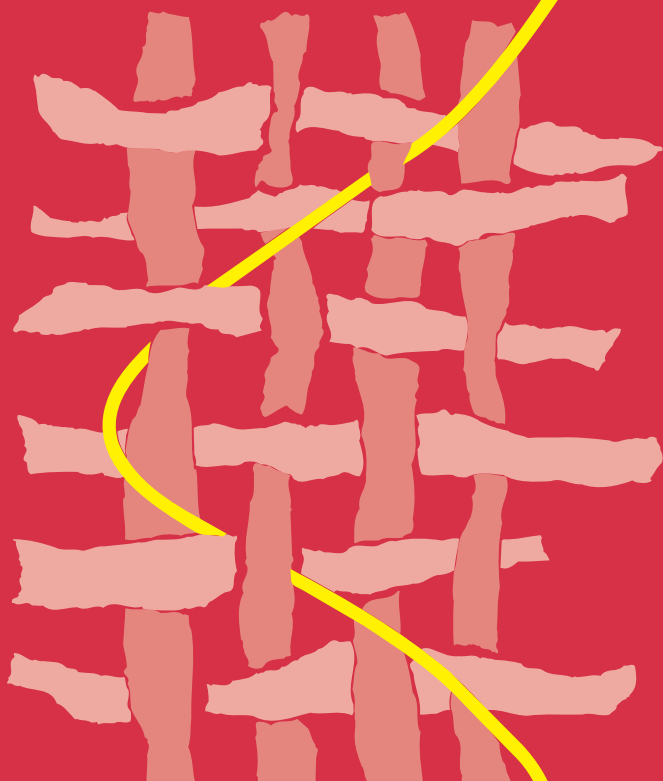


The European Ombudsman

# ANNUAL REPORT

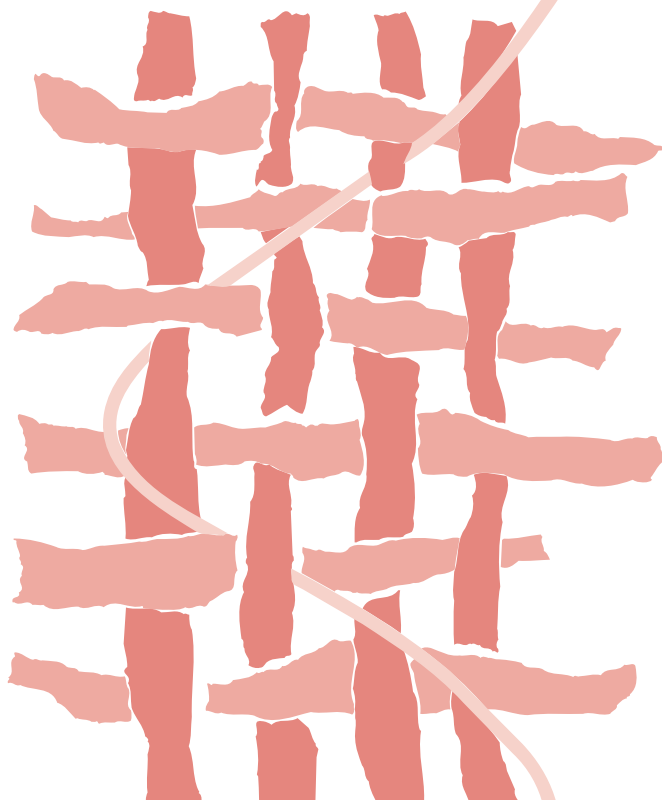
FOR 19**97**



The European Ombudsman

# ANNUAL REPORT

FOR 1997



Strasbourg, 20 April 1998

**Mr José María Gil-Robles Gil-Delgado**

President  
European Parliament  
rue Wiertz  
B - 1047 Bruxelles

Mr President,

In accordance with Article 138e (1) of the Treaty establishing the European Community and Article 3 (8) of the Decision of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, I hereby present my report for the year 1997.

Jacob Söderman,  
Ombudsman of the European Union

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## 1 FOREWORD BY THE EUROPEAN OMBUDSMAN

This is the third Annual Report by the European Ombudsman, but only the second to cover a full year of activity. The Office is still at a relatively early stage of its development, but already in 1997 we managed to begin more own-initiative inquiries, close more cases with reasoned decisions and achieve more positive results for complainants. Three friendly solutions have been successfully proposed and the first Special Report was presented to the European Parliament.

During the year it was also possible to inaugurate the main office in Strasbourg with a small festivity and to open an antenna in Brussels. The implementing provisions were adopted by the Ombudsman in accordance with Article 14 of the Statute of the Ombudsman and a network of liaison officers was set up with the national ombudsmen offices and similar bodies in the Member States.

### INFORMING CITIZENS ABOUT THE RIGHT TO COMPLAIN

Since beginning work as European Ombudsman on 1 September 1995, I have dedicated a considerable part of my time to informing European citizens about their right to complain to the Ombudsman, about the situations in which it is appropriate to make a complaint and about how this should be done. To promote the citizens' knowledge, I have engaged in regular contact and cooperation with the offices of the national ombudsmen and similar bodies, with the European Parliament information offices and with the European Commission representations in the Member States. All these bodies have our information material available, including the optional standard form on which a complaint may be made. They have shown a positive attitude towards cooperation all the time.

To provide information to citizens more quickly and effectively, we have also opened a Website on the Internet, linked to that of the European Parliament, where we give general information about the right to complain and about our activities. We have also released information to the European press about decisions or initiatives of general interest and presented the Ombudsman's work in a number of trade journals.

I have also visited the Member States in order to make the work of the Ombudsman better known. There is only one Member State, Portugal, which I have yet to visit. My visit there is due to take place in April 1998 and

is being arranged in cooperation with the European Parliament information office in Lisbon and the office of the Portuguese national Ombudsman.

The statistics showing the number of complaints in relation to population for each Member State give a rough picture of how the information campaign has been received (see Appendix A). There are some significant differences. Leaving aside Belgium, Luxembourg and Finland, each of which has its own explanation, it seems that of the smaller countries Ireland is well informed whereas fewer complaints have been received from Austria and Sweden. As regards the big countries, the information campaign has been successful in Spain and France and less successful in Germany and Italy.

On the general level, 1181 new complaints were made to the European Ombudsman during 1997. That represents an increase of 40% on the total of 842 new complaints received in 1996. There has also been an increase in the number of admissible complaints, although it has been clearly slower.

There is still a lot to be done in the field of information. I expect that the European Parliament and the Committee on Petitions have the same problems in promoting knowledge of the right to petition. The difference is that, with my rather limited mandate - confined to the activities of the Community institutions and bodies - I must focus on reaching the people who might have a real reason to complain about the European administration rather than launch general campaigns. During the year 1998, the Ombudsman's information campaign will target citizens and bodies who deal with the European Community administration. More effort will be put into using the possibilities to use the Internet both to communicate directly with citizens and to furnish European information offices and organisations with knowledge of the right to complain to the Ombudsman. It seems to be important also to focus more on the regional level in those Member States which have a more decentralised structure. This information activity could also distribute information on the citizens' right to petition the European Parliament.

## INITIATIVES ON TRANSPARENCY

Article 138e of the Treaty gives the Ombudsman the possibility to carry out inquiries on his own initiative as well as in response to complaints. Within the limits of my mandate, I have used the own-initiative power so as to promote transparency in the Union by beginning three inquiries into subjects where a number of complaints suggested more general dissatisfaction on the part of citizens.

The own-initiative inquiry into the procedures used by the European Commission in dealing with complaints from citizens about infringements of Community law by Member States was initiated and closed during 1997 and is presented in this report (see chapter 3 below). The own-initiative inquiry was welcomed by the Parliament in its Resolution concerning the Fourteenth Annual Report of the Commission on the monitoring of the application of Community law (rapporteur Astrid THORS).

Another own-initiative inquiry which is intended to promote greater transparency concerns the procedures used by the Community institutions for recruitment of staff. This inquiry was launched in November 1997 and is still continuing.

Finally, there is the own initiative inquiry into public access to documents, which I launched in June 1996. On 20 December 1996, I made draft recommendations to 14 Community institutions and bodies that they should adopt, and make easily available to the public, rules concerning public access to documents. The draft recommendations and the reasons for them were fully explained in the Annual Report for 1996.

The responses of the institutions and bodies concerned to the draft recommendations are the subject of a Special Report by the Ombudsman to the European Parliament, which I presented to President Gil-Robles on 15 December 1997. Since this is the first ever Special Report under the Statute of the European Ombudsman, I proposed that it could be dealt with through a procedure similar to that used for the Annual Report.

To guarantee a consistent and effective response to the Ombudsman's work, it would be of utmost importance that the Committee of the European Parliament responsible for relations with the Ombudsman also deals with all the reports that the Ombudsman presents to the Parliament in accordance with the Statute. If special expertise is needed in relation to a particular report, this could of course be obtained in an appropriate way, such as an opinion from another Committee. To avoid confusion, it could be helpful for the Parliament to consider a clarification of its Rules of Procedure to specify how the Ombudsman's Annual and Special Reports are dealt with.

## RESULTS OF THE WORK

In each year of operation of the Ombudsman's office so far there have been more positive results for the citizens. This year the number of cases settled by the institutions has increased and the first friendly solutions have been reached. Still more must be achieved in this respect during the coming year before the results can be considered satisfactory. The antenna in Brussels

will make it easier to carry out the time-consuming activities of inspecting documents and negotiating friendly solutions. The adoption and publication of a code of conduct on good administrative behaviour would surely raise the quality of the institutions' administrative practices and enhance their relations with the European citizens.

Although the Office managed to decide rapidly on the admissibility of new complaints and when necessary advise the complainants of another competent body to which the complaint could be addressed and although it also managed to deal with far more admissible cases and open more own initiative investigations, a small backlog in dealing with some admissible complaints has developed.

The objective should be to carry out the necessary inquiries into a complaint and inform the citizen of the outcome within one year, unless there are special circumstances which require a longer investigation. At the end of 1997, there were about 30 cases in which this goal had not been achieved, partly because the initial phase involved more administrative work than expected, but also because there is an objective need for more staffing. The need for more staff is also underlined by the new responsibilities that the Treaty of Amsterdam will mean for the European Ombudsman. I hope that this will be adequately dealt in the budget procedure for the years 1999 and 2000.

In its resolution dealing with the Ombudsman's Annual Report for 1996, the European Parliament expressed the need to define the term "maladministration". I undertook that obligation and a definition which takes into account the experience of the national ombudsmen and similar bodies in the Member States is included in chapter two of this Annual Report.

The cooperative and positive atmosphere to which I have referred in the earlier Annual Reports has continued during the year 1997 and I hope that the European citizens will benefit from an more open and human European administration.

Jacob Söderman

## 2 COMPLAINTS TO THE OMBUDSMAN

The most important task of the European Ombudsman is to deal with maladministration in the activities of Community institutions and bodies. Possible instances of maladministration come to the attention of the Ombudsman mainly through complaints made by European citizens. The Ombudsman also has the possibility to conduct inquiries on his own initiative.

Any European citizen, or any non-citizen living in a Member State, can make a complaint to the Ombudsman. Businesses, associations or other bodies with a registered office in the Union may also complain. Complaints may be made to the Ombudsman either directly, or through a Member of the European Parliament.

Complaints to the Ombudsman are dealt with in a public way unless the complainant requests confidentiality. It is important that the Ombudsman should act in as open and transparent a way as possible, both so that European citizens can follow and understand his work and to set a good example to others.

During 1997, the Ombudsman dealt with 1 412 cases. 1 181 of these were new complaints received in 1997. 1 067 of these were sent directly by individual citizens, 57 came from associations and 38 from companies. 17 complaints were transmitted by Members of the European Parliament. 227 cases were brought forward from the year 1996. The Ombudsman also began 4 own-initiative inquiries.

As first noted in the Ombudsman's Annual report for 1995, there is an agreement between the Committee and the Ombudsman concerning the mutual transfer of complaints and petitions in appropriate cases. During 1997, 2 petitions were transferred to the Ombudsman, with the consent of the petitioner, to be dealt with as complaints. 13 complaints were transferred, with the consent of the complainant, to the European Parliament to be dealt with as petitions. Additionally, there were 86 cases in which the Ombudsman advised a complainant to petition the European Parliament. (See Annex A, Statistics, p. 311)

## 2.1 THE LEGAL BASIS OF THE OMBUDSMAN'S WORK

The Ombudsman's work is carried out in accordance with Article 138e of the Treaty establishing the European Community and the Statute of the Ombudsman<sup>1</sup>. Article 14 of the Statute provides for the Ombudsman to adopt implementing provisions. In view of the limited experience available in 1996 on the operation of the European Ombudsman's office, the implementing provisions were first adopted on an indicative and provisional basis on 4 September 1996. The Ombudsman informed the Committee on Petitions and the Committee on the Rules of Procedure of the European Parliament of his adoption of implementing provision on a provisional and indicative basis and that formal and durable implementing provisions would be adopted in the course of 1997.

On 16 October 1997, the Ombudsman adopted formal and durable implementing provisions which came into effect on 1 January 1998. The Committee on Petitions and the Committee on Rules of Procedure of the European Parliament were informed of the adoption of the final provisions. The text of the implementing provisions, in all official languages, is published on the Ombudsman's Website (<http://www.euro-ombudsman.eu.int>). The text is also available from the Ombudsman's office. A notice giving details of the adoption and publication of the implementing provisions was published in the Official Journal.

The implementing provisions deal with the internal operation of the Ombudsman's office. However, in order that they should form a document that will be understandable by and useful to citizens, they also include certain material relating to other institutions and bodies that is already contained in the Statute of the Ombudsman.

Article 13 of the implementing provisions revises and consolidates the rules governing public access to documents held by the European Ombudsman. Previously the rules on access to complaints-related documents were contained in the provisional and indicative implementing provisions, whilst rules on public access to other documents were contained in a separate decision of the Ombudsman of 24 March 1997.

During 1997 the Parliament's Committee on the Rules of Procedure proposed amendments to Rule 161 (rapporteur, Mr Brian CROWLEY). The Ombudsman attended a meeting of the Committee on 24 September at which the proposed amendments were discussed. The report of the

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<sup>1</sup> European Parliament decision 94/262 of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties. OJ 1994, L 113, p. 15.

Committee on Rules of Procedure on the amendment of Rule 161 of the Parliament's Rules of Procedure, unanimously adopted by the Committee at its meeting of 4 November 1997, did not come before a plenary session of the Parliament during 1997.

The Rules of Procedure of the European Parliament contain no specific provisions for how the Parliament deals with the Annual Report and Special Reports of the European Ombudsman. If it is felt that there is a need for such provisions, the Ombudsman is willing to consider making a proposal for this purpose as foreseen by Rule 161 §1 of the Rules of Procedure.

## **2.2 HOW COMPLAINTS ARE DEALT WITH**

All complaints sent to the Ombudsman are registered and acknowledged. The letter of acknowledgement informs the complainant of the procedure for considering his or her complaint and includes the name and telephone number of the legal officer who is dealing with it. The next step is to examine whether the complaint is within the mandate of the Ombudsman.

### **2.2.1 THE MANDATE OF THE EUROPEAN OMBUDSMAN**

The mandate of the Ombudsman, established by Article 138e of the EC Treaty, empowers him to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State, concerning instances of maladministration in the activities of Community institutions and bodies with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. A complaint is therefore outside the mandate if

- 1 the complainant is not a person entitled to make a complaint;
- 2 it is not against a Community institution or body;
- 3 it is against the Court of Justice or the Court of First Instance acting in their judicial role; or
- 4 it does not concern a possible instance of maladministration.

**Who is entitled to complain ?**

A Turkish citizen residing in the United States complained to the Ombudsman concerning the handling by the European Commission of Turkey's application for membership of the European Union.

Since the complaint came from an individual who was neither a citizen of the Union nor residing in a Member State of the Union, it fell outside the mandate of the Ombudsman.

The Ombudsman suggested to the complainant that he could address the responsible Commissioner about the matter directly and informed him of the address to which he could write.

*(1017/97/OV)*

A Moroccan citizen wrote to the Ombudsman from an address in Morocco complaining that he had been expelled from France, without a hearing before a court, following the withdrawal of his residence permit by the Prefect of Paris.

Since the complaint came from an individual who was neither a citizen of the Union nor residing in a Member State of the Union, it fell outside the mandate of the Ombudsman.

The Ombudsman informed the complainant in general terms of the conditions under which a case could be dealt with by the European Commission of Human Rights.

Note: Even if the complainant had still been physically present in France, the complaint would nonetheless have fallen outside the Ombudsman's mandate since it was not against a Community institution or body.

*(978/97/XD)*

**Examples of complaints which are not against a Community institution or body**

A UK citizen applied to a Business Innovation Centre for support for a project for a start-up business. He complained to the Ombudsman that his



application had failed because of irregularities in the way it had been dealt with by the Centre.

The Business Innovation Centre against which the complaint was made is part of the European Business and Innovation Network, which consists of different business centres within the Community. The Community supports the creation and development of these centres both financially and with technical assistance. However, the centres themselves are based on public and private partnerships between such bodies as local authorities, chambers of commerce, professional associations, trade unions, financial institutions, universities, research centres, firms and similar local interests. The Commission is not represented on their governing bodies.

The Ombudsman therefore informed the complainant that business centres in the European Business and Innovation Network are not Community institutions or bodies.

*(Complaint 947/97/HMA)*

A former employee at the European Molecular Biology Laboratory complained to the Ombudsman concerning the Laboratory. The complainant alleged that she had been mistreated and subjected to harassment and that she had suffered injury because of lack of safety measures in the workplace.

The Laboratory was set up in the context of the European Molecular Biology Conference, of which 16 States are currently members. The agreement to set up the laboratory was originally signed in 1973 by ten States; Austria, Denmark, France, the Federal Republic of Germany, Israel, Italy, the Netherlands, Sweden, Switzerland and the United Kingdom. Thus, the Laboratory was not established by the Community Treaties, nor by an act adopted by the institutions of the Communities and its funding is not provided by the Communities.

The Ombudsman therefore informed the complainant that the Laboratory is not a Community institution or body.

*(Complaint 374/15.01.96/MV/UK/PD)*

An official of the European Commission complained to the Ombudsman about the European School of Woluwe in Brussels.

The complaint concerned decisions taken by the class council and the disciplinary council of the School concerning his son. The complainant alleged that there existed no rights of defence, either for the student, or for the parents. He also criticized the appeal system of the European School claiming that it is unfair for the class council to hear appeals against its own decision.

The Ombudsman decided that the complaint was outside his mandate because it was not against a Community institution or body. Although the Commission has some general responsibility, as it is represented on the Board of Governors of the Schools and provides a large part of the budget, it cannot be held responsible for matters of internal management.

*(Complaint 989/97/OV)*

Another question concerning the competence of the Ombudsman arose from six complaints against the Council made by British journalist Mr Tony BUNYAN on behalf of the non-governmental organisation "Statewatch" in November and December 1996. The complaints concerned the Council's responses to requests made by Mr BUNYAN for access to documents relating to activities in the "third pillar". ("Third pillar" is an informal term used to refer to cooperation in the fields of Justice and Home Affairs under Title VI of the Treaty on European Union).

After determining that the six complaints were within the mandate, admissible and that there were grounds for an inquiry, the Ombudsman forwarded them to the Council in January 1997. In March 1997, the Council sent a reply which contested the competence of the Ombudsman to deal with the complaints.

On 15 April 1997, the Ombudsman wrote to the Council confirming his original decision that the complaints were within his mandate and renewing his request for an opinion on the substance of the complaints. On 20 June 1997 the Council complied with the Ombudsman's request<sup>1</sup>.

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<sup>1</sup> One of the complaints from Mr Bunyan was closed in 1997 as settled by the institution (see the summary in chapter 3 below entitled "Conservation of draft agendas of the Council of Justice and Home Affairs Ministers". At the end of 1997, the Ombudsman's inquiries into the other five complaints were still continuing.

The Council's argument that the Ombudsman lacked competence to deal with the complaints from Mr BUNYAN appeared to be based on two propositions:

- 1 the competence of the Ombudsman does not extend to actions taken by the Council under the third pillar;
- 2 the subject matter of the complaints concerned action taken by the Council under the third pillar.

In confirming his earlier decision that he was competent to deal with the complaints, the Ombudsman explained that the second of the above propositions was wrong. It was therefore unnecessary for him to take a position on the first proposition.

The Ombudsman recalled that the complaints concerned the Council's response to requests for access to documents. The requests had been made under the Council Decision on public access to Council documents<sup>1</sup> and were dealt with by the Council in purported application of that Decision. The Council Decision on public access to documents was made under Article 151 of the Treaty establishing the European Community. The Court of Justice confirmed in its judgement in *Netherlands v Council*<sup>2</sup>, that the Decision has legal effects vis-à-vis third parties as a matter of Community law.

The Decision was interpreted and applied by the Court of First Instance in *Carvel and Guardian Newspapers v Council*<sup>3</sup>. This case involved access to, inter alia, documents relating to the actions of the Council under the third pillar.

Given the limitations on the jurisdiction of the Court of Justice imposed by Article L of the Treaty on European Union, the Court of First Instance would have had no jurisdiction to deal with this aspect of the Carvel case if access to Council documents concerning actions under the third pillar was itself a third pillar matter. In fact, however, the Court did accept jurisdiction in the case.

The correct interpretation and application of the Council decision on public access to documents is therefore a matter of Community law and not a matter dealt with in the third pillar, even if the documents in question concern actions under the third pillar.

<sup>1</sup> Decision 93/731/EC, OJ 1993 L340/43

<sup>2</sup> Case C-58/94, judgement of 30 April 1996

<sup>3</sup> Case T-194/94, judgement of 19 October 1995

### THE MEANING OF MALADMINISTRATION

In its resolution on the Ombudsman's Annual Report for 1996, the European Parliament encouraged the Ombudsman to make full use of the mandate conferred on him by the Treaties to deal with maladministration in the activities of Community institutions and bodies.

The Resolution also referred in this context to the need for a clear definition of the term maladministration.

The Treaty establishing the European Community does not define maladministration. On the occasion of the adoption by the Parliament of the above Resolution, the Ombudsman therefore undertook to attempt to provide a more precise definition in the Annual Report for 1997.

The Ombudsman's Annual Report for 1995 explained the term maladministration as follows:

Clearly, there is maladministration if a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it, or if it fails to observe the rules and principles of law established by the Court of Justice and Court of First Instance.

For example, the European Ombudsman must take into account the requirement of Article F of the Treaty on European Union that Community institutions and bodies are to respect fundamental rights.

Many other things may also amount to maladministration, including:

- administrative irregularities
- administrative omissions
- abuse of power
- negligence
- unlawful procedures
- unfairness
- malfunction or incompetence
- discrimination
- avoidable delay
- lack or refusal of information

This list is not intended to be exhaustive. The experience of national ombudsmen shows that it is better not to attempt a rigid definition of what may constitute maladministration. Indeed, the open ended nature

of the term is one of the things that distinguishes the role of the Ombudsman from that of a judge.

There are limits, however, to what may count as maladministration. All complaints against decisions of a political rather than an administrative nature are regarded as inadmissible; for example, complaints against the political work of the European Parliament or its organs, such as decisions of the Committee on Petitions. Nor, for example, is it the task of the Ombudsman to examine the merits of legislative acts of the Communities such as regulations and directives.

This explanation of maladministration was accepted in the European Parliament's Report on the Ombudsman's Annual Report for 1995. It was also referred to with approval at the meeting of the European national ombudsmen held in September 1997.

In order to supplement the above explanation with a definition, the national ombudsman and similar bodies were asked to inform the European Ombudsman of the meaning given to the term maladministration in their Member States.

From the replies received, it appears that the fundamental notion can be defined as follows:

**Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it.**

Two comments concerning this definition are necessary.

First, the mandate of some Ombudsmen is expressly limited by the national law establishing the office. For example, the legislation establishing the UK Parliamentary Commissioner for Administration provides that he shall not normally investigate complaints where there is a possible judicial remedy<sup>1</sup>. Naturally, the Ombudsman concerned limits his inquiries into maladministration accordingly. However, such restrictions are not part of the normal meaning of the term "maladministration", otherwise it would be unnecessary to state them expressly. Thus, for instance, the Office of the Danish Ombudsman, which served as an inspiration for the creation for the office of European Ombudsman, does not know of any such restriction and the Council of Europe's definition of an ombudsman's role includes review of the lawfulness of administrative acts<sup>2</sup>.

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<sup>1</sup> Parliamentary Commissioner Act 1967, section 5 (2)

<sup>2</sup> The Administration and You: a handbook, 1996 p. 44.

