Decision of the European Ombudsman on complaint 3453/2005/GG against the European Commission

Decision

Case 3453/2005/GG - **Opened on** 15/11/2005 - **Recommendation on** 12/09/2006 - **Special report on** 15/11/2005 - **Decision on** 14/09/2007

In 2001, a German doctor complained to the European Commission about Germany's alleged failure to comply with EU legislation on working time, in particular as regards the time spent on call by doctors in hospitals. The relevant rules were laid down in Directive 93/104/EC, and remained in force until the latter was replaced by Directive 2003/88. In two judgments rendered in 2000 and 2003, the European Court of Justice held that time spent on call is to be considered as working time within the meaning of these rules.

In a complaint lodged with the Ombudsman in December 2003 (complaint 2333/2003/GG), the complainant alleged that the Commission had failed to deal with his infringement complaint against Germany within an appropriate period of time. Having examined the case, the Ombudsman considered that the complainant's allegation was well-founded. He noted, however, that Germany had recently introduced new legislation in this field which the Commission still needed to examine and that the Commission appeared to accept that the decisions of the Court of Justice had clarified the relevant legal issues. On the assumption that the Commission would not incur further delays in dealing with the complainant's infringement complaint, the Ombudsman thus closed his inquiry.

In November 2005, the complainant turned to the Ombudsman again. In his new complaint (3453/2005/GG), the complainant in essence repeated the allegation that he had already submitted in his earlier complaint, according to which the Commission had failed to deal with his infringement complaint within an appropriate period of time. The Ombudsman decided to open a new inquiry.

In its opinion, the Commission noted that in September 2004 it had submitted to the Community legislator a proposal for an amendment of Directive 2003/88. The Commission pointed out that it would examine the complainant's infringement complaint in the light of this proposal and of its ongoing discussions with the other Community institutions.

The Ombudsman took the view that submitting a proposal for amending a directive did not allow the Commission to disregard its duty to ensure that the existing directive was respected by Member States. He further considered that the Commission's undoubted discretion in matters

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relating to alleged infringements of Community law by Member States did not entitle it to postpone indefinitely reaching a conclusion on a complaint on the grounds that the applicable law may be amended at some time in the future.

On 12 September 2006, the Ombudsman therefore addressed a draft recommendation urging the Commission to deal with the complainant's infringement complaint as rapidly and as diligently as possible.

In its detailed opinion, the Commission maintained its position.

On 10 September 2007, the Ombudsman therefore submitted a special report to Parliament concerning this case.

 Strasbourg, 14 September 2007
Dear Mr D.,

On 2 November 2005, you complained to me that the European Commission had failed to deal with your infringement complaint, which had been registered under reference 2002/4298, within an appropriate period of time.

On 10 September 2007, following an in-depth inquiry into your complaint, including a draft recommendation to the Commission, I submitted a special report to the European Parliament, in accordance with Article 3(7) of the Statute of the Ombudsman. The special report recommended that the Commission should deal with your infringement complaint as rapidly and as diligently as possible.

The Statute of the Ombudsman provides for the submission of a report to the European Parliament to be the final step in an inquiry by the Ombudsman.

I therefore close the file on the complaint.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS