002

The complainant handed in two complaints in accordance with article 90(2) of the Staff Regulations, one on 12 March 2002 (ref. R/219/02) and another one on 18 March 2002 (ref. R/214/2002). The first complaint was directed at an alleged delay in drawing up the complainant's staff report and an alleged failure to reply to the request of 26 September 2001. The second complaint was directed against flaws in the management of her personal file by the Commission's administration and delays in correcting her personal file. The complainant alleged an infringement of article 26 of the Staff Regulations.

On 3 June 2002 the Commission decided, thereby dismissing both complaints, that the delay in establishing the staff report was minimal and had no influence on the complainant's career, that the complainant should have been aware that the information contained in the data bank about her eligibility for promotion was wrong, that for procedural reasons the disciplinary measures requested by the complainant against the responsible officials could not be taken and that the allegation of an infringement of article 26 of the Staff Regulations lacked evidence.

Complaint and request of 16 September 2002

On 16 September 2002, the complainant submitted a request (D/538/02) and a complaint (R/481/02) pursuant to article 90(1) and 90(2), respectively, of the Staff Regulations. The complaint was registered on 26 September 2002. In this complaint, the complainant repeated earlier complaints and requests and contested the decision of the Secretary-General of the Commission to confirm her staff report. The complainant alleged that her staff report for



1999-2001 was less favourable than the one for 1997-1999. The complainant also asked the Commission to open an administrative inquiry in relation to alleged infringements of the legislation on the protection against radiation and of the legislation on dangerous goods by the ITU staff.

On 7 February 2003, complaint R/481/02 was dismissed in so far as the complainant had repeated claims which had already been dismissed on 3 June 2002. Furthermore, the Appointing Authority also considered that the staff reports for 1997-1999 and for 1999-2001 could not be compared since they referred to different duties, and different supervisors.

3. Alleged delays in drawing up the complainant's staff report.

There had been a slight delay in drawing up the complainant's staff report, which was finalised by the appeal assessor on 22 February 2002. However, this had had no effect on the complainant's career since she was promoted to an A5 grade post in 2002 and since according to the judgement of the Court of First Instance in case *Liao v. Council* (5) , the Appointing Authority could not be held responsible for any further delay in drawing up a staff report which may result from the official's appealing to the Joint Committee on Staff Reports. In the present case, the complainant had made use of this possibility.

Conclusion

The Commission had replied to all the complainant's communications within the statutory time limits and there was no evidence of systematic delay and incompetence. Although the communication regarding the error made in the data bank as to the complainant's seniority could have been clearer or further clarified at the complainant's request, the Appointing Authority was entitled to expect officials, especially officials with a fairly high grade, to read letters with due attention and an open mind.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In her reply of 8 February 2004, the complainant maintained her complaint and in summary stated the following:

1. Alleged delays in replying or failure to reply to letters.

The reply of 9 January 2002, which the Commission considered as also replying to the requests of 26 September 2001 and 23 November 2001, did not refer to these requests. Furthermore, while these requests concerned the staff report procedure, the reply of 9 January 2002 concerned the promotion procedure. The Commission's failure to reply to these requests constituted an instance of maladministration.

The request of 26 October 2001 was a request for access to a note transmitted by Directorate-General Environment to Directorate-General Taxation and Customs Union. It contained false information discrediting the complainant. It did not concern the promotion procedure, as argued by the Commission, and the Commission could therefore not sustain that it had implicitly replied to it on 9 January 2002. The Commission's failure to reply to the request of 26 October 2001 constituted an instance of maladministration.

The requests of 26 September 2001, 26 October 2001 and 23 November 2001 only received a reply in a decision of 3 June 2002. The Commission did not apologise for this excessive delay.



Furthermore, as put forward in the complaint, four letters inquiring about the proper registration of the requests of 26 September 2001 and 26 October 2001 remained unanswered.

The reply to the complaint of 13 December 2001 was not part of the complaint lodged with the Ombudsman insofar the Commission provided an acceptable reply in due time.

The reply to the complaint of 16 September 2002 had been late.

2. Alleged systematic delay and incompetence in the handling of requests and complaints.

Requests of 26 September 2001 and 23 November 2001

The Commission not only failed to reply to these requests in due time, but it took no measures to make sure that the official in charge of drawing up the staff report in question abode by the timetable set out in the implementing provisions of article 43 of the Staff Regulations.

Complaints of 12 and 18 March 2002

The Commission did indeed reply to the complaints of 12 and 18 March 2002 in due time.