Secondly, the specific rules and principles which are binding on public bodies vary according to the constitutional, legal and administrative framework of the country concerned. Furthermore the rules and principles are not static. They change and develop as the result of the work of the legislator, of the courts, of the ombudsman and of the administration itself.

It could therefore be helpful to add some further remarks about the rules and principles which are binding in the context of the European Community.

### THE RULE OF LAW

The starting point for the work of all the institutions and bodies created by, or under, the European Union Treaties is law. As the Court of Justice has emphasised on many occasions, the European Community is a Community of law. Therefore, when the European Ombudsman investigates whether a Community institution or body has acted in accordance with the rules and principles which are binding upon it, his first and most essential task must be to establish whether it has acted lawfully. In carrying out this task, the Ombudsman is always mindful of the fact that, as stated in the Annual Report for 1995, the highest authority on the meaning and interpretation of Community law is the Court of Justice. Furthermore, in accordance with Article 138e of the EC Treaty the Ombudsman cannot conduct inquiries where the alleged facts are or have been the subject of legal proceedings.

Some complaints to the European Ombudsman raise issues of national law. In particular, when a complaint concerns an existing contractual relationship between the complainant and a Community institution, the contract is governed by the provisions of the relevant national law.

In many Member States, the Ombudsman does not deal with contractual disputes, either because of the general characteristics of such contracts under national law, or because the law establishing the Ombudsman's mandate expressly excludes contractual matters. As stated in the Annual Report for 1995, part of the mission of the European Ombudsman is to help relieve the burdens of litigation, by promoting friendly solutions and by making recommendations that avoid the need for proceedings in courts. The European Ombudsman, therefore, does deal with complaints of maladministration that arise from contractual relationships.

He does not, however, seek to determine whether there has been a breach of contract by either party. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact. However, as

a matter of good administration, a public authority engaged in a contractual dispute with a private party should always be able to provide the Ombudsman with a coherent account of the legal basis for its actions and why it believes that its view of the contractual position is justified.

### **RULES AND PRINCIPLES OF GOOD ADMINISTRATIVE BEHAVIOUR**

What good or bad administration means in practice is usually established and concretised on a case-by-case basis. The matter can also be clarified by adopting a law or a code of conduct concerning good administrative behaviour, as has been done in many of the Member States. An important initiative has been taken by Roy PERRY MEP, rapporteur for the report of the Committee on Petitions on its own activities in 1996-7<sup>1</sup>, in calling for a code of good administrative behaviour to be established for Community institutions and bodies. The Secretary General of the European Commission informed the Ombudsman at a meeting in Strasbourg on 21 October 1997 that the Commission had begun drafting such a code to apply to its officials.

These initiatives should be warmly welcomed. A published code of good administrative behaviour would inform officials of the service they should provide and citizens of what they could expect. It would thereby enhance both the quality of administrative work and relations with citizens.

The office of the European Ombudsman has therefore assisted the preparatory work of the Secretary General of the Commission by providing information and examples drawn from the experience of the Member States and by commenting on the principles applied in the initial stages of drafting. In particular, the Ombudsman forwarded to the Secretary General copies of the Danish law on public administration of 1985 and the Finnish law on administrative procedures of 1982, both of which contain detailed provisions concerning matters of procedure, including giving reasons for decisions, the right to be heard and the duty to give information about possible remedies.

The Ombudsman also forwarded to the Secretary General copies of: the Portuguese code of administrative procedures of 1991; the recent French draft law concerning relations between the administration and the public, which contains provisions concerning acknowledgement of receipt, the obligation to transmit correspondence to the competent service, deadlines for replies and the right to present written and oral observations before a decision; a statement of the principles of the United Kingdom's "Citizen's

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<sup>1</sup> A4 - 0190/97

Charter"; check lists of good administrative behaviour established by the Ombudsmen of Ireland and Hong Kong and other relevant materials.

### THE LIMITS OF MALADMINISTRATION

To conclude this section of the report, it may be helpful to clarify the limits of maladministration in relation first to the exercise of discretionary administrative power and secondly to the political work of the Parliament.

In carrying out the administrative tasks conferred on it by or under the Treaties, a Community institution or body may have legal authority to choose between two or more possible courses of action. For example, if the Commission considers that a Member State has failed to fulfil an obligation under the EC Treaty, it may, after following the necessary procedural steps, bring the matter before the Court of Justice under Article 169 of the Treaty. This is a discretionary power and the Commission cannot, therefore, be required to bring an infringement before the Court of Justice.

The Ombudsman does not seek to question discretionary administrative decisions, provided that the institution or body concerned has acted within the limits of its legal authority. General limits on such authority are established by the jurisprudence of the Court of Justice which requires, for example, that administrative authorities should act consistently and in good faith; avoid discrimination; comply with the principles of proportionality, equality and legitimate expectations and respect human rights and fundamental freedoms<sup>1</sup>.

Although Article 138e of the EC Treaty specifically excludes the judicial work of the Court of Justice from the mandate of the Ombudsman, it is silent concerning the political work of the European Parliament. However, the classical Ombudsman office in the Nordic countries is set up to supervise the public administration on behalf of the Parliament, not to supervise the political activities of the Parliament. Ombudsmen in other Member States also appear not to supervise the political work of their respective

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<sup>1</sup> Also relevant in this context is Council of Europe Recommendation No. R (80) 2 which states that an administrative authority, when exercising a discretionary power :

1. does not pursue a purpose other than that for which the power has been conferred;
2. observes objectivity and impartiality, taking into account only the factors relevant to the particular case;
3. observes the principle of equality before the law by avoiding unfair discrimination;
4. maintains a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues;
5. takes its decision within a time which is reasonable having regard to the matter at stake;
6. applies any general administrative guidelines in a consistent manner while at the same time taking account of the particular circumstances of each case



Parliaments. Applying therefore a constitutional principle common to the Member States, the European Ombudsman has established that he does not carry out inquiries into the political activities of the European Parliament. This question had to be dealt with in practice because, early on, the Ombudsman's office received a number of complaints alleging maladministration by the Committee on Petitions of the European Parliament in dealing with petitions. Since the Committee is a political body dealing with petitions as a political task of the Parliament, these complaints were not considered to be within the mandate of the Ombudsman.

### 2.2.2 ADMISSIBILITY OF COMPLAINTS

A complaint that is within the mandate of the Ombudsman must meet further criteria of admissibility before the Ombudsman can open an inquiry. The criteria as set out by the Statute of the Ombudsman are that:

- 1 the author and the object of the complaint must be identified (Art. 2.3 of the Statute)
- 2 the Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling (Art. 1.3)
- 3 the complaint must be made within two years of the date on which the facts on which it is based came to the attention of the complainant (Art. 2.4),
- 4 The complaint must have been preceded by appropriate administrative approaches to the institution or body concerned (Art. 2.4)
- 5 in the case of complaints concerning work relationships between the institutions and bodies and their officials and servants, the possibilities for submission of internal administrative requests and complaints must have been exhausted before lodging the complaint (Art. 2.8).

#### Examples of inadmissible complaints

In October 1997, a Greek Ph.D researcher in international and Community law complained to the Ombudsman against the European Commission.

The complaint was based on the following facts. In 1990 he had been excluded, on the basis of his nationality, from competitions organized for posts as a university researcher by the Law School of "La Sapienza" University in Rome and the Istituto Universitario Di Lingue Moderne in Milan. He complained to the Commission by letters in March and June

1990 that his exclusion from the competitions infringed Article 48 of the EC Treaty. According to the complaint to the Ombudsman, although the Commission replied to his letters in May and July 1990, it had not taken satisfactory steps to deal with the discrimination.

The Ombudsman decided that the complaint was inadmissible because the complainant had not contacted the Commission since July 1990, that is for a period of 7 years before complaining to the Ombudsman. The time limit of two years established by Article 2.4 had thus been considerably exceeded.

*(Complaint 937/97/OV)*

A company complained to the Ombudsman against the Commission in relation to a tender procedure in which it participated. The tender used the restricted procedure and was for provision of transport services for the diplomatic bag and other post.

According to the complaint, the facts were as follows. The Commission invited the company to submit a tender, with a deadline of 29 September 1997. On 10 September and 24 September the company requested further information and clarification about certain aspects of the tender documents. On 19 September and 25 September the Commission replied that it was unable to provide the information requested.

According to the complainant, whoever held the previous contract had the advantage of having more background information. The company therefore complained to the Ombudsman whom they asked to clarify the situation.

Although the complainant had been in contact with the Commission during the tender procedure, there was no indication that they had made the Commission aware of their dissatisfaction with the conduct or outcome of the tender procedure. The Ombudsman therefore decided that the complaint was inadmissible, since appropriate administrative approaches had not been made as required by Article 2 (4) of the Statute.

The complainant company was advised to contact the Commission, setting out clearly its concerns about the tender process. If it was dissatisfied with the Commission's response, it could then address a complaint to the Ombudsman.

*(1136/97/IJH)*

### 2.2.3 GROUNDS FOR INQUIRIES

The Ombudsman can deal with complaints that are within his mandate and which meet the criteria of admissibility. Article 138e of the EC Treaty provides for him to "conduct inquiries for which he finds grounds". In some cases, there may not be sufficient grounds for the Ombudsman to begin an inquiry, even though the complaint is technically admissible. Where a complaint has already been dealt with as a petition by the Committee on Petitions of the European Parliament the Ombudsman normally considers that there are no grounds for him to open an inquiry, unless new evidence is presented.

Where a complaint alleges only that a letter has not been answered, the Ombudsman's office tries to resolve the matter through informal telephone inquiries. If the institution or body concerned responds by sending an answer to the complainant promptly, the Ombudsman normally considers that there are no grounds for him to make further inquiries and the case is closed for that reason.

#### **Examples of complaints that provided no grounds for an inquiry**

In July 1997, Mrs S. complained to the Ombudsman that evidence given to the Committee on Petitions of the European Parliament by two Commission officials failed satisfactorily to explain and justify the Commission's view that there had been no breach of the Habitats directive 92/43/EEC in the case of the Newbury Bypass.

Since the substance of the complaint concerned a matter with which the Committee on Petitions was already dealing in its consideration of petitions relating to the Newbury Bypass, the Ombudsman considered that there were no grounds for him to inquire into the complaint and Mrs S. was informed accordingly.

*(646/97/IJH)*

On 10 February 1997, Ms V. complained to the Ombudsman about the actions of the Commission in relation to BSE ("mad cow disease"). She alleged that the Commission had ignored the views of British and European researchers.

On 18 July 1996, a Temporary Committee of Inquiry had been established by the European Parliament under Article 138c of the EC Treaty, to examine the BSE affair. The Committee considered the responsibilities of the Commission as well as those of the Council and the UK government. The Committee's report, published on 7 February 1997<sup>1</sup> included findings critical of the Commission and recommendations for the future.

In view of the fact that the Commission's responsibilities in relation to BSE had already been examined by the Temporary Committee of Inquiry, the Ombudsman considered that there were no grounds for him to inquire into the complaint and Ms V. was informed accordingly.

*(Complaint 143/97/JMA)*

### 2.3 ANALYSIS OF THE COMPLAINTS

Of the 2 321 complaints registered from the beginning of the activity of the Ombudsman, 14.9 % originated from France, 14.7 % from Germany, 14 % from Spain, 12.5 % from the UK, and 11% from Italy. A full analysis of the geographical origin of complaints is provided in Annex A, Statistics, p. 311.

During 1997, the process of examining complaints to see if they are within the mandate, meet the criteria of admissibility and provide grounds to open an inquiry was completed in 97 % of the cases. 27 % of the complaints examined appeared to be within the mandate of the Ombudsman. Of these, 230 met the criteria of admissibility, but 34 did not appear to provide grounds for an inquiry. Inquiries were therefore begun in 196 cases.

Most of the complaints that led to an inquiry were against the European Commission (80 %). As the Commission is the main Community organ that makes decisions having a direct impact on citizens, it is normal that it should be the principal object of citizens' complaints. There were 18 complaints against the European Parliament and 14 complaints against the Council of the European Union.

The main types of maladministration alleged were lack of transparency (60 cases), discrimination (42 cases), unsatisfactory procedures or failure to respect rights of defence (32 cases), unfairness or abuse of power (23 cases), avoidable delay and negligence (both 22 cases), failure to ensure fulfilment of obligations, that is failure by the European Commission to carry

<sup>1</sup> A4-0020/97, PE 220.544/fin./A.

out its role as "Guardian of the Treaties" vis-à-vis the Member States (20 cases) and legal error (14 cases).

#### **2.4 ADVICE TO CONTACT OTHER AGENCIES AND TRANSFERS**

If a complaint is outside the mandate or inadmissible, the Ombudsman always tries to give advice to the complainant as to another agency which could deal with the complaint. If possible the Ombudsman transfers a complaint directly to another competent agency with the consent of the complainant, provided that there appear to be grounds for the complaint.

During 1997, advice was given in 490 cases, most of which involved issues of Community law. In 254 cases the complainant was advised to take the complaint to a national or regional Ombudsmen or similar body. In addition, with the consent of the complainant 3 complaints were transferred directly to a national Ombudsman and 1 as a petition to a national Parliament. 86 complainants were advised to petition the European Parliament and, additionally, 13 complaints were transferred to the European Parliament, with the consent of the complainant, to be dealt with as petitions. In 76 cases the advice was to contact the European Commission. This figure includes some cases in which a complaint against the Commission was declared inadmissible because appropriate administrative approaches had not been made to the Commission. In 73 cases the complainant was advised to contact other agencies.

#### **2.5 DECISIONS FOLLOWING AN INQUIRY BY THE OMBUDSMAN**

When the Ombudsman decides to start an inquiry into a complaint, the first step is to send the complaint and any annexes to the Community institution or body concerned for an opinion. When the opinion is received, it is sent to the complainant for observations.

In some cases, the institution or body itself takes steps to settle the case to the satisfaction of the complainant. If the opinion and observations show this to be so, the case is then closed as "settled by the institution". In some other cases, the complainant decides to drop the complaint and the file is closed for this reason.

If the complaint is neither settled by the institution nor dropped by the complainant, the Ombudsman continues his inquiries. If the inquiries reveal no instance of maladministration, the complainant and the institution or body are informed accordingly and the case is closed.

If the Ombudsman's inquiries reveal an instance of maladministration, if possible he seeks a friendly solution to eliminate it and satisfy the complainant. At a meeting held in Strasbourg on 21 October 1997, the Ombudsman and the Secretary-General of the Commission, Mr Carlo TROJAN agreed that an informal meeting could, in some cases, provide an appropriate way to pursue a friendly solution in cases involving the Commission.

If a friendly solution is not possible, or if the search for a friendly solution is unsuccessful, the Ombudsman either closes the file with a critical remark to the institution or body concerned, or makes a formal finding of maladministration with draft recommendations.

A critical remark is considered appropriate for cases where the instance of maladministration appears to have no general implications and no follow-up action by the Ombudsman seems necessary.

In cases where follow-up action by the Ombudsman does appear necessary (that is, more serious cases of maladministration, or cases that have general implications), the Ombudsman makes a decision with draft recommendations to the institution or body concerned. In accordance with Article 3 (6) of the Statute of the Ombudsman, the institution or body must send a detailed opinion within three months. The detailed opinion could consist of acceptance of the Ombudsman's decision and a description of the measures taken to implement the recommendations.

If a Community institution or body fails to respond satisfactorily to a draft recommendation, Article 3 (7) provides for the Ombudsman to send a report to the European Parliament and to the institution or body concerned. The report may contain recommendations. The possibility for the European Ombudsman to present such a Special Report to the Parliament is of inestimable value for his work. Some national Ombudsmen have had a long struggle to obtain a comparable possibility. Special Reports should not therefore be presented too frequently, but only in relation to important matters when the Parliament can take action to assist the Ombudsman in accordance with the Statute of the Ombudsman.

The Ombudsman's first Special Report was made on 15 December, following the own-initiative inquiry into public access to documents held by Community institutions and bodies (see further chapter 4 below).

In 1997 the Ombudsman began 200 inquiries, 196 in relation to complaints and 4 own-initiatives.

16 cases were settled by the institution or body itself. 2 further cases were dropped by the complainant. In 59 cases, the Ombudsman's inquiries revealed no instance of maladministration.

A critical remark was addressed to the institution in 21 cases. A friendly solution was reached in 3 cases. Draft recommendations to the institutions and bodies concerned were not made in 1997. (For further details, see Appendix A, Statistics, p. 311)

### 3.1 CASES WHERE NO MALADMINISTRATION WAS FOUND

#### 3.1.1 THE EUROPEAN PARLIAMENT

##### DECISION ON NON-ACTIVE STATUS UNDER ARTICLE 41 OF THE STAFF REGULATIONS

*Decision on complaint 483/4.3.96/DG/L/KT against the European Parliament*

##### **THE COMPLAINT**

On 27 February 1996, Mrs G. complained to the Ombudsman about the decision of the European Parliament to place her on non-active status under Article 41 of the Staff Regulations. She had already complained to the Ombudsman on 12 February 1996 on the same subject. This complaint (424/14.2.96/DG/L/KT) was deemed inadmissible because internal administrative remedies had not been exhausted (Article 2.8 of the Statute of the Ombudsman).

In early January 1996, the European Parliament informed Mrs G. of its decision to place her on non-active status. The decision itself was dated 21 December 1995 and it took effect from 15 December 1995.

Mrs G. wrote to the Secretary-General contesting the fact that the decision had been communicated three weeks after it had been taken and that it had retroactive effect. Furthermore, she pointed out that she had been placed on a sick leave until the end of February 1996. After having received a reply from the Secretary-General, the complainant was still unsatisfied and renewed her complaint to the Ombudsman.

##### **THE INQUIRY**

The complaint was forwarded to the European Parliament. In summary, the Parliament's comments were as follows:

Mrs G. was one of 34 officials who volunteered in July 1994 for non-active status after having learned of a proposal to reduce posts by means of Article 41 of the Staff Regulations. She subsequently indicated no change in her intentions either to her service or to the Administration. There was therefore never any reason to believe that the decision to transfer her to non-active status was anything other than highly favourable to her.



The decision to place Mrs G. on non-active status had to be taken by the end of the year as the budgetary authority had decided to remove a maximum of 15 posts in the course of the 1995 programme.

As to the retroactivity of the decision, it was necessary for the appointing authority to consult both the Joint Committee and the Reports Committee before deciding on her non-active status. These consultations were completed on 15 November 1995.

On 9 January 1996, Mrs G. asked for the date of her transfer to non-active status to be changed to 1 March 1996 so that she could enjoy the full period of sick leave granted by her doctor from 24 October 1995 to 29 February 1996.

When the Parliament learned that the wording of its Establishment plan for 1996 allowed outstanding or unused Article 41 procedures to be carried over from 1995 to 1996, the Personnel Service proposed that the date of entry into force of the decision to place Mrs G. on non-active status be changed to 1 February 1996. However, the Financial Controller took the view that the factors involved did not warrant a change in the initial decision.

The comments of the European Parliament were forwarded to Mrs G. with an invitation to make observations, if she so wished. No observations appear to have been received.

### **THE DECISION**

According to Article 41, paragraph 2, of the Staff Regulations, the appointing authority shall draw up a list of the officials to be assigned non-active status. Any official occupying one of the posts affected by reductions in the number of posts who expresses the wish to be assigned to non-active status shall automatically be entered on this list. Officials whose name appear on this list shall be assigned non-active status by decision of the appointing authority.

On the basis of the information available to the Ombudsman, it appears that Mrs G. wished to be assigned to non-active status and that the European Parliament believed that its decision to do so was highly favourable to her. No evidence was presented to the Ombudsman of any breach of the Staff Regulations by the European Parliament in dealing with this case.

It also appears that the Parliament responded to Mrs G.'s request to postpone the entry into force of the decision to transfer her to non-active status,

but that the Financial Controller took the view that the factors involved did not warrant a change in the initial decision. No evidence was presented to the Ombudsman questioning the exercise of discretion by the Financial Controller.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### **HANDLING OF A COMPLAINT**

*Decision on complaint 130/97/HMA against the European Parliament*

#### **THE COMPLAINT**

In February 1997, X lodged a complaint concerning the Management Committee of the kindergarten run by the European Parliament. Over a period of 18 months, X's son was bitten 6 times by other children of the kindergarten. X had numerous contacts with the director of the kindergarten as well as the Management Committee in an attempt to solve this problem. He complained to the Management Committee about the fact that the director of the kindergarten was doing nothing to protect his son from being bitten again. In his view, the Management Committee did not deal properly with his complaint.

The complainant made the following allegations:

- The Management Committee had been negligent as it did nothing to protect children in danger.
- There was abuse of power in the form of intimidation and threats. X claimed that he was told that under the circumstances his future baby might not be admitted to the kindergarten.
- There was inequality and discrimination as children who were biting others were treated better than the children who had been bitten. X alleged that he was told that he was free to withdraw his son from the kindergarten if he was not satisfied with the situation.
- The Management Committee refused to disclose the names of children who had bitten X's son and never explained what concrete action had been taken within the kindergarten in regard to children that kept biting others and in preventing incidents of the same kind from happening again.

In accordance with Article 2 (3) of the Statute the complaint was classified as confidential at the request of the complainant.

## **THE INQUIRY**

### **The Parliament's comments**

The complaint was forwarded to the European Parliament. In summary, the Parliament's comments made the following points:

There was no case of negligence, as the complaint had been dealt with by the relevant authorities in detail. It appeared from the file that a member of the Management Committee had witnessed a similar incident at the kindergarten and saw how it was handled.

The allegation of intimidation and threats was unfounded. There was no obstacle to admitting X's future baby to the kindergarten.

The allegation of abuse of powers was related partly to the fact that the Management Committee refused to apply for a transfer of X's son to the Commission's kindergarten. There are strict rules governing transfer applications and the only situation where such a demand is grounded is if the applicant is high on the list of priorities for entrance to the kindergarten and no place is available in the Parliament facility. Therefore there was no abuse of powers.

The director of the kindergarten gave the Management Committee detailed explanations with regard to the events described and the policies of her staff in dealing with such incidents. On the basis of these explanations, the Management Committee found no evidence of discrimination. According to the Parliament, X had never been forced to withdraw his son from the Eastman kindergarten.

The failure to disclose the name of the child who had bitten X's son was justified. This policy was followed in order to avoid any violent scenes between parents in the kindergarten which would be negative for all concerned. The matter was being dealt with between the kindergarten and the parents of the child who had bitten X's son. The Parliament stated that otherwise X was being kept informed of the procedures and of all decisions taken by the Management Committee and the director of the kindergarten. X was invited to discuss the matter further with the director of the kindergarten.

### **The complainant's observations**

X observed that even if his complaint had been examined by the Management Committee, this did not mean that there was no negligence as to the substance and outcome of the investigation.

He opposed the fact that he was "forbidden" to have direct contact with the parents of the children who bit his son. And he claimed that the director had never informed him of her intention to speak to the parents herself, nor about what concrete action had been taken to solve the problem.

Concerning threats, X maintained his position in regard to the threat not to admit his future baby to the kindergarten under the circumstances.

### ***THE DECISION***

Concerning the allegation that the Management Committee had been negligent, it appeared that the Committee had examined the complaint and questioned the director of the kindergarten on the matter, thus carrying out an investigation which appeared to be in accordance with the principles of good administration.

As for the allegation of abuse of powers, the Parliament had in its opinion stated that there was no obstacle to admitting any future child of the complainant to the kindergarten. As for the demand to transfer the complainant's child to the Commission kindergarten, it did not seem appropriate to inquire further into the justification for the refusal of this demand as, in the meantime, the child had been placed in another kindergarten.

As for the allegation of discrimination, it appeared that the pedagogy followed by the kindergarten was applied to all children in the same way and therefore there appeared to be no discrimination. There was no evidence to the effect that the complainant was forced to withdraw his child from the kindergarten.

As for the refusal of the director, supported by the Management Committee, to disclose the names of children who had bitten X's son, this refusal was based on pedagogical considerations. The director of the kindergarten seemed to be aware that parents often opposed such a decision, but she preferred to channel the parents' anger towards herself rather than towards other parents and their children. This decision of a pedagogical nature did not appear to infringe principles of good administration.

It appeared from the file that the complainant was informed that the children who bit others were being punished according to the pedagogy followed by the kindergarten and that the director was talking with the parents of these children in view of solving the problem. The complainant was invited to further discuss the matter with the director. The decision not to disclose what concrete action had been taken appeared to be related to work

ethics. This decision of an ethical nature did not appear to infringe principles of good administration.

On the basis of the European Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the Management Committee of the kindergarten of the European Parliament. The Ombudsman therefore closed the case.

### 3.1.2. THE EUROPEAN PARLIAMENT. THE EUROPEAN COMMISSION. THE COURT OF AUDITORS. THE COMMITTEE OF THE REGIONS AND THE ECONOMIC AND SOCIAL COMMITTEE

#### ACTIO POPULARIS COMPLAINT: AGE LIMITS IN RECRUITMENT COMPETITIONS

*Decision on complaint 1042/25.11.96/SKTOL/FIN/BB against the European Commission, the European Parliament, the Court of Auditors, the Committee of the Regions and the Economic and Social Committee*

#### THE COMPLAINT

In November 1996, Mr B. complained to the Ombudsman on behalf of the Federation of Finnish Translation Offices (*Suomen Käännöstoimistojen Liitto r.y.*) about age limits in the notices of competition published by the Community institutions and bodies, in particular, the notices for competitions COM/A/1029, EUR/LA/118 and EUR/LA/119.

According to the complaint, the translators' profession was of the opinion that the current practice of the Community institutions discriminates against people on the basis of age and is, therefore, contrary to the principle of equal treatment and possibly even to the United Nations Charter. The translators claimed that it is all the more disconcerting that this practice exists within the European Union, which puts emphasis on free competition and a citizens' Europe.

Mr B. asked the Ombudsman to investigate the legality of all age limits and to take the necessary steps to deal with the matter.

#### THE INQUIRY

The complaint was forwarded to the institutions and bodies concerned.

### **The Commission's comments**

The Commission's comments began by referring to its opinion to a background note which it had sent to the Ombudsman on 31 October 1996.

Furthermore, the Commission stated that the application of age limits in competitions is an option provided by the Staff Regulations and may be flexibly applied depending on the circumstances and specific objectives of the competitions.

The Commission also explained that the application of age limits has been one tool in managing a high number of potential applications.

Finally, the Commission noted that age limits do not prevent women from applying. Furthermore, results of competitions for the new Member States have shown that age is an important factor affecting mobility.

### **The Parliament's comments**

The Parliament stated that, according to the Staff Regulations, an age limit may be set for candidates in open competitions organized by the Community institutions. It is up to the various appointing authorities to decide, on the basis of their own judgement and sound administrative principles, whether an age limit is justified.

The Parliament stressed that all institutions apply age limits in their recruitment policies. The various institutions have reasoned the application of age limits as follows:

- a) maintenance of the career structure
- b) difficulties in settling in a multicultural and multi linguistic environment far away from home increase with age
- c) administrative and financial problems would increase if age limits were abolished, as recruitment would become more cumbersome, and expensive and there would be no concomitant increase in the number of posts to be filled.

### **The Court of Auditors' comments**

The Court of Auditors associated itself with the Commission's comments transmitted on 19 March 1997.

### **The Committee of Regions and the Economic and Social Committee**

The Committee of Regions and the Economic and Social Committee gave a common opinion associating themselves with the Commission's comments transmitted on 19 March 1997.

## ***THE DECISION***

### **1 Age limits in the recruitment policy of the Community institutions**

- 1.1 It seemed that, as a general rule, all Community institutions apply age limits for the admission of candidates to competitions. This possibility appears in Annex III of the Staff Regulations and, especially, Article 1 (g) of Annex III in which it is stated that the notice of open competition must specify, where appropriate, the age limit and any extension of the age limit in the case of servants of the Communities who have completed not less than one year's service.
- 1.2 It appeared that age limits may be raised at least for candidates who have performed compulsory military service, who have been looking after a dependent child under compulsory school age or suffering from a severe mental or physical handicap, and for candidates who have a physical handicap.
- 1.3 The institutions consider age limits as important instruments in assuring a career civil service and the respect of statutory obligations. The institutions follow a principle of recruiting personnel on the basic grade, therefore, changes to this principle might have negative effects on motivation and good management. According to the Commission, research shows that the higher the age limit, the clearer the geographic imbalance. Furthermore, the Commission claimed that experience has shown that more women participate in open competitions for A8 than A7/6.

### **2 The European Ombudsman's own initiative inquiry into the use of age limits for recruitment to the Community institutions**

- 2.1 The European Ombudsman had received a series of complaints alleging instances of maladministration in the use of age limits for recruitment of personnel to the Community institutions.
- 2.2 The inquiries of the Ombudsman into this complaint and into several other complaints against the use of age limits by various Community institutions, led the Ombudsman to conclude that it is appropriate to conduct a more general examination of the use of age limits.
- 2.3 On the basis of the complaints that the Ombudsman had received, it appeared that the current practice regarding the use of age limits by the institutions caused considerable dissatisfaction amongst European citizens, in particular, amongst citizens of the new Member States.

2.4 According to Article 138e of the Treaty Establishing the European Community, the European Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible maladministration in the activities of Community institutions and bodies. By virtue of this provision, the Ombudsman initiated an own initiative inquiry into the use of age limits in the recruitment of officials and other servants of the European Communities on 14 July 1997.

### **CONCLUSION**

On the basis of the European Ombudsman's inquiries into this complaint and into other complaints against the use of age limits, it appeared justified to open a general inquiry into the use of age limits.

On 14 July 1997, the Ombudsman initiated an own initiative inquiry into the use of age limits in the recruitment by the Community institutions. The issues raised by this specific complaint will be taken into account in the own initiative inquiry. The Ombudsman therefore closed the case.

## **3.1.3 THE COUNCIL OF THE EUROPEAN UNION**

### **RECRUITMENT: EXCLUSION FROM A COMPETITION**

*Decision on complaint 725/16.7.96/GD/FR/KH against the Council*

#### **THE COMPLAINT**

Mr D. complained to the Ombudsman in July 1996 about his exclusion from a general competition (C/360) organised by the Council. He had passed the written tests and was invited by letter mailed on 15 May 1996 to take part in the oral examination, to be held in Paris on 10 June 1996. The letter was mailed to the address in Marseilles which Mr D. had given to the Council. Mr D. left Marseilles for Brussels on 22 May 1996 and asked his father to forward his mail to him. It was only on the occasion of a telephone call made to his parents on 16 June 1996 that Mr D. heard that a letter from the Council had arrived for him. On receipt of this letter on 20 June 1996, Mr D. learned about the invitation to the oral tests. When he contacted the Council he was told that the Selection Board had finished its work on 17 June 1996.

By letter of 21 June 1996 Mr D. asked the chairman of the Board to organize a supplementary oral examination for him. One reason put forward for this request was that, given the age limit normally applied to candidates, Mr D. would not have another opportunity to participate in a competition organized by the Community institutions. On 25 June 1996, the chairman of the



board informed Mr D. in writing that the Selection Board had terminated its work and that he had been excluded from the competition.

### ***THE INQUIRY***

#### **The Council's comments**

The complaint was forwarded to the Council. In its comments, the Council made the following points:

If Mr D. had contacted the General Secretariat of the Council early on 17 June 1996, the Board could probably still have fitted him in to the oral examination.

However, from the moment when the reserve list was established, the principle of equal opportunity of all candidates prevented the Council from reopening the competition procedures by organising an oral test specially for Mr D.

#### **The complainant's observations**

In his observations on the Council's comments, Mr D. maintained his initial complaint.

### ***THE DECISION***

The Ombudsman remarked that, following the Council's comments, it would have been possible to respond favourably to the complainant's request if this had been presented in due time. However, as the request had reached the Council after the closure of the competition procedures, accepting it would have implied the reopening of these procedures. In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### ***FURTHER REMARKS BY THE OMBUDSMAN***

The Ombudsman remarked that given the large number of complaints he had received concerning age limits for recruitment of personnel to the institutions, he had decided to conduct an own initiative inquiry into this practice.

### 3.1.4. THE COUNCIL OF THE EUROPEAN UNION AND THE EUROPEAN COMMISSION

#### DISCRIMINATION IN OPEN COMPETITIONS

*Decision on complaint 851/3.9.96/ALC/ES/VK against the European Commission and the Council of the European Union*

#### **THE COMPLAINT**

In August 1996, Mr L.C. from Spain complained to the Ombudsman concerning an alleged instance of maladministration by the Commission and Council of the European Union regarding some aspects of their recruitment systems.

The complainant put forward three claims:

- 1 In his view there was a gap between what was stated in the Commission's booklet published in Spanish "*La carrera en la Comisión de las Comunidades europeas*" and the institution's real policy as regards the recruitment of officials.
- 2 The principle of non-discrimination on the basis of nationality had been breached by the coming into force of Council Regulation 626/95 of 20.3.95<sup>1</sup> which introduced special and temporary measures that contradicted, in his opinion, the Staff Regulations; and
- 3 The Council and Commission were discriminating on the basis of the age, since they normally applied age limits for the recruitment of their officials.

He requested that any age limit be eliminated in any Community open competition, and that the respect to the principle of non-discrimination on the basis of nationality be ensured.

#### **THE INQUIRY**

The complaints were forwarded to the Commission and to the Council.

#### **The Commission's comments**

Following a previous request by the Ombudsman, the Commission had already forwarded its comments concerning the general question of the application of age limits.

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<sup>1</sup> OJ 1995 L 66/1.

It pointed out that the institutions had applied age limits for recruitment of officials to the Community on the basis of the provisions of the Staff Regulations, Annex III, Article 1. However, since those age limits had been the object of criticism by several Members of the European Parliament, the Commission had undertaken a thorough assessment of the implications of abolishing any age limit. In the Commission's view, the main reasons in support of age limits were the following:

- 1 to assure better conditions for a balanced management of human resources;
- 2 to promote a geographical balance within the institution's civil servants; and
- 3 to support women's applications.

As regards the specifics of Mr L.C.'s complaint, the Commission indicated that the booklet referred to by the complainant did not have any legal value, and it was designed for information purposes. With respect to the alleged infringement of the principle of non-discrimination on the basis of nationality, Council Regulation 626/95 introduced special and temporary measures aimed at promoting the recruitment of officials from the new Member States that joined the Union on 1 January 1995. The Commission stressed that the complainant had previously addressed a petition regarding the same subject-matter to the European Parliament (N. 898/95). The Committee on Petitions had already examined the petition and decided to close the file in view of the Commission's reply.

### **The Council's comments**

Firstly, the Council underlined that in the implementation of its recruitment policy, the institution must take into account the posts actually available as well as its budgetary restrictions. Secondly, that Council Regulation (EEC) 625/95, which introduced special and temporary measures in order to promote the recruitment of officials from the new Member States, did not breach the principle of non-discrimination on the basis of nationality.

### **The complainant's observations**

Mr L.C. claimed that the possibility of applying age limits as foreseen in Article 1 of the Annexe III in the Staff Regulations, was contrary to the European Convention on Human Rights and the Spanish Constitution. The argument that the career prospects for a newly appointed official of an older age could be limited was irrelevant, because not all of them considered promotion during their careers as their priority. Finally, he believed that a balanced representation of nationals from all Member States could not be achieved merely by limiting access to open competitions on the basis of

nationality, but rather by promoting equal access to those competitions for all Union citizens.

### **THE DECISION**

It appeared from the inquiries that had been made that the type of brochure, as well as its presentation and content, showed that its aim was not to create a legal framework defining access to the Union's civil service, but rather to provide general information on the open competitions for the institutions. The Ombudsman concluded that the potential divergence between the existing situation and the general aim of the brochure, could not be considered as an instance of maladministration on the part of the Commission.

As regards discrimination on the basis of nationality, the complainant had addressed a petition to the European Parliament about the same matter, which had been dealt with by the Committee on Petitions as petition N. 858/95. The Ombudsman therefore considered that there were no grounds to pursue further inquiries into the matter.

The question of age limits was the subject of an own initiative inquiry by the Ombudsman launched on 14 July 1997 and the Ombudsman did not therefore consider it necessary to pursue further inquiries into this particular complaint. However, the complainant will be informed of the outcome of the own initiative inquiry.

Against this background, the European Ombudsman closed the case.

### **RECRUITMENT: ASSESSMENT OF WORK EXPERIENCE AND FAILURE TO REPLY**

*Decision on complaint 940/11.10.96/AS/SW/BB against the European Commission and the Council of the European Union*

### **THE COMPLAINT**

In October 1996, Ms S. complained to the Ombudsman concerning the assessment of work experience in competition EUR/LA/75 organized by the Commission and the Council's failure to reply to Ms S.'s request to transmit a copy of her corrected examination script in competition COUNCIL/LA/369.

Ms S. had been excluded from open competition EUR/LA/75 on the grounds that she lacked the required minimum work experience of 12 years.

Following Ms S.'s request the Selection Board reviewed its decision, but maintained its original decision. Later, Ms S. wrote again to the Selection Board claiming that the Board had not specified how they had assessed her work experience. Furthermore, Ms S. pointed out that she was not aware that study periods parallel to work activity were not recognized. Therefore, she had not sent her study merit certificate but only her merit certificate which states the final dates for each subject. Finally, Ms S. had calculated that, her study merit certificate indicated that she had the required 12 years of work experience. Ms S. asked for a second review of the Selection Board's decision.

In January 1996, the Board replied that it had again reviewed its decision. The Board referred to point B.3 of the notice and V.B.2, VI.2 and XI of the application form published in the Official Journal 1995 C 219 A and stated that no exceptions to these rules were allowed.

In her complaint to the Ombudsman Ms S. claimed that the Commission had not indicated the evaluation criteria used in the assessment of work experience. She stressed that in order to treat applicants equally it was necessary for the Selection Board to provide information on the assessment method.

In February 1996, Ms S. had sent a letter to the Council requesting a copy of her corrected English examination script in relation to competition COUNCIL/LA/369. In her complaint to the Ombudsman, she claimed that she never received any reply to her letter.

### **THE INQUIRY**

The complaint was forwarded to the Commission and to the Council.

#### **The Commission's comments**

In summary, the Commission made the following points in its comments:

According to the notice of competition, candidates must have at least twelve years of professional experience, after obtaining their university degree;

The notice of competition stipulated that duly attested periods of specialist or refresher training courses will also count as professional experience. In the case of further training courses, they must be on a level at least equivalent to that required for admission to the competition. Consequently, specialist or refresher training courses and further training courses may be taken into account in the calculation of professional experience. However, in order to be counted as experience, the train-

ing must be full-time. The same rule applies to professional experience. In other words, where training takes place during employment, it cannot be counted as additional to the period of professional experience. According to point XI in the notice of competition, photocopies showing that the candidate satisfies the conditions must be attached to the application;

Ms S.'s professional experience was calculated on the basis of her original application and documents. Altogether, her professional experience amounted to eleven years and six months;

The text of the notice of competition is legally binding and the Selection Board must respect it.

### **The Council's comments**

In summary, the Council made the following points in its comments:

In January 1996, Ms S. was informed that she was not admitted to the oral competition because of her negative result in Part 3 of the written test;

In February 1996, Ms S. requested a copy of her corrected script for the written test. The President of the Selection Board gave a detailed reply to her request, explaining the procedures, but refusing to submit the corrected script;

In October 1996, Ms S. informed the Ombudsman about the Council's refusal to transmit the corrected script. The same day, she wrote to Mr Brunmayr, Deputy Director-General, requesting a reply;

In October 1996, a copy of the letter of 27 February 1996 was sent again to the complainant;

Corrected scripts are covered by the secrecy of the Selection Board's proceedings provided for in Article 6 of Annex III of the Staff Regulations;

The high number of candidates participating would make it very difficult to consider accepting requests for copies of corrected scripts.

### **The complainant's observations**

In her observations, Ms S. made, in summary the following points:

As to the assessment of work experience, she still considered that the notice of competition did not mention that further training which has

taken place during employment could not be counted as additional to the period of professional experience. If the notice had clearly indicated that this was the case, Ms S. claimed that she would have sent her study merit certificate from the University of Stockholm already with her original application for open competition EUR/LA/369.

When she requested a review of the decision to exclude her from the above-mentioned competition, the Commission should have calculated her work experience according to the study merit certificate enclosed with the request for review. Ms S. claimed that taking into account her study merits she fulfilled the required 12 years work experience.

As regards the Council's letter of 27 February 1996, Ms S. stated that she only received a copy of that letter in October 1996. She alleged that the Council never sent the letter in the first place. She maintained her request to get a copy of her corrected script.

## **THE DECISION**

### **1 Assessment of work experience**

- 1.1 According to the case law of the Court of Justice, Selection Boards have wide discretionary powers. In the exercise of these powers, Selection Boards must respect the legal framework for their activities, laid down in the notice of competition.
- 1.2 In its letter of 19 December 1995 and in its comments to the Ombudsman, the Commission informed Ms S. of the Selection Board's method of assessment of work experience. Furthermore, the comments specified how the complainant's work experience was calculated.
- 1.3 Based on the Ombudsman's inquiries into this complaint, it appeared that the Selection Board has acted in accordance with the notice.

### **2 Failure to reply to correspondence**

- 2.1 The Council provided the Ombudsman with a copy of its letter dated 27 February 1997. In this letter the Council replied that as a rule it did not send copies of corrected examination scripts.
- 2.2 The Ombudsman found that there was no evidence to support the complainant's allegation that Council never sent the above-mentioned letter.

### 3 Copy of the corrected examination script

- 3.1 In the present state of Community law, there is no legal basis for considering that the Council is under any obligation to disclose a copy of a corrected examination scripts to an applicant who so requests.
- 3.2 The Ombudsman has received a number of complaints within the field of recruitment, in particular concerning a lack of transparency in the procedures. Among other things the complainants have complained about being refused copies of corrected examination scripts upon request.
- 3.3 According to Article 138 e of the Treaty establishing the European Community, the Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of the Community institutions and bodies. By virtue of this provision, he has opened an own initiative inquiry on 7 November 1997 concerning the secrecy which forms part of the Commission's recruitment procedures.
- 3.4 As part of this own initiative the Ombudsman will investigate whether the Commission envisages taking measures in order to allow the disclosure of copies of corrected examination scripts to the applicant concerned.

In view of the above findings, there appeared to be no maladministration either by the Commission or by the Council. The Ombudsman therefore closed the case.

#### **FURTHER REMARKS**

In view of the considerable number of complaints that the Ombudsman has received concerning the lack of transparency in procedures for recruitment competitions organized by the Community institutions, he opened an inquiry on his own initiative on this matter on 7 November 1997.



### 3.1.5 THE EUROPEAN COMMISSION

#### SELECTION OF TRAINEES: ACCESS TO THE "BLUE BOOK"

*Decision on complaint 111/95/VK against the European Commission*

#### **THE COMPLAINT**

In September 1995, X complained to the European Ombudsman that traineeships with the Commission were not awarded on the basis of merit, but through having the right connections to high ranking persons.

In support of his allegations X referred to his two unsuccessful applications for a traineeship with the Commission. He claimed it was impossible to understand why he entered the so-called "Blue Book" of the Commission the first time, but not the second time when he was much better qualified.

In accordance with Article 2 (3) of the Statute the complaint was classified as confidential at the request of the complainant.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission, which stated in its comments that X did meet the necessary requirements for admissibility according to the regulations for traineeships. However, due to the high number of applications received each year, it was necessary to carry out a pre-selection test on the basis of the actual study results of the candidates and on possible studies undertaken in European Integration or in the field of Community law.

The Commission stated that on the grounds of the excellent profile of his *curriculum vitae*, X had been able to enter the Blue Book and only later failed to meet the requirements. Furthermore, the Commission emphasized that, in principle, geographical balance and the amount of applications each year needed to be taken into account.

##### **The complainant's observations**

The Commission's comments were sent to the complainant who maintained his complaint. The complainant added that only a recommendation from a high ranking person helped him to enter at last the supplementary list of the Blue Book the second time he applied.

### **FURTHER INQUIRIES**

The Ombudsman requested information from the Commission in relation to the procedure of registration in the Blue Book. In addition, the Ombudsman asked for copies of the application forms of the other candidates of the same nationality as X in order to assess their qualification profile.

The Commission submitted additional comments as well as copies of the application forms of the other candidates of the same nationality as X. The Commission pointed out that the supplementary list was used for further assessment of applications and served for correction purposes in technical or printing errors.

### **THE DECISION**

The Ombudsman observed that the criteria applied for the selection of trainees as communicated to him by the Commission did not appear to be unfounded.

It had to be recalled that an administrative authority enjoyed a margin of appreciation in determining whether a concrete application fulfilled the criteria set out for a vacancy.

From the Ombudsman's examination of the applications of other candidates of the same nationality as X, it did not appear that the Commission had disregarded the criteria that it had laid down.

X contended that he had been placed on the supplementary list of the Blue Book because of the recommendation of a high ranking person. Given the lack of any indication as to the identity of this person and of the person or persons on whom influence was allegedly exerted, there were no grounds for further inquiries into this claim.

The Ombudsman therefore closed the case.

## **REFUSAL TO ACCEPT AN EUR 1 CERTIFICATE FROM IVORY COAST**

*Decision on complaint 187/17.10.95/FS/B/IJH against the European Commission*

### **THE COMPLAINT**

Mr S. complained to the Ombudsman in October 1995 on behalf of a company called B. NV. The complaint stated that B. NV purchased a quantity of long-grain rice from the Ivory Coast, through a UK trading agent, for importation into the Community in April 1994. Rice originating in Ivory Coast, a Lomé Convention country, is subject to reduced import duty.

B. NV submitted an EUR 1 certificate to the Belgian customs authorities as proof of the rice's origin. The customs authorities, however, suspected that the rice was not of Ivory Coast origin and refused to accept the certificate. To obtain release of the rice, B. NV provided the customs authorities with a guarantee for 10% of the additional customs duties payable if the rice did not originate in Ivory Coast.

The Belgian customs authorities took samples of the rice for testing and initiated the procedure for subsequent verification of the EUR 1 certificate. In March 1995, B. NV was informed that the Ivory Coast government had confirmed the validity of the EUR 1 certificate. B. NV then requested release of the guarantee that it had given. By letter of 28 July 1995, the Belgian customs authorities informed B. NV that the Community anti-fraud section refused to release the guarantee and wanted to investigate further.

In his complaint to the Ombudsman, Mr S. claimed that, because the verification procedure had been completed, the guarantee given by B. NV should be released. He claimed that any doubts about the issuing of EUR 1 certificates by the Ivory Coast should be a matter between the Community authorities and the Ivory Coast government.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission in January 1996. In its comments, the Commission referred to the reasons why the Belgian customs authorities and the Commission's services suspected that the rice did not originate in Ivory Coast. In summary, the comments also made the following points:

Although the reply from the Ivory Coast confirmed the authenticity of the certificate and the origin of the goods, previous experience has shown that verification by the Ivory Coast authorities cannot always be relied on and is often a question of verifying the existence of the certificate and not the origin of the goods

In accordance with Article 26 of Protocol No 1 of the Lomé Convention, the Commission requested the Ivory Coast authorities to make an enquiry regarding the rice and offered to send a Community mission to assist. The request was made on 22 June 1995 and repeated on 12 September 1995.

As subsequent correspondence did not bring an answer to the questions raised the Commission services brought the matter before the EC-ACP Customs Cooperation Committee.

Whilst there was no evidence to show B. NV's involvement in fraud, serious concerns remained as to the validity of the EUR 1 certificate.

A dialogue had been entered into with the Ivory Coast authorities who had requested and been supplied with further information.

The comments concluded by expressing the hope that the dialogue would lead to a settlement of the matter in the near future.

### **The complainant's observations**

The Commission's comments were forwarded to Mr S. in April 1996. His observations contested the evidence concerning the validity of the EUR 1 certificate and claimed that there could be no "reasonable doubts" to justify the subsequent verification and precautionary measures under the Lomé Convention.

The observations also raised a new issue concerning alleged delay by the Belgian customs authorities in forwarding the EUR 1 certificate to the Ivory Coast authorities for verification.

### **FURTHER INQUIRIES**

In March 1997, the European Ombudsman wrote again to the Commission to inquire whether the dialogue with the Ivory Coast authorities had reached a conclusion and, if not, what other steps the Commission proposed to take to resolve the matter.

In its reply, the Commission gave details of its further attempts to resolve the issue. In particular, it referred to a further request for cooperation at the ACP-EC Customs Cooperation Committee in May 1996 and to an administrative co-operation mission in November 1996.

According to the reply, there was still disagreement between the Community delegation (which included representatives of the Commission and of the Belgian customs authorities) and the Ivory Coast authorities as to the relevant facts.

