

## Decision of the European Ombudsman on complaint 323/97/PD against the European Commission

Decision

**Case 323/97/PD - Opened on 30/06/1997 - Decision on 06/05/1999**

Strasbourg, 6 May 1999 Dear Mrs J., On 14 April 1997 you lodged a complaint with the European Ombudsman concerning the European Commission. You put forward that the European Commission had failed to ensure that the Spanish authorities comply with their obligations under Directive 89/48. The Directive lays down the general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration. On 30 June 1997 I forwarded your complaint to the President of the European Commission. On 15 October 1997 the Commission sent its opinion and I forwarded it to you with an invitation to make observations if you so wished. On 6 January 1998 you lodged observations. Furthermore, you made additional submissions on 6 December 1997, 12 December 1997, 23 December 1997, 29 January 1998, 24 February 1998, 27 April 1998, 11 August 1998 and 23 November 1998. On 8 March 1999 you asked to be informed about the processing of your complaint. I am writing now to let you know the result of the inquiries that have been made. I apologise for the length of time it has taken to deal with your complaint. To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of the Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be subject of a complaint to the European Ombudsman. The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

**THE COMPLAINT** According to the complainant and on the basis of the submitted evidence, the background to the complaint may be summarised as follows: The complainant is a Belgian national and holds a Belgian diploma "Licence en traduction", delivered by the University of Mons. In 1992, the complainant asked the Spanish authorities to recognise the diploma so that she could take up professional activity in Spain as a language teacher. The request was submitted under Directive 89/48 on a general system for the recognition of higher-education diplomas awarded on completion of professional training and training of at least three years' duration (OJ 1989 L 19/16). This Directive does not concern purely academic recognition, but recognition with a view to take up so-called regulated professions. The professions in Spain in which the complainant considered to be regulated in the meaning of the Directive were "profesor de escuelas oficiales de idiomas" and "profesor de educación secundaria". As



concerns the first profession, the complainant applied under a competition for entering the Spanish civil service as "profesor de escuelas oficiales de idiomas". Apparently, the complainant succeeded in the competition but her appointment was later annulled on the ground that she had not submitted the required documentation, attesting that she hold the diploma necessary for the post. As concerns the second profession, the complainant applied at the competent Spanish authority for recognition of her diploma so that she could teach French and English. The Spanish authority observed that according to Belgian legislation, the diploma could only entitle her to teaching if she had an "Agrégation" or a "Certificat d'Aptitude Pédagogique" (CAP). Furthermore, it observed that Spanish legislation also required the possession of a CAP; however, one could dispense from that requirement in case the person in question had one year's teaching experience in an establishment of the appropriate level. As it was established that the complainant at that time did not possess a CAP, the Spanish authority rejected the complainant's request. However, Article 5 of the Directive provides that Member States may facilitate the recognition of a diploma by allowing the citizen to undertake the part of the education that he/she is missing for obtaining recognition. On that basis, the complainant took the required CAP at a Spanish teaching establishment and in 1994, the complainant was allowed access to the profession of "profesor de educación secundaria" for teaching in French and English. However, the complainant considered that the original actions of the Spanish authorities were contrary to the above mentioned Directive. The complainant wanted therefore to have access to the professions with retroactive effect. The argumentation which seems to underlie this view, as concerns the "profesor de educación secundaria", may be summarised as follows : In notices for competition for entering the Spanish civil service as "profesor de enseñanza secundaria", there was a provision according to which one year's teaching experience could dispense from the CAP requirement. The complainant had two years' teaching experience in Spanish, acquired in Belgium from 1983-1985. The complainant therefore considered that her Belgian experience should be taken into account. The complainant approached the Spanish authorities on the subject-. These approaches were apparently in vain. On 2 February 1995 the complainant then lodged a complaint with the European Commission. By letter of 16 March 1995, DG XV of the Commission acknowledged receipt of the complaint. The complaint gave rise to an extensive correspondence between the complainant, the responsible services in the Commission, the Belgian and Spanish authorities. Furthermore, at a certain moment the complainant started corresponding with DG V. The complainant and the Commission services were also in contact by telephone. While the Commission processed the complaint, the complainant continued her dealings before the Spanish authorities with a view to make them change their position. By letter of 27 March 1997, the Commission notified to the complainant that the Commission had decided to close the file on her complaint. The letter contains two paragraphs; the first one that the Commission had decided to close the case; the second one that on the basis of the case law of the Court of Justice, individuals cannot challenge the Commission's decision not to initiate infringement proceedings. This is in brief the background against which the complainant lodged the complaint with the European Ombudsman. In the complaint it was firstly put forward that the Commission had taken too long to deal with the original complaint. Secondly it was alleged that the Commission could not archive the complaint as the Spanish authorities were continuously refusing to acknowledge the complainant's professional experience on the ground that the experience had not been obtained in Spain, but in Belgium. In the complaint, the complainant only referred to the Commission's



