

Decision of the European Ombudsman on complaint 1109/18.12.96/XXX/UK/IJH against the European Commission

Decision

Case 1109/96/IJH - Opened on 15/01/1997 - Decision on 22/07/1998

Strasbourg, 22 July 1998 Dear X On 12 December 1996 you made a complaint to the Ombudsman concerning a tender exercise for a post of finance manager under the PHARE programme, carried out by DG1A of the European Commission. In accordance with Article 1(3) of the Statute of the Ombudsman, you requested that your complaint should be treated confidentially. I am writing now to let you know the results of the inquiries that have been made. On 15 January 1997, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 21 April 1997 and I forwarded it to you with an invitation to make observations, which you sent on 24 June 1997. On 15 December 1997, I wrote to the Secretariat-General of the Commission to propose an informal meeting between the Commission's services and the Ombudsman's services to discuss the possibility of a friendly solution to your complaint. My services informed you of this initiative by telephone. The meeting took place on 2 February 1998. My services sent minutes of the meeting both to the Secretariat-General of the Commission and to you. Following the meeting, the Commission informed the Ombudsman that discussions between the Commission services and yourself were taking place. On 27 April 1998, you informed me by fax that you had reached agreement with the Commission on the terms of a financial settlement of your complaint. On 14 July 1998, the Commission informed me that a friendly settlement had been reached.

THE COMPLAINT

In summary, the relevant facts as presented in your complaint were as follows: In April 1993, you were employed as finance manager in a programme co-ordination unit for PHARE. The place of employment was Brussels. In August 1994, the post was re-located to another country. After receiving informal assurances about the length of time for which you could expect to be employed, you moved to the other country with your family. After approximately one year, the post of finance manager was subject to a tender exercise, in which you were unsuccessful. In your complaint to the Ombudsman, you claimed that the tender exercise was not properly conducted and, in particular, that:

- the tender exercise was not conducted in accordance with PHARE regulations;
- the person to whom the award was made did not even closely comply with the terms of



reference for the post;

- the person to whom the award was made had previously been in a position to know the level of the fees which you had previously received as finance manager.

THE INQUIRY

The Commission's opinion In its opinion, the Commission provided information about the organisational and contractual framework of the Phare programme. In relation to your specific case, the opinion made a number of points. In particular it stated that there had not been a call for tenders for the post of finance officer, but a comparative evaluation of the qualifications of two candidates, of whom you were one. The opinion also included several annexed documents concerning the selection process. **Your observations** In your observations, you contested several of the points made by the Commission. In particular, you referred to a letter dated 22 December 1995 which was addressed to you by an official of DG 1A of the Commission. This letter, a copy of which you supplied to the Ombudsman, began as follows: *"I regret to inform you that the final choice made by the Evaluation Committee, responsible for the call for tender (...) did not retain your offer as most advantageous."* You also remarked that the Commission had not responded to points (ii) and (iii) of your complaint.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After examining the Commission's opinion and your observations, the Ombudsman considered that there was *prima facie* evidence of maladministration in the discrepancy between the Commission's opinion, which stated that no call for tenders had taken place, and the letter addressed to you by DG1A, which referred to the outcome of a tender exercise. In accordance with Article 3 (5) of the Statute, therefore, the Ombudsman wrote to the Secretariat-General of the Commission to propose an informal meeting between the Commission services and the Ombudsman's services to discuss the possibility of a friendly solution to the complaint. Following the meeting, which took place on 2 February 1998, the Commission informed the Ombudsman that discussions between the Commission services and yourself were taking place. On 27 April 1998, you informed me by fax that you had reached agreement with the Commission on the terms of a financial settlement of your complaint. On 14 July 1998, the Commission informed me that a friendly settlement had been reached.

THE DECISION

1 The Ombudsman's inquiries into this case appeared to reveal *prima facie* evidence of maladministration. 2 In accordance with Article 3 §5 of the Statute ¹, the Ombudsman therefore proposed an informal meeting between the Commission's services and the Ombudsman's services ². 2 Following this initiative by the Ombudsman, the Commission and the complainant have reached a friendly settlement of the complaint. The Ombudsman therefore closes the case. Yours sincerely Jacob Söderman



¹ *"As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint".*

² On 22 October 1997, the European Ombudsman and the Secretary-General of the Commission agreed that an informal meeting could, in some cases, provide an appropriate way to pursue a friendly solution to a complaint, in accordance with Article 3 §5 of the Statute.