The reply concluded as follows:

*The Commission has been informed that the Belgian authorities have increased the deposit paid by B. NV (the 10% difference between the preferential import rate and the non-preferential rate was increased to 100%).*

*It is for the appropriate Belgian authorities to draw its conclusions from this matter. The Belgian government is currently unable to notify the importer (B. NV) of the customs debt in the absence of irrefutable proof that the rice did not originate in Ivory Coast.*

*The Commission can only emphasize once again that it exercises its powers scrupulously to protect the financial interests of the Union as effectively as possible (going beyond own resources losses, there is the aspect of application of agreements with ACP countries). However, it regrets that, contrary to the hopes engendered by the meeting of 3 April 1996, the level of cooperation shown by the Ivory Coast authorities was inadequate, as the circumstances described above show.*

## **THE DECISION**

### **1 Preliminary remarks**

- 1.1 The implementation of Community customs law and carrying out of the relevant administrative procedures are the responsibility of national customs authorities. Although they implement Community law, national customs authorities are not Community institutions or bodies and their activities cannot be the subject of inquiry by the European Ombudsman.
- 1.2 The Ombudsman was not competent, therefore, to deal with the complaint insofar as it related to the administrative activities of the Belgian customs authorities. In particular, the Ombudsman could not to inquire into the allegation, made in the complainant's observations on the Commission's comments, of undue delay by the Belgian customs authorities in forwarding the EUR 1 certificate to the Ivory Coast authorities for verification.
- 1.3 In examining whether there has been maladministration in the activities of the European Commission, the Ombudsman cannot determine the substantive dispute over the origin of the rice. This question could be determined by a court of competent jurisdiction, which would have the possibility to hear testimony and evaluate conflicting scientific evidence.

### **2 The role of the Commission**

- 2.1 From the Commission's replies, it appeared that its competences in relation to this case derive from two sources:

- Its participation in the Customs Cooperation Committee, established by Article 30 of Protocol 1 of the Lomé Convention<sup>1</sup>, which deals with disputes under Articles 26 (7) and 27 (7) of the Protocol;
- Its responsibility, in the execution of the Community budget, to ensure proper accounting for customs duties (which are a Community resource) that are payable.

### **3 The Commission and the Ivory Coast authorities**

- 3.1 The evidence available to the Ombudsman was that the Commission had:
- requested that the Ivory Coast authorities make appropriate inquiries in accordance with Article 26 of Protocol 1 of the Convention;
  - requested, and participated, in an administrative cooperation mission to the Ivory Coast;
  - brought the matter before successive meetings of the ACP-EC Customs Cooperation Committee.
- 3.2 According to the Commission's evidence, the failure of the above activities to resolve the matter resulted from lack of cooperation by the Ivory Coast authorities.
- 3.3 The Commission therefore appeared to have used fully its possibilities of action under the provisions of the Lomé Convention in relation to this dispute.

### **4 The Commission and the Belgian customs authorities**

- 4.1 In its comments, the Commission did not contradict the allegation that the Commission services refused to release the guarantee paid by B. NV. On the basis of the limited evidence available, it appeared likely that, in practice, the Commission services played a decisive role.
- 4.2 In fulfilment of its responsibilities for execution of the Community budget, the Commission has an obligation, repeatedly emphasised by reports of the Court of Auditors, to protect the financial interests of the Community.
- 4.3 From the Commission's replies in this case, it appeared that its doubts concerning the origin of the rice were based on evidence and therefore

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<sup>1</sup> See Council Regulation 714/90/EEC of 5 March 1990 concerning the application of Decision No 2/90 of the ACP-EEC Council of Ministers on transitional measures to be applied from 1 March 1990, OJ L 84/1 30.3.90.

constituted "reasonable doubts" in the sense of Article 26 of Protocol 1 of the Lomé Convention.

4.4 In these circumstances, the lack of progress in resolving the dispute, resulting from the Commission continuing to doubt that the rice is of Ivory Coast origin, did not appear to constitute maladministration in the form of avoidable delay.

In view of these findings, there appeared to be no maladministration. The Ombudsman also noted that the complainant still had the possibility himself to submit the dispute concerning the origin of the rice to a competent judicial authority in proceedings against the national customs authorities. The Ombudsman therefore closed the case

### **RECRUITMENT: ORAL SELECTION PROCEDURE**

*Decision on complaint 252/22.11.95/TMF/VK against the European Commission*

#### **THE COMPLAINT**

In his complaint to the Ombudsman in November 1995, Mr R. alleged that he was given the impression that he had passed the oral selection procedure organized by DG XII of the Commission due to the behaviour of the Selection Board. According to him, the members of the Selection Board questioned him on his future work and congratulated him and shook hands with him after the interview. Furthermore, he alleged that the Commission did not want to disclose the names of the members of the Selection Board.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission in February 1996. In its comments, the Commission stated that it had questioned the secretary of the Selection Board. According to her, no indication had been given to the candidate that he had been successful, nor had he been congratulated. Furthermore, the Commission emphasized that members of Selection Boards are briefed on how to behave and that they should not give any indication or reaction in relation to the candidates's performance. This is supervised by the secretary of the Selection Board.

In his observations on the Commission's comments Mr R. maintained his complaint.

### **THE DECISION**

According to the complainant, he was asked questions in relation to the post and the actual work involved. The content of these questions is not disputed by the Commission. It seems natural for the future employer to ask such questions in order to assess the candidate, for example on how a candidate would react in certain work situations. Therefore, the content of the questions does not appear to constitute an indication that the candidate has been chosen for the post.

Mr R. claimed that he was congratulated by members of the Selection Board. This factual issue remains in dispute between the parties. A handshake at the end of an interview can be understood as a gesture of politeness, rather than of congratulation.

In the present state of Community law, a refusal to disclose the names of members of a Selection Board does not appear to be unlawful.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### **FREEDOM OF MOVEMENT: HANDLING OF COMPLAINTS LODGED WITH THE COMMISSION**

*Decision on complaint 259/27.11.95/PL/UK/PD against the European Commission*

### **THE COMPLAINT**

On 20 November 1995, Mr L. complained to the Ombudsman on behalf of the B. brothers and as the representative of the National Council for Civil Liberties (Liberty). The complaint alleged maladministration in the handling of two complaints lodged with the European Commission.

#### **The background to the complaint**

In November 1990, two Welsh brothers, G.B. and R. B., travelled by train to Belgium to see Wales play a football match. The brothers were taken out of the train at the Belgium - Luxembourg border by the Belgian police and their identity was recorded and photographs were taken. This information was later transmitted to the UK National Criminal Intelligence Service (NCIS) and recorded on a computer list.

In November 1992, the recorded information was passed on to the Belgian police on the occasion of another football match the B. brothers were attending. The brothers were detained at the police station at Kortrijk and later subjected to an identity check in Brussels. Furthermore, R.B. was



detained at the police station in Brussels for 16 hours, searched and photographed and later deported.

According to R.B., the reason given to him was that his name was recorded on the NCIS list. The official report from the Belgian Ministry of the Interior to NCIS stated that R.B. was arrested on 17 November 1992 at Brussels because he was under the influence of alcohol, disturbed public order during an identity check and did not appear to possess any identity papers.

The B. brothers and their national and European Parliamentary representatives sought to obtain a national remedy, but were unsuccessful.

### **The complaint to the European Commission**

On 8 July 1994, the B. brothers, represented by Liberty, complained to the European Commission. The Commission registered the complaints as No 94/4998 against the United Kingdom, and No 94/4999 against Belgium.

Liberty requested that the Commission communicate the complaint to the Member States concerned and obtain an undertaking that those Member States would comply with the requirements of Community law. Liberty also requested the removal of all records relating to the B. brothers.

Furthermore, the Commission was requested to obtain assurances for the B. brothers that they would be free to move within the European Union and that they would not be subjected to restrictions that were not justified under the EC Treaty. If either State were to fail to adopt such measures satisfactorily, the Commission was requested to institute infringement proceedings under Article 169 of the EC Treaty.

On 20 October 1994 the Commission Directorate General XV responded by letter stating:

*Belgium and the United Kingdom are bound to give active consideration to the brothers' request to be removed from any 'blacklist' on which they might appear. I have written to both Member States to this effect, asking them to delete your clients' names from any such 'blacklist' and, if not, to give reasons for keeping them on such a list."*

By a letter of 6 October 1995 DG XV of the Commission reported that a reply had been received from the United Kingdom:

*"In substance the UK authorities indicate that A.B. has never been the subject of an entry on NICS records, and that while entries have been*

*made, in relation to both G.B. and R.B., no details concerning them remain on those records.”*

*“The absence of any mention of your clients in the NCIS records leads us to conclude that there are, at present, no restrictions envisaged by the United Kingdom authorities on their free movement.”*

*“As a consequence, it must be considered that there is no infringement of Community law in the case in point and it is my intention to propose to the Commission that your complaint is filed.”*

As no response had been received from the Belgian authorities, the Commission was continuing to press them for their reply.

Liberty responded by letter of 11 October 1995 and presented the issues which it considered still unresolved:

The brothers had never been informed of precisely which lists their names appeared on.

The brothers had not been informed as to which other States and organizations had been provided with the list or lists.

The question of the legality of their names being originally listed had not been dealt with satisfactorily.

### **The complaint to the European Ombudsman**

Liberty alleged that there had been maladministration in the Commission's handling of the complaint against the United Kingdom, for the following reasons:

- 1) The delay of 16 months in responding substantively to the complaint.
- 2) The failure to require the United Kingdom to deal with each of the issues raised in the complaint lodged in July 1994.
- 3) The failure to institute proceedings under Article 169 of the EC Treaty.

Liberty alleged that there had been maladministration in the Commission's handling of the complaint against Belgium, for the following reasons:

- 1) The failure of the Commission to obtain the Belgian authorities' response after the complaint was lodged in July 1994.
- 2) The failure of the Commission to institute proceedings under Article 169 of the EC Treaty in the absence of any response whatsoever from the Belgian authorities 16 months after the complaint was lodged at the Commission.

## THE INQUIRY

The EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman. The Ombudsman's inquiries into this complaint were therefore directed towards examining whether there had been maladministration in the activities of the European Commission.

### The Commission's comments

The complaint was forwarded to the Commission. In summary, the Commission made the following points in its comments:

In deciding not to open infringement proceedings as regards the United Kingdom the Commission had exercised its discretion as fully recognized by the Court of Justice. The Court has consistently held<sup>1</sup> that:

*"...it is clear from the scheme of Article 169 of the EEC Treaty that the Commission has no obligation to commence proceedings under that Article; it has discretionary power precluding the right of individuals to require it to adopt a particular position and to bring an action for annulment against its refusal to take action."*<sup>2</sup>

- 1 It had proceeded towards the complainants in conformity with principles of good administrative behaviour;
- 2 The complaints were registered, replies were sent to the complainants and letters were forwarded to the Member States within normal time scale for dealing with complaints or alleged infringements.
- 3 The Commission had written to the Member States asking for information or clarification, it was, in regard to the issue of timing and delays, in the hands of the Member State concerned.
- 4 As regards the case of the United Kingdom, a first letter was issued on 20 October 1994 and after a reminder was sent on 29 March 1995 a reply from the United Kingdom authorities was received on 22 May 1995.
- 5 As soon as the reply was examined by the Commission services, the complainants were informed via their legal representative on 6 October 1995.

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<sup>1</sup> Case 247/89 *Star Fruit v Commission* [1989] ECR 291 and Case 87/89, *Sonito and Others v Commission* [1990] ECR 1981.

<sup>2</sup> *Sonito and others v Commission*, p. 2008.

- 6 As regards the case of Belgium, an acknowledgement was received from the Permanent Representative on 16 December 1994, however it was only after several reminders issued on 28 February 1995 and 27 June 1995 that the Belgian authorities wrote to the Commission on 19 October 1995 confirming that the request for clarification had been transmitted to the appropriate authorities.
- 7 There was as yet no reaction from these authorities and thus the complaint against Belgium was still being examined.
- 8 At all times during this period of sixteen months and in respect of both cases, the Commission had kept the complainants informed through their legal representative.
- 9 In an Article 169 procedure the complainant did not possess any specific procedural guarantees as could be in other sectors such as competition issues or anti-dumping cases;
- 10 As regards the time taken to deal with both these matters, it was relevant to recall that complex legal and technical considerations were involved.

### The complainant's observations

In his observations Mr L. made, in summary, the following points:

- 1 Neither the Commission's discretion over whether or not to issue formal proceedings under Article 169, nor the sending of the initial letter to the Member States within the normal time scale was disputed;
- 2 The Commission's comments had failed to address the core of the complaint on maladministration and in particular the following issues:

On 20 October 1994, the Commission expressed the view, applying the Court of Justice rulings in *Bouchereau and Adoui and Cornuaille*,<sup>1</sup> that "*Belgium and the United Kingdom are bound to give active consideration to the brothers' request to be removed from any 'blacklist' on which they might appear.*" The fact that the Commission accepted that such action from the Member State concerned was necessary is highly pertinent to the assessment of the adequacy of the subsequent handling of the matter by the Commission;

Whether the Commission had complied with good administrative practice by proposing to close the file in relation to the United Kingdom although the reply from the UK did not deal with most of the concerns raised in the complaint, and specifically whether or not the names of the B. brothers had been communicated onto

<sup>1</sup> Case 30/77, [1977] ECR 1999 and Cases 115/81 and 116/81, [1982] ECR 1665.

other countries' records and by proposing to take no further specific action in relation to Belgium although no reply whatsoever had been received from the Member State;

Whether the requirement of good administration requires the Commission to pursue in some effective way the undisputed concerned the fact that the B. brothers' fundamental rights under EC law had not been respected;

The complainant requested that the Ombudsman should find that the response of the Commission was insufficient and that good administration required some effective follow-up action by the Commission.

### ***FURTHER INQUIRIES***

It appeared that the Commission had not informed the Ombudsman of the situation as regards complaint No 94/4999. The Ombudsman therefore asked the Commission to inform him whether there had been a reply from the Belgian authorities to complaint No 94/4999.

The Commission's reply stated that the Commission had received a short formal response dated 10 June 1996 from the Permanent Representative of Belgium. In substance the Belgian authorities gave assurances about the respect of the rights of the complainants to free movement on their territory.

The Commission had examined the response and communicated its terms to the complainants via their legal representative by letter of 9 July 1996. This letter also indicated that, in view of the position put forward by the Belgian authorities, the Commission services would be proposing to the group which examined alleged infringements of Community law, at its next meeting, that case No 94/4999 be filed.

The meeting at which the services' proposal to file the case took place was held on 10 October 1996. The decision was confirmed at the Commission's weekly meeting on 16 October 1996.

By letter of 4 December 1996, the confirmation of the decision to file the case was communicated to Mr L. as the representative of the complainants.

### ***THE DECISION***

#### **1 Alleged failure to obtain a reply from the Belgian authorities**

1.1 As a matter of good administrative practice, the Commission should persist in attempts to obtain replies from the Member States at the

administrative stage of the infringement procedure under Article 169.

- 1.2 In accordance with the case-law of the Court of Justice, Member States must facilitate the achievement of the Commission's tasks as "Guardian of the Treaty", under Article 155 of the Treaty<sup>1</sup>. The Member States are required to cooperate *bona fide* in an inquiry undertaken by the Commission under Article 169, and to supply the Commission with all the information requested for that purpose.<sup>2</sup> Refusal by a Member State to assist the Commission in its investigations constitutes a failure to fulfill a duty incumbent on every Member State under Article 5 to facilitate the achievement of the Commission's tasks.<sup>3</sup> In such a case the Commission may bring the matter before the Court of Justice.
- 1.3 It appeared that the Commission finally obtained a reply from the Belgian authorities on 17 June 1996, following several reminders by letter and further contacts. The Ombudsman therefore found that there was no evidence of maladministration in relation to this aspect of the case.

## 2 Delay in responding substantively to the complaint against the United Kingdom

- 2.1 As regards the alleged delay of 16 months in responding substantively to the complaint against the United Kingdom, Liberty stated that it did not contest the sending of the initial letter to the Member States within the normal time scale. Therefore, the complaint concerned the period after 20 October 1994. After that date, the Commission sent a reminder and received a reply on 22 May 1995. By letter of 6 October 1995 the Commission informed the complainant that the complaint had been filed.
- 2.2 It appeared from the Ombudsman's inquiries that the Commission had persisted in its attempts to obtain a reply from the United Kingdom. As a matter of good administrative practice, the Commission should always communicate a decision to close the file to the complainant reasonably promptly. The Ombudsman found that there was no evidence to support the allegation that there had been undue delay in responding substantively to the complaint against the United Kingdom.

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1 .. the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied; (...)

<sup>2</sup> Case 192/84 *Commission of the European Communities v Hellenic Republic* [1985] ECR 3967, par. 19.

<sup>3</sup> Case 240/86 *Commission of the European Communities v Hellenic Republic* [1988] ECR 1835, par. 28.

### 3 Failure to require the United Kingdom to deal with each of the issues raised in the complaint

3.1 As to the allegations that the Commission had failed to require the United Kingdom to deal with each of the issues raised in the complaint lodged in July 1994, the United Kingdom authorities had indicated that no details concerning the B. brothers remained in the NCIS records. Therefore, the Commission had considered that there was no infringement of Community law by the United Kingdom.

3.2 It appeared that the Commission had concluded that there was no infringement at the present and that it did not intend to pursue the issue whether there had been an infringement in the past. According to the Court of Justice, the purpose of the pre-litigation procedure provided for in Article 169 is to give the Member State an opportunity to remedy the position before the matter is brought before the Court.<sup>1</sup> The Ombudsman's inquiries, therefore, had not revealed any instance of maladministration by the Commission in relation to the alleged failure to request a reply on each issue presented in the complaint.

### 4 Failure to open infringement proceedings under Article 169 of the EC Treaty

4.1 As regards the allegation that the Commission had failed to institute formal proceedings against the United Kingdom and Belgium, Article 169 of the EC Treaty provides for the Commission to issue a reasoned opinion if it *considers that a Member State has failed to fulfil an obligation under this Treaty*.

4.2 Article 169 of the Treaty does not lay down procedures or criteria to be followed by the Commission in the period preceding the issuing of a reasoned opinion to a Member State. Furthermore, the jurisprudence of the Court of Justice provides only limited guidance. The Commission itself must therefore decide what procedures and criteria to adopt in order to discharge its responsibilities under Article 169 in the process that may lead to the issuing of a reasoned opinion.

4.3 According to the case-law of the Court of Justice, given its role as "Guardian of the Treaty", the Commission alone is competent to decide whether it is appropriate to bring proceedings against a Member State for failure to fulfil its obligations.<sup>1</sup> The Ombudsman found, therefore,

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<sup>1</sup> Case 74/82 Commission of the European Communities v Ireland [1984] ECR 317, par. 13.

that there was no instance of maladministration in the way the Commission had concluded the inquiries it had undertaken in this matter.

In view of these findings and taking into account that the Commission had obtained both from the United Kingdom and Belgium assurances that the rights of the complainants to free movement would be respected, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### **FURTHER REMARKS**

Inquiries into this complaint and several other complaints against the Commission, led the Ombudsman to conclude that it would be appropriate for there to be a more general examination of the Commission's administrative procedures for dealing with complaints from citizens concerning Member States' failure to fulfil their obligations under Community law. On 15 April 1997, therefore, the Ombudsman initiated an own-initiative inquiry into the possibilities for improving the quality of the relevant administrative procedures of the Commission.

### **RECRUITMENT OF A TEMPORARY AGENT**

*Decision on complaint 265/29.11.95/VKCG/PD/UK-en against the European Commission*

### **THE COMPLAINT**

Mrs G. had responded to a notice inviting applications for a post as a temporary agent, at grade A4/A5 in the Consumer Policy Service of the Commission. In August 1995, the Selection Board informed her that she would not be invited for an interview.

In her complaint to the Ombudsman in November 1995, Mrs G. alleged that the successful applicant was known in advance. She raised a number of questions. In particular, she asked how many applicants were interviewed and the reasons for not inviting her for an interview. Mrs G. alleged that the advertisements in the national press were false and misleading because they advertised job vacancies which did not in fact exist. She also questioned whether the procedure used complied with equal opportunities policy and whether the expenditure incurred in the process was justifiable and reasonable.

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<sup>1</sup> Case 431/92 Commission of the European Communities v Federal Republic of Germany [1995] ECR I-2189, par. 22.



## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. The Commission's comments included the following points:

In the Commission, temporary staff are recruited through selection procedures which are announced by means of advertisements in the national press of the Member States. Accordingly, the temporary A post was advertised in the national press of the Member States.

Applications received in response to advertisements are submitted to a Selection Board consisting of senior officials who are specialists in the fields covered by the procedure.

For the post in question, a Selection Board comprising three persons was established in order to examine the applications and select those judged best suited for the post for an interview.

The Selection Board received 75 applications. Eight applicants were selected for an interview on the basis of criteria established by the Selection Board, i.e. the quality and duration of applicants' professional experience. Of those who were invited to an interview, four were placed on a reserve list.

The Commission rejected the allegation that the person appointed to the post was determined in advance. It stated that the Selection Board recognized the complainant's qualities but judged that other applicants were better qualified for the post in question.

As for equal opportunities policy, the Commission pointed out that two of the four people on the reserve list were women. It added that the Selection Board based its decisions solely on the relative merits of the applicants.

### **The complainant's observations**

In her observations, Mrs G. raised a number of questions relating to the procedure and reasons behind the creation of a temporary A4/A5 post in the Consumer Policy Service as well as to the selection procedure followed and the identity of the successful applicant. Furthermore, Mrs G. suggested that the Ombudsman should interview some staff members at the Commission.

### ***FURTHER INQUIRIES***

After considering the Commission's comments and the complainant's observations, it appeared that a number of aspects of the complaint remained unanswered. On 5 July 1997, the complainant's observations were forwarded to the Commission for a complementary comment. Furthermore, the European Ombudsman asked the Commission to forward to him: the published notice of vacancy, the applications of the eight short-listed applicants, and the report of the Selection Board.

In its complementary comments, the Commission stated that the report of the Selection Board included a list of the eight applicants invited for interview as well as a list of the four applicants judged best suited for the post. Subsequently, the Directorate General of Consumer Policy examined the files of the four short-listed applicants and selected the person considered to be best suited for the post in question. Furthermore, the Commission stated that the expectation that the successful applicant would be offered the post in question was no greater than that of any other person, either within or outside the Commission.

#### **The complainant's complementary observations**

The Commission's complementary comments were forwarded to Mrs G. In her further observations, she maintained her original complaint.

### ***THE DECISION***

According to Article 2 of the Conditions of Employment of Other Servants of the European Communities, temporary staff are engaged to fill posts which the budgetary authority has classified as temporary.

The engagement of a temporary agent differs from the recruitment of an official, in that the Staff Regulations do not contain specific provisions governing the recruitment procedure for temporary agents.

On the basis of the Ombudsman's inquiries, there appeared to be no evidence that the Commission had failed to act in accordance with its normal procedures for recruitment of temporary agents in this case.

On the basis of the information available to the Ombudsman there appeared to be no evidence to support the allegation that the identity of the successful applicant was known in advance. In these circumstances, the Ombudsman considered that there were not sufficient grounds for him to pursue further inquiries into this aspect of the complaint.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### TERMINATION OF A CONTRACT

*Decision on complaint 271/4.12.95/DEA-EF-en against the European Commission*

#### THE COMPLAINT

In his complaint to the European Ombudsman in November 1995, Mr A. stated that he was employed under contract by a company, ("BMB"), as programme co-ordinator of an EU-funded rural development programme in Nigeria ("the Middle Belt Programme"). BMB abruptly terminated Mr A.'s contract in November 1994 and subsequently agreed to pay him £45 000 in settlement of his claim for wrongful dismissal.

Mr A.'s complaint had three elements:

- 1 He alleged that the Commission was directly responsible for the termination of his contract, either through its Delegation in Nigeria or through the actions of an official based in Brussels.
- 2 He alleged that he lost an opportunity for employment with a different company, ("MM"), on another EU-funded programme in Nigeria, because the Commission Delegation in Nigeria informally advised that his nomination would not be approved.
- 3 He expressed the view that if he had been blacklisted for work on EU-funded projects he should be formally advised of this and that full reasons should be given so that he could have the opportunity to contest them.

#### THE INQUIRY

##### The Commission's comments

The complaint was forwarded to the Commission. In its comments, the Commission denied that the termination of Mr A.'s contract with BMB resulted from direct intervention by any of its officials. It claimed that contacts between its officials and the Middle Belt Programme had focused on management, monitoring and reporting issues which had been highlighted in a critical independent review of the programme. According to the Commission, BMB had decided on its own responsibility to replace Mr A. as programme coordinator.

As regards the allegation that he lost an opportunity for employment because the Commission Delegation in Nigeria informally advised that his nomination would not be approved, the Commission stated that its under-

standing was that the company concerned made its own assessment of the situation and came to the conclusion that Mr A.'s candidature should not be retained.

Finally, the Commission stated that no other appreciation of Mr A.'s services existed other than the positive one established by the Delegation in Nigeria, of which he had received a copy.