However, the substance of the reply rejecting the allegations contained in the complaints were not correct. Both the delays in drawing up the staff report and the failure to inform her in due course of changes in her personal file amounted to maladministration.

Complaint of 16 September 2002

The Commission's reply of 7 February 2003 was late and unsatisfactory.

Requests of 16 September 2002, 16 October 2002 and 28 February 2003

The requests concerned alleged infringements of the radiation protection legislation and the dangerous goods legislation. The question whether a complaint should be classified as pertaining to article 90(1) of the Staff Regulations or to Commission Decision C/2002/845 of 4 April 2002 on "whistleblowing" was not clear. The Commission itself, in its correspondence regarding the request of 16 September 2002 referred to article 90(1) of the Staff Regulations. In any case, the Commission would either have been bound by the four-month deadline foreseen by the Staff Regulations or by the duty to inform the complainant in due time, as provided for in article 2(2) of the Commission Decision on raising concerns about serious wrongdoings. The Commission abode by neither of these provisions. This was an instance of maladministration.

Conclusion

The delays in replying, the failure to reply or the errors made in connection to the correspondence were clear indications of systematic delays in the procedures and of the incompetence of the responsible services within the Commission.

3. Alleged delays in drawing up the complainant's staff report.

The Commission had set a precise timetable for each step of the procedure leading to the drawing up of staff reports. The timetable was contained in the implementing provisions of article 43 of the Staff Regulations and in a communication to the staff by the Commission's Director General for Personnel of 7 June 2001. In the same communication, the staff members were invited to alert their hierarchy in case of delays. According to the timetable, the first draft report should have been available at the latest on 30 July 2001 and the whole procedure should have been finalised on 31 December 2001. For staff eligible for promotion in 2001 the whole procedure should have been finalised on 30 September 2001. In the present case, the first draft report was dated 4 October 2001, while the staff report was finalised on 24 July 2002. The hierarchy had been duly alerted of delays at various steps of the procedure.



On 26 September 2001 and 23 November 2001, in the absence of appropriate reactions and in view of the disregard expressed by the hierarchy for the timetable set by the implementing provisions, two requests based on Article 90 had been sent to the Appointing Authority. The Commission had neither reacted to these requests, nor to the allegations regarding the delays in the procedure. Contrary to the Commission's assumptions, and as the Court of First Instance had held in a judgement of 7 May 2003, the timetable contained in the implementing provisions was compulsory.

The delays in the staff report procedure and the failure to address the allegations raised in the requests constituted instances of maladministration.

Conclusion

The complainant concluded by saying that no friendly solution could possibly be achieved for the cases of maladministration set out above. She therefore called upon the Ombudsman to conclude the case with critical remarks and, in the future, to consider investigating the systemic malfunctioning of the Commission's administration on a broader basis.

THE DECISION

1 Preliminary remark

1.1 In her observations on the Commission's opinion, the complainant made a new allegation against the Commission, namely that the substance of the replies sent to her by the Commission was not correct.

1.2 The allegations made by the complainant in her original complaint relate to the formal aspect of the Commission's handling of her correspondence. The new allegation made by the complainant in her observations concerns the substance of the replies provided by the Commission and would therefore require additional inquiries. In order to avoid delaying the decision on the original allegations, the new allegation will not be dealt with in the present decision. It could however be the object of a new complaint submitted by the complainant.

2 Alleged delays in replying or failure to reply to letters

2.1 The complainant alleged that the letters she had sent to the Commission received either a late reply or no reply at all.

2.2 The Commission argued that it had replied to the complainant's correspondence within the statutory time limits or with only slight delays.

2.3 The Ombudsman notes that between 26 September 2001 and 18 July 2003, the date on which the complainant lodged a complaint with the Ombudsman, the complainant sent nine letters to the Commission containing requests or complaints pursuant to article 90(1) and 90(2) respectively of the Staff Regulations. During the same period of time, the complainant sent 4 other letters (letters of 25 October 2001, 29 November 2001, 14 December 2001, 7 January 2002) inquiring about the proper registration of the requests of 26 September 2001 and 26 October 2001. According to the complainant, these 4 letters received no reply and 6 out of the 9 letters containing requests or complaints received a late reply (letters of 26 September 2001, 26 October 2001, 23 November 2001, 16 September 2002, 16 October 2002, 28 February 2003).



