

Cinneadh i gcás 2029/2005/MF - Mainneachtain fírinniú dlíthiúil a thabhairt maidir le cinneadh i dtaca le haisíocaíocht i ndáil le hathlonnú an ghearánaigh

Cinneadh

Cás 2029/2005/MF - Tosaithe an 05/07/2005 - Cinneadh an 04/09/2007

Bhog an gearánach ó Barcelona go dtí an Bhruiséil roimh dhul i mbun a dhualgas sa Choimisiún agus chuir sé dhá mheastachán faoi bhráid an Choimisiúin i ndáil leis an athlonnú. Mheas an Coimisiún go raibh na meastacháin sin iomarcach agus rinne sé teagmháil le cuideachta athlonnaithe eile. Cheadaigh an Coimisiún an tsuim a bhí luaite i meastachán na cuideachta sin i leith seirbhíse inchomparáide. Dúirt an gearánach go raibh seirbhís ualaigh pháirtigh á tairiscint ag an gcuideachta a roghnaigh an Coimisiún ach gur bhain meastacháin s'aigesean le seirbhís ualaigh iomláin.

Líomhnaigh an gearánach, *inter alia*, gur mhainnigh an Coimisiún, de réir fírinniú dlíthiúil a thabhairt maidir lena chinneadh i dtaca le haisíocaíocht i ndáil le hathlonnú. D'éiligh sé gur ceart don Choimisiún aisíocaíocht EUR 219.96 a thabhairt dó, ar suim í a fhreagraíonn don difríocht idir an meastachán a cheadaigh an institiúid agus an méid a d'foc seisean iarbhír.

Ina thuairim, dúirt an Coimisiún gurbh eol don ghearánach gurbh é a bhí san aisíocaíocht uasta a bhí ceadaithe ná suim EUR 1 094. Ó tharla gur roghnaigh an gearánach an chuideachta a bhí i gceist, ní fhéadfadh sé géilleadh dá éileamh.

Ina chuid tuairimí, dúirt an gearánach go raibh sé tar éis a mhíniú don Choimisiún gur theastaigh uaidh seirbhís ualaigh iomláin a fháil mar nach bhféadfadh a chuid plandaí maireachtáil ar feadh na stoc-thréimhse níos faide a bheadh i gceist dá mbeadh seirbhís ualaigh pháirtigh ann.

Maidir le líomhain an ghearánaigh, rinne an tOmbudsman togra don Choimisiún maidir le réiteach cairdiúil. Mheas an tOmbudsman gur mhainnigh an Coimisiún cúiseanna dóthanacha a thabhairt lena chinneadh maidir le haisíoc chostais an athlonnaithe, go háirithe tar éis don ghearánach a chur in iúl don Choimisiún arís agus arís eile go raibh gá le seirbhís ualaigh iomláin chun a chuid plandaí a chosaint. Ba é a bhí i gconclúid shealadach an Ombudsman ná gur léir go raibh fírinniú ann i leith éileamh an ghearánaigh ar aisíocaíocht EUR 219.96.

Ba é a bhí sa togra maidir le réiteach cairdiúil ná go ndéanfaidh an Coimisiún breithniú i dtaobh míniú a thabhairt don ghearánach ar na cúiseanna nach raibh gá leis an gcineál córa iompair a



d'iarr seisean (seirbhís ualaigh iomláin), nó nach raibh fírinniú ann ina leith, nó, mura mbeifí an ann míniú den sórt sin a thabhairt, go ndéanadh an Coimisiún breithniú i dtaobh an méid breise EUR 219.96 a aisíoc leis an ngearánach.

Ina fhreagra, ghlac an Coimisiún le togra an Ombudsman maidir le réiteach cairdiúil a bhaint amach. Ag féachaint don difríocht bheag idir an méid a d'íoc an gearánach iarbhr as an athlonnú agus an meastachán a cheadaigh an Coimisiún, d'aontaigh an Coimisiún athbhreithniú a dhéanamh ar a chur chuige roimhe seo agus, mar eisceacht, EUR 219.96 a íoc leis an ngearánach.

Chuir an gearánach in iúl do sheirbhísí an Ombudsman nár theastaigh uaidh aon tuairimí eile a thabhairt agus gur mheas sé go rabhtas tar éis teacht ar réiteach cairdiúil. Ghabh sé buíochas leis an Ombudsman as an idirghabháil a rinne sé.

