

## **Decision of the European Ombudsman on complaint 2778/2004/JMA against the European Economic and Social Committee**

Decision

**Case 2778/2004/JMA - Opened on 28/09/2004 - Decision on 14/11/2005**

Strasbourg, 14 November 2005

Dear Mrs P.

On 4 August 2004, you lodged a complaint with the European Ombudsman against the European Economic and Social Committee ("EESC"). The complaint concerned the alleged failure of the EESC to comply with the decision of the Court of First Instance in Case T-183/96 regarding the reimbursement of your legal fees.

You had lodged a previous complaint with the Ombudsman on 17 May 2002, regarding the same subject-matter. The complaint had been registered under reference number 927/2002/(BF)JMA. It was considered inadmissible on 25 June 2002 since, from the available information, it appeared that you had not exhausted all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 (1) and (2) of the Staff Regulations, as required by Article 2 (8) of the Statute of the European Ombudsman.

On 28 September 2004, I informed the President of the EESC of this complaint and I asked him to submit an opinion. On 17 December 2004, I received the EESC's opinion. I forwarded it to you on 14 January 2005 with an invitation to make observations. I have received no observations from you.

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 the case.

## **THE COMPLAINT**

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

On 17 May 2002, the complainant first lodged a complaint with the Ombudsman against the EESC which was registered under file number 927/2002/(BF)JMA. In her complaint, the



complainant alleged that the EESC had failed to comply with the ruling of 17 February 1998 of the Court of First Instance in Case T-183/96, in which the Court ordered the EESC *inter alia* to reimburse the complainant's legal fees.

The complainant explained that, on 14 November 1996, she had brought an action against the EESC before the Court of First Instance in which she contested the decision of her employer to take disciplinary action against her, as a result of which she had been demoted from step 5 to step 2 in grade C3. The EESC adopted this decision on 18 January 1996, on the grounds that the comments made by the complainant in her evaluation report, corresponding to the period between 1 September 1992 and 31 August 1994, were contrary to the dignity of her position and the loyalty she owed to the institution and in breach of her duties under Articles 12 and 21 of the Staff Regulations. The Court of First Instance, however, concluded, on 17 February 1998, that the EESC's decision was not proportionate, and overturned it. The Court also condemned the EESC to reimburse the complainant for her legal fees.

In her complaint to the Ombudsman, the complainant alleged that, despite the Court's clear ruling regarding her legal fees, the EESC had not yet reimbursed her for them. Since it appeared, from the available information, that the complainant had not exhausted all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 (1) and (2) of the Staff Regulations, the complaint was declared inadmissible on 25 June 2002 pursuant to Article 2 (8) of the Statute of the European Ombudsman. In this letter of 25 June 2002, as well as in a further reply dated 30 August 2002, the Ombudsman suggested that the complainant should exhaust all the possibilities for the submission of internal administrative requests, in particular the appeal procedure set out in Article 90 (2) of the Staff Regulations. The Ombudsman added that, once she had done so, she could consider submitting a new complaint to him should she find the reply from the institution to be unsatisfactory.

On 4 April 2004, the complainant wrote again to the Ombudsman. In this letter, she stated that she had written to the EESC on a number of occasions, most recently on 12 July 2004, requesting the reimbursement of her legal expenses, to the amount of 69 190 BEF. Despite her requests, no reimbursement had yet been made. The complainant enclosed with her complaint copies of all her correspondence with the EESC.

Taking into consideration the new evidence, the Ombudsman decided to register the complainant's letter as a new complaint (reference 2778/2004/JMA) and to start an inquiry. The allegations on which the Ombudsman asked the EESC to submit an opinion were the following:

The complainant alleges, in summary, that, despite her numerous requests to the appropriate EESC services, her legal fees in Case T-183/96, before the Court of First Instance, have not yet been reimbursed, in violation of the Court's ruling. She therefore claims that she should be reimbursed for her legal fees to the amount of 69 190 BEF.

## THE INQUIRY



### **The European Economic and Social Committee's opinion**

In its opinion, the EESC first gave a detailed chronology of the factual situation. The institution enclosed with its opinion all the correspondence between the complainant and its services.

The EESC noted that, on 17 February 1998, the Court of First Instance gave its judgement in Case T-183/96, brought by Mrs P. against the EESC, in which it condemned the institution to pay the complainant's legal fees.

On 16 May 2002, the complainant wrote to the EESC to request the execution of the ruling. In her letter, the complainant asked for the reimbursement of her legal fees, although she did not enclose any supporting evidence in relation to these fees. The EESC's services tried unsuccessfully to contact the complainant, in order to ask her to submit evidence regarding the amount and nature of her legal fees.

