

Decision of the European Ombudsman on joined complaints 531/97/PD and 535/97/PD against the European Commission

Decision

Case 531/97/PD - Opened on 16/09/1997 - Decision on 06/05/1999

Strasbourg, 6 May 1999 Dear Mr M., On 21 April 1997 you made a complaint to the European Ombudsman concerning a statement made by the European Commission about Argentinean dentistry diplomas. The complaint was lodged on behalf of a number of dentists having obtained their diplomas in Argentina, including Mrs S. who lodged a complaint on the same subject matter on 9 June 1997 (535/97/PD). I therefore decided to treat the two complaints jointly. Your complaint was first declared inadmissible under Art. 2.4 of the Statute of the European Ombudsman. However, you forwarded additional information concerning the administrative approaches made with the Commission, which allowed me to undertake an inquiry into the allegations put forward. On 16 September 1997 I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 10 December 1997 and I forwarded it to you with an invitation to make observations, if you so wished. On 25 February 1998 I received your observations. On 2 July 1998 I informed you that I had written to the President of the European Commission requesting an inspection of the file. A second request was sent to the Commission on 19 October 1998 and a third on 4 November 1998. The inspection of the file finally took place on the Commission premises in Brussels on 11 January 1999. I am writing now to let you know the result of the inquiries that have been made. **THE COMPLAINTS** The background to the complaints is in short the following: Spain, who became a member of the European Community in 1986, has for many years had Latin-American dentists working on its territory. These dentists have been allowed to work on the basis of international agreements between Spain and a number of Latin-American countries. In the late nineteen eighties, the European Commission concluded that some Latin-American diplomas in dentistry did not comply with the minimum requirements for dentistry diplomas, laid down by Directives 78/686/EEC and 78/687/EEC on harmonization and mutual recognition of dentistry diplomas (OJ 1978 L 233/1 and OJ 1978 L 233/10). In 1990, the Commission therefore started to conduct investigations with a view to initiating infringement proceedings against Spain under Article 169 EC Treaty. Spain initially defended its case, referring to Article 1(4) of Directive 78/687 which provides that Member States are free to make their own arrangements for the recognition of third country diplomas. Spain later changed its legal rules to the satisfaction of the Commission which in 1997 decided not to initiate court proceedings. In its annual reports on the monitoring on the application of Community law, the Commission gave amongst others the following information on the state of the on-going investigations against the Spanish authorities (see for



instance the 14th annual report (1996), published in OJ 1997 C 332/1): *"a case against Spain for admitting dentists with qualifications obtained in Latin America at a level far below the Directive's requirements."* It is this statement which sparked off the complaints to the European Ombudsman. The complainants considered that the statement wrongly discredited holders of Argentinean diplomas in dentistry (hereinafter just: Argentinean dentists). In the complaints, it was in substance put forward - that the Commission's interpretation of the applicable law was wrong and therefore wrongly led it to initiate the investigations against Spain, and - that the statement in question was based on poor knowledge of Latin-American diplomas in dentistry and thus tainted by inadequate examination of the issues assessed. In support of the first allegation, the complainant referred to the above mentioned Article 1 (4) of Directive 78/867, according to which Member States remain free to recognize diplomas from third countries. In support of the second allegation, the complainants stated, amongst others, that the Commission had apparently not contacted the relevant sources for adequate information, for instance Latin-American education establishments. Furthermore, they submitted material that showed that Argentinean educations in dentistry had served as inspiration for the Spanish education in dentistry.