### **The complainant's observations**

In his observations on the Commission's comments, Mr A. stated that he had been personally informed by a member of BMB's management that the Commission had requested his dismissal from the Middle Belt Programme.

He further stated that he had been directly informed by MM that their consortium partner had been informed that the Commission would not support his candidature.

Finally he stated that he remained unconvinced by the Commission's denial that he had been blacklisted.

## **THE DECISION**

### **1 The termination of the "Middle Belt Programme" contract**

- 1.1 The appraisal of programmes supported by Community funding is a normal and appropriate activity for the Commission to undertake.
- 1.2 It appeared probable that a critical appraisal by a Commission official of management and procurement in the Middle Belt Programme led to the termination of the complainant's contract.
- 1.3 There appeared to be no evidence of direct intervention by Commission officials to secure the termination of the contract. Nor did the payment made by the complainant's former employer in settlement of his claim for wrongful dismissal imply that there was any such intervention.
- 1.4 It was therefore unnecessary to examine whether and in what circumstances direct intervention by Commission officials to secure the termination of such a contract would constitute maladministration.

### **2 The alleged loss of an employment opportunity**

- 2.1 The complainant claimed that an offer of employment was withdrawn because the Commission Delegation in Nigeria informally advised that it would not support his candidature. The Commission's view was that the company concerned made its own assessment of the situation.

2.2 The complainant's claim was based on what his potential employer told him about what the Commission Delegation had said to its consortium partner. This information lacked the factual specificity and probative value necessary to support an allegation of maladministration.

2.3 It was therefore unnecessary to examine whether and in what circumstances informal advice that a candidature would not be supported would amount to maladministration.

### **3 The allegation of "blacklisting"**

3.1 The complainant claimed that, if he had been blacklisted by the Commission for employment on Community-funded projects, he should be formally advised of this and full reasons should be given so that he could have the opportunity to contest them. The Commission did not dispute this claim.

3.2 The Commission denied, however, that it had blacklisted the complainant and there appeared to be no evidence to support the allegation of blacklisting.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

## **INTERPRETATION OF COMMISSION REGULATION**

*Decision on complaint 308/96/PD against the European Commission*

### **THE COMPLAINT**

In January 1996, Mr. C., an Italian lawyer complained on behalf of the company X. He alleged that, with the knowledge of the Commission, the Italian authorities had discriminated against X in autumn 1994. The alleged discrimination concerned applications for import licence for bananas. According to Mr C., both X and another company Y submitted applications outside the deadline of 4 September 1994. However, Y's application, submitted on 7 September 1994, was approved, but the application lodged by X was refused.

### **THE INQUIRY**

#### **The Commission's comments**

The complaints were forwarded to the Commission. In its comments, the Commission stated that the prime responsibility for the running of the import licenses regime lies with the authorities of the Member States and that according to the information available to the Commission, the company X had presented its application for an import licence outside the dead-

line, which in the concrete case by virtue of Regulation No 1442/93<sup>1</sup> did not expire until 7 September 1994.

### **The complainant's observations**

In his observations, the complainant stated that the Commission had not addressed the substance of his complaint which was that the company Y had been granted an import licence although on a proper reading of Regulation 1442/93, its application lodged on 7 September 1994 was outside the deadline.

The complainant further stated that it became obvious that the company was outside the deadline when one considered a subsequent change of the relevant provision in Regulation 1442/93. At the time of the disputed facts, Regulation 1442/93 provided that applications for import licenses should be lodged "during the first week of the last month of each quarter" while later the Regulation was amended by Regulation No 2444/94<sup>2</sup> which provided that the application should be lodged "during the first seven days of the last month of the quarter preceding that in respect of which the licenses are issued". Thus, according to the complainant, the "first week" of September 1994 is not equal to the "first seven days" of September 1994; the first week expired on 4 September 1997 and therefore, the application lodged by Y on 7 September 1994 was out of time.

### **FURTHER INQUIRIES**

The Ombudsman decided to ask the Commission for comments on the complainant's observations. The Commission stated that Regulation 2444/94 did not modify the time limit for lodging applications but merely clarified the legal situation. Secondly, the Commission observed that according to the information provided by the complainant and by the Italian authorities, X's application was lodged 13 days out of time. Thirdly, the Italian authorities had never communicated to the Commission that there had been a case similar to that of X and in any case, an application lodged on 7 September 1994 was within time.

In his observations on these supplementary comments, Mr C. maintained his complaint and in particular that the Commission was wrong in claiming that Regulation 2444/94 did not modify the time limit for the lodging of applications.

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<sup>1</sup> OJ 1993 L 142/6.

<sup>2</sup> OJ 1994 L 261/3.

### **THE DECISION**

Firstly, the European Ombudsman stated that he was solely competent for instances of maladministration in the activities of the institutions and bodies of the Community; activities of national authorities did not fall under his remit of jurisdiction. Thus, the European Ombudsman was not competent to consider allegations against the Italian authorities.

The issue in this complaint was whether the Commission had correctly interpreted the provision that lays down the time limit for lodging an application.

The regulatory background was that, in order to ensure the free movement of bananas within the Community, the Council adopted a common organization of the market in bananas in Council Regulation No 404/93 of 13 February 1993<sup>1</sup>. The Regulation establishes a basic distinction between bananas produced (i) within the Community, (ii) in ACP countries and (iii) in other countries. Concerning the last two categories of bananas, the Regulation creates a system tariff quotas: up to a certain threshold, bananas can be imported free of customs duties or upon payment of a modest duty; above the threshold, higher duties apply.

In order to make this system operational, the import of bananas into the Community has to be monitored by a regime of import licenses. Commission Regulation No 1442/93 laid down the detailed rules for the application of the arrangements for importing bananas into the Community.

As for bananas originating in ACP States, to be imported under the threshold, Art 14.2 of Regulations 1442/93 provided, at the moment of the facts of the complaint:

"Import license applications shall be lodged with the competent authorities of any Member State during the first week of the last month of each quarter."

According to the complainant, "first week" refers to a calendar week. According to the Commission, "first week" means the first seven days of the month. In support of his view, the complainant referred to the subsequent new wording of the provision in question, introduced by Regulation 2444/94, after which Art 14.2 has the following wording:

"Import license applications shall be lodged with the competent authorities of any Member State during the first seven days of the last month

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<sup>1</sup> OJ 1993 L 47/1.

of the quarter preceding that in respect of which the licenses are issued".

According to Mr C., this new wording showed that previously, "first week" must have meant a calendar week. According to the Commission, this new wording merely clarified that "first week" always had the meaning of the first seven days of the month.

In assessing this dispute between the complainant and the Commission, the European Ombudsman examined whether either point of view had support in the recitals of Regulation 2444/94. The relevant recital reads:

"Whereas, as regards the detailed rules concerning import licenses for traditional ACP bananas, for reasons connected with management, the period for lodging the license applications should be adjusted ..." .

The use of the word "adjusted" suggests that the time limit was actually in substance modified. Other language versions point in the same direction; for instance in the German, French, Italian, Spanish and Danish versions "adjusted" has been translated by respectively "angepaßt", "adapter", "adattare", "adaptar" and "tilpasse". While this examination thus gave some support to the complainant's view that before the new wording of Art 14.2, the time limit for lodging the applications in question was actually one calendar week, such an interpretation did not seem obvious. In the first place, Mr C.'s view that "the first week" was the calendar week could lead to an expiry of the time limit on the first or the second day of the month. If these days fell on a Saturday or Sunday, it would imply that companies would have to lodge their applications even earlier instead of benefiting from the first seven days of the following month. No reason was put forward for such a shortening of the time limit, and no reason was put forward for adopting an interpretation which makes the actual time limit vary from month to month. Furthermore, it was not clear that such an interpretation would ensure uniform application throughout the Community. The Commission's view that the "first week" meant the first seven days of the month thus seemed well founded. It must be recalled, however, that the Court of Justice is the highest authority on questions of Community law.

On the basis of the European Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the European Commission. The Ombudsman therefore decided to close the case.



## RIGHTS OF FREE MOVEMENT FOR PERSONS ON PRE-RETIREMENT PENSIONS

*Decision on complaint 313/4.1.96/MB/ES/KH against the European Commission*

### THE COMPLAINT

In December 1995, Mr B. complained to the Ombudsman about the failure by the Commission to act against the alleged infringement by the Danish *etterløn* rules (a type of pre-retirement benefit) of Community law. He had brought the matter to the attention of DGV of the Commission in October 1995 and complained to the Ombudsman about the way the Commission had dealt with this complaint.

### THE INQUIRY

#### The Commission's comments

The complaint was forwarded to the Commission. In summary, the Commission's comments made the following points:

- 1 It had not intervened with the Danish authorities regarding the allegation of discrimination because - irrespective of the nationality of the holder of the benefit - the legal situation was the same.
- 2 The only Community law regulating the right to receive social benefits for persons residing in another Member State is Regulation 1408/71. This is not applicable to pre-retirement benefits, such as the Danish *etterløn*, as has been made clear by the Court of Justice.<sup>1</sup>
- 3 A proposal was submitted by the Commission to the Council in 1980 to extend the scope of the Regulation 1408/71, but this was never adopted.<sup>2</sup> A new proposal to bring pre-retirement benefits into the scope of the Regulation was submitted to the Council on 10 January 1996.<sup>3</sup>
- 4 The Commission had therefore taken all appropriate measures to ensure the free movement of persons in receipt of pre-retirement benefits.

### THE DECISION

The EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically

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<sup>1</sup> Case 171/82 Valentini, ECR [1983] 2157.

<sup>2</sup> Proposal of 18 June 1980.

<sup>3</sup> OJ 1996 C 62/14.

provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

The Ombudsman's inquiries into the matters raised by the complaint were therefore directed towards examining whether there had been maladministration in the activities of the Commission's dealing with the complaint.

### 1 Concerning the treatment of the complaint

- 1.1 The letters the complainant wrote to the Commission in 1995 were duly answered, about 2 months after reception.
- 1.2 The Commission's reply referred to the Regulation on Social Security (Regulation 1408/71<sup>1</sup>). This Regulation ensures that the categories of workers to which it applies, including retired people, have the right to reside within any of the Member States without affecting their pension rights.
- 1.3 The reply explicitly stated that the Regulation did not cover pre-retirement benefits and referred to the applicable case law of the Court of Justice. The complainant was also informed of the most recent proposal the Commission had made to the Council, in order to include benefits like the *etterløn* within the material scope of the Regulation.
- 1.4 Considering the above, it appears that the Commission has acted in full conformity with the procedural requirements which could be expected of it when dealing with the complaint.

### 2 Substantive issues of the complaint

- 2.1 The complainant disputed the Commission's conclusion on two grounds. First, that the Treaty acknowledges the freedom to reside within the Union and this also had to be valid for people benefitting from *etterløn* without affecting their right to that benefit. Second, that it must be considered discriminatory that a group of persons - those benefitting from *etterløn* - was excluded from the right of free movement.
- 2.2 Freedom of movement is assured by Article 48 and following of the Treaty. Article 51 states that the Council shall such adopt measures in the field of social security as are necessary to provide for such freedom of movement. Such measures have, in part, been taken by the adoption of Regulation 1408/71. It is established case law, however, that persons on pre-retirement are excluded from the material scope of the

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<sup>1</sup> Council regulation of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community; OJ 1992 C 325.

Regulation. Hence, measures guaranteeing the right to free movement for persons on pre-retirement benefits without it affecting their social benefits remain to be taken. Therefore, the conclusion of the Commission that freedom of movement of people benefitting from the *efterløn* scheme is not assured by the Treaty does not appear incorrect.

2.3. It is not disputed that the Danish state does not differentiate between a Danish and a non-Danish national as far as the circumstances under which a right to *efterløn* arises are concerned. Therefore, the conclusion drawn by the Commission that there was no discriminatory element in the Danish Act, did not appear incorrect.

2.4 In conclusion, it seemed that the substantive issues of the complaint had been dealt with by the Commission in its answer in a thorough manner and the answer given by the Commission did not appear to be incorrect. Moreover, by submitting a proposal to the Council to enlarge the material scope of the Regulation, the Commission clearly showed its preoccupation with the problems the complaint had brought forward.

In view of the above, the Ombudsman did not establish any instance of maladministration in the way the Commission had dealt with the complaint, and he therefore closed the case.

### **FURTHER REMARKS**

According to Article 2 (5) of the Statute, the Ombudsman may advise the person lodging a complaint to address it to another authority. The initiation of legal proceedings involves expenses and the risk that the proceedings may be unsuccessful. The Ombudsman does not therefore give advice to initiate legal proceedings. This is a matter solely for the judgement of a complainant.

Subject to the above, and taking into account the complainant's explicit request to be informed about which authorities could deal with his claim, the Ombudsman made the following further remarks. The complaint contained elements which could be brought before a national court. In particular, it could be argued that the direct effect of the Treaty articles on free movement makes the exclusion of pre-retirement pensions from the scope of Regulation 1408/71 irrelevant. Some support for this argument could be found in a recent decision by the Court of Justice.<sup>1</sup>

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<sup>1</sup> Case C-443/93 Vougioukas v. Ika ECR [1995] I-4033. In particular where it states at paragraph 36 that Article 4(4) of Regulation 1408/71 (which excludes from the scope of the regulation special schemes for civil servants and persons treated as such) does not entail that a request for aggregation is to be refused when it may be satisfied in direct application of Articles 48 to 51 of the Treaty, without recourse to coordination rules adopted by the Council.

If legal proceedings were brought before a national court this might result in a reference under Article 177 of the EC Treaty to the Court of Justice, which is the highest authority on Community law.

### **RECRUITMENT: LEVEL OF QUALIFICATION REQUIRED TO TAKE PART IN A COMPETITION**

*Decision on complaint 373/9.1.96/AM/L/PD against the European Commission*

#### **THE COMPLAINT**

Mrs M. complained in January 1996 to the Ombudsman about a notice of competition for recruitment as an official of the European Communities. The notice specified that graduates of Finnish universities must have completed a higher university degree (*fil.kand.*). The complainant stated that graduates of other Member States, such as Sweden or the UK, need only possess a qualification at a level corresponding to the Finnish lower level degree (*hum.kand.*).

The complainant assumed that the notice of competition contained an error and complained that, as a result, a large number of Finns had missed the opportunity of applying for jobs.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments made the following points:

There is no agreed harmonized academic equivalence of University degrees between the Member States;

The Commission must therefore itself determine the nature of the diplomas to allow eligibility for admission to competitions, based upon information provided by the national authorities;

The Commission seeks to ensure that its approach provides for similar treatment as between University graduates whichever Member State they graduated in;

The Commission's approach towards Finnish University degrees has been to require higher university degrees for admission to competitions.

The Commission concluded its comments by stating that *"in the light of recent developments in the field of higher education the Commission*

*intends to review its overall approach to diplomas giving access to its competitions and to ensure a common approach between the institutions."*

### **The complainant's observations**

In her observations, Mrs M. stated that the Commission's comments meant that a higher level of qualifications is required of Finns than of other applicants. She believed this to be wrong and requested the Ombudsman to continue to investigate the question.

### **FURTHER INQUIRIES**

After considering the Commission's comments and the complainant's observations, it appeared that a number of aspects of the complaint remained unanswered. The Ombudsman therefore asked the Commission for further information about the criteria it used in establishing eligibility requirements for Finnish, Swedish and British candidates. The Ombudsman also asked for the detailed contents of the Commission's review of its overall approach to diplomas giving access to its competitions.

In summary the reply of the Commission was as follows:

In evaluating University degrees the Commission has based itself on specific information provided by national ministries of education, the annually updated report of the NEED Working Party of the Council of Europe and information compiled by the Network of National Academic Recognition Information Centres (NARIC);

In the case of Finland and Sweden, the Commission made its decisions on the basis of information provided by the respective national ministries of education and confirmed by NEED and NARIC. The decision on eligibility for admission of University degrees obtained in the United Kingdom was made at the time of its accession. In all three case a final university degree is required.

The Commission concluded by stating that *"in the absence of an official intergovernmental agreement on the recognition of academic degrees the Commission envisages to stipulate that candidates must be holders of a final University degree giving eligibility for admission to doctoral studies."*

## **THE DECISION**

### **1 The notice of competition**

- 1.1 The original complaint raised the question of whether the notice of competition contained incorrect and misleading information.
- 1.2 It is clear from the Commission's comments that the notice of competition accurately stated the Commission's decision to require higher university degrees in the case of graduates of Finnish universities.

### **2 The Commission's decision to require higher university degrees in the case of graduates of Finnish universities**

- 2.1 Article 27 of the Staff Regulations of the European Communities provides that recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Communities.
- 2.2 In choosing the criteria by which vacant posts are to be filled, the appointing authority has a discretionary power.<sup>1</sup>
- 2.3 In exercising this discretionary power, the appointing authority must respect the principle of equality.<sup>2</sup> It must not discriminate by treating candidates in similar situations differently, if there are no justifiable grounds for doing so.
- 2.4 Qualifications in higher education are within the competence of each Member State. Community action in this respect is based on the principle of mutual recognition.<sup>3</sup> Variation in the period of university study necessary for graduates from different Member States to be admitted to a competition is not therefore sufficient in itself to demonstrate failure to respect the principles of equality and non-discrimination.
- 2.5 The Commission has acknowledged the principles of equality and non-discrimination in its comments on the complaint by stating that, in determining the nature of the diplomas to allow eligibility for admission to competitions, it seeks to ensure that its approach provides for similar treatment as between University graduates whichever Member State they graduated in.

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<sup>1</sup> Bakke-d'Aloia v Council [1981] ECR 2887.

<sup>2</sup> Prais v Council 1976 [ECR] 1589.

<sup>3</sup> Council Directive 89/48, 1989 OJ L19/16.

2.6 There appears, therefore, to be no evidence that the Commission has exercised improperly its discretionary power to choose the criteria by which vacant posts are to be filled.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### INVITATION FOR TENDER: PROCEDURE

*Decision on complaint 444/20.2.96/TK/D/VK against the Joint Research Centre of the European Commission*

#### **THE COMPLAINT**

Mr. K, a German national, petitioned in January 1995 the European Parliament concerning the Joint Research Centre of the European Commission. In May 1995, the Committee on Petitions transferred his petition to the Ombudsman to be dealt with as a complaint.

Mr K. had participated in a restricted tender procedure organised by the Joint Research Centre in Ispra. He alleged that the procedure was not properly conducted, in comparison with the requirements for tendering under German law. In particular, he complained about poor communication and the fact that, when his projects were not accepted by the jury, he was not properly compensated for the work he had undertaken.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission made the following points:

In order to renovate buildings of the Research Centre in Ispra, a call for interest, prior to a restricted invitation to tender was published in the Official Journal of 25 May 1993.

15 out of 42 companies who expressed interest were selected by an internal committee. Among them was the company of the complainant.

All relevant documents concerning the restricted invitation to tender were sent to the 15 candidates. Furthermore, a meeting was held in order to inform the candidates. The complainant decided not to take part in this meeting. A report of this meeting was sent to all 15 candidates, including the complainant.

The restricted invitation to tender was carried out in accordance with relevant provisions of Community law, i. e. the Financial Regulation and the public procurement directives.

All relevant documents distributed to the candidates were correct and complete and every participant was personally informed about the result of the procedure. The Commission also annexed documents to its comments, which provided detailed information about the selection procedure and the identity of the jury.

The Commission has no general obligation to reimburse the costs of unsuccessful tenderers. In this particular case, the Research Centre had undertaken to provide a maximum compensation payment of 5.000 ECU per building project submitted but not selected, depending on how progressive and new the proposal was. On that basis, the complainant was paid 2.500 ECU as compensation for one third-finalist project, plus 10.000 ECU for his five projects which had not been taken into consideration.

### **The complainant's observations**

In his observations on the Commission's comments, Mr K. stated that, as regards the transparency of the procedure, he was satisfied with the information given by the Commission in the documents annexed to the comments.

In relation to the level of compensation, the Mr K. observed that the volume of preparatory work for the projects had been unusually high. This had led to a debate among the participants, as a result of which the compensation was subsequently increased. The terms of compensation payments were unclear and also unusual, and it was not understandable why the terms of compensation payments were only published at the end of the competition.

### **THE DECISION**

On the basis of the evidence available to the European Ombudsman, it appeared that the restricted tender procedure had been carried out properly and in accordance with the relevant provisions of Community law.

As regards the level of compensation for unsuccessful projects, the principles of good administration require that all participants should be given full and accurate information informed about the procedure of an invitation to tender. This includes the compensation scheme for projects submitted, since the preparation of projects involves considerable effort and costs.



On the basis of the evidence available to the European Ombudsman, it appeared that the Research Centre had clearly explained the procedure for the submission of projects and had also given precise information about the conditions of compensation foreseen for projects submitted. There appeared to be no evidence that the Research Centre had failed to apply the conditions it had laid down.

As regards communication, the complainant did not participate in the information meeting organized by the Research Centre and did not request further information. There appeared to be no basis, therefore, for any claim that the Centre should have provided him with additional information.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### **TERMINATION OF A PHARE SUB-CONTRACT: RESPONSIBILITIES OF THE COMMISSION**

*Decision on complaint 475/7.3.96/SH/ROM/KT against the European Commission*

#### **THE COMPLAINT**

Mr H. had been the local coordinator of a Phare project in Romania. He provided services as a sub-contractor, to a company called T.T. T.T had a contract with the European Commission under the Phare programme ("the Phare contract").

In February 1996, T.T terminated its contract with Mr H. on the grounds of his alleged unsatisfactory performance.

In March 1996, Mr H. complained to the European Ombudsman. In summary, Mr H. complained that:

- 1 The termination of his contract was unjustified since the project was on schedule and within budget.
- 2 Changes to the project initiated by the Commission Delegation in Romania and T.T broke the terms of the Phare contract and decisions on the project taken by the Commission Delegation and T.T required prior approval in writing by the Commission services responsible for Phare, which was not obtained.
- 3 He was denied access to a copy of the Phare contract.
- 4 His request for a meeting of the project Steering Committee to discuss the above matters was refused.

A year later, in March 1997, Mr H. sent to the Ombudsman copies of material that he had also addressed to the Court of Auditors and the European Commission's anti-fraud unit, UCLAF. This material concerned alleged irregularities in the award of contracts financed by the European Communities in Romania. It included allegations against two named individuals, including the head of the Commission delegation in Romania.

In dealing with allegations of maladministration that raise questions concerning the protection of the financial interests of the Community, the Ombudsman is mindful of the competence of the Court of Auditors under Article 188c of the Treaty establishing the European Community and of the role of the Commission's anti-fraud unit UCLAF. Mr H.'s allegations appeared to raise matters that could be more appropriately considered for inquiry by the Court of Auditors and UCLAF, to whom Mr H. had already addressed the allegations. The Ombudsman did not, therefore, re-open his inquiry and his decision on the case concerned only the claims made in Mr H.'s original complaint.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission which, in summary, made the following comments:

- 1 According to the information available to the Commission, important deficiencies occurred in the preparation of a seminar and an important gala event under the responsibility of Mr H.
- 2 The seminar and workshops changed several times with the agreement of the Commission delegation. These changes were largely due to the lack of fruitful cooperation and communication by Mr H. with the rest of the team. The termination of the sub-contract between T.T and Mr H. did not require prior approval by the Commission. Re-allocation of funds that became available because of the termination of the contract did require Commission approval. The Commission gave its formal approval for amendments to the contract in order to deal with the consequences of the replacement of Mr H.
- 3 Mr H. received a copy of the contract between the Commission and T.T in September 1995.
- 4 The Steering Committee of the project consisted of the contractor, the Commission delegation in Romania and the Department for European Integration of the Government of Romania. The members of the Committee unanimously considered it not to be necessary to call for

a meeting to discuss the termination of the cooperation of Mr H. in the contract.

### **The complainant's observations**

In his observations on the Commission's comments, Mr H. referred to specific provisions of the Phare contract which he claimed had been breached by T.T. The observations also repeated his claims concerning unjustified dismissal, delay in giving access to the Phare contract and the absence of a Steering Committee meeting to discuss his dismissal and the reasons for it.

## **THE DECISION**

### **1 The legal context**

- 1.1 It appeared from the documents available to the Ombudsman that there was no contractual relationship between the complainant, Mr H., and the European Commission. The Commission entered into a Phare contract with a consultancy company called T.T. T.T then sub-contracted with Mr H. for the supply of some of the services it had agreed to provide under the Phare contract.
- 1.2 As regards Mr H., therefore, the Commission acted as a public authority bound by Community law, including the requirement to observe general principles of good administration.