On 29 July 2003, the complainant formally lodged an appeal before the EESC pursuant to Article 90 (2) of the Staff Regulations. In her appeal, she requested the payment of her legal fees to the amount of 10 000 BEF. She enclosed with her appeal a certificate in which her lawyer declared that, in 1991 and/or 1996, the complainant had paid him 10 000 BEF. In its reply of 9 December 2003, the EESC concluded that no payment could be granted since the document enclosed with the complainant's letter was only a copy of the original certificate, and, moreover, it did not prove that the requested fees involved legal work for Case T-183/96.

In a letter dated 16 April 2004, the complainant urged the EESC to abide by the Court's judgment and to pay her legal fees to the amount of 10 000 BEF. She enclosed with her letter the original certificate regarding this amount. In a reply, dated 5 July 2004, the EESC's services refused the complainant's request on the grounds that the evidence submitted by her was neither a proper receipt nor her lawyer's bill, and, moreover, that it did not refer to the specific work for which the bill had been issued. In its letter, the institution described the type of supporting evidence which the complainant ought to send to have her request for payment granted.

On 12 July 2004, the complainant sent two separate certificates, from 1997 and 2000, in which her lawyer declared that the work performed by him for the complainant was for his work on Case T-183/96. In the letter, the complainant also included a new request concerning additional legal fees to the amount of 59 190 BEF. In its reply, dated 15 October 2004, the EESC agreed to reimburse the initial request for 10 000 BEF, but refused to pay the additional 59 190 BEF, since it considered that the second request was not supported by any evidence.

Following its statement of the facts of the case, the EESC made a number of comments concerning the Ombudsman's inquiry and the substance of the case.

As regards the decision of the Ombudsman to open an inquiry in this case, the EESC argued that the complainant had not exhausted the possibilities for the submissions of internal administrative complaints, in particular the appeal referred to in Article 90 (2) of the Staff Regulations, before lodging a complaint with the Ombudsman, in breach of Article 2 (8) of the



Ombudsman's Statute. The EESC argued that, as regards the request for the payment of 10 000 BEF, the complainant had lodged her complaint with the Ombudsman one month before the deadline for the institution's reply to her appeal, provided for in Article 90 (2) of the Staff Regulations, had expired. As for the complainant's request for the reimbursement of an additional 59 190 BEF, the EESC pointed out that no internal appeal had ever been lodged with its services as regards this second request. The EESC therefore concluded that the Ombudsman should have declared the case inadmissible on the basis of Article 2 (8) of his Statute.

In connection with the allegations made by the complainant, the EESC referred to the explanations included in its decision of 15 October 2004, whereby it had accepted to pay the complainant's legal fees to the amount of 10 000 BEF, but refused to do so for her second request of 59 190 BEF. The institution argued that, in the first case, its services had proceeded to pay the complainant's fees once she had provided the necessary evidence on 12 July 2004. As regards the EESC's refusal to honour the complainant's new request for 59 190 BEF, the institution argued that no proof had yet been presented in order to justify the nature of these fees. The institution therefore concluded that its services had acted properly in this situation, and that any delay in the payment was the result of the complainant's failure to submit proper evidence concerning the nature of her lawyer's fees.

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

The Ombudsman has not received any observations from the complainant.

## **THE DECISION**

### **1 Preliminary remark**

1.1 In its opinion, the European Economic and Social Committee ("EESC") takes the view that the complaint did not comply with the requirements set out in Article 2 (8) of the Statute of the European Ombudsman, and therefore that the Ombudsman should not have declared it admissible. It argues that, before lodging her complaint with the Ombudsman, the complainant did not exhaust all the possibilities for the submissions of internal administrative complaints, in particular the appeal procedure referred to in Article 90 (2) of the Staff Regulations.

1.2 The Ombudsman recalls that, according to Article 2 (8) of his Statute:

*"No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90(1) and (2) of the Staff Regulations, have been exhausted by the person concerned and the time limits for replies by the authority thus petitioned have expired."*

1.3 Regard has to be had to the fact that, on 17 May 2002, the complainant first lodged a complaint with the Ombudsman concerning the same subject-matter (reference: 927/2002/(BF)JMA), which was declared inadmissible on 25 June 2002 pursuant to Article 2 (8) of the Statute of the European Ombudsman. It appeared that the complainant had not



exhausted all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 (1) and (2) of the Staff Regulations. In his letter of 25 June 2002, as well as in a further reply dated 30 August 2002, the Ombudsman made it clear to the complainant that she should exhaust the appeal procedure set out in Article 90 (2) of the Staff Regulations, before considering lodging a new complaint with him.

