

Decision of the European Ombudsman on complaint 1967/2003/JMA against the European Parliament

Decision

Case 1967/2003/JMA - Opened on 21/10/2003 - Decision on 10/12/2004

Strasbourg, 10 December 2004

Dear Mrs S.,

On 19 August 2003, you wrote to the European Ombudsman complaining against both the European Commission and the European Parliament, in connection to the alleged use of discriminatory business practices by a Belgian bank.

Since your allegations were addressed against two institutions, I decided to register them under two different file numbers. Your allegations against the European Parliament were registered under complaint number 1967/2003/JMA, and those against the Commission were registered with the reference 1618/2003/JMA.

Your complaint against the Commission, concerning the alleged failure of this institution to properly investigate the problem despite your numerous requests, is the object of a separate inquiry currently under way.

The present decision therefore deals only with your complaint against Parliament, which concerned the institution's alleged failure to reply to the letter you addressed to its Legal Service on 15 February 2003 regarding the alleged use of discriminatory business practices by a Belgian bank.

On 21 October 2003, I forwarded your complaint to the President of the European Parliament with a request for comments. On 23 November 2003, you sent additional information to me. I received the Parliament's opinion on 8 December 2003, which I forwarded to you with an invitation to make observations. On 23 January 2004, you forwarded me a copy of your previous letter of 23 November 2003. On 27 January 2004, you sent your observations on the Parliament's opinion to me. On 15 September 2004, you wrote to me requesting clarification as regards the scope of the Ombudsman's inquiries pertaining to both of your complaints, and asking for access to all the documents related to your cases.

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

The facts of the case are, in summary, as follows:

The complainant, a Finnish national, opened an account with a Belgian bank in April 1997. Because of her status as a foreign national living in another EU Member State, she was asked at the time to make a deposit of 15,000 Belgian Francs (approximately EUR 372) in order to cover a potential default of her obligations towards the bank. The Bank did not justify its request on the basis of any written regulation. The complainant was also informed that no interest would be paid on her deposit.

The complainant also referred to a number of business practices followed by the bank which, in her view, were unfair, in particular as regards foreign currency exchanges. She explained, for instance, that after having requested a particular foreign exchange transaction, the operation was not carried out until the rate of exchange became more favourable for the financial institution. The complainant also explained that, in August 2000, the bank issued statements indicating that for part of that year her funds had been kept in a USD current account and not, as had been usual and customary since 1997, in a savings account. This omission on the part of the bank caused a loss of interest for the account holder. In spite of its mistake, the Bank refused to compensate her for the loss.

The complainant noted that, in her case, the bank decided that fax or phone orders would no longer be carried out. As a result, orders for financial transactions required that the account holder be physically present in the bank's premises. This practice was, in the complainant's view, an arbitrary and discriminatory act constituting a disguised restriction on the free movement of capital and payments, contrary to the Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

The complainant referred to a number of technical mistakes on the part of the bank involving financial transactions which resulted in losses for her.

The bank decided to close the complainant's account on 8 July 2002.

In order to find a solution to the numerous problems with her Belgian bank, the complainant turned to a number of officials and institutions of the EU for help. She hoped to pursue an extra-judicial course of action and thus avoid time-consuming and expensive litigation. As regards the European Parliament, she sent letters to the Committees on Legal Affairs and the Internal Market, the Committee on Economic Affairs, the Committee on Petitions, the Parliament's Legal Service and the Parliament's President.

Her letter to the Committees on Legal Affairs and the Internal Market, dated 11 December 2002, was replied to on 10 January 2003. In its reply, the Committee explained that her letter should be considered a petition and dealt with as such. In the complainant's view, the Committee



probably had a valid reason for its recommendation.

Also on 11 December 2002, the complainant wrote to the Committee on Economic Affairs. In its reply of 17 July 2003, the Committee suggested that the complainant turn to the Ombudsman for Banks. In the complainant's view, the length of time taken to answer constituted maladministration, since it was contrary to Article 17 of the European Code of Good Administrative Behaviour (reasonable time-limit for taking decisions).

The complainant also wrote to the European Parliament's Legal Service on 15 February 2003. She did not receive a reply. In her telephone conversations with this service, the complainant was informed that her letter had been forwarded to another institution of the EU but the person to whom she spoke refused to say when and to whom her letter had been forwarded. In the complainant's view, this action constituted maladministration, since it was contrary to Articles 15 (obligation to transfer to the competent service) and 17 (reasonable time-limit for taking decisions) of the European Code of Good Administrative Behaviour.