Strasbourg, 4 September 2007

Dear Mr X,

On 31 May 2005, you submitted a complaint to the European Ombudsman against the European Commission concerning the reimbursement of your removal expenses and of payment of daily subsistence allowances.

By e-mail of 3 June 2005, you sent me further documents related to your complaint.

On 5 July 2005, I forwarded the complaint to the President of the European Commission. The deadline for its opinion was 30 September 2005.

On 11 July 2005, you sent me a further e-mail related to your complaint, to which I replied on 12 September 2005. I informed the Commission accordingly on the same day. In my letter, I further informed it of the extension of the deadline for its opinion until 31 October 2005.

The Commission sent me its opinion on 22 November 2005.

On 5 December 2005, I forwarded it to you with an invitation to make observations before 31 January 2006. You sent me your observations on 27 January 2006.

On 6 October 2006, you sent me further documents related to your complaint.

On 31 May 2007, I made a proposal to the Commission for a friendly solution to your complaint.

On 19 July 2007, the Commission sent its reply to this proposal.

On 23 July 2007, I sent you a copy of the Commission's reply with an invitation to submit your observations by 31 August 2007. By e-mail of the same day, you informed my services that you did not wish to make any further observations.



On the occasion of a telephone conversation with my services on 23 July 2007, you informed them that you considered that a friendly solution had been achieved and thanked the Ombudsman for his intervention.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

According to the complainant, the relevant facts were, in summary, as follows:

The complainant has been an official of the European Commission since 16 January 2004. Before his appointment as an official, he used to live in Barcelona. In order to take up his duties, he consequently had to move from Barcelona to Brussels.

The complainant was paid the daily subsistence allowance up to and including June 2004. In a letter dated 9 July 2004, the Office for the administration and settlement of individual entitlements ("PMO") of the Commission informed him that he had to reimburse EUR 1079.96, since he was only entitled to receive daily subsistence allowances until 14 May 2004. In the complainant's view, he was entitled to be paid daily subsistence allowances during the whole of the probationary period with an extension of one month.

On 22 July 2004, the complainant sent to the Commission the estimates for his move from Barcelona to Brussels.

Following the submission of the estimates for his move from Barcelona to Brussels, the Commission informed the complainant, on 7 September 2004, that it had rejected the estimates that he had submitted " *because the least expensive exceeded by more than 50% the average price which had been observed for ten years by the service, for an identical service* ". The Commission then informed the complainant that, pursuant to Article 9 of Annex VII of the Staff Regulations, it had contacted another removal company and that the amount of its estimate for a comparable service had been approved. On 13 September 2004, the complainant informed the Commission that he disagreed with the choice of the removal company because it did not offer a comparable service. In his view, the company chosen by him offered a full load service whereas the one chosen by the Commission offered a partial load service. The complainant stated that he wished to have a full load service because, in his view, his plants could not survive the longer stock period required by a partial load removal.

In his complaint to the European Ombudsman, the complainant submitted the following allegations:

- The Commission had wrongly asked him to reimburse the daily subsistence allowances.
- The Commission had failed legally to justify its decision concerning the reimbursement of his move.
- The Commission had ignored his objections during two months and informed him after one month that the only possible way to appeal against the Commission's decision was by using the



procedure under Article 90 of the Staff Regulations.

The complainant submitted the following claims:

- The Commission should pay him EUR 1350 as compensation corresponding to (i) five months of rent in Barcelona (1) and (ii) EUR 100 for damages to his plants.
- The Commission should reimburse him EUR 219.96 (2), that is, a sum corresponding to the difference between the estimate approved and the amount actually paid by him.

THE INQUIRY

The Ombudsman's approach

The Ombudsman decided to open an inquiry into the complainant's first allegation and informed him accordingly by letter of 5 July 2005. However, in the same letter, the Ombudsman further informed the complainant that, as the internal remedies foreseen by Article 90 of the Staff Regulations did not appear to have been exhausted with respect to his second and third allegations and his two claims, he had decided to consider these aspects of the complaint as inadmissible on the basis of Article 2(8) (3) of the Ombudsman's Statute. The complainant was informed that these aspects of the complaint would therefore not be covered by the Ombudsman's inquiry.

The complainant's further correspondence

In an e-mail of 11 July 2005, the complainant contested the Ombudsman's decision of inadmissibility concerning his second and third allegations and his two claims. He stated that his second and third allegations had been raised in a complaint he had made under Article 90(2) (4) of the Staff Regulations. The complainant further stated that his two claims had also been implicitly raised in this complaint.

