

Decision of the European Ombudsman closing the inquiry into complaint 1562/2012/JF against the European Commission

Decision

Case 1562/2012/JF - Opened on 17/09/2012 - Decision on 01/08/2014 - Institution concerned European Commission (Friendly solution) |

The case concerned a Commission official who was diagnosed with breast cancer. Three months following the completion of surgeries, including a mastectomy and a number of reconstruction surgeries, the complainant asked the Commission for an authorisation for a convalescent cure in her country of origin. The Commission refused, on the argument that the complainant's last intervention was a plastic surgery that did not justify the cure. The cure would have been justified if the complainant had submitted her request for the cure three months after her major surgery.

The complainant then turned to the Ombudsman, who investigated the complaint. After carefully assessing the evidence available in the file, the Ombudsman proposed, as a friendly solution, that the Commission should consider the complainant's successive operations, including plastic surgeries, as one single treatment and should authorise the convalescent cure.

The Commission accepted the proposal, provided the complainant submitted additional documents, in accordance with the applicable rules. The complainant was satisfied and the case was closed.

The background

1. The Ombudsman inquired into the complainant's allegation that the Commission's decision refusing to grant her authorisation for a convalescent cure was unfair.
2. The Commission argued that because the complainant's last reconstructive operations were not major surgeries and did not involve chemotherapy or radiotherapy, authorising a convalescent cure was not appropriate, pursuant to the relevant rules. In addition, the complainant had failed to indicate the centre she had chosen for the cure and its costs, contrary to the applicable rules



3. The complainant argued that her doctors considered all the operations she had undergone to constitute one single treatment for her serious illness, which justified a convalescent cure. She enclosed three medical certificates, one with her request to the Commission, and an additional two with her complaint and observations to the Ombudsman [1] .

Alleged unfairness

The Ombudsman's friendly solution proposal

4. The Ombudsman pointed out that the medical certificates submitted by the complainant and, in particular, the last of those certificates, clearly set out the medical opinion that a convalescent cure was necessary. She took the view that the complainant's illness could not have been considered as cured before her last reconstructive operation. She noted also that the Management Committee of the Joint Insurance Scheme of the European Union had been unable to reach a consensus on the complainant's case and had failed to deliver an opinion on it. Finally, the Ombudsman took the view that the complainant's failure to indicate the convalescent centre or its costs could be easily corrected at any time. She made, therefore, a proposal for a friendly solution, in accordance with Article 3(5) of her Statute, to the effect that

"[t] he Commission could take into account the fact that the complainant's successive operations constitute one single treatment and accept that the three-month time limit for requesting a convalescent cure started to run from her last operation. Because the complainant complied with that time limit, the Commission could grant her authorisation for a convalescent cure in a centre in [Member State X] providing that the complainant also submits evidence of the centre's appropriate medical and paramedical infrastructure. "

5. The Commission accepted the Ombudsman's friendly solution proposal and invited the complainant to submit the necessary evidence, after which she would be reimbursed the costs of the convalescent cure. The complainant was satisfied with the outcome of the Ombudsman's inquiry and submitted relevant evidence to the Ombudsman.

The Ombudsman's assessment after the proposal for a friendly solution

6. The Ombudsman welcomes the Commission's acceptance of her friendly solution which shows that the Commission is sensitive to the difficult situations which sometimes affect its staff.

7. The Ombudsman forwarded the evidence submitted by the complainant to the Commission so that the parties can reach an agreement directly.

Conclusion



On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

The Commission accepted the proposal for a friendly solution.

The complainant and the President of the Commission will be informed of this decision.

Emily O'Reilly

Strasbourg, 1/8/2014

[1] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's friendly solution proposal available at:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54643/html.bookmark>