The complainant also explained that she submitted a petition to the European Parliament on 30 September 2002, which was registered under reference number 1351/2002. Only on 30 July 2003 did she receive a communication from the Committee informing her that her petition had been declared inadmissible, without any further explanation. In the complainant's view, this action constituted maladministration, since it was contrary to Article 10 (legitimate expectations) and 18 (duty to state the grounds for decision) of the European Code of Good Administrative Behaviour.

In her complaint, the complainant mentioned that she had also addressed a letter to the President of the European Parliament on 15 March 2003. Even though she had not received a reply, her telephone inquiries lead her to believe that the President was carefully examining the case and needed more time to come to a reasoned opinion. She was therefore prepared to wait for his reply.

In the light of the information submitted in the complaint, the Ombudsman opened an inquiry against the European Parliament. The allegation on which the Ombudsman asked the Parliament to submit an opinion was the following:

The complainant alleged that the European Parliament failed to reply to the letter she had addressed to its Legal Service on 15 February 2003 concerning the alleged use of discriminatory business practices by a Belgian bank.

On 23 November 2003, the complainant wrote to the Ombudsman. In her letter, she explained that there appeared to be a technical mistake, since her first complaint to the European Ombudsman had been sent on 19 August 2002, was registered and assigned the reference number 1532/2002/VK. The complainant pointed out that her complaint against a Belgian bank concerned not only its fraudulent behaviour in financial transactions and its discriminatory practices, but also mental terror and incessant harassment over a number of years. She also explained that her allegations against the European Parliament were not limited to its failure to



reply to her letter to the Legal Services, but they also involved the replies given by its services and by several MEPs, including its President. The complainant noted that after her complaint with the Ombudsman was lodged, yet another Belgian bank decided to close her account.

On 23 January 2004, the complainant sent another copy of her letter of 23 November 2003, pointing out that she had received no reply to her first letter, and indicating that she would reply to the Ombudsman's letter of 16 December 2003 by 31 January 2004.

THE INQUIRY

The European Parliament's opinion

In its opinion, the Parliament first described the factual background to the case. It explained that the complainant had written to different bodies in the European Parliament regarding the allegedly discriminatory business practices carried out by some Belgian financial institutions.

According to Parliament's Rules of Procedure, the Committee on Legal Affairs and the Internal Market has no power to deal with complaints submitted by citizens. The Parliament services suggested to the complainant that her complaint be treated as a petition. She accepted the suggestion. The Committee on Petitions wrote to the complainant on 30 July 2003, explaining that her petition had been declared inadmissible because, in accordance with its Rules of Procedure, the European Parliament can only examine petitions whose subject matter falls within the sphere of activities of the European Union. The Committee considered that this condition was not met in the case of the petition submitted by the complainant.

As regards the correspondence with the Parliament's Legal Service, the institution noted that, on 5 March 2003, this service received a letter from the complainant dated 15 February 2003. The letter referred to a dispute involving private parties, a subject-matter which does not correspond to the tasks under the responsibility of the Legal Service. The letter was therefore forwarded to the department already in charge of the file, namely the Secretariat of the Committee on Petitions.

Subsequently, the Legal Service was contacted, not by the complainant herself but, seemingly, by a male relative. He was informed that the correspondence had been transmitted to another department within Parliament, and that the complainant should already have received a reply from the Committee on Petitions.

The Parliament concluded by stating that, since the complainant had received a reply to her letter of 15 February 2003 from a department within the European Parliament, she cannot truly allege maladministration for failure to answer her letter.

The complainant's observations

In her observations on the Parliament's opinion, the complainant repeated some of the allegations made in her complaint.

The complainant made, however, some preliminary remarks. She noted that her first letter to the European Ombudsman had been sent in August 2002, and a second letter with additional



enclosures had been sent in October 2002. Her letters were registered under file number 1532/2002/VK. Consequently, the complainant stressed that the date of her complaint to the Ombudsman was August 2002 rather than August 2003.

The complainant underlined that, even though the Ombudsman only submitted to Parliament one of the allegations made in her complaint, she had actually made a number of additional allegations concerning avoidable delay, discrimination, failure to ensure fulfilment of legitimate expectations, refusal to provide information, and negligence on the part of the Committee on Legal Affairs, the Committee on Economic Affairs, the Legal Service, the Committee on Petitions, and the President of Parliament.

As to the contents of Parliament's opinion, the complainant pointed out that the Committee on Legal Affairs, did not suggest that the complainant submit a petition, but, on its own initiative, forwarded her letter to the Committee on Petitions, whereas she had already done so. The complainant added that she never received the Committee's reply of 30 July 2003.