The Ombudsman's reply

After a further examination of the complainant's file, the Ombudsman noted that it emerged from the information contained in it that the complainant had lodged two complaints under Article 90(2) of the Staff Regulations with the Commission. On 27 August 2004, he had lodged a first complaint concerning the Commission's decision asking him to reimburse EUR 1079.96, a sum corresponding to the daily subsistence allowances. This complaint had been rejected on 25 November 2004. On 12 October 2004, he had submitted a further complaint concerning the Commission's decision relating to the reimbursement of the costs of his removal, which had been rejected on 21 January 2005.

By letter of 12 September 2005, the Ombudsman apologised to the complainant and informed him that his second and third allegations and his two claims would be covered by the present inquiry.

The Commission's opinion

The opinion of the Commission on the complaint was, in summary, as follows:

As regards the complainant's first allegation relating to the reimbursement of the daily subsistence allowances, the Commission stated that, given that he was not entitled to the household allowance, he could, pursuant to Article 10(2)(a) of Annex VII of the Staff Regulations, only benefit from a daily subsistence allowance for the statutory period of 120



days. In the complainant's case, this statutory period started on the date when he took up his duties, that is, on 16 January 2004, and ended on 14 May 2004. However, as the result of an error when these entitlements were introduced to the " *Sysper* " database, the complainant had mistakenly been paid a daily subsistence allowance until the end of June 2004. The Commission noticed the mistake and, by note dated 9 July 2004, informed the complainant of its intention to recover the overpayment of EUR 1079.96, pursuant to Article 85 (5) of the Staff Regulations. In its opinion, the Commission apologised for this error.

The Commission further referred to the decision of 25 November 2004 of the Appointing Authority rejecting the complainant's complaint made on 27 August 2004 under Article 90(2) of the Staff Regulations against the Commission's decision to recover EUR 1079.96. The Commission stated that, in its decision of 25 November 2004, the Appointing Authority had already confirmed that the Commission's decision to recover the overpayment was well founded.

As regards the complainant's second allegation, the Commission pointed out that the complainant submitted on 22 July 2004 two removal estimates related to his move from Barcelona to Brussels. On the same day, the Commission requested from the complainant a third estimate, a request form as well as an inventory list in order to complete his file, and also indicated that he should ask the removal company for a partial load price because the small volume of his removal load could not justify a full load price. The complainant replied that Article 9 (6) of Annex VII of the Staff Regulations only required the submission of two estimates. He also explained that he could not ask for a partial load if he also wanted to have his plants moved as well. According to the complainant, his plants could not survive the longer stock period required by a partial load removal.

The Commission stated that, after several contacts between its services and the complainant, the latter finally submitted a third estimate. By e-mail of 7 September 2004, the Commission informed the complainant that it could not accept the estimates submitted, given that the least expensive one exceeded by more than 50% the average price for a similar service from Spain to Brussels calculated on the basis of the last ten years of removal costs.

Given that, in the Commission's view, the "three" estimates provided by the complainant were excessive, the Commission obtained a further estimate for the removal, pursuant to Article 9 of Annex VII of the Staff Regulations. This supplementary estimate amounted to EUR 1094 and offered a comparable level of service to that proposed by the companies contacted by the complainant.

The Commission further stated that, by decision of 8 September 2004, it officially informed the complainant of the amount that he had to reimburse, that is, EUR 1094, and of the basis on which this amount had been determined. In this decision of 8 September 2004, which followed a series of telephone calls and e-mails between the complainant and four members of the Commission's staff, stretching over a period of about ten weeks, the Commission informed the complainant that, although he was free to choose any other removal firm, the maximum reimbursement was fixed at the amount mentioned above and that he would have to pay any



additional costs.

As regards the complainant's third allegation, the Commission stated that this was not an accurate reflection of the relevant events. The Commission's decision of 8 September 2004 had been preceded by numerous contacts between the complainant and several members of the Commission's staff. It followed from the complainant's file that the Commission endeavoured promptly to reply to the complainant's e-mails.

