

Decision of the European Ombudsman on complaint 320/97/PD against the European Commission

Decision

Case 320/97/PD - Opened on 30/06/1997 - Decision on 02/12/1998

Strasbourg, 2 December 1998 Dear Mr R., On 15 April 1997 you made a complaint to the European Ombudsman concerning the European Commission. You put forward that the way in which the Commission had dealt with a recruitment procedure concerning you constituted maladministration. On 30 June 1997, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 27 October 1997 and I forwarded it to you with an invitation to make observations, if you so wished. On 8 January 1998 I received your observations on the Commission's opinion. On 25 March 1998 I asked the Commission for additional information. The Commission forwarded its second opinion on 26 May 1998, which I sent to you with an invitation to make observations if you so wished. On 24 June 1998 I received your observations on the Commission's second opinion. I am writing now to let you know the results of the inquiries that have been made. I apologize for the length of time it has taken to deal with your complaint.

THE COMPLAINT

The background to the complaint is in summary the following: In June 1994 you passed a selection procedure organized by the Commission for establishing a reserve list for the recruitment of temporary posts in grades A7/6, 65T/XXIII/93. On 23 September 1996 you, who are working in Peru, South America, were called by Mr José Luis Triminio, Directorate General IB, who wanted to know whether you would be interested in a job in the department concerning Latin America. You confirmed your interest. On 4 November 1996, you received a letter from Directorate General IX inviting you to a job interview in Brussels and to the necessary medical examinations in case you were offered the job. The interview and the medical examinations took place on 21 and 22 November 1996. On 6 December 1996 you were informed orally by DG IB that you were offered the job in question. By note of 16 December 1996 DG IB asked DG IX to put the recruitment procedure in motion as soon as possible. On 13 January 1997 you contacted DG IX. You were told that your recruitment was sure and that you would receive a fax to that effect within a week. On 16 January 1997 DG IX informed you that the recruitment procedure was blocked by a decision to close the reserve list, upon which you were, and therefore you could not be hired. You have never been informed in writing that your reserve list has been closed. By letter of 15 March 1997 you informed the Commission that you did not find this way of proceeding appropriate. Against this background you have put forward in your complaint that the Commission's way of proceeding constitutes maladministration. In your view,



it shows faulty procedures, lack of professional conscience within the Commission's services, disrespect for the citizen as well as bad financial management, your return ticket Lima-Brussels having been paid by the Commission.

THE INQUIRY

The Commission's opinion The Commission has stated that on 13 November 1996 it adopted a new decision concerning its policy towards temporary agents governed by Art. 2a of the Rules Applicable to Other Agents (hereinafter; the new decision). Detailed consultation with services and staff representation preceded the adoption of the decision which entered into force on 1 December 1996. The new rules are much stricter than the old ones, because they limit the recruitment of temporary agents in grade A7/6 to applicants who are on a reserve list established under an external competition or to applicants who have passed a selection procedure for specific professions. Actually, according to the new decision, recruitment of temporary agents shall as a main rule take place in the grade A5/4 so as to enable the institution to dispose of specialised knowledge. Furthermore, the Commission administration decided that all reserve lists, established under selection procedures for temporary posts, should be closed as from 1 December 1996, so as to relaunch the policy towards temporary agents on the basis of the new decision. General Directors and Heads of service were informed of the new decision on 3 December 1996. The Commission has further stated that it is true that during the process leading to the adoption of the said decision, DG IB was in contact with you and you had a job interview with DG IB. However, as DG IB's request for recruiting you was not sent to DG IX until 16 December 1996, the administration had to apply the new rules and therefore reject the request. The Commission has furthermore stated that it finds it regrettable that you received contradictory information concerning a possible job offer, but it considers it necessary to underline the following points: - When you were asked to come to Brussels, the new rules were not yet adopted and therefore the administration could not refuse DG IB's request for inviting you for a job interview. - The fact of being on a reserve list does not confer any right to a job upon the person concerned. It is in fact only the Director General of DG IX who is authorized to decide on the recruitment of temporary agents and it is only the services of DG IX who are empowered to address job offers in the name of the Commission. It is established that you never received such a letter. - Your letter of 15 March 1997 was replied to.

The complainant's observations In your observations on the Commission's opinion you have maintained your complaint. You have in particular emphasised that you consider the Commission's way of proceeding contrary to the principle of legitimate confidence and that the fact that the Commission services both in December and in January could confirm orally the job offer that you were about to have, i.e. after the new decision came into force, confirms your point of view that the Commission's procedures are faulty.

FURTHER INQUIRIES

After due consideration of the Commission's opinion and the complainant's observations, the European Ombudsman addressed the Commission. In his letter the Ombudsman asked the Commission to forward him a copy of the decision of 13 November 1996 and to inform him on the following points: Did the mentioned decision provide for any transitory measures as concerns ongoing recruitment procedures ? If the decision did not provide for any such measures, what were the reasons for that? Did the intensive consultation with services involve



DG IB ? When was the work on the decision finalised, and thus when was the procedure for submitting the decision to the Commission's approval set in motion? How were the Commission's services informed about the decision after its adoption? In its reply the Commission forwarded the decision of 30 November 1996 as well as a note by DG IX addressed to the Directors General and Heads of services of the Commission of 3 December 1996 concerning the new decision. Furthermore the Commission forwarded a copy of your curriculum vitae. According to the Commission, the decision contained transitory measures as the mentioned note of 3 December 1996 stated that existing reserve lists could be kept open in order to allow for recruitments in conformity with the new decision. The Commission has further stated that it was not possible to consider your education in political science as a specific profession under the new decision. Finally the Commission stated that the procedure leading to the adoption of the new decision had taken place in all transparency and that all the Commission services had been regularly informed about the ongoing work, e.g. during the weekly meetings of assistants as well as by the note of 3 December 1996. In your observations on the second opinion of the Commission you maintained your complaint.

THE DECISION

1. Principles of good administration require that the administration deals with citizens in a fair and just way. It falls upon the Commission to organize its procedures so as to comply with that requirement. In this case it is established that the new decision concerning recruitment of temporary agents came into force as from 1 December 1996 and that the new decision laid down the requirement that the applicant shall have a specialized profession. It is also established that you did not fulfill that requirement and therefore was not recruited. Furthermore, it is established that under the old rules you had undergone interviews and medical examinations successfully and had been retained by the service responsible. It appears that if the old rules had continued in force after 30 November 1996, you would have been recruited. Thus, the question is whether it is fair to apply to your case a new requirement which was not in force at the moment when you were successful in the recruitment procedure. The Commission has not indicated any overriding interest in doing so. The Ombudsman finds that it cannot be qualified as fair to apply to you a requirement which was not in force at the moment when you were successful in the recruitment procedure. Thus, it appears that the Commission has not met the requirement that follows from principles of good administration. It falls on the Commission to organize its procedures so as to comply with the requirement. **Conclusion** 2. On the basis of the inquiries into this complaint, it appears necessary to make the following critical remark: Principles of good administration require that the administration deals with citizens in a fair and just way. In this case it appears that an applicant, who had successfully undergone interviews for a job and medical examinations and had been retained by the service responsible, was not recruited. The reason for this was that the Commission subjected the recruitment to a requirement which was not in force at the moment, when the applicant was successful. By proceeding in this way, the Commission committed an instance of maladministration. Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob SÖDERMAN