examination of her situation as regards the profession as "profesor de educación secundaria". Annexed to the complaint were a number of certificates from Belgian authorities concerning the complainant's teaching experience. From these certificates it appeared that from 1983 to 1985 the complainant had given language courses in Spanish to adults at a level corresponding to secondary school. One certificate expressly mentioned that the complainant's diploma was covered by Directive 89/48. Furthermore, a letter of 23 September 1996 from DG V to the complainant was annexed. According to this letter, it would be contrary to Article 48 EC Treaty if the Spanish authorities did not consider her experience in her Belgium just on the ground that it had not been obtained in Spain.

## THE INQUIRY

**The Commission's opinion** In its opinion, the Commission firstly stated that it has discretionary powers as to the initiation of infringement proceedings against a Member State and that the documentation forwarded to the Ombudsman by the complainant in no way gave a representative vision of the file. The Commission annexed a list of the correspondence in the file. As concerns the time taken for examining the complaint, the Commission acknowledged that the processing of the complaint, in taking two years, had exceeded the normal time limits set for dealing with citizens' complaints. However, the Commission observed that after the lodging of the complaint, the complainant had continuously submitted new and sometimes contradictory elements of which the Commission had to take account in processing the complaint. Furthermore, given the subject matter, i.e. recognition of diplomas, the Commission had to be in contact with both Spanish and Belgian authorities and the replies from this last ones had been quite delayed. As concerns the decision to close the file on the complaint, the Commission stated that the attestation delivered by the Belgian authorities contradicted other evidence in the file and the information of general nature that the Commission possessed concerning the kind of diploma in question. The Commission therefore contacted the Belgian authorities which then confirmed that the "Licence" in it self without any "Agrégation" or CAP could not be considered a diploma within the meaning of Directive 89/48. Thereafter, the Commission recalled that a preliminary condition for recognition under the Directive is that the diploma in question gives access to the profession in the State of origin. The Directive applies if the holder of the diploma can exercise, in the State of origin, the profession for which recognition is sought in another Member State. On the basis of the information from the Belgian authorities, the Spanish authorities had therefore been right to consider that the complainant did not fall under the Directive. As concerns the claim that the Spanish authorities' refusal to recognise the complainant's professional experience on the ground that it had been obtained in Belgium, the Commission stated that it had persistently pursued this matter, both before and after the lodging of the complaint with the Ombudsman. The Commission had clearly stated its view that such a condition would be contrary to Article 48 EC Treaty and it had sought and obtained the Spanish authorities' acceptance of that view. The Commission had communicated this to the complainant. **The complainant's observations** In her observations the complainant maintained her complaint. She also forwarded further documentation. From this it appeared - that the complainant had lodged a court action before the Spanish courts concerning the subject matter, - that the Belgian authorities had informed the Spanish authorities that the "Licence" only gives the holder the right to teach when the teaching establishment does not encounter a holder of a "Licence" with CAP or "Agrégation" on the labour market, - that the Commission had



twice expressed the view that the civil service "profesor de escuelas oficiales de idiomas" was a regulated profession in the meaning of the Directive, and - that the Spanish authorities continuously had held the opinion that the civil service "profesores de escuelas oficiales de idiomas" was an unregulated profession, to which the Directive did not apply. It did not appear from the documentation whether the resolution of this last discrepancy of views between the Commission and the Spanish authorities would have an impact on the situation of the complainant.