The Commission further stated that, as a general rule, after sending the letter approving a removal estimate, there was normally little or no contact between the Commission and the member of the staff who was moving, until, once the removal had taken place, the latter had submitted the request for reimbursement of the removal costs and the accompanying documents. However, in the present case, the complainant disagreed with the maximum reimbursement amount approved by the Commission and asked the Commission to reconsider its decision. After several contacts between the complainant and different members of the Commission's staff, the complainant was finally received by the Head of the Commission's unit responsible for the administration of individual financial entitlements to discuss his case. At that meeting and in a further e-mail of 8 October 2004, the Head of Unit explained that the only way to challenge the decision of 8 September 2004 was to launch a complaint under Article 90(2) of the Staff Regulations. He also apologised in case the contacts with the Commission staff in charge of managing the complainant's file might have misled him as regards the possibilities available to him to challenge the Commission's decision of 8 September 2004.

In any event, the Commission considered that the complainant had been aware of the possibility of challenging the Commission's decision of 8 September 2004 under Article 90(2) of the Staff Regulations. In fact, considering that, on 27 August 2004, the complainant had already lodged a complaint under Article 90(2) of the Staff Regulations concerning his daily allowances, it was clear that, by the time he received the decision concerning his removal, he was well aware of the possibilities offered by Article 90(2) of the Staff Regulations.

As regards the complainant's claim, the Commission stated that the complainant himself chose the company and that he was perfectly aware of the fact that the amount of EUR 1094 was the maximum reimbursement approved by the Commission. The Commission therefore could not agree to pay the difference between this amount and the actual cost incurred, which was almost EUR 1314.

The Commission concluded that, in view of the above, neither compensation nor any other reimbursement should be granted to the complainant.

The complainant's observations

In his reply, the complainant maintained his complaint and made, in summary, the following further comments.

As regards the reimbursement of his daily subsistence allowances, the complainant stated that some of his colleagues who were in the same individual situation as he was had been granted the daily subsistence allowance during a period of 180 days.



He further pointed that Article 10(2) (7) of Annex VII of the Staff Regulations could be interpreted in conformity with the Commission's interpretation of that article in its opinion. However, in the complainant's view, the extension of one month as regards the period in respect of which the daily subsistence allowance was granted should be granted to all officials on probation, regardless of whether they were entitled to the household allowance or not. He stated that this distinction could appear discriminatory for the officials on probation who were single and without any children. In the complainant's view, Article 85 of the Staff Regulations was not applicable in his case.

As regards the reimbursement of his removal expenses, the complainant stated that, contrary to the Commission's statement, he had not submitted a third estimate for his move from Barcelona to Brussels. On 22 July 2004, the complainant explained that he wished to have a full load service because, in his view, his plants could not survive the longer stock period required by a partial load removal. The complainant further stated that, on 29 July 2004, he had been asked by the Commission to send a third estimate. On 30 July 2004, the complainant replied that, according to Article 9 of Annex VII of the Staff Regulations, he only had to submit two estimates for his removal. The complainant further pointed out that the further estimate obtained by the Commission had not been based on similar services, given that the service provided was a partial load removal.

The complainant stated that it was only on the occasion of a meeting with the Head of Unit of the PMO organised on 7 October 2004 that he was informed that he had the possibility to challenge the Commission's decision of 8 September 2004. In the complainant's view, this decision did not mention that the *only* possibility to challenge it was to have recourse to the procedure envisaged under Article 90 of the Staff Regulations.

The complainant's further e-mail of 6 October 2006

On 6 October 2006, the complainant sent the Ombudsman a further e-mail, in which he enclosed an exchange of e-mails between the PMO officials related to the reimbursement of his removal costs.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The Ombudsman's assessment

After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's allegation and claim. In accordance with Article 3(5) (8) of his Statute, the Ombudsman therefore wrote to the President of the Commission to propose a friendly solution on the basis of the following analysis:

1. The Ombudsman noted that Article 9 (Removal expenses) of Annex VII of the Staff Regulations provides as follows:

" 1. *The expenses incurred in respect of removal of furniture and personal effects, including the*



cost of insurance against ordinary risks (breakage, theft, fire), shall be reimbursed to an official who is obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations and who has not been reimbursed in respect of the same expenses from another source. Such reimbursement shall not exceed the amount of an estimate approved in advance. Not less than two estimates shall be submitted to the appropriate departments of the institution, which may, if they consider the estimates to be excessive, select another removal firm. In the latter case, entitlement to reimbursement may be limited to the amount of that firm's estimate. "