### **2 The termination of Mr H.'s contract**

- 2.1 Mr H.'s contract was with T.T, not the Commission. Since T.T is not a Community institution or body, the European Ombudsman had no competence to decide whether T.T's termination of Mr H.'s contract was justified.
- 2.2 Insofar as T.T's actions with regard to Mr H. were subject to provisions of the Phare contract, the Ombudsman was competent to inquire into possible maladministration by the Commission in the exercise of its powers in relation to that contract.
- 2.3 The Ombudsman carefully examined the provisions of the Phare contract referred to by Mr H. It did not appear that the facts alleged by Mr H. constituted a breach of any of the provisions. It was therefore unnecessary for the Ombudsman to consider whether a failure by the Commission to enforce the terms of the contract against T.T, or initiation by the Commission itself of changes to the project which were not

in accordance with the terms of the contract, would constitute maladministration in the circumstances of the case.

### **3 The availability of the Phare contract to Mr H.**

- 3.1 It appeared that the Phare contract between T.T and the Commission was concluded on 25 July 1995 and that a copy was made available to Mr H. at a meeting of the Steering Committee on 29 September 1995.
- 3.2 The material supplied to the Ombudsman did not include any document requesting a copy of the contract, nor did the complainant specify a date when such a request was made. There appeared to be no evidence, therefore, that the gap of two months between the signing of the Phare contract and its communication to a sub-contractor represented maladministration.

### **4 The request for a meeting of the Steering Committee**

- 4.1 The Commission stated that the members of the Steering Committee, which included the Commission delegation, unanimously considered it not to be necessary to call for a meeting of the Steering Committee as requested by Mr H.
- 4.2 It is a general principle of good administration that a person whose interests are perceptibly affected by a decision taken by a public authority must be given the opportunity to make his point of view known.<sup>1</sup> If a meeting of the Steering Committee had taken place, Mr H. would have had the opportunity to present his point of view concerning his alleged unsatisfactory performance.
- 4.3 In the circumstances of the case, however, the relevant decision (i.e. to terminate Mr H.'s sub-contract) was made not by the Commission, but by T.T. The question that arose, therefore, is whether it was maladministration for the Commission delegation not to press for a meeting of the Steering Committee to discuss a decision that was within the competence of T.T and which T.T had already made.
- 4.4 From its comments to the Ombudsman, it appears that before agreeing to the subsequent modifications to the Phare contract requested by T.T, the Commission satisfied itself that there was some evidence to support T.T's claims of unsatisfactory performance by Mr H. The Commission could therefore reasonably be satisfied that the decision by T.T to terminate Mr H.'s contract was not manifestly wrong. There

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<sup>1</sup> Case 17/74 Transocean Marine Paint Association v Commission [1974] ECR 1063 at 1081.

appears to be no basis for a claim that principles of good administration required the Commission to ensure what would have been, in effect, an *ad hoc* informal hearing on a contractual dispute between T.T and Mr H.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

In view of the allegations made in by Mr H. in March 1997, the Ombudsman sent a copy of his decision, for information, to the Court of Auditors and UCLAF, with a request to be informed of any action that they might take in relation to Mr H.'s allegations. The Ombudsman was subsequently informed that UCLAF had begun an investigation.

### REFUSAL OF ACCESS TO A DOCUMENT

*Decision on complaint 532/28.3.96/UTEC/B/KT against the European Commission*

#### **THE COMPLAINT**

Mr F. complained to the Ombudsman in March 1996 concerning the Commission's refusal to give him a copy of a customs document T5.

Mr F.'s Belgian company U. is an import-export company specializing in trade with African states. In an international trade operation, company U. exported milk to Togo through a Dutch company C. The milk was refused by the importer in Togo as it was not in conformity with the contract. Company U. immediately brought a legal action against company C. before the Dutch courts.

Company U. alleged that the Zutphen Chamber of Commerce had delivered a false certificate of origin on the basis of which company C. received its payment. After having addressed both the Belgian and Dutch authorities without success, company U. requested the customs document T5 from the Commission. The Commission answered that only the national authorities could provide the document.

Mr F. addressed a complaint to the Ombudsman asking him to obtain the T5 customs document from the Commission.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that it cannot intervene in cases such as the one in

question, since it possesses no administrative or legal powers in relation to disputes between private persons.

According to the Commission, these questions have to be settled by national law. Therefore, the Commission advised company U. to go to a civil court in the Netherlands in order to try to settle the matter.

Furthermore, the Commission stated that the document in question was not a Commission document, but that the Commission services had access to the customs documents used by the national services to control the import and export of goods.

Such access is specifically provided for by Regulation (EEC) N° 1468/81 of 19 May 1981<sup>1</sup> in order to enable the Commission services to carry out their task of control, coordination and monitoring. The Commission stressed that according to Article 19 of the Regulation, it was not possible, for reasons of professional secrecy, for documents obtained under these powers to be transmitted by the Commission to third parties for use in a civil procedure.

### **The complainant's observations**

In his observations Mr F. maintained his original complaint and protested against the attitude of the Commission of refusing him access to the T5 document on grounds of professional secrecy.

### ***FURTHER INQUIRIES***

After considering the Commission's comments and the complainant's observations, it appeared that aspects of the complaint remained unanswered. The Ombudsman therefore asked the Commission for information about the legal basis of the Commission's refusal to give the complainant a copy of the document, particularly, in the light of the Commission Decision of 8 February 1994 on public access to Commission documents.

In reply, the Commission stated that the customs document T5 neither originated from the Commission services, nor the services of another institution or organ of the Community, but from company C with the visa of the Dutch customs authorities. The Commission further stated that it did not hold that document either in its original form, or as a copy.

### ***THE DECISION***

On 8 February 1994, the Commission adopted a Decision on public access to Commission documents.<sup>2</sup> This decision establishes the principle of wide access of the public to Commission documents.

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<sup>1</sup> OJ 144 of 2.6.1981, p. 1

<sup>2</sup> OJ 1994, L46/58.

The Commission had declared to the Ombudsman that it was not the author of the customs document T5 and that it did not hold that document either in its original form, or as a copy.

In these circumstances, it was not possible for the Commission to give access to the document in question, which fell outside the scope of the Commission Decision on public access to Commission documents.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### ALLEGED DELAY IN PAYMENT OF A SUBVENTION

*Decision on complaint 533/01.4.96/ETEN/ES against the European Commission*

#### THE COMPLAINT

In March 1996 Mr. C., the technical secretary of the European Tourism Education Network (ETEN), a Europe-wide non profit association, complained to the Ombudsman that the Commission had failed to pay the outstanding 40 % of an agreed subvention for two tourism projects. He also complained that the Commission had failed to reply to all the letters sent by ETEN asking the Commission to give an explanation for the delay in payment.

In December 1993, the Commission (DG XXIII) agreed to finance 80 % of the costs of two projects by ETEN. The two projects concerned were the establishment of the International Tourism Students Association (ITSA project) and the publication of a Thesaurus and Dictionary in Tourism Terminology (Thesaurus project). The framework for these subsidies was the "Community action plan to assist tourism".<sup>1</sup> The subventions were the subject of contracts between ETEN and DG XXIII dated 30 and 31 December 1993, which included "declarations by the recipient of a financial assistance".

Payment of the subvention was to be in two stages amounting to 60 % and 40 % of the total amount due. The ITSA project was completed in December 1994. The Thesaurus-project was completed in June 1995, after a six-month extension period awarded to ETEN by the Commission. According to the complainant, all necessary documentation including the Final Report and Statement of Accounts were delivered within time to DG XXIII. The first payment of 60 % (57.450 ECU and 60.480 ECU respective-

<sup>1</sup> Council decision 94/421/EEC of 13 July 1992 on a Community action plan to assist tourism (OJ L 231/26); Community action plan to assist tourism, Timetable of priorities, Invitations to tender and calls for proposals (OJ C/93 128/09).

ly for the ITSA and Thesaurus project) was made in August 1994. The Commission subsequently failed to pay the outstanding 40 %, amounting to 78.620 ECU (38.300 ECU and 40.320 ECU respectively).

ETEN consequently contacted the Commission on numerous occasions requesting payment of the outstanding sum and an explanation for the delay. They received no reply from DG XXIII other than the claim that they had suffered an administrative delay. Five letters and a fax sent to the Commission by ETEN between June 1995 and April 1996 went unanswered. On the basis of these facts, ETEN complained to the European Ombudsman that the Commission had failed to meet its obligation to pay the outstanding 40 % and failed to provide ETEN with an explanation for this delay.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission made the following points in its comments:

- 1 The Commission admitted the failure to reply to the correspondence of ETEN and apologized for it. Procedures within DG XXIII for responding to inquiries about outstanding payments to similar bodies were being reviewed in order to ensure that these inquiries were acknowledged without delay and replies issued as soon as possible.
- 2 The delay in payment was partly due to the fact that, in the case of the ITSA project, two separate copies of the contract with signatures of different representatives of ETEN were returned to the Commission. Furthermore ETEN, while located in Spain during the project period, completed registration formalities in Luxembourg in November 1993 and changed its bank account from Brussels to Luxembourg.
- 3 For both projects, the Commission was not satisfied with the final statement of accounts which did not reflect the real costs of the projects. Furthermore, the supporting documentation for the claimed amounts was insufficient and not in accordance with the conditions of the contract.
- 4 The ITSA project had not been carried out in conformity with the contract conditions, as one of its primary objectives (offering traineeships) had not been achieved. As the Commission was not satisfied with the information asked from ETEN on the state of implementation of this project, it thought it necessary to carry out an on-the-spot inspection at the headquarters of ETEN on 25 April 1996.



5 The Commission was not satisfied by the explanations given by Mr. C. and by the supporting documents obtained from ETEN during and after the on-the-spot inspection. A further examination of the situation was therefore necessary in order to determine whether a final payment could be made to ETEN or whether, on the contrary, an amount needed to be recovered from ETEN. Its intention was to make a final decision before the end of July 1996.

### **The complainant's observations**

In summary, Mr. F., president of ETEN, made the following observations :

- 1 The registration formalities and the other administrative facts which the Commission invoked did not fully justify the delay in payment. More specifically, the administrative setting-up procedures dating from 1994 could account for some of the initial delays, but not for the later delays when the projects were completed. Moreover, the Commission's explanation on this point only concerned the ITSA project and did not justify the delay in payment for the Thesaurus-project.
- 2 The Commission's services could notice during the on-the-spot inspection that the ITSA project had managed to offer traineeships to students and that they continued to be consolidated, but that the further expansion of the project was curbed by the lack of financial aid from the Commission.
- 3 All the material requested by the Commission after the visit had been sent to its services within a short time.
- 4 By the end of July 1996 there had still been no final decision from the Commission and no indication of an approximate date for a final decision.

In an additional letter to the Ombudsman, the complainant observed that, due to the delays in payment, both ITSA and Thesaurus projects were seriously undermined in their development.

### **FURTHER INQUIRIES**

The Commission informed the Ombudsman that it had communicated to ETEN by letter of 3 December 1996 its final decision on the payment for the ITSA and Thesaurus projects. The Commission concluded that, for the Thesaurus project, the final unpaid amount of 40.320 ECU had to be reduced to 25.519 ECU due to ineligible expenditure and a lack of supporting documents. For the ITSA project, the Commission concluded that the full amount of the first 40 % payment (57.450 ECU) had to be recovered, given the total failure of the project and the clear indications that the

efforts of ETEN were not such as to provide any reasonable prospect of success. The Commission had therefore sent a net result recovery order of 31.931 ECU to ETEN.

### **The complainant's additional observations**

The complainant did not agree with the final decision of the Commission resulting in a recovery order, given that, according to him, both projects were successfully completed in time according to the terms agreed. With regard to the ITSA project, the complainant was of the opinion that the Commission admitted in its letter of 3 December 1996 that the agreed terms of this project were essentially fulfilled by the end of December 1994 and that the Commission was responsible for the later financial and organisational problems of both projects.

Finally, the complainant asked the European Ombudsman to suspend the recovery order.

## **THE DECISION**

### **1 The complainant's claim to suspend the recovery order**

The Ombudsman has no power to suspend the operation of a recovery order.

### **2 The Commission's failure to reply to correspondence**

The Commission admitted and regretted the failure to reply to the letters sent by ETEN. Moreover, the Commission also indicated that the procedures within DG XXIII in relation to responses to inquiries about outstanding payments were being reviewed in order to ensure that these enquiries were acknowledged without delay and that the replies were issued as soon as possible. No further remark by the Ombudsman therefore seemed necessary.

### **3 The Commission's failure to pay the outstanding 40 % of the subvention**

3.1 The conditions for the payment of the outstanding 40 % of the financial assistance were laid down in identical terms in the "declarations by the recipient of a financial assistance", signed by ETEN on 30 and 31 December 1993. The relevant provisions of these declarations foresaw that the outstanding 40 % of the financial assistance would be paid after submission to and acceptance by the Commission of the necessary documents (a report on the use of the financial assistance, an account statement or a financial statement together with duly certified

supporting documents indicating the nature and amount of each item of expenditure and the corresponding income). These declarations also foresaw that, should the statement of expenditure fail to justify the use of the financial assistance, ETEN agreed to reimburse, at the Commission's request, any amount unduly paid.

- 3.2 ETEN was therefore entitled to receive payment if it fulfilled the conditions in the two declarations. According to the Commission's comments, the delay in payment was essentially due to the fact that ETEN did not fully comply with these conditions.
- 3.3 The Ombudsman could not determine the substantive dispute between the Commission and ETEN over whether the latter had fulfilled the conditions in the two declarations. This question could only be determined by a court of competent jurisdiction, which would have the possibility to hear testimony and evaluate conflicting evidence.
- 3.4 The role of the Ombudsman in relation to this aspect of the case was to examine whether there was evidence that the Commission had failed to act in accordance with principles of good administration. These principles require that it should not have delayed payment to ETEN of the outstanding 40 % of the financial assistance unless it had genuine doubts concerning ETEN's fulfilment of the conditions in the two declarations.
- 3.5 If the registration formalities and the other administrative facts which the Commission invoked, could not, as the complainant rightly observed, fully justify the delay in payment of the outstanding 40 %, the other arguments which the Commission put forward appeared to provide evidence that the Commission had genuine doubts concerning ETEN's fulfilment of the conditions in the two declarations. In particular, it appeared from its comments that the Commission was not fully satisfied that the final statement of accounts was a true reflection of the real costs of the projects. It also appeared to the Commission that the supporting documentation for the amounts claimed was insufficient and not in accordance with the contract conditions.
- 3.6 Moreover, the fact that the Commission, not satisfied with the information provided by ETEN on the state of implementation of the ITSA project, decided to carry out an on-the-spot-control at the headquarters of ETEN, and later considered the possibility of recovering from ETEN a certain amount confirmed that it had genuine doubts about ETEN's compliance with the contract conditions. The existence of genuine doubts on the part of the Commission was further confirmed by its final

decision to issue a recovery order, because of ineligible expenditure and a lack of supporting documents in the Thesaurus-project and given the total failure of the ITSA project.

On the basis of the inquiries into this complaint, there appeared to have been no maladministration by the European Commission. In view of these findings, the Ombudsman decided to close the case.

### **FURTHER REMARK**

The Ombudsman noted that the complainant had the possibility himself to submit the dispute concerning the payment of the outstanding 40% of the financial assistance and the final decision of the Commission to a competent judicial authority.

## **HANDLING OF A REQUEST FOR INFORMATION BY A COMMISSION REPRESENTATION**

*Decision on complaint 539/3.4.96/MA/DK/PD against the European Commission*

### **THE COMPLAINT**

In March 1996, Mrs A. complained to the Ombudsman alleging that the Commission Representation in Denmark had not assisted her properly as it did not give her information concerning her rights under Regulation No 1408/71<sup>1</sup>.

As a Swedish pensioner living in Denmark, Mrs A. had run into problems related to social security in Denmark. She had written both to the Danish Representation and to the President of the Commission in order to get advice.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments made the following points:

Mrs A. wrote to the President of the European Commission in April 1996. The letter was referred to the Commission's Representation in Copenhagen for further action;

The Copenhagen's help desk, 'Euro-Jus', was entrusted with the matter, and according to the Commission, its legal consultant spoke to Mrs A. on the telephone several times. Mrs A. was promised technical help

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<sup>1</sup> OJ 1971 L 149/2.

to solve her problem if she could provide further information. This information was requested by a letter of 22 April 1996, with a reminder of 9 May 1996. In the reminder letter the Copenhagen Representation repeated its willingness to help, but explained that further information was needed in order to pursue the matter. A final reminder was sent by the Legal Adviser on 29 May 1996, explaining that without the information requested it was impossible to investigate the matter;

The Commission stated that it remained more than willing to assist Mrs A. However, in order to investigate the matter it was essential that the Commission disposed of the information to which it had already referred in its correspondence with Mrs A.

### **The complainant's observations**

In her observations, Mrs A. maintained her complaint. She confirmed that she wrote to the President of the Commission in April 1996, but she stated that she had not received an answer from him.

Mrs A. denied speaking several times on the phone with the legal consultant of the Representation. According to Mrs A. there had been no telephone contacts between her and the Office after April 1996. However, she confirmed speaking once with the Euro-Jus representative on 21 February 1996.

Mrs A. stated that it was not possible for her to present all relevant material before she knew exactly where Community Law stands.

Mrs A. stated that she had received the letter of 22 April 1996 only towards the end of May 1996. In fact she had first received the reminder letter of 9 May 1996 to which the letter of 22 April was annexed. Mrs A. was astonished about the delays in receiving these letters.

Insofar as the content of the letter of 22 April 1996 was concerned, Mrs A. stated that she had already answered the first question in her previous letter of 17 February 1996. Furthermore, she considered the latter three questions were irrelevant and aimed at frustrating her. According to Mrs A., also these questions had been already answered.

## **THE DECISION**

### **1 Correspondence between the complainant and the Commission Services**

1.1 On 17 February 1996, Mrs A. wrote to the Commission representation in Copenhagen requesting help in her matter. In this letter she gave an

address in Frederiksberg. On 22 February 1996, Mrs A. spoke on the phone with the Euro-Jus representative, Mrs F., who promised to look into the matter. On 22 April 1996, Ms F. replied to Mrs A.'s letter of 17 February 1996 requesting some further information. This letter was sent to the address mentioned in Mrs A.'s letter of 17 February 1996.

- 1.2 On 16 April 1996, Mrs A. wrote to the President of the European Commission. In this letter she gave an address in Humlebæk. On 18 April 1996, the President forwarded her letter to the Commission Representation in Copenhagen. On 9 May 1996, Ms F. replied on behalf of the President of the European Commission thanking Mrs A. for her letter and informing her that she would try to help Mrs A., but that she would need Mrs A.'s answers to the questions already put forward. This letter was sent to Humlebæk and Mrs A. received it towards the end of May 1996.
- 1.3 The Commission Representation sent a last reminder letter on 29 May 1996 to both addresses Mrs A. had used in her correspondence. In this letter the request for further information was renewed.
- 1.4 Based on the above findings, Mrs A.'s letters to the Commission Representation in Copenhagen and to the President of the European Commission were answered on 22 April 1996 and 9 May 1996.
- 1.5 Therefore the Ombudsman found that no instance of maladministration had been established in the way the Commission Representation had replied to the above mentioned letters.

## **2 Delays in receiving the letters sent by the Commission Representation**

- 2.1 In her observations, Mrs A. mentioned the delays in receiving the letters sent by the Commission Representation. The alleged delays appeared to be due to the fact that Mrs A. had used two different addresses in her correspondence to the Commission Representation and to the President of the European Commission.
- 2.2 Each reply was sent to the address Mrs A. had given in her corresponding letters. Furthermore, Mrs A. appeared not to have indicated her change of address to the Commission. The Ombudsman's inquiries, therefore, did not reveal any maladministration related to the delays in receiving the correspondence.

### 3 Assistance provided by the Commission Representation

3.1 In its correspondence, the Commission Representation had indicated that it needed further information on Mrs A.'s particular situation in order to investigate her matter. The Representation had expressed its willingness to help, but Mrs A. had considered that the questions put forward were irrelevant.

3.2 The Ombudsman found that the Commission Representation had tried to assist Mrs A. in her matter and that in order to be able to help her the Representation had had to ask for further information.

In view of these findings, there appeared to be no maladministration by the European Commission. The Ombudsman therefore closed the case.

#### CONTRACT FOR TECHNICAL ASSISTANCE IN ALGERIA

*Decision on complaint 572/24.4.96/ST/IT/KT against the European Commission and the European Court of Auditors*

#### THE COMPLAINT

In April 1996, Mr T. lodged a complaint with the Ombudsman concerning a contract for technical assistance in Algeria signed with the Commission. His complaint also dealt with the opinion given on the project by the Court of Auditors.

#### 1 Concerning the Commission

In 1994 Mr T. had signed a contract with the Commission for cooperation in Algeria, in the context of the PSAS programme financed by the European Community. Following a call for tenders, which was handled by the Commission's delegation in Algeria, the complainant was awarded the project "SEM/03/208/030/A".

His tasks in Algeria began in March 1994. Despite some difficulties, the complainant managed to complete his tasks before the deadline set in the contract (March 1995). The Commission paid two bills concerning the six months he worked in 1994, but, as regards other bills sent to the Commission on 15 February 1995 and 18 May 1995, no payments were made.

Mr T. requested payment of those bills, the payment of interests for the delay, and also a compensation for the discredit of his professional image. In March 1996, the Commission agreed to settle the matter.

Mr T. complained to the Ombudsman about alleged maladministration of the Commission in failing to provide him with sufficient technical assistance, for abuse of power through oppressive contractual clauses, for administrative irregularities and for wrong and erroneous information forwarded to the Court of Auditors.

## **2 Concerning the Court of Auditors**

Mr T. also complained about several remarks included in the 1994 Annual Report of the Court of Auditors concerning the PSAS Programme for Algeria. In point 11.69 of the Report, the Court of Auditors indicated that it had limited its report "to the examination of the documents, and to some meetings with the Commission's officials". In the complainant's view, the Court should have also arranged a meeting with him to give him the opportunity to justify his actions.

### ***THE INQUIRY***

The complaint was forwarded to the institutions concerned.

#### **The Commission's comments**

In summary, the Commission made the following points:

Progressively, Mr T. had not complied with the technical indications of the contract and his reports were incomplete and too vague.

In February 1995, Mr T. forwarded a short report on his work activities for the period from 15.5.1994 to 18.1.1995. A second report was sent on 10 May 1995, once the contract had been completed. These reports were insufficient and had been written in a hasty way and hence did not allow for a clear evaluation of progress.

The Commission decided to postpone payment of the last two bills of the contract until its control procedure, in which several Commission services were involved, had been finalized.

In June 1996 an agreement was reached with the complainant who agreed not to pursue his claims in exchange for the payment of a lump sum.

#### **The Court of Auditors' comments**

In summary, the Court of Auditors made the following points:

The Court of Auditors had audited the development of the PSAS programme during the period from April 1994 to February 1995. In carrying out those tasks, the Court followed the criteria laid down in the EC



Treaty, in particular Article 188c, 3rd paragraph which indicated that the audit "shall be based on the records and, if necessary, performed on the spot in the other institutions of the Community and in the Member States". In the present case, the Court decided not to make checks on the spot because of the difficult political situation in Algeria.

The Court referred to the PSAS programme in its 1994 Annual Report. Several sections of the Report had been drafted by the Court on the basis of the information provided by the Commission, in accordance with paragraph 4 of Article 188c. Mr T. was not called upon to give evidence since the Court was not under any obligation to hear private individuals or other bodies. On the other hand, the complainant had only informed the Court of his wish to be heard once the 1994 Report had been published in the Official Journal.

The Report did not refer to any aspects related to the complainant's performance of the contract. The specific word used in point 11.75 of the Annual Report and to which the complainant had referred ("*as a result*") concerned all the observations made in previous paragraphs, and not only the questions of technical assistance.

### **The complainant's observations**

The complainant confirmed that a friendly solution had been reached, although he insisted on the need to receive a public apology from the Commission, and he also requested that the Court of Auditors should add a *corrigendum* in the Official Journal to the extent that the word "*as a result*" in point 11.75 of its 1994 Annual Report did not concern the technical assistance he had performed.

The complainant demanded that the Commission recognize its mistake in a letter in order to rehabilitate his professional image. In this letter it should be declared that his contractual relationship with the institution was settled.

### **THE DECISION**

It appeared from the inquiry pursued by the Ombudsman, that Mr T. and the Commission both stated that a friendly settlement had been reached on the merits of the complaint. Since this settlement apparently met most of the complainant's demands, he expressed his satisfaction. Since the Commission had publicly acknowledged the agreement reached with Mr. T, his claims for public recognition were already satisfied.