## THE DECISION

**1 The time for dealing with the complaint** 1.1 The complainant considered it an instance of maladministration in the form of avoidable delay that the Commission had not processed her complaint in less than two years. 1.2 In taking a stand on this, the Ombudsman shall observe that the complaint was not simple and that the Commission has evidenced that for a considerable time, the case was pending upon replies from national authorities, to whom the Commission sent reminders. The list of correspondence submitted by the Commission does not either point to passivity on the Commission's side. Consequently the Ombudsman finds that there has been no maladministration by the Commission on this aspect of the complaint. **2 The Commission's decision to close the file** 2.1 The complainant considered that the Commission's decision to close the file was unjustified since she continued to experience problems in having the Spanish authorities recognise her diploma with effect from 1992. 2.2 In taking a stand on this, the Ombudsman shall firstly observe that the complaint shows the problems related to recognition of diplomas that citizens may experience in exercising their right to free movement, a cornerstone of the Community. Faced with such problems, citizens may turn to the Commission which is the Guardian of the Treaty and which possesses the necessary expertise. They are entitled to expect a diligent and efficient examination by the Commission. 2.2 In taking a stand on this, the Ombudsman shall firstly observe that the complaint shows the problems related to recognition of diplomas that citizens may experience in exercising their right to free movement, a cornerstone of the Community. Faced with such problems, citizens may turn to the Commission which is the Guardian of the Treaty and which possesses the necessary expertise. They are entitled to expect a diligent and efficient examination by the Commission. 2.4 However, the Commission's decision to close the file is laconic and gives no reasons for the decision. Although this decision has to be seen in the context of the previous correspondence with the complainant, the decision left fundamental questions, material to the complainant, unanswered such as e.g. whether the Commission had not found an infringement, or whether it had actually found an infringement which it had decided not to pursue any further in the exercise of its discretionary powers. The decision does not permit the Ombudsman to ascertain whether the Commission acted within the limits of its legal authority. 2.5 Principles of good administration require the administration to give reasons for the decisions it takes towards the citizen concerned. Such reasoning is essential for the citizen's confidence in the administration and for the transparency of the administration's decision making. In this case it appears that the Commission gave no reasons at all for its decision to close the file on the citizen's complaint. This lack of reasoning was mitigated by the Commission's previous correspondence with the complainant. However, the failure to give reasons left the citizen with fundamental questions unanswered. The Commission thus failed to comply with the requirement which follows from principles of good administration. Given that it has now appeared that the complainant has



lodged a court case against the Spanish authorities on the subject matter of her complaint to the Commission, the Ombudsman finds that there are no reasons for inquiring further into this aspect of the complaint. **3 Conclusion** On the basis of the Ombudsman's inquiries into this complaint, it appears necessary to issue the following critical remark: Principles of good administration require the administration to give reasons for the decisions it takes towards the citizen concerned. Such reasoning is essential for the citizen's confidence in the administration and for the transparency of the administration's decision making. In this case it appears that the Commission gave no reasons at all for its decision to close the file on the citizen's complaint. This lack of reasoning was mitigated by the Commission's previous correspondence with the complainant. However, the failure to give reasons left the citizen with fundamental questions unanswered. The Commission thus failed to comply with the requirement which follows from principles of good administration. Given that this aspect of the case concerns 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. Yours sincerely, Jacob SÖDERMAN