2. The Ombudsman found it useful to recall the main facts at the origin of this allegation. It emerged from the complaint's enclosures that, on 22 July 2004, the complainant had submitted two estimates for his move from Barcelona to Brussels. On the same day, the PMO official had asked him to submit a request form, three estimates and an inventory list. The complainant had replied that he could try to obtain a third estimate but that, according to the Staff Regulations, he only had to submit two estimates. On 29 July 2004, the official had again requested three estimates. In his reply of 30 July 2004, the complainant had stated that, according to Article 9 of Annex VII of the Staff Regulations, he only had to submit two estimates (9) . The Ombudsman further noted that it emerged from the Commission's opinion that, given that it considered the estimates submitted by the complainant to be excessive, it had requested a further one from another removal company. On the basis of the estimate obtained from this removal company, the Commission had decided that the maximum amount to be paid to the complainant for his removal costs was EUR 1094. The Commission stated that the services provided by the further removal company were identical to the ones offered by the removal companies chosen by the complainant.

3. The Ombudsman further noted that it emerged from the exchange of e-mails between the complainant and the officials in charge of his file at the PMO that, in view of the plants that he wished to transport, the complainant had requested, on several occasions, a particular type of transport, namely, a full load service. The Ombudsman noted that, on 22 July 2004, one PMO official wrote the following: " *[I] have already noted that the small volume of your removal cannot justify a full load price.* " In his reply of the same day, the complainant explained to the PMO official the reasons why he wished to have a full load service, namely, because, in his view, his plants could not survive the longer stock period required by a partial load removal. The Ombudsman further noted that, by e-mail of 13 September 2004, the complainant had stated that the estimate requested by the Commission corresponded to a partial load removal. He requested the Commission to ask for a new quotation. In his reply of the same day, the official made the following statement: " *this is absolutely normal to have for such small volume a part load, the Commission will not agree for a full load* ".

4. In view of the above, the Ombudsman was of the view that the Commission had respected the procedural rules. Given that the Commission considered the two estimates submitted by the complainant to be excessive, it acted in conformity with the procedural rules set out in Article 9 of Annex VII of the Staff Regulations by obtaining a third estimate and by limiting the amount to be reimbursed to EUR 1094, that is, the amount corresponding to the third estimate requested by the Commission itself.



5. As regards the substance of the Commission's decision, the Ombudsman noted that it emerged from the above that the complainant had repeatedly informed the relevant service that a particular type of transport (a full load service) was needed for his move in order to protect his plants. On the basis of the evidence available to the Ombudsman, it appeared, however, that the service in charge of his file had failed to address this argument and to explain to the complainant why his request could not be granted. On the contrary, it appeared that this service had limited itself to informing the complainant that the small volume of his goods to be moved could not justify a full load service. In these circumstances, the Ombudsman considered that the Commission had failed to provide sufficient reasons for its decision concerning the reimbursement of the costs of the complainant's move.

6. In light of the above, the Ombudsman's provisional conclusion was that the Commission's failure legally to justify its decision to reimburse EUR 1094 for the complainant's removal expenses could constitute an instance of maladministration.

7. As regards the complainant's claim to be reimbursed EUR 219.96, that is a sum corresponding to the difference between the estimate approved by the Commission and the amount that he actually paid for his removal, the Ombudsman noted that an official taking up employment for the Communities is entitled to ask for the reimbursement of the expenses incurred " *in respect of removal of furniture and personal effects* ". The Commission had not disputed that the complainant's plants formed part of his "personal effects". The Ombudsman considered that the right to have the expenses of such a move reimbursed necessarily entails the right to have this move carried out in such a way as to ensure that the furniture and personal effects of the official concerned arrive safely at their destination. In the present case, the complainant and the Commission disagreed on whether a " *partial load price* " or a " *full load price* " was appropriate for the complainant's move. Given that the Commission had so far only focused on the volume of the transport but omitted to deal with the complainant's argument that his plants required a particular mode of transport, the Ombudsman was not in a position to reach a definitive conclusion concerning this issue. However, given the delicate and perishable nature of plants, the complainant's argument did not, at first sight, appear to be unreasonable. The Ombudsman considered it useful to stress that the relevant issue had to be considered on the basis of the facts that had been presented to the Commission at the relevant time, that is, at the time before the move was carried out. The fact that the plants did not survive the move, even though the complainant chose the mode of transport he considered appropriate, was thus irrelevant in this context.