In assessing the meaning of point 11.75 in the 1994 Report of the Court of Auditors, it could be concluded that the word "*as a result*" did not refer only

to the technical assistance provided by the complainant. From the context in which it appeared it seemed to refer to all the previous sections of the Report. The object of the Court's report was the Commission and not the complainant.

On the basis of the Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the Commission or the Court of Auditors. The Ombudsman therefore closed the case.

### **NON-RECOGNITION OF A THIRD-COUNTRY DIPLOMA**

*Decision on complaint 579/2.5.96/MAMG/UK/IJH against the European Commission*

#### **THE COMPLAINT**

In April 1996, Mr M. complained to the Ombudsman concerning the non-recognition of his Argentinean qualifications as a clinical psychologist. His complaint was against the British Psychological Society (BPS) and the Commission. The Ombudsman informed him that he could only deal with the complaint insofar as it related to the Commission, because BPS is not a Community institution or body.

According to the complainant, a Spanish citizen, he obtained his university qualifications as a clinical psychologist in Argentina and later practised in France, where his qualifications had been recognised in December 1991. In 1992 he moved to the United Kingdom where he was seeking to taking up work as a clinical psychologist, but the BPS refused to recognize his qualifications and required him, in order to obtain a Statement of Equivalence, to pass the UK Diploma in Psychology. As a result of this lack of recognition, he was ineligible for most appointments as a clinical psychologist in the UK National Health Service. He considered that the BPS should have recognised his qualifications under Council Directive 89/48/EEC<sup>1</sup> and the Council Recommendation 89/49/EEC.<sup>2</sup>

In April 1993, the Citizen's Europe Advisory Service (part of the Commission's London Office), which was acting on behalf of Mr M. reported his situation to the Commission and asked for clarification on whether the requirement of the BPS of taking the entire UK diploma in order to obtain the Statement of Equivalence was in accordance with Directive 89/48. In June 1993, the Commission (DG XV - Internal market and financial services) answered by saying that it had received no information relating to the recognition of the complainant's Argentinean diploma by the

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<sup>1</sup> OJ 1989 L 19/16.

<sup>2</sup> OJ 1989 L 19/24.

French authorities, and that, therefore, it had serious doubts that he fulfilled the conditions in order to benefit from Directive 89/48/EEC. The Commission more particularly observed that the certificate handed in to the British authorities by Mr M., was issued by the Spanish Embassy in Paris and was not a certified photocopy of the original decision taken by the French competent authorities.

According to the complainant, the Commission's answer made unfair allegations against him. In January 1995 a Member of the European Parliament wrote a letter to DG XV stating that the Commission's answer to the Citizen's Europe Advisory Service was extremely negative and unhelpful to the complainant. For this reason he asked for a review of the matter and a more carefully considered opinion. The MEP pointed out that the French Ministry of Education had recognized the complainant as competent to practise on 24 September 1991 and that the complainant had fulfilled the requirements of at least three years' professional work in France before he came to the UK.

The Commission replied in February 1995 by repeating that, in order to benefit from Directive 89/48/EEC on a general system of recognition of higher-education diplomas, the complainant had to justify three years of professional experience certified by the Member State which recognized his third-country diploma (Article 1 (a) of the Directive). The Commission observed that, in order to be able to intervene with the British authorities and ask them to apply the Directive in this case, the complainant had to send a copy of the formal decision of the French authorities recognizing his Argentinean diploma to the Commission, as well as the certificate of three years' professional experience.

On the basis of these facts, Mr M. complained to the Ombudsman that the DG XV of the Commission

- 1 failed to assist him in obtaining recognition of his qualifications
- 2 made unfair allegations against him in correspondence concerning the matter
- 3 adopted an obstructive interpretation of Directive 89/48/EEC by demanding three years' official employment after recognition
- 4 failed to give effect to Recommendation 89/49/EEC concerning nationals of Member States who hold a diploma conferred by a third State.

## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission made the following points:

- 1 As regards the allegation that it failed to assist the complainant in obtaining recognition of his qualifications, the Commission confirmed the point it made to its London office by observing that it still had no proof that the French authorities had recognised the Argentinean diploma. The Commission added that it had asked the complainant on several occasions to send a simple copy of the recognition but that he had consistently failed to do so. The Commission also observed that, as soon as it received evidence that the complainant was indeed covered by Directive 89/48/EEC, it would be able to contact the UK authorities on his behalf.
- 2 With regard to the allegation that it had made unfair allegations against the complainant, the Commission observed that it was its normal practice in dealing with complaints against Member States to ask the complainant to supply copies of the essential documents in order to clarify the facts and to evaluate the grounds of the complaint before contacting the Member State's authorities, and that this attitude was not designed to cast any aspersions on the complainant's good faith.
- 3 As regards the interpretation of Directive 89/48/EEC, the Commission observed that a third-country diploma obtained by a Community national can only benefit from the recognition procedure of the Directive under two conditions : a) it must first be recognised by a Member State of the Union and b) the holder needs three years professional experience certified by the Member State which recognised the diploma.
- 4 As regards the alleged failure to give effect to Council recommendation 89/49/EEC, according to article 189 of the EC Treaty a recommendation has no binding force.

### **The complainant's observations**

The complainant repeated his prior observations and added that the documentation of his recognition had been sent many times, including by the Citizen's Europe Advisory Service and by the MEP, but that the DG XV had removed the evidence proving this recognition. The complainant finally asked that his right to employment was restored.

## ***THE DECISION***

### **1 The alleged failure of the Commission to assist the complainant in obtaining recognition of his qualifications**

- 1.1 In order to assist the complainant in obtaining recognition of his qualifications and to verify whether the UK authorities had acted in accordance with the Directive, it was necessary for the Commission to be in possession of all documents which could help it in evaluating and verifying the validity of the relevant legal facts of the complainant's professional situation. The recognition by the French authorities of the Argentinean diploma of the complainant constituted one of these documents.
- 1.2 It appeared from the Commission's comments that it made several requests to the complainant to obtain a copy of the formal recognition decision by the French authorities, but that the complainant failed to send it. Instead the Commission received from him a certificate issued by the Spanish embassy in Paris, which did not constitute a certified copy of the recognition decision by the French authorities. Without this essential document, the Commission could not start an investigation. The Commission observed several times that, once it received the requested copy, it would be able to intervene with the British authorities.
- 1.3 It appeared thus from the foregoing that there was no evidence that the Commission had failed to assist the complainant in obtaining recognition of his qualifications.

### **2 The alleged unfair allegations against the complainant**

By asking the complainant to supply a copy of the formal recognition decision by the French authorities and by refusing the certificate issued by the Spanish embassy as proof of this recognition, the Commission was trying to obtain the relevant documentation for a legal assessment of the professional background of the complainant. By doing so, the Commission could not be considered as having made unfair allegations against the complainant.

### **3 The Commission's interpretation of Directive 89/48/EEC**

- 3.1 Article 1 (a) of the Directive provides that a third-country diploma obtained by a national of a Member State can only benefit from the recognition system of the Directive if "the holder thereof has three

years' professional experience certified by the Member State which recognized a third-country diploma".

3.2 Therefore, by requiring three years of professional experience after recognition of the third-country diploma, the Commission did not seem to have adopted an interpretation which was contrary to the above conditions. It should be recalled however that the Court of Justice is the highest authority in the interpretation of Community law.

#### **4 The alleged failure of the Commission to give effect to Recommendation 89/49/EEC**

As recommendations have no binding force (Article 189 EC Treaty), the Commission has no power to require a Member State to comply with a recommendation. Therefore, the Commission cannot be considered as having failed to give effect to Recommendation 89/49/EEC.

On the basis of the inquiries into this complaint, there appeared to have been no maladministration by the Commission and the Ombudsman therefore closed the case.

### **RECOGNITION OF A DIPLOMA: HANDLING OF A COMPLAINT WITH THE COMMISSION**

*Decision on complaint 583/3.5.96/MFCL/IT/KT against the European Commission*

#### **THE COMPLAINT**

In May 1996, Mrs C. complained to the Ombudsman concerning the way her complaint against the Portuguese authorities had been dealt with by the Commission.

Mrs C. informed the Ombudsman that she was a holder of a French Doctorate in Linguistics. She tried to obtain the recognition of her French Diploma in Portugal without success. The Portuguese authorities considered that her Doctorate did not fall within the scope of Directive 89/48/EEC<sup>1</sup>.

In January 1994, Mrs C. wrote to the Commission on the subject. The Secretariat General of the Commission replied in May 1994 informing her that her complaint was registered under n° 94/4382 and that it would be examined.

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<sup>1</sup> OJ 1989 L 19/16.

In her complaint, Mrs C. asked the Ombudsman to investigate the matter since the Commission had neither closed her file n° 94/4382 nor opened an infringement procedure against Portugal.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission made the following points:

The subject matter of the complaint involved the exercise by the Commission of its discretion with regard to proceedings under Article 169;

Council Directive 89/48/EEC of 21 December 1988 established a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration;

On the basis of the above mentioned Directive the complainant had a right to obtain recognition in order to exercise the same professional activities in Portugal to which her doctoral degree gave her access in France;

The Commission services had been corresponding with the Portuguese and the French authorities and the complainant. A detailed list of correspondence was provided to the Ombudsman;

Based on the above correspondence, the reply of the French authorities and several letters of individuals with similar problems in other Member States, the Commission decided to discuss the question in a meeting on 24 April 1996 with national coordinators for the application of Directive 89/48/CEE;

Mrs C. was informed by telephone of the meeting of coordinators and of the fact that due to the meeting calendar of the Commission all decisions relating to the possible opening of an infringement proceeding could be taken at the earliest in October 1996.

Based on the arguments advanced by the Portuguese authorities and the discussion at the meeting of the coordinators, the Commission services asked Mrs C. to forward a copy of all correspondence with the Portuguese authorities and a copy of her diplomas;

The Commission indicated that Mrs C.'s case concerned complicated questions which were currently being discussed between the Member States and the Commission. Furthermore, the Commission pointed out that

when its services addressed the Member States for information, the calendar for treating a file depended to a large extent on the latter;

Finally, the Commission stated that Mrs C. had been kept informed at all times about the evolution of her file and that the Commission would continue to keep her informed of all actions taken by it in the exercise of its discretionary powers.

### **The complainant's observations**

In her observations, Mrs C. maintained her complaint. She stated that she had experience in higher education and that her diploma was not an academic one as it gave access to *enseignant d'Université* profession. Furthermore, she informed the Ombudsman that the Commission had requested further information from her only on 12 June 1996 and that she had replied to this request on 19 June 1996.

Mrs C. subsequently informed the Ombudsman that, in November 1996, she had received a letter from the Commission stating that it would send a formal notification to the Portuguese authorities. In January 1997, Mrs C. had received another letter in which she was informed that the letter of formal notification had not yet been sent due to material questions. Mrs C. expressed her dissatisfaction with the delay in sending the formal notification.

### **FURTHER INQUIRIES**

The Ombudsman decided to request further information from the Commission on whether it had initiated an infringement procedure under Article 169 of the EC Treaty against Portugal concerning the transposition of Directive 89/48/EEC as indicated in its letter to the complainant in January 1997.

### **The Commission's reply**

The Commission replied that it had decided to initiate an infringement procedure against Portugal under Article 169 of the EC Treaty. This procedure was based on the incomplete transposition of Directive 89/48 into Portuguese law. According to the Commission, it informed Mrs C. by letter in June 1997 of the developments of the procedure.

### **THE DECISION**

#### **1 The administrative stage of the Article 169 procedure**

1.1 Article 169 EC does not lay down procedures or criteria to be followed by the Commission in the period preceding the issuing of a reasoned



opinion to a Member State. Furthermore, the jurisprudence of the Court of Justice provides only limited guidance. The Commission itself therefore must decide what procedures and criteria to adopt in order to discharge its responsibilities under Article 169 in the process that may lead to the issuing of a reasoned opinion.

- 1.2 As a matter of good administrative practice, the Commission should persist in its attempts to obtain replies from the Member States at the administrative stage of the infringement procedure. In accordance with the case-law of the Court of Justice, Article 5 of the Treaty places the Member States under an obligation to facilitate the achievement of the tasks which the first indent of Article 155 assigned to the Commission. The Member States are required to cooperate *bona fide* in an inquiry undertaken by the Commission under Article 169, and to supply the Commission with all the information requested to that end.<sup>1</sup>
- 1.3 Given that since 6 May 1994 when Mrs C.'s complaint was registered under n° 94/4382 the Commission has continuously kept sending letters to the Member State concerned and had kept Mrs C. informed of the developments either by correspondence or by telephone, the Ombudsman found that there was no evidence of maladministration in relation to this aspect of the case.

## **2 Decision to open infringement proceedings under Article 169 of the EC Treaty**

- 2.1 Article 169 of the EC Treaty provides for the Commission to issue a reasoned opinion if it considers that a Member State has failed to fulfil an obligation under the Treaty.
- 2.2 According to the case-law of the Court of Justice, given its role as guardian of the Treaty, the Commission alone is competent to decide whether it is appropriate to bring proceedings against a Member State for failure to fulfil its obligations.<sup>2</sup>
- 2.3 The Commission had informed the complainant by letter in June 1997 that it had sent a formal notification to the Portuguese authorities under Article 169 of the EC Treaty concerning the incomplete transposition of Directive 89/48.

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<sup>1</sup> Case 192/84 Commission v. Hellenic Republic [1985] ECR 3967, par. 19.

<sup>2</sup> Case 431/92 Commission of the European Communities v. Federal Republic of Germany [1995] ECR I-2189, par. 22.

2.4 The Ombudsman found, therefore, that there was no instance of maladministration in the way the Commission had conducted the inquiries it had undertaken in this matter.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### **FINANCING OF A PROJECT UNDER THE MED-URBS PROGRAMME**

*Decision on complaint 605/21.5.96/CGW/B/PD/XD against the European Commission*

#### **THE COMPLAINT**

In May 1996, Mrs S. complained to the Ombudsman on behalf of an Association about a project funded in the framework of the MED-URBS programme.

A contract was signed between the Commission and a city in Greece to finance a MED-URBS project. The Association benefited from the project and had made an agreement with the Greek city about the location of a cultural centre. Later, a problem arose between the Association and the city about the location of the centre.

The complainant argued that this disagreement endangered the project as a whole and complained to the Ombudsman that the Commission should take responsibility for resolving the disagreement.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission pointed out that the contract providing funds for the project was concluded between the Commission and the Greek city. The Association was not a party to the contract. Secondly, the Commission remarked that a separate agreement on the location of the cultural centre was concluded between the city and the complainant and that the Commission was not a party to this agreement. The Commission concluded that it could not be responsible for the city council's acts and that it had therefore no obligation to start an inquiry.

##### **The complainant's observations**

The complainant argued that the Commission was responsible for the project because it provided funds and therefore made possible the creation of the cultural centre.

According to the complainant, the Commission had a moral obligation to support the project. This obligation could be derived from some provisions of the contract intended ensure continuity of the project. The Commission could not, on the one hand, finance a project and, on the other hand, allow this project to be endangered by the city which is in charge of the coordination of the project.

### **THE DECISION**

Firstly, the Ombudsman noted that there was no contractual link between the complainant and the Commission. On the one hand, the contract financing the project was concluded between the Commission and the Greek city. On the other hand, the agreement concerning the location of the cultural centre was signed by the complainant and the city only.

Secondly, the Ombudsman considered the provisions of the contract which was concluded between the Commission and the city. The Commission had the obligation to finance the project in so far as the city respected the conditions laid down in the contract. According to the Commission, the project was financed because the conditions of the contract were fulfilled. The contract did not provide any further obligations for the Commission.

Thirdly, the Ombudsman considered the contract in the global framework of the decentralised cooperation which underpins the European programme MED-URBS. The Community finances projects which respect the spirit and the conditions laid down in the programme. It cannot answer for a project nor have responsibility for every practical problem which could occur in the framework of a project.

Against this background, the European Ombudsman found no instance of maladministration in the Commission's attitude and closed the case.

### **TREATMENT BY A COMMISSION REPRESENTATION**

*Decision on complaint 615/30.5.96/LK/FIN/KT/VK against the European Commission*

### **THE COMPLAINT**

In May 1996, Ms K. complained to the Ombudsman about the way the Commission Representation in Finland had treated her. In April 1996, Ms K. called the Commission Representation in Finland and inquired about the reimbursement of her travel expenses from Commission competition EUR/LA/74. She claimed that the reply given by the office was impolite as she was told to contact the Commission in Brussels. Earlier in 1996, Ms K. had contacted the Representation in Finland to request information on

recruitment opportunities. The Representation had similarly replied that Ms K. should call Brussels.

In her complaint Ms K. expressed dissatisfaction about the way the Commission Representation in Finland had responded to her inquiries.

### ***THE INQUIRY***

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission informed the Ombudsman about the nature of advice given by the Commission Representation in Finland. It stated that in this particular case, Ms K. was advised to telephone Brussels. According to the Commission, one week later she had approached the relevant Unit by letter.

#### **The complainant's observations**

In her observations, Ms K. maintained her complaint. In addition, she claimed that she was entitled to a compensation as a result of the late payment of her travel expenses.

### ***THE DECISION***

1 As regards the advice given by the Commission Representation in Finland, the Commission stated that the Representation regularly provides general information about open competitions on request. It is the practice of the Representation to refer members of the public who have detailed questions concerning specific recruitment matters to the Recruitment Unit DG IX in Brussels.

According to the Commission, Ms K. was given the correct assistance throughout the contacts. The Commission stated that above all, her personal rights were at all times respected.

In her observations Ms K. neither contested nor presented evidence to the contrary in relation to this aspect of the case.

The Ombudsman therefore found no evidence of maladministration in relation to the advice given by the Commission Representation in Finland.

2 On 5 June 1996, the payment of travel expenses, was ordered by the Commission. On 10 July 1996, Ms K. acknowledged having received this payment some weeks earlier.

The Ombudsman noted that if the complainant intended to pursue her claim for compensation, it should be addressed directly to the Commission.

In view of these findings there appeared to be no maladministration. The Ombudsman therefore closed the case.

### RECRUITMENT OF TEMPORARY AGENTS

#### *Decision on complaint 631/10.6.96/AS/L/KT against the European Commission*

In June 1996, Mr S. complained to the Ombudsman concerning the selection of temporary agents by the European Commission (AT/3/95, reference 21T/SDT/95). The Selection Board had notified the complainant by letter of 23 April 1996 of its decision to exclude him from an interview. Mr S. contested this decision by letter to the Commission, who answered confirming the initial decision. Mr S. then addressed a complaint to the Ombudsman concerning the assessment of his qualifications in competition AT/3/95.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that, following the publication of a notice of vacancy, the Commission had forwarded 213 applications to the Selection Board. The members of this Board were experts in the field concerned by the notice. They first checked that the general conditions were respected by all candidates (cf Art 12 of the Staff Regulations), and then compared the special competences of the candidates in relation to the requirements of the duties to be held. Mr S. was not among the 16 candidates who were short-listed for an interview.

When he contested his exclusion from the group of selected candidates, Mr S. was told in writing that the Selection Board had re-examined his application. As the Board had concluded that other candidates were better qualified than the complainant, it maintained its initial decision, justifying it by the need for the candidate to have an in-depth knowledge of computational linguistics as described in the notice of vacancy.

#### **THE DECISION**

In contrast to the Staff Regulations of the European Communities which apply to the recruitment of officials, the Regulations Applicable to other Servants of the European Communities, which apply to temporary agents, do not lay down any specific recruitment procedure.

According to the Commission, selection procedure 21T/SDT/95 aimed at recruiting Temporary Agents of grade LA7/LA6 responsible for the development of the automatic translation systems of the Commission.

The Commission had also states that the Selection Board had undertaken a comparative examination of the candidates' particular qualifications in relation to the requirements of the post. It concluded that the complainant's professional qualifications were limited to the development of a particular system of computational linguistics.

In view of the fact that the Selection Board gave the complainant a reasoned decision and that the inquiries carried out by the Ombudsman did not give him any reason to doubt the correctness of the reasoning, there was no evidence of maladministration. The Ombudsman therefore closed the case.

### **RADIONAVIGATION SYSTEMS IN EUROPE: LACK OF IMPLEMENTATION**

*Decision on complaint 638/13.6.96/CC/F/VK against the European Commission*

#### **THE COMPLAINT**

In June 1996, Mr. C. complained to the Ombudsman, alleging that the Commission had failed to implement its obligations under Council Decision of 25 February 1992 (92/143/EC) concerning the functioning of the radionavigation systems for Europe, in particular the operation of the Mediterranean Loran-C chain.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments made the following points:

- 1 The Commission it shared the complainant's view that everything should be done to operate the Loran-C chain and to ensure full coverage of the Western Mediterranean with the Loran-C signal.
- 2 The Commission had reached an agreement in 1995 with the Spanish authorities for the re-opening of the relevant station (Estartit). However, Spain had not yet implemented this agreement. The Commission therefore planned to report to the Council on the non-implementation and to start a new radio navigation policy as a result of which a draft report on Loran-C chains would be presented to the Council.
- 3 Council Decision 92/143 requires Member States and the Commission to set up a worldwide radionavigation system, including

European regional Loran-C chains. However, the Decision leaves the responsibility to become a party to regional Loran-C agreements solely to the Member States, and it does not contain a binding commitment to maintain or to develop the system.

4 The Commission made a considerable effort to convince Member States to set up a regional Loran-C agreement.

### **The complainant's observations**

The complainant pointed out that there was an obligation on the contracting parties to an international agreement to establish and maintain navigation aids.

### **THE DECISION**

The Commission is obliged to fulfill its obligations regarding the functioning of the radionavigation systems under Council Decision 92/143.

Article 2 of the Decision provides that the Commission shall ensure cooperation between Member States, encourage the development of receivers and pursue its work with a view to setting up a radio navigation plan and propose the necessary measures to the Council.

It appeared from the information given to the Ombudsman, that the Commission had made arrangements to come to an agreement with the Member States. It reached an agreement with Spain in 1995. However, since then the Spanish authorities had not yet implemented the relevant provisions. According to the Commission it planned to report to the Council on the non-implementation and to start a new radio navigation policy as a result of which a draft report on Loran-C chains would be presented to the Council.

It appeared that the Commission had fulfilled its obligation as regards the 1992 Council Decision.

The complainant stated that the contracting parties were obliged to arrange for the establishments and the maintenance of aids for navigation.

This requirement is based on the 1974 International Convention for the Safety of Life at Sea (Solas 1974). It is not a requirement of the 1992 Council decision. Furthermore, the Commission is not a party to the Convention. The Commission therefore is not obliged to arrange for the establishment and the maintenance for aids to navigation.

The inquiry of the European Ombudsman into this case did not reveal any instance of maladministration. The Ombudsman therefore closed the case.

**AGRICULTURE: TENDER FOR THE SUPPLY OF RYE FLOUR**

*Decision on complaint 647/18.6.96/JEW/A/VK against the European Commission*

**THE COMPLAINT**

In June 1996, JEW, an Austrian flour mill enterprise, complained to the Ombudsman concerning a contract for the supply of rye flour for which it successfully tendered in accordance with Commission Regulation No 2389/95 of 11 October 1995<sup>1</sup>.

The Commission imposed a penalty for late delivery of the goods on the complainant. The above mentioned Regulation states that the goods were to be delivered *with effect from* 4 December 1995. According to the complainant, the Commission had wrongly interpreted the Regulation by requesting that the goods were to be delivered *at the latest* on 4 December 1995. Particularly in view of the fact that the goods were taken over by the relevant freight carrier within 10 days, as foreseen in the Regulation, the penalty did not seem justified. Furthermore, the complainant alleged that the Commission discriminated against smaller enterprises.

**THE INQUIRY****The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that the period of 10 days was not meant to enable the deliverer to divide the flour supply into different delivery shifts. It is exclusively meant to give the transporter some flexibility in his planning. The deliverer is therefore not left with a time margin and the entire amount of flour should have been kept ready for transport on 4 December. The penalty was therefore justified.

As regards discrimination against smaller enterprises, the Commission stated that it especially lowered the quantity of goods in order to enable smaller enterprises to participate in the tender.

The complainant did not make any observations.

**THE DECISION**

Article 12 of Regulation 2009/95<sup>2</sup> provides that the supply security which successful tenderers lodged in favour of the Community shall be forfeited when delays occur in delivery caused by the producer.

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<sup>1</sup> OJ 1995 L 244/53.

<sup>2</sup> OJ 1995 L 196/4.



From the information given to the Ombudsman, it appeared that the goods were not delivered within the time schedule foreseen and that therefore the penalty was justified. Furthermore there appeared to be no evidence of discrimination against smaller enterprises.