2.4 As regards requests or complaints based respectively on article 90(1) or 90(2) of the Staff Regulations the authority shall, according to these provisions, notify the person concerned of its reasoned decision within four months from the date on which the request was made or the complaint was lodged. If at the end of that period no reply to the request or complaint has been received, this shall be deemed to constitute an implied decision rejecting it. This last rule is meant to establish a possibility to a legal remedy to an official, even when an authority does not follow its legal obligations. It does not in any way give the right to the authority to depart from its obligation to follow good administrative behaviour.

2.5 The Commission put forward that the requests of 26 September 2001, 26 October 2001 and 23 November 2001 had received an implicit reply in the letter of 9 January 2002 concerning the complainant's eligibility for promotion in 2001. However, the Ombudsman notes that the requests of 26 September 2001, 26 October 2001 and 23 November 2001 were not mentioned in the Commission's letter of 9 January 2002. In its decision of 3 June 2002 to the complainant, the Commission itself stated that no reply had been provided to the requests of 26 September 2001, 26 October 2001 and 23 November 2001. It would thus appear that the three requests in question were only answered on 3 June 2002 and thus outside the four-month time limit foreseen by the Staff Regulations. This constitutes an instance of maladministration.

2.6 As regards the complainant's letters of 25 October 2001, 29 November 2001, 14 December 2001 and 7 January 2002, the Ombudsman notes that they related to the registration of the requests of 26 September 2001 and 26 October 2001 and never received a reply. The Commission does not appear to have provided the Ombudsman with an explanation regarding its failure to reply in these cases. Given the importance of the registration for the deadlines in the procedure, the Ombudsman considers that the Commission should have replied to the complainant's inquiries. The Commission's failure to provide a response to the complainant's letters of 25 October 2001, 29 November 2001, 14 December 2001 and 7 January 2002 thus constitutes a further instance of maladministration.

2.7 According to the information at the Ombudsman's disposal, the letters of 16 September 2002, 16 October 2002 and 28 February 2003 containing requests and complaints pursuant to article 90 received a reply after more than four months, i.e. respectively on 11 February 2003, 6 March 2003, 31 July 2003. The Commission argued that they related to whistleblowing and that the four-month deadline was therefore not applicable. In view of the fact that the Commission registered these letters as requests and complaints pursuant to article 90, that they were dealt with as such, and that the Commission does not appear to have informed the complainant at the time that it considered the four-month deadline not to be applicable, the Commission's arguments do not appear to be a suitable explanation for the delays that occurred. The Commission's should have provided the complainant with a reply in due time and where applicable informed her that the procedure she had chosen was not appropriate. The failure to do constitutes an instance of maladministration.

2.8 From the documents at hand it thus emerges that the Commission failed to reply to the letters of 25 October 2001, 29 November 2001, 14 December 2001 and 7 January 2002 and, in



certain cases, replied with significant delay to the letters of 26 September 2001, 26 October 2001, 23 November 2001, 16 September 2002, 16 October 2002 and 28 February 2003 sent by the complainant. This constitutes an instance of maladministration. A critical remark will therefore be made in this respect.

3 Alleged systematic delaying and incompetence in the handling of requests and complaints

3.1 The complainant alleged that the handling of her requests or complaints revealed systematic delay and incompetence.

3.2 The Commission argued that part of the complaints and requests were premature and unfounded but that all received an answer within the statutory time limits or with a slight delay. In certain cases, the four-month time limit foreseen by article 90 did not apply, insofar as the procedure chosen by the complainant was the wrong one and related to the "whistleblowing" procedure in which the four-month time limit was not applicable. The Commission considered that there was no evidence of systematic delay and incompetence.

3.3 In view of the findings in point 2. above, there appears to be no need further to investigate this aspect of the complaint.

4 Alleged delays in drawing up the complainant's staff report

4.1 The complainant alleged that the drawing up of her staff report for the period of time 1999-2001 was delayed.

4.2 The Commission admitted that there had been a slight delay in the drawing up of the complainant's staff report, which was finalised by the appeal assessor on 22 February 2002. However the Commission also emphasised that this had had no effect on the complainant's career since she was promoted to an A5 grade post in 2002 and that according to the judgement of the Court of First Instance, *Liao v. Council*, the Appointing Authority could not be held responsible in case of any delay in drawing up a staff report which may result from the official's appealing to the Joint Committee on Staff Reports.

4.3 The Ombudsman notes that the Commission has admitted delays in the procedure leading to the drawing up of the complainant's staff report. According to the information at the Ombudsman's disposal, the appeal assessor decided upon the complainant's staff report on 22 February 2002. The complainant then appealed to the Joint Committee on Staff Reports, which delivered its opinion on 17 July 2002. The appeal assessor finalised the staff report on 24 July 2002.