8. The Ombudsman considered it important to underline that the Staff Regulations make it clear that the right to the reimbursement of the costs of a move is not unlimited and that there is no obligation to accept excessive costs. However, given that the Commission accepted costs amounting to EUR 1094, it was not clear why a further amount of EUR 219.96 should have been considered to be excessive.

9. In view of the above, the Ombudsman's provisional conclusion was that the complainant's claim to be reimbursed EUR 219.96 appears to be justified.



10. As regards the complainant's first and second allegation, the Ombudsman concluded that there appears to have been no maladministration by the Commission. As regards the complainant's claim, the Ombudsman considered that the complainant has not established it. The reasons on which these conclusions were based were set out in the letter proposing a friendly solution, a copy of which was sent to the complainant.

The possibility of a friendly solution

On the basis of the above considerations and in accordance with Article 3(5) of the Statute of the European Ombudsman, the Ombudsman proposed a friendly solution between the complainant and the Commission.

The friendly solution proposed consisted in the following:

The Commission could consider providing the complainant with the reasons why the particular type of transport he had requested (a full load service) was not needed or justified for his move, including his plants, or, if such reasons cannot be given, the Commission could consider reimbursing the complainant an amount of EUR 219.96 corresponding to the difference between the estimate approved by it and the amount that he actually paid for his removal expenses.

The Commission's response

In its reply to the Ombudsman's proposal, the Commission accepted the Ombudsman's proposal to seek a friendly solution with the complainant. The Commission stated that, in view of the small difference between the amount actually paid by the complainant for the removal expenses and its estimate for this removal, it accepted to review its prior approach and would therefore exceptionally pay to the complainant the further amount of EUR 219.96.

The complainant's additional observations

By e-mail of 23 July 2007, the complainant informed the Ombudsman's services that he did not wish to make any further observations.

On the occasion of a telephone conversation with the Ombudsman's services on the same day, the complainant informed them that he considered that a friendly solution had been achieved and thanked the Ombudsman for his intervention.

THE DECISION

1 The complainant's allegations and claims

1.1 The complainant has been an official of the European Commission since 16 January 2004. Before his appointment as an official, he used to live in Barcelona. In order to take up his duties, he consequently had to move from Barcelona to Brussels. The complainant was paid the daily subsistence allowance up to and including June 2004. In a letter dated 9 July 2004, the Office for the administration and settlement of individual entitlements ("PMO") of the Commission informed him that he had to reimburse EUR 1079.96, since he was only entitled to receive daily subsistence allowances until 14 May 2004. In the complainant's view, he was entitled to be paid daily subsistence allowances during the whole of the probationary period with an extension of one month. On 22 July 2004, the complainant sent to the Commission the estimates for his move from Barcelona to Brussels. Following the submission of the estimates for his move, the



complainant was informed, on 7 September 2004, that the estimates he had submitted had been rejected " *because the least expensive exceeded by more than 50% the average price which had been observed for ten years by the service, for an identical service* ". The complainant was then informed that, pursuant to Article 9 (10) of Annex VII of the Staff Regulations, the Commission had contacted another removal company and that the amount of its estimate for a comparable service had been approved. On 13 September 2004, the complainant informed the Commission that he disagreed with the choice of the removal company because it did not offer a comparable service. In his view, the company chosen by him offered a full load service whereas the one chosen by the Commission offered a partial load service. In his complaint to the European Ombudsman, the complainant alleged that (i) the Commission had wrongly asked him to reimburse the daily subsistence allowances; (ii) the Commission had failed legally to justify its decision concerning the reimbursement of his move; (iii) the Commission had ignored his objections during two months and informed him after one month that the only possible way to appeal against the Commission's decision was by using the procedure under Article 90 of the Staff Regulations. The complainant claimed that the Commission should pay him EUR 1350 as compensation corresponding to (i) five months of rent in Barcelona and (ii) EUR 100 for damages to his plants. He further claimed that the Commission should reimburse him EUR 219.96 corresponding to the difference between the estimate approved and the amount actually paid by him.