THE INQUIRY

The Commission's opinion The Commission stated in substance the following: As for its view that third country diplomas recognised by individual Member States must comply with the minimum requirements laid down in the Dentistry Directives, the Commission stated that the aim of the Directives required such interpretation. The public health and freedom of movement could be harmed if individual Member States were allowed to create categories of dentists who do not comply with the minimum requirements in the Community directives. The recognition of Latin-American dentists, who did not comply with the requirements of the Directives, had as a consequence that the free movement of European dentists was impaired. As for the statement referred to in its annual reports, the Commission observed that the statement did not constitute a precise "technical" evaluation in itself. Such a statement was only intended to succinctly convey information of a factual nature. As for the substantive evaluation behind the statement, the Commission stated that this had been conducted with adequate regard to normal practice and due diligence. **The complainants' observations** In their observations the complainants maintained the complaint.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the observations lodged, the Ombudsman decided to inspect the file underlying the Commission's statement. By letter of 2 July 1998, he requested the Commission to make the necessary arrangements for the inspection. The purpose of the inspection was to verify that the Commission had properly examined the file which constituted the basis for the statement. On 11 and 12 January 1999, two senior legal officers from the Ombudsman's Office carried out the inspection. During the examination of the file, the six Commission officials who represented respectively Directorate General XV, the Legal Service and the General Secretariat also replied to questions put to them by the Ombudsman's officers.

THE DECISION



On the basis of the information provided by the complainant and the observations submitted by the European Commission, the Ombudsman has reached the following conclusions: **1 The allegations** 1.1 The complainants have made two allegations. First, they dispute the Commission's legal interpretation, in essence claiming that Community law does not prevent Member States from recognising third country diplomas which fall below the minimum standards of Directive 78/687. Secondly, they claim that the Commission's statement about an examination of Latin-American dentistry diplomas is unwarranted. **2 The Commission's interpretation of the applicable law** 2.1 The Commission has considered that the Directives in question do not allow Member States to recognise third country diplomas which fall below the minimum standards set out for Community dentistry diplomas. The complainants contend this view, referring to Article 1(4) of Directive 78/6687, which states that: *"Nothing in this Directive shall prejudice any facility which may be granted in accordance with their own rules by Member States in respect of their own territory to authorize holder of diplomas, ... which have not been obtained in a Member State to take up and pursue the activities of a dental practitioner."* 2.2 It has to be conceded that read literally, this provision seems to confer absolute freedom to the Member States as concerns recognition of third country diplomas. However, the Commission has considered that the provision must be read in its context and in the light of the aims of the Directive, aims which comprise public health and the free movement of persons. It considers inter alia that dentists from other Member States wanting to enter Spain would be in a less favourable position compared to persons with dentistry diplomas which have required less time and effort to obtain. 2.3 Against this background, the Ombudsman finds that the Commission's interpretation appears reasoned and well-founded. However, it has to be recalled that the Court of Justice is the highest authority on the interpretation of Community law. **3 The Commission's case-examination** 3.1 The complainants have in substance alleged that the Commission's statement about Latin-American diplomas in dentistry was due to faulty examination of the facts and issues underlying the statement. In support of this allegation, they stated that the Commission had failed to take contact with education establishments in Latin-America which teach dentistry. 3.2 Principles of good administration require that the Commission carefully and diligently examines all the relevant aspects of the individual case in question. 3.3 In examining whether the Commission has complied with this requirement in this case, it shall firstly be observed that the statement in question does not as such refer to all Latin-American dentists. The statement merely informs that there are dentists working in Spain, whose Latin-American dentistry diplomas do not comply with the minimum requirement for Community diplomas. From the evidence available to the Ombudsman, it appears also that Spain - who initially disputed the infringement proceedings - did not challenge the Commission conclusion that such dentists had in fact been authorised to practice on Spanish territory. Spain's objections were aimed at the Commission's legal interpretation of the Directives in question, an issue dealt with above. 3.4 Secondly, it shall be observed that the inspection of the Commission's file showed that the Commission was in possession of a large number of copies of diplomas, delivered in various Latin-American countries, which did not conform to the requirements of the Directives. 3.5 Against this background, the Ombudsman finds that the Commission has not failed to comply with the requirement to carefully and diligently examine the case. **4 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. 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