4.4 In the present case, according to the implementing provisions of article 43 of the Staff Regulations regarding the drawing up of the staff report of 15 May 1997, and given that the complainant was not eligible for promotion, the whole procedure, including the appeal procedure involving the Joint Committee on Staff Reports and the final decision of the appeal assessor, should have been finalised by 31 December 2001. It was actually finalised nearly 7 months after this deadline.

4.5 In its judgement of 7 May 2003 in the case *Lavagnoli v Commission* (6), the Court of First



Instance has held that according to the case law *Liao v. Council* (7) , judgement of 6 November 1997 and *Ditterich v. Commission* (8) , judgement of 1 December 1994, which derived from the judgement *Ditterich v. Commission* (9) of 5 May 1983, the institution had a reasonable period of time at its disposal to draw up a staff report. Further delays in the procedure, which may have resulted from the official's appealing to the Joint Committee on Staff Reports, were considered as being outside the institution's responsibility. However, in the situations which gave rise to the aforementioned cases the Institutions were not bound by a precise timetable but by the mere obligation contained in article 43 of the Staff Regulations to draw up a staff report at least every two years. However, it follows from the judgement of 7 May 2003, *Lavagnoli v Commission* that, when the Commission is bound by a precise timetable contained in binding provisions like the implementing provisions of 15 May 1997, the only reasonable period of time for drawing up a staff report is the one set by the timetable.

4.6 As regards the present case, the Ombudsman considers that the Commission has committed itself to following a precise timetable laid down in the implementing provisions as regards article 43 of the Statute of 15 May 1997. The timetable in question foresaw that the whole procedure was to be concluded at the latest on 31 December of the year in which it was started. This also included the procedure before the Joint Committee on Staff Reports. The Commission has not put forward any exceptional circumstances to justify the fact that it departed from this timetable.

4.7 It would thus appear that the Commission's failure to abide by the precise timetable adopted by the Commission itself when drawing up the complainant's staff report constituted an instance of maladministration. A critical remark will therefore be made in this respect.

5 Conclusion

5.1 On the basis of the Ombudsman's inquiries into this complaint, the Ombudsman considers it necessary to make the following critical remarks:

The Commission failed to reply to the letters of 25 October 2001, 29 November 2001, 14 December 2001 and 7 January 2002 and, in certain cases, replied with significant delay to the letters of 26 September 2001, 26 October 2001, 23 November 2001, 16 September 2002, 16 October 2002 and 28 February 2003 sent by the complainant. This constitutes an instance of maladministration.

The Commission's failure to abide by the precise timetable adopted by the Commission itself when drawing up the complainant's staff report constituted an instance of maladministration.

5.2 According to Article 3 (5) of his Statute, the Ombudsman shall, when he finds that there has been maladministration, as far as possible seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complainant. However, in the present case this possibility was expressly excluded by the complainant.

5.3 If he identifies instances of maladministration, according to Article 3 (6) of his Statute, the Ombudsman may, where appropriate, make a draft recommendation to the institution or body concerned. In view of the fact that the complainant was promoted in 2002, the Ombudsman



does not consider it appropriate to make a draft recommendation regarding the maladministration identified above.

5.4 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) The Institute for Transuranium Elements is part of the European Commission's Joint Research Centre.

(2) Article 90 of the Staff Regulations of officials of the European Communities: 1. Any person to whom these Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph. 2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. (...)

(3) C/2002/845 of 4 April 2002 - *Commission decision on raising concerns about serious wrongdoings* .

(4) Article 45 of the Staff Regulations of officials of the European Communities: 1. (...) Promotion shall be exclusively by selection from among officials who have completed a minimum period in their grade, after consideration of the comparative merits of the officials eligible for promotion and of the reports on them. For officials appointed to the starting grade in their service or category, this period shall be six months from the date of their establishment; for other officials it shall be two years (...).

(5) Case T-15/96 *Liao v. Council* [1995] ECR - SC, Page IA-329; II-897.

(6) Case T-327/01 *Luciano Lavagnoli v Commission of the European Communities* [2003] ECR - SC.

(7) Case T-15/96 *Liao v. Council* [1995] ECR - SC Page IA-329; II-897.

(8) Case T-79/92 *Ditterich v. Commission* [1994] ECR - SC Page IA-289; II-907.



(9) Case 207/81 *Ditterich v. Commission* [1983] ECR, Page 1359, point 25.