1.2 In its opinion, the Commission stated that, as regards the complainant's first allegation, given that he was not entitled to the household allowance, he could only benefit from a daily subsistence allowance for the statutory period of 120 days, which started on the date when he took up his duties, that is, on 16 January 2004, and ended on 14 May 2004. However, the complainant had mistakenly been paid a daily subsistence allowance until the end of June 2004. In its opinion, the Commission apologised for this error. As regards the complainant's second allegation, the Commission referred to the decision of the Appointing Authority of 21 January 2005 rejecting the complainant's complaint made under Article 90(2) (11) of the Staff Regulations. The Commission further stated that, in its decision of 8 September 2004, it had clearly informed the complainant of the amount which would have to be reimbursed and of the basis on which this amount had been determined. As regards the complainant's third allegation, the Commission stated that its decision of 8 September 2004 had been preceded by numerous contacts between the complainant and several members of the Commission's staff and that the complainant had been aware of the possibility of challenging the Commission's decision of 8 September 2004 under Article 90(2) of the Staff Regulations. As regards the complainant's claim, the Commission stated that the complainant himself chose the company and that he was perfectly aware of the fact that the amount of EUR 1094 was the maximum reimbursement approved by the Commission. The Commission therefore could not agree to pay the difference between this amount and the actual cost incurred, which was almost EUR 1314. The Commission concluded that, in view of the above, neither compensation nor any other reimbursement should be granted to the complainant.

1.3 As regards the complainant's first and second allegations, the Ombudsman concluded that there appears to have been no maladministration by the Commission. As regards the complainant's first claim, the Ombudsman considered that the complainant has not established



it.

1.4 As regards the complainant's second allegation, the Ombudsman's provisional conclusion was that the Commission's failure legally to justify its decision to reimburse EUR 1094 for the complainant's removal expenses could constitute an instance of maladministration and that the complainant's claim to be reimbursed EUR 219.96 appeared to be justified. On 31 May 2007, the Ombudsman made a proposal for a friendly solution to the Commission which was that the Commission could consider providing the complainant with the reasons why the particular type of transport he had requested (a full load service) was not needed or justified for his move, including his plants, or, if such reasons could not be given, the Commission could consider reimbursing the complainant an amount of EUR 219.96 which corresponded to the difference between the estimate approved by it and the amount that he actually paid for his removal expenses.

1.5 The Commission accepted the friendly solution proposed and stated that, in view of the small difference between the amount actually paid by the complainant for the removal expenses and its estimate for this removal, it accepted to review its prior approach and would therefore exceptionally pay to the complainant the further amount of EUR 219.96.

1.6 In his observations, the complainant informed the Ombudsman that he considered that a friendly solution to the complaint had been achieved and thanked him for his intervention.

1.7 On the basis of the above, the Ombudsman notes that a friendly solution has been agreed between the complainant and the Commission.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the Commission and the complainant. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) The complainant claimed that he had to pay five months rent for his flat in Barcelona, at EUR 250 per month, as a result of the Commission's alleged mistake in the payment of his daily subsistence allowance during two months and of the fact that, in his view, the Commission had ignored his objections over a period of two months and did not inform him of the possibility to use the procedure provided under Article 90 of the Staff Regulations in order to appeal against a Commission decision until one month after its decision asking him to reimburse EUR 1094.

(2) This amount corresponds to the difference between the estimate paid by the complainant



(EUR 1313.96) and the amount approved by the Commission (EUR 1094).

(3) " *No complaint may be made to the Ombudsman that concerns work relationships between Community institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90(1) and (2) of the Staff Regulations, have been exhausted by the person concerned and the time limits for replies by the authority thus petitioned have expired.* "

(4) " *Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him (...)* "

(5) " *Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for payment or if the fact of the overpayment was patently such that he could not have been unaware of it. (...)* "

(6) " (1) *The expenses incurred in respect of removal of furniture and personal effects (...) shall be reimbursed to an official who is obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations and who has not been reimbursed in respect of the same expenses from another source. Such reimbursement shall not exceed the amount of an estimate approved in advance. Not less than two estimates shall be submitted to the appropriate departments of the institution, which may, if they consider the estimates to be excessive, select another removal firm. In the latter case, entitlement to reimbursement may be limited to the amount of that firm's estimate. (...)* "

(7) " *The period in respect of which the daily subsistence allowance is granted shall be as follows:*

(a) *in the case of an official who is not entitled to the household allowance: 120 days;*

(b) *in the case of an official who is entitled to the household allowance: 180 days or, if the official is a probationer, the period of probation plus one month.*

(...) "

(8) " *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.* "

(9) *On the basis of the evidence available to the Ombudsman, it appears that the complainant indeed only submitted two estimates to the Commission.*

(10) *See note 6 above.*

(11) *See note 4 above.*