As regards the Committee on Petitions, the complainant stated that on 19 August 2003, eleven months after the registration of her petition, she was informed that her petition was inadmissible, without any further information.

She noted that the Parliament's opinion did not contain any reference to her correspondence with the Committee on Economic Affairs, and recalled the numerous exchanges, both by telephone and letter, held with the Chairman of this Committee.

In connection to the actions of the Legal Service, the complainant indicated that she never received an acknowledgement of receipt from this service indicating to whom and when her letter had been forwarded. Nor had she received a letter from other departments of the European Parliament confirming receipt of that letter.

The complainant referred to a list of MEPs and officials of Parliament whom she had contacted, including Mr Ward Bayen; Mrs Miert Smet, MEP; and Mrs Patsy Sørensen, MEP, among others. She added that, even though she was initially prepared to give the President of the European Parliament the benefit of the doubt and thought that he simply needed more time, she had come to the conclusion that the failure to reply to her letter of 15 March 2003 also constituted maladministration.

THE DECISION

1 Preliminary remarks *Nature of the dispute between the complainant and a Belgian bank*

1.1 To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.



1.2 The Ombudsman's inquiries into this complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Parliament. The Ombudsman has no competence to inquire into the complainant's allegations against her Belgian bank.

Previous complaints lodged with the Ombudsman

1.3 In her observations on the European Parliament's opinion, the complainant indicates that her first letters to the European Ombudsman were sent respectively in August and October 2002. The Ombudsman registered these letters under file number 1532/2002/VK. Accordingly, the complainant stresses that the date of her complaint to the Ombudsman should be August 2002 rather than August 2003.

1.4 It appears that the complainant first wrote to the Ombudsman on 19 August 2002. Her complaint concerned the irregularities and disappearance of money from her account at a Belgian bank, and the failure of the bank's management to reply to her numerous letters. The Ombudsman points out that this complaint was declared inadmissible on 20 September 2002, since it was not related to an act of a Community institution or body, as required by Article 2 (1) of his Statute. In his letter informing the complainant of the inadmissibility of her complaint, the Ombudsman suggested that she contact the Ombudsman of the Belgian Bank Association.

The Ombudsman notes that in a different letter sent to the Ombudsman and dated October 2002, the complainant pointed out that she had written to the Commission, and that the replies received may have constituted maladministration. In a reply dated 29 January 2003, the Ombudsman informed the complainant that if she wished to complain against the Commission, she should use the complaint form enclosed with the reply.

In a letter to the Ombudsman dated June 2003, the complainant requested access to the all the documents related to the file 1532/2002/VK. In accordance with Article 13 of his Implementing Provisions, the Ombudsman granted access to the requested documents on 29 July 2003.

1.5 The Ombudsman draws the complainant's attention to the fact that her first complaint dated 19 August 2002 and registered as 1532/2002/VK concerned the actions of a private firm. Since these actions were outside the Ombudsman's remit, the complaint was declared inadmissible.

Her complaint to the Ombudsman of 19 August 2003, which was registered as 1967/2003/JMA and is the object of the present decision, was against the European Parliament and involved different allegations from those contained in complaint 1532/2002/VK.

The Ombudsman therefore considers it appropriate that the two complaints submitted by the complainant respectively on 19 August 2002 and 19 August 2003 be registered under different file numbers, and that the date of the second complaint be set on the date at which the complainant sent her new allegations.

The Ombudsman also recalls that the complainant's allegations in complaint 1618/2003/JMA are addressed against the Commission, and are therefore different from those contained in complaint 1532/2002/VK.



Scope of the Ombudsman's inquiry

1.6 In her observations on the Parliament's opinion, the complainant notes that even though the Ombudsman only submitted to the President of the Parliament one of the allegations made in her complaint, she had in fact made a number of additional allegations involving avoidable delay, discrimination, failure to ensure fulfilment of legitimate expectations, refusal to provide information, and negligence on the part of the Committee on Legal Affairs, the Committee on Economic Affairs, the Legal Service, the Committee on Petitions, and the President of the European Parliament.

1.7 The European Ombudsman notes that his powers are defined in the Treaty establishing the European Community and the Statute of the European Ombudsman. These legal texts set precise conditions as to the admissibility of a complaint. The Ombudsman can only start an inquiry if these conditions are met.

One of these conditions, set in Article 2.2 of his Statute states as follows:

"Any citizen of the Union [...] may [...] refer a complaint to the Ombudsman in respect of an instance of maladministration ..."

