

Decision of the European Ombudsman on complaint 3147/2004/PB against the European Commission

Decision

Case 3147/2004/PB - Opened on 23/11/2004 - Decision on 12/12/2005

Strasbourg, 12 December 2005

Dear Mr N.,

By letters dated 20 October and 19 November 2004, you made a complaint to the European Ombudsman concerning an infringement complaint that you had brought before the Commission against Denmark.

On 23 November 2004, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 10 February 2005 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you. I am writing now to let you know the results of the inquiries that have been made.

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.

The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

THE COMPLAINT

The complainant, the vice-chairman of a local group of a Danish political party, wrote an e-mail to Commissioner Anna Diamantopoulou (Employment and Social Affairs) on 12 July 2002. In his e-mail, he called on the Commissioner to take action in a case concerning the rights relating to the free movement of EU citizens. The case concerned the alleged insufficiency of social entitlements granted to a German spouse of a Dane. According to the complainant, his spouse had become unable to work following an accident at her Danish workplace.



The complainant received a reply dated 6 August 2002, in which the Commission asked him to provide further details of the case. The complainant replied on 10 December 2002, providing additional information.

In his complaint to the Ombudsman, the complainant stated that he had not received any reply to his letter of 10 December 2002. He stated that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

The complainant alleged that the Commission had failed to properly handle his infringement complaint against Denmark.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made, in summary, the following comments:

The documentation submitted, together with the complainant's letter of 10 December 2002, showed that the German citizen concerned had been awarded a lump sum payment for a work-related injury and that she had been awarded German and Danish invalidity pensions.

The Commission replied to the complainant in a letter sent on 20 January 2003. In this letter, the Commission responded to the matter raised by the complainant, i.e., that the pensions granted to the German citizen concerned were too low. The Commission explained the functioning of Community law in the field of social security. It was pointed out that there was no unified European social security system and that each Member State takes its own decisions as to which benefits shall be provided, the size of these benefits, and the conditions for eligibility. The Community legislation regulating the co-ordination of the national systems was explained in some detail (1). The Commission concluded that, as far as it could judge from the documents provided by the complainant, the pensions granted to the German citizen concerned were in conformity with this Community legislation, and that the Commission could therefore not intervene in the matter.

In light of the above, the Commission considered that the complainant's allegation was unfounded.

The complainant's observations

The Commission's opinion was forwarded to the complainant from whom the Ombudsman received no observations.

THE DECISION

1 Allegation of failure to properly handle infringement complaint

1.1 The complainant wrote an e-mail to Commissioner Anna Diamantopoulou (Employment and Social Affairs) on 12 July 2002. In his e-mail, he called on the Commissioner to take action in a



case concerning the rights relating to free movement of EU citizens. The case concerned the alleged insufficiency of social entitlements granted to a German spouse of a Dane. According to the complainant, his spouse had become unable to work following an accident at her Danish workplace. The complainant received a reply dated 6 August 2002, in which the Commission asked him to provide further details of the case. The complainant replied to this letter on 10 December 2002, providing additional information. In his complaint to the Ombudsman, the complainant stated that he had not received any reply to his letter of 10 December 2002. He alleged that the Commission had failed to properly handle his infringement complaint against Denmark.

1.2 In its opinion, the Commission rejected the allegation that it had not replied to the complainant's letter of 10 December 2002. It referred to a letter that it had sent to the complainant on 20 January 2003. In that letter, the Commission had explained the functioning of Community law in the field of social security. It had been pointed out that there was no unified European social security system and that each Member State could take its own decisions on which benefits should be provided, the size of these benefits, and the conditions for eligibility. The Community legislation regulating the co-ordination of the national systems had been explained in some detail (2) . The Commission had concluded that, as far as it could judge from the documents provided by the complainant, the pensions granted to the German citizen concerned were in conformity with this Community legislation, and that the Commission could therefore not intervene in the matter.

1.3 The Ombudsman received no observations from the complainant.

1.4 The specific rules for the Commission's handling of infringement complaints are laid down in Commission Communication COM(2002) 141 of 20 March 2002, "*Commission Communication to the European Parliament and the European Ombudsman on Relations with the Complainant in Respect of Infringements of Community Law*" (3) . Part 8 of the Communication provides that "*[a]s a general rule, Commission departments will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year from the date of registration of the complaint by the Secretariat-General*". Part 9 provides that "*complainants will be informed in writing of the decision taken by the Commission in connection with their complaint and any subsequent Commission decisions on the matter*."

1.5 It has not been clarified why the Commission's letter of 20 January 2003 did not, apparently, reach the complainant. The Commission has enclosed a copy of its letter in its opinion on the present complaint. The letter contains a stamp of outgoing post (dated 20 January 2003). The complainant has not made any observations on this matter.

1.6 In light of the above, it appears that the Commission dealt in an adequate way with the complaint within a reasonable time. Hence, the Ombudsman can find no maladministration on the part of the Commission.

2 Conclusion

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



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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, Official Journal 1971 L 149, p. 2; and Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, Official Journal 1972 L 74, p. 1.

(2) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, Official Journal 1971 L 149, p. 2; and Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, Official Journal 1972 L 74, p. 1.

(3) Official Journal 2002 C 244 p. 5.