1.4 From the evidence submitted by the EESC, it appears that, on 29 July 2003, the complainant did in fact lodge an appeal pursuant to Article 90 (2) of the Staff Regulations which sought to have the EESC reimburse her for her legal fees in Case T-183/96 (1) and that the EESC replied on 9 December 2003.

1.5 The Ombudsman notes that there was also subsequent correspondence between the complainant and the EESC. However, since the Article 90 (2) appeal to the EESC, and the subsequent complaint to the Ombudsman, addressed the same subject-matter, the Ombudsman takes the view that the complaint meets the conditions laid down in Article 2 (8) of his Statute. Accordingly, the Ombudsman deems it appropriate to consider the allegations made by the complainant and, thus, to assess the merits of the case.

## **2 Alleged EESC's failure to reimburse the complainant's legal fees**

2.1 The complainant alleges that, despite her numerous requests to the appropriate EESC services, her legal fees in Case T-183/96, before the Court of First Instance, have not yet been reimbursed, in contravention of the Court's ruling. She therefore claims that she should be reimbursed for her legal fees to the amount of 69 190 BEF.

The complainant explains that, on 14 November 1996, she brought an action against the EESC before the Court of First Instance, in which she contested the EESC's decision to demote her from step 5 to step 2 in grade C3. In its ruling of 17 February 1998, the Court concluded that the EESC's decision was not proportionate and, accordingly, overturned it. As a consequence of this finding, the Court ordered the institution to reimburse the complainant's legal fees.

2.2 The EESC argues that, on 16 July 2004, its services proceeded to reimburse the complainant's legal fees to the amount of 10 000 BEF, once she had provided the necessary evidence concerning the nature of the legal work involved. The EESC notes, however, that its services have refused to honour the complainant's second request for an additional 59 190 BEF, since she had not submitted proper evidence to justify the nature of these fees.

The EESC explains that the complainant first contacted its services on 16 May 2002 to request the execution of the ruling. Her letter however did not include any supporting evidence. On 29 July 2003, she repeated her request and put the value of her legal fees at 10 000 BEF. The payment of that amount was only made on 16 July 2004, once the appropriate evidence was sent to the EESC. On 12 July 2004, the complainant sent a new request concerning additional legal fees for an amount of 59 190 BEF. The EESC argues that the additional amount has not been reimbursed because the complainant has not put forward any proof which could justify the nature of these fees.



2.3 The Ombudsman has carefully reviewed all the available information. It appears that the complainant made a first request to the EESC for the reimbursement of her lawyer's fees in a letter received by the EESC on 16 May 2002. In her letter, which drew attention to the section of the Court's ruling concerning the reimbursement of her legal fees by the EESC, the complainant, however, did not quantify the exact amount of these fees. Subsequently, the complainant made two separate requests regarding her legal fees.

2.4 In the complainant's letters to the EESC dated 29 July 2003 and 16 April 2004 the complainant put her legal fees at 10 000 BEF.

The Ombudsman notes that, following several written exchanges between the complainant and the EESC concerning the evidence in support of these legal fees, the institution paid the complainant the sum of 10 000 BEF on 16 July 2004. It appears, therefore, that the first request made by the complainant has been paid for by the institution.

2.5 By letter dated 12 July 2004, however, the complainant made a new request to the EESC whereby she asked for the reimbursement of legal fees not advanced to her lawyer to the amount of 59 190 BEF.

The letter included two certificates issued by her lawyer in support of the new request. In the first certificate, dated 16 August 2000, her lawyer refers to an unspecified/unidentified procedure before the EESC for which the main legal fees were 46 992 BEF and for which additional expenses amounted to 12 198 BEF. A second certificate, dated 4 March 1997, gives a detailed breakdown of the expenses (16 742 BEF) and the legal fees (40 250 BEF) involved in a legal case between the complainant and the EESC. There were however no further details that could have identified the precise nature of this case.

2.6 The Ombudsman notes that none of the documents submitted by the complainant in support of her second request for 59 190 BEF either identifies the object of the legal work or describes in detail how that work was quantified.

The Ombudsman takes the view that, on the basis of the principle of sound financial management, it appears reasonable that the administration, before honouring a debt, requests that the potential beneficiary should provide supporting evidence concerning the amount and nature of the expenditure.

In view of the above, the Ombudsman finds that the position adopted by the EESC as regards the complainant's second request appears to be reasonable.

The Ombudsman has therefore concluded that there appears to be no maladministration.

### **3 Conclusion**

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

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



Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Case T-183/96 *E v Economic and Social Committee* [1998] ECR-SC IA-67; II-159.