1.8 In response to a call from the European Parliament for a clear definition of maladministration, the Ombudsman offered the following definition in his Annual Report for 1997:

"Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it."

The European Parliament adopted a resolution in 1998 approving this definition.

1.9 In order to clarify the limits of maladministration in relation to the political work of the European Parliament, the Ombudsman put forward a number of considerations in his Annual Report for 1997. He stated that Article 195 (formerly Article 138 e) of the EC Treaty is silent as regards the political work of the European Parliament. However, the classical Ombudsman office in the Nordic countries is set up to monitor the public administration on behalf of the Parliament, not to supervise the political activities of the Parliament. Ombudsmen in other Member States also appear not to supervise the political work of their respective Parliaments. Applying therefore a constitutional principle common to the Member States, the European Ombudsman does not deal with complaints against decisions of the European Parliament, or its Committees, including the Committee on Petitions. These complaints are therefore not considered to be within the mandate of the Ombudsman (1) .

1.10 The Ombudsman has also taken the view that complaints about the administrative procedures followed by the European Parliament's committees do not fall within his remit either, since the organisation of the work of those committees pertains to the political responsibility of the institution. Accordingly, it corresponds to the European Parliament to organise its services so as to enable it to carry out its institutional functions. In the Ombudsman's view, these



complaints raise political issues, rather than maladministration (2) .

1.11 In view of the above, the Ombudsman considered that the allegations made by the complainant against the Committee on Legal Affairs, the Committee on Economic Affairs, and the Committee on Petitions of the European Parliament did not concern maladministration, and raised instead political issues which do not fall within his mandate.

Since the Ombudsman has no power to deal with these aspects of the case, the corresponding allegations could not be addressed in his request for comments addressed to the President of the European Parliament.

The Ombudsman notes that, at the time the complainant submitted her original complaint, no allegations had been made against the President of the European Parliament.

2 Alleged failure of the Parliament services to reply to a letter

2.1 The complainant alleges that the European Parliament failed to reply to the letter she had addressed to its Legal Service on 15 February 2003 concerning the alleged use of discriminatory business practices by a Belgian bank.

2.2 The Parliament notes that, on 5 March 2003, this service received a letter from the complainant dated 15 February 2003. Since the subject-matter of the letter did not fall under the responsibility of this service, it was forwarded to the responsible unit, namely the Secretariat of the Committee on Petitions. Following a telephone call made by a representative of the complainant, the Legal Service informed the caller that the letter had been transferred to the competent service, namely the Secretariat of the Committee on Petitions.

The Parliament takes the view that its services acted properly since its Committee on Petitions replied to the complainant on 30 July 2003.

2.3 The Ombudsman notes that the European Parliament's Code of conduct (3) addresses the standard of conduct which officials are expected to follow when replying correspondence from citizens in point III.A.1. This provision states that:

"Whenever an outside person sends a written request to an administrative department of Parliament, its receipt must be rapidly acknowledged, specifying the surname, forename, position, and office address of the person responsible for processing it. These details must appear in all correspondence sent to the applicant. The reply shall be drafted in the official language of the Union used by the applicant and, in accordance with the Bureau decision of 10 July 1997, given within 45 days."

In the event that the recipient service is not responsible for the content of the letter, point III.A.3 of the Parliament's Code of conduct states that:

"When requests have been sent to the wrong administrative department, the officials or other servants who receive them shall immediately pass them on to the appropriate department and inform the senders of the action taken."



2.4 From the available information, it appears that upon receipt of the complainant's letter of 15 February 2003, the Legal Service of the European Parliament considered that the queries it contained did not fall under the responsibilities of the Legal Service. Accordingly, it transferred the letter to the Secretariat of the Committee on Petitions, so that its contents could be taken into account in the context of a petition already submitted by the complainant, which was being considered at the time by the Committee.

It also appears that the Parliament's Legal Service orally informed the complainant's representative of the action taken in connection with the letter.

The Ombudsman considers that the actions taken by the European Parliament's services in relation to the letter sent by the complainant on 15 February 2003 appear to be in accordance with the obligations set out in the institution's own Code of conduct, which do not appear to diverge from those contained in the European Code of Good Administrative Behaviour. The Ombudsman therefore finds no maladministration.

3 Conclusion

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) European Ombudsman, Annual Report for 1997, pp. 26-27.

(2) European Ombudsman, Annual Report for 1996, complaint 420/9.2.96/PLMP/B, page 15.

(3) The text of the code can be found at the following internet address:

<http://www.ombudsman.europa.eu/code/en/default.htm> [Link]