



Alleged failure to deal properly with an article 226 EC complaint, in a case also pending before a national supreme court

Summary of decision on complaint 3254/2004/(OV)ID against the European Commission

In November 2004, the complainant filed a complaint with the Ombudsman, alleging that the Commission had failed to properly deal with his Article 226 EC complaint, concerning the Greek authorities' failure to recognise him as a Chemical Engineer on the basis of his professional qualification, obtained in the UK, as a Materials Engineer, and, in particular, that the Commission had wrongly interpreted and applied Directive 89/48/EEC and Articles 43 and 47 of the EC Treaty in his case.

The Ombudsman, first, observed, that, in deciding, under Article 195 of the EC Treaty and Article 3(1) of the Statute of the European Ombudsman, whether further inquiry into, and consideration of, a complaint is justified, he examines, in particular, whether the assessment of the merits of the complaint involves an examination of legal or factual issues raised in an action filed before a Community or National Court. This is all the more important where the complaint involves issues pertaining to the interpretation and application of national legislation, since National Courts are better positioned than the European Ombudsman to deal with such questions.

After having carefully examined the complainant's complaint, his observations on the Commission's opinion, and the action for annulment of the relevant decision of the competent Greek authority that the complainant had filed before the Council of State (the Supreme Administrative Court) of Greece in September 2004, the Ombudsman found that the assessment of the merits of the complainant's foregoing allegation would involve a thorough examination of issues raised in the complainant's action before the Council of State of Greece, including, *inter alia*, questions pertaining to the interpretation and application of Greek legislation regarding the regulation in Greece of the professional activities of a "Materials Engineer, with specialisation in Polymer Science and Technology" and their relationship with the activities which fall within the scope of the profession of Chemical Engineer, as regulated in that Member State. Under these circumstances, the Ombudsman concluded that further inquiry into, and consideration of, the above-mentioned allegation was not justified, since it would, in essence, amount to a duplication of the legal proceedings initiated by the complainant before the Greek Council of State.

The Ombudsman, nevertheless, further noted that the complainant might renew his complaint to the Ombudsman, after the completion of these legal proceedings, in particular



if the Commission fails to reconsider its reply to his infringement complaint, or maintains the positions taken in this reply, despite the fact that it has been notified of a final judgment rendered by the Council of State of Greece in his case, or of a preliminary ruling of the Court of Justice, that may be given at the request of the Greek Council of State in the context of his case, which casts doubt on the propriety of its reply to the complainant's infringement complaint.