The inquiry of the Ombudsman into this case did not reveal any instance of maladministration. The Ombudsman therefore closed the case.

### APPEAL AGAINST A DECISION NOT TO PROLONG AN INTER-UNIVERSITY PROGRAMME

*Decision on complaint 661/25.6.96/DG/FK/KT against the European Commission*

#### THE COMPLAINT

Mr G. was Vice-President of the Groupe Écoles Supérieure de Commerce de Rennes (GSC Rennes), which received funding under the ERASMUS programme for an Inter-University Cooperation Programme (ICP). GSC Rennes did not submit a reapplication form for 1996/97 for its ICP. In the absence of the reapplication form, the ERASMUS Office decided not to prolong the GSC Rennes ICP into the year 1996/97.

By letter of 13 May 1996, Mr G. complained to the Head of TAO SOCRATES & YOUTH about the decision and explained that GSC Rennes had never received the reapplication form for 1996/97.

As Mr G. had not received any reply to his letter by 21 June 1996, he complained to the Ombudsman in June 1996. In his complaint he expressed concern about the procedures of the ERASMUS Office. In particular, he alleged that there exists no possibility to appeal against decisions of the Office.

#### THE INQUIRY

##### The Commission's comments

The complaint was forwarded to the Commission. In summary the Commission's comments were as follows:

There is no institutionalised system of appeal against the decisions of the ERASMUS Office. Complaints both on qualitative judgments and on procedural matters are examined *ad hoc*.

If administrative errors occur in the procedures used by the Commission or its Technical Assistance Office (TAO) in dealing with a proposal, the Commission has the power to correct those errors and reconsider the proposal.

The Commission's practice in cases where the applicant makes a procedural error is to examine whether the error is due to circumstances beyond the control of the applicant or his or her institution. Examples of such circumstances are sudden death or illness.

The principle of equal treatment plays an important role in the outcome of the appeal. If the selection procedure is changed, on the basis of a complaint, other applicants should have the opportunity to reapply under new conditions.

The Commission explained that it had decided to reject Mr G.'s appeal on the grounds that it had informed universities twice of the necessity to send in the 1996/97 reapplication form. According to the Commission, Mr G. seemed to have at least received one of the relevant letters as he quoted it in his letter of appeal.

Furthermore, the Commission stated that in similar cases where a formal procedural requirement has been neglected, it has not considered there to be sufficient grounds to reconsider the selection decision. The principle of equal treatment therefore implied that this case could not be reconsidered.

The Commission's comments were forwarded to Mr G. with an invitation to submit observations if he so wished. No observations appear to have been received.

### **THE DECISION**

It appeared from the information provided to the European Ombudsman that the Commission uses an *ad hoc* procedure for dealing with appeals. The procedure can be used to examine and correct administrative errors both on the part of the Commission or its Technical Assistance Office and on the part of the applicant.

According to the Commission, it evaluated the arguments put forward by Mr G. to the effect that he had not received the reapplication form and found them not to be convincing.

In refusing to accept a reapplication outside the deadline, the Commission's reasoning refers to the principle of equal treatment. It states that similar cases in which ICP coordinators have omitted formal requirements have not been accepted by the Commission as providing sufficient grounds to reconsider the selection decision.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

**STAFF: ADDITIONAL SALARY PAYMENTS**

*Decision on complaints 669/17.6.96/ND/LVK; 670/27.6.96/KM/LVK and 679/1.7.96/CS/LVK against the European Commission*

**THE COMPLAINT**

In June 1996, Ms D, Ms S. and Mr M. complained to the Ombudsman about the refusal of the Commission to pay them additional salaries.

The complainants had passed an open competition enabling them to obtain a higher grade. The officials were appointed to the higher grade without any recognition of their work experience.

Following a judgement by the Court of First Instance in cases brought by other Commission officials, the complainants benefited from a re-grading. However, additional salary payments were backdated only to the date of the Court's judgement in 1993.

The officials used the possibilities for internal complaint provided by Article 90 of the Staff Regulations but their complaints were rejected. The officials then complained to the Ombudsman, claiming that they should have received the additional salary for their improved step with effect from the date of their nomination to the higher grade.

**THE INQUIRY****The Commission's comments**

The complaints were forwarded to the Commission. In its comments, the Commission made, in summary, the following points:

Following the judgement of the Court of First Instance in *Baiwir and others v Commission*,<sup>1</sup> the grading in the step of officials passing an open competition in a higher category could be based on either Article 32 or Article 46 of the Staff Regulations, whichever gave a more favourable result for the official concerned. On 10 February 1994, the Commission published an administrative notice inviting officials to apply to have their grading reconsidered in the light of the judgement. The notice stipulated that the effect of any changes could not be backdated to before the date of the judgement (28 September 1993).

Following the publication of the notice, the complainants sought to have their original grading changed and a decision was taken to this effect. The officials then made a complaint according to Article 90 (2) of the Staff Regulations. They objected to the fact that the improved step they

<sup>1</sup> Joined cases T-103/92, T-104/92 and T-105/92 [1993] ECR II-987.

had obtained only took effect, in terms of its salary equivalent, from the date of the judgement and not retrospectively from the date of their appointment in the new category.

The complaint was rejected by the Commission on the grounds that the benefit of a judgement can only be obtained by the parties to it and that an action based on that judgement brought by other persons can only have effect for the future.

Were it not for the terms of the Commission's administrative notice, the complainants would have been barred from contesting the grading decision under Articles 90 (2) and 91 of the Staff Regulations. These articles, which exemplify the application of the principle of legal certainty, provide that a decision adversely affecting an official must be challenged within three months from the date of its notification.

### **The complainants' observations**

The complainants stated that the Commission had breached the principle of equality. One complainant did not find it comprehensible that the Commission on one hand provided for retroactive regrading but on the other hand, it would not consider the complainant to be in the same situation as the parties of the *Baiwir* judgment.

### **THE DECISION**

- 1 On 28 September 1993, the Court of First Instance gave judgement in joined cases *Baiwir and others v Commission*<sup>1</sup> and thereby annulled decisions of the Commission applying to the applicants in those cases.
- 2 The Commission subsequently published an administrative notice inviting other officials, who were not parties to the *Baiwir* case, to apply to have their grading reconsidered in the light of the judgement. The notice stipulated that the effect of any changes could not be backdated to before the date of the judgement. The question at issue in this complaint was whether the Commission was entitled to impose this restriction.
- 3 The Commission's original decision concerning the step in the complainant's grading was made in June 1984. The time limits for appeal against this decision under the Staff Regulations expired several years ago. These time-limits are mandatory and were laid down with a view to ensuring clarity and legal certainty.<sup>2</sup> According to the case-law of the

<sup>1</sup> Joined cases T-103/92 T-104/92 and T-105/92 [1993] ECR II-987.

<sup>2</sup> Case C-191/84 *Barcella and others v Commission* [1986] ECR 1541.

Court of Justice, only the emergence of a "new fact" is capable of causing time to start running again.<sup>1</sup>

- 4 In this regard, the Court has consistently held that a judgement annulling an administrative measure can constitute a "new fact" only as regards the persons directly affected by the measure which is annulled.<sup>2</sup>
- 5 In relation to officials who were not parties in the *Baiwir* case, therefore, the Commission could properly decide that any change in grading should have effect, in terms of salary, only from the date of the judgement in that case. The Commission was, therefore, also entitled to consider that a difference in treatment in this respect between the applicants in the *Baiwir* case and other officials was justifiable and did not violate the principle of equality<sup>3</sup>. It should be recalled, however, that the Court of Justice is the highest authority on questions of Community law.

The inquiry of the European Ombudsman into this case did not reveal any instance of maladministration. He therefore closed the case.

### DEVELOPMENT: APPLICATION FOR FUNDING UNDER THE BUDGET HEAD-ING FOR TROPICAL FORESTS

*Decision on complaint 677/1.7.96/AYMY/NL/VK against the European Commission*

#### THE COMPLAINT

In June 1996, WS, a foundation, complained to the Ombudsman concerning its participation in a tender for a project for sustainable development of the tropical rain forest in Surinam.

WS stated that the relevant Commission officials of DG VIII had not provided sufficient information so that it could not present its project in time and in the correct form.

#### THE INQUIRY

##### The Commission's comments

The complaint was forwarded to the Commission. In its comments, the Commission stated that the foundation had attempted to adapt its initial

<sup>1</sup> Case 127/84 *Eslly v Commission*, [1985] ECR 1437.

<sup>2</sup> Case 43/64 *Müller v Councils of the EEC, EAEC and ECSC* [1965] ECR 385; Case 125/87 *Leslie Brown v Court of Justice* [1988] ECR 1619.

<sup>3</sup> Case T-93/94 *Michael Becker v Court of Auditors* [1996] ECR II-145.

project. The successive versions of the project had never fully complied with the objectives of the relevant budget heading. The Commission claimed that it had always attempted to explain carefully its successive refusals and to provide documentation to help the complainant review the design of its project and to formulate a new project which would be eligible under the relevant budget heading.

The Commission admitted that it took a very long time to assess the project which was partly due to long periods of silence on the part of the complainant and its inability to design an acceptable and sustainable development project.

### **The complainant's observations**

The foundation stated that a delegation of its Surinam office had met with representatives of the Commission in order to discuss the project. The complainant pointed out that this discussion had been very positive. The final decision was to be made in Brussels at a later date.

### **THE DECISION**

From the information given to the Ombudsman, it appeared that there were unfortunate initial delays. The Commission however, explained the successive refusals and provided documentation to help the complainant review the design of the project. The complainant had furthermore the chance to re-apply under the same conditions. There was therefore no evidence that these delays were responsible for the complainant's failure to achieve funding for its project.

The Ombudsman's inquiry into this case did not reveal any instance of maladministration. The Ombudsman therefore closed the case.

## **ALLEGED FAILURE TO RESPOND TO A COMPLAINT**

*Decision on complaint 701/3.7.96/JE/UK/KT against the European Commission*

### **THE COMPLAINT**

Mrs E. stated that she had submitted a complaint to the Commission in September 1994 regarding possible breaches of the Habitats Directive 92/43/EEC by the "Newbury Bypass" road in the UK. She complained to the European Ombudsman in June 1996 that she had not received any correspondence from the Commission about the matter.

## THE INQUIRY

### The Commission's comments

The complaint was forwarded to the Commission, which commented as follows:

*the complaint... was addressed to Mr Ken Collins MEP on 14 September 1994, who forwarded it to Directorate-General XI on 20 September 1994 where it was received on 23 September 1994. On 30 September 1994 Mrs E. spoke by telephone with the official in DG XI responsible for the complaint. At some point before 11 October 1994, Mrs E. instructed Messrs D. as solicitors for her in relation to this complaint.*

*Correspondence from Messrs D. and Mrs E. occurred during October and early November 1994. DG XI wrote to Messrs D. on 10 November 1994, 7 March 1995 and, finally on 6 December 1995 when the decision of the Commission of 20 October 1995 not to open infringement proceedings was communicated to them. Further correspondence with Messrs D. has taken place since that date.*

*Further to this correspondence with solicitors instructed by Mrs E. in respect of this matter, Commissioner BJERREGAARD wrote to her at the Newbury Transport Forum address used by her in other correspondence on 12 and 19 July 1995 concerning her complaint.*

The Commission opinion also contained a detailed schedule of the above mentioned correspondence.

The comments of the Commission were forwarded to Mrs E. with an invitation to make observations, if she so wished. No observations were received.

## THE DECISION

- 1 The complainant stated that she had received no correspondence from the Commission concerning her complaint, made in September 1994.
- 2 It appeared that the Commission addressed correspondence in the matter to the complainant's solicitors, from whom correspondence about the complaint had been received. It also appears that two letters from Commissioner BJERREGAARD were sent to the complainant at an address (the Newbury Transport Forum) used by her in other correspondence concerning the complaint.

- 3 There appeared therefore to be no evidence that the Commission breached the principles of good administrative behaviour by failing to respond to the complaint. Furthermore, the Commission appeared to have acted reasonably in sending correspondence to the complainant's solicitors and to the complainant herself at the address of the Newbury Transport Forum.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

#### **STAFF: REIMBURSEMENT BY THE ADMINISTRATION**

##### *Decision on complaint 735/736/17.7.96/EE/LVK against the European Commission*

In July 1996, Mr. E., a Commission official, lodged a complaint with the Ombudsman concerning his claim for reimbursement for a pair of glasses for computer work and a medical machine for muscles and nerves. The claim for reimbursement had been rejected.

The complaint was forwarded to the Commission. In its comments, the Commission referred to the Regulations on the reimbursement of costs of spectacles according to which, under certain circumstances, wearers of VARILUX-lenses of around 55 years of age may be able to claim reimbursement. In the present case, the Medical Service decided that Mr. E. did not meet the necessary requirements. It later explained that the reimbursement was not possible because only lenses which are entirely meant for computer work at a distance of around 70 cm can be taken into account.

The medical machine was considered non-functional.

The complainant pointed out that the Commission did not follow its own protection measures for its staff and that the glasses were necessary in order to carry out the work properly. The medical machine would save the complainant visits to the physiotherapist as he could use it at home. He could therefore work without interruption.

From the information given to the Ombudsman, it appeared that the relevant regulations were applied properly, and that the evaluation procedure was carried out accordingly by the Medical Service. There appeared to be no grounds for the allegation of incorrect application of the existing rules.

The inquiry did not reveal any instance of maladministration. The Ombudsman therefore closed the case.



**RECRUITMENT: RIGHTS OF A PERSON ON A RESERVE LIST**

*Decision on complaint 746/96/KT against the European Commission*

**THE COMPLAINT**

In July 1996, X complained to the Ombudsman concerning competition COM/R/C/4/89950375. In accordance with Article 2 (3) of the Statute the complaint was classified as confidential at the request of the complainant.

According to the complaint, X applied in January 1989 for a post in the security service of the Joint Research Centre in Ispra, Italy. On 23 November 1990, the complainant was informed of being placed on a reserve list for a temporary post. The validity of the reserve list was originally foreseen to end on 30 June 1991. However, the period of validity was later prolonged until 31 December 1994 and again until 31 December 1995. At the date of the complaint, X had not yet been recruited by the Joint Research Centre in Ispra.

The complainant found out that no other candidates were left on the reserve list. In the complaint, X expressed his disappointment at learning that there was an intention to hold a new competition to fill the very post he had applied for. He explained that he had been informed that the security service was understaffed and that there was still need for a firearms instructor. X had also heard rumours that the reason for the failure to recruit him was that there was disagreement between the Head of Division at the Centre, and the Head of the local security service as the latter, himself Italian, was said to be willing to recruit only fellow Italians.

X stated that he was lodging his complaint on a number of grounds:

- 1 maladministration as the service seems to be understaffed;
- 2 failure to provide accurate information because whenever he called he was always directed to officials who had no knowledge of the actual matter;
- 3 possible discrimination on the grounds that he was not Italian;
- 4 unfair treatment because a new competition had been held before the recruitment reserve list had been exhausted;
- 5 avoidable delay because he was informed only in April 1995 that the period of validity of the relevant reserve list was being extended to 31 December 1995.

## **THE INQUIRY**

### **The Commission's comments**

In summary, the Commission made the following points in its comments:

Being on a reserve list does not give a candidate any right to be recruited by the Commission. X had been personally informed of this.

As regards the allegation of discrimination, X's information was false. In fact, only one Italian national was placed on the reserve list, but that person was not recruited by the Centre.

The Commission had organized a new competition for temporary agents for the security service of the Joint Research Centre for category D and not for agents in category C as the competition in which X had participated.

The Commission considered that Mr X's complaint was unfounded.

The complainant made no observations on the comments.

## **THE DECISION**

### **1 Rights of a person on a reserve list**

1.1 It follows from the case law of the Court of Justice that the fact that the name of a person is on a reserve list does not confer upon this person an entitlement to a post with the Community institutions.

1.2 As regards the complainant's allegation that the service concerned is understaffed, this allegation had remained unsubstantiated.

1.3 Having regard to the above and given the fact that there were no elements at hand, indicating that the Commission had used incorrect procedures, the Ombudsman's inquiries did not reveal any instance of maladministration in relation to this aspect of the complaint.

### **2 Failure to provide accurate information**

2.1 The complainant's allegation of failure to provide accurate information seemed to refer to his telephone calls to the Commission.

2.2 In his complaint to the Ombudsman the complainant indicated that he had regularly had telephone and written contacts with the official responsible for the Ispra personnel department. The official responsible had made a note of the complainant's interest to be recruited into his file.

2.3 The Ombudsman did not find any evidence of maladministration in relation to the allegation of failure to provide accurate information.

### **3 Discrimination on the grounds of nationality**

3.1 As regards the alleged discrimination based on nationality, the complainant claimed that there had been a preference to recruit only Italian nationals. In its opinion, the Commission stated that the reserve list included only one candidate of Italian nationality, who was not recruited by the Joint Research Centre.

3.2 On the basis of the Ombudsman's inquiries it appeared therefore that there was no evidence of maladministration in relation to this aspect of the complaint.

### **4 Organizing a new competition before the reserve list had been exhausted**

4.1 In his previous decisions, the Ombudsman has taken the view that when staffing requirements arise, the Commission is not obliged to wait for a reserve list to be exhausted before launching a new competition.

4.2 The Commission stated in its opinion that a new competition had been organized this time in order to recruit agents in category D. This is in fact a lower category than the category C competition in which the complainant had participated in January 1989.

4.3 The Ombudsman's inquiries did not therefore reveal an instance of maladministration in relation to the organizing of a new competition for category D before exhausting the reserve list for category C.

### **5 Avoidable delay in possible recruitment**

5.1 As to the alleged delay in informing the complainant in April 1995 that the period of validity of the reserve list was being extended to 31 December 1995, the Ombudsman accepts that the Commission has the right to extend the validity of a specific reserve list.

5.2 The validity of the reserve list for competition COM/R/C/4/89950375 was originally foreseen six months ahead, from November 1990 until the 31 June 1991. In May 1993 the complainant was informed that the validity was prolonged another six months now until 31 December 1994. In fact, the complainant was informed already on 15 March 1995 that the validity had been extended by nine months until 31 December 1995.

5.3 In view of the above findings, and the fact that it seemed that the decision to prolong the validity of the reserve list was favourable to the complainant, the Ombudsman did not find an instance of maladministration in relation to this aspect of the complaint.

In view of these findings, there appeared to be no maladministration. The Ombudsman therefore closed the case.

### **FAILURE TO PROMOTE A COMMISSION OFFICIAL**

*Decision on complaint 754/23.7.96/LS/IT/DT against the European Commission*

#### **THE COMPLAINT**

In May 1996, Mr S. complained to the Ombudsman about the failure of the Office for Official Publications of the European Communities (OPOCE) to include him in the promotions list.

Not being selected among the proposed candidates for promotion to grade B1 in 1994, Mr S. used the internal complaints procedure of Article 90 (2) of the Staff Regulations. In the reply to his Article 90 (2) complaint, the Director General for Personnel informed him that no irregularities had taken place in the promotion procedure. It was stated that OPOCE had proceeded on the basis of the information reports of all B2 officials included in the promotion list, and that the other five candidates included in the list were more qualified than him.

In his complaint to the Ombudsman, Mr S. alleged that he had been subject to administrative irregularities by his superiors at OPOCE, and also by the Legal Service of the Commission.

He also claimed that this discrimination had continued, since he had not been promoted in 1995 or 1996.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments were as follows: (i) other applicants were better qualified than the complainant for a promotion in 1994; (ii) even if in 1995 Mr S. was not proposed for a promotion to B 1 grade, his superiors suggested that his name be included in the promotion list for 1996 or 1997, provided that he carried out his tasks with similar standards; (iii) the complainant was included in the 1996 promotion list with 31 other officials, but at the end of the evaluation procedure only three obtained a promotion and

he was not among them; (iv) the Promotions Committee for B grade had been informed about the "slow career" of Mr S. Nevertheless, that was a problem to be dealt with primarily by his own service which had to submit a proposal for a promotion; (v) no irregularities had been committed in the selection procedure for promotions and the main criteria for promotions had been based on the candidate's merits.

### **The complainant's observations**

In his observations on the Commission's comments, Mr S. stressed that his "slow" career path only began in 1994 and that although he was included in the 1996 promotion list, his inclusion had to overcome a series of irregularities due to obstructionism by the head of the OPEC and the Legal Service. He also pointed out that, because of the modifications made in the procedure to evaluate career promotions in 1993, some of his colleagues who were less qualified than himself enjoyed an advantage as a consequence of his exclusion.

### **Further inquiries**

Although the Commission had indicated in its opinion that there had not been any irregularities in the selection procedure for 1994, the Ombudsman considered that there were no objective elements in the institution's letter to verify this assertion.

In order to ensure that the exercise of the Commission's discretion in this process had followed principles of good administration, the Ombudsman requested by letter of 18 July 1997 to inspect a number of confidential documents used by the Commission to reach its decision. They included personnel reports, comparative tables and/or related material employed by the appointing authority in assessing the merits of the candidates.

The Commission sent the Ombudsman confidential information used by the appointing authority in the selection procedure for the 1994 promotion.

### **THE DECISION**

With respect to the selection procedure for promotion in 1994, because of the nature of the promotions procedure, and as set out in Article 45 of the Staff Regulations, and recognized by the Court of Justice, the appointing authority enjoys a large margin of discretion. In using its discretion, the appointing authority has to consider the merits of the candidates on the basis of objective elements susceptible of control as recognized by the Court of Justice.

In order to ensure that the exercise of the Commission's discretion in this process had followed principles of good administration, the Ombudsman inspected a series of confidential documents used by the appointing authority in assessing the merits of the candidates. From the inspection, it appeared that the Commission had reached its decision with due reference to a number of *prima facie* objective criteria. There was no evidence, therefore, that the Commission had used its discretion for this particular promotion in 1994 in an arbitrary or discriminatory way.

Mr S. had also complained about an alleged unfair treatment by the Commission in the selection proceedings for the 1995 and 1996 promotions. He did not contest these proceedings internally within the Commission. According to Article 2 § 8 of the Statute of the Ombudsman: *"No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all possibilities for 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 (...)"*

As this condition had not been met in relation to the selection proceedings for the 1995 and 1996 promotions, the Ombudsman did not pursue his inquiries as regards this part of the complaint.

In view of these findings, there appeared to have been no maladministration by the Commission. The Ombudsman therefore closed the file.

### STAFF: FREEDOM OF EXPRESSION

*Decision on complaint 794/5.8.1996/EAW/SW/VK against the European Commission*

#### THE COMPLAINT

Mr W., a Swedish national, complained to the Ombudsman in July 1996 about a letter sent by Mr. Erkki LIIKANEN, the Member of the Commission responsible for personnel and administration, to Mr. Carl-Magnus LEMMEL, deputy director general of DG III of the Commission.

It appeared from the file on the complaint that the Swedish newspaper *Dagens Politik* published remarks attributed to Mr LEMMEL. The remarks were critical of the working methods of the Commission. The complaint concerned that fact that following the above mentioned remarks published in the *Dagens Politik*, Mr. LIIKANEN wrote to Mr. LEMMEL. Mr. LEMMEL himself did not complain to the Ombudsman. He was informed of the com-

plaint and of the Ombudsman's inquiry into it. He did not submit any views or information to the Ombudsman

## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. The comments of the Commission contained the following statements:

*The public expression of opinion by officials is governed by Article 12 of the Staff Regulations, which provides that "an official shall abstain from any action and, in particular, any public expression of opinion which may reflect on his position". Furthermore, Article 17 of the Staff Regulations provides that "an official shall exercise the greatest discretion with regard to all facts and information coming to his knowledge in the course of or in connection with the performance of his duties".*

*In spite of these provisions of the Staff Regulations, the Commission decided in the case in question not to start disciplinary proceedings. It limited itself to sending a letter reminding, on the one hand, the official - who had just been recruited - of the duty of reserve to which all officials are subject and, on the other hand, recalling that the Commission expects all its officials, and particularly officials in the higher grades, to be creative and attentive to improvements that could be made in the management and implementation of the tasks entrusted to the Institution. However, these initiatives should be examined and followed by appropriate means inside the Commission, so that they can give rise to proposals and be translated into concrete measures.*

### **The complainant's observations**

In his observations on the Commission's comments, the complainant stated that in Sweden, freedom of expression is a constitutional right which is also enjoyed by civil servants. He also stated that he considered that the Commission imposed severe restrictions on the freedom of expression and that this was inappropriate.

## **THE DECISION**

### **1 The facts on which the Ombudsman's decision was based**

On the basis of the inquiries conducted by the European Ombudsman, the relevant facts appeared to be as follows:

1.1 Remarks critical of the Commission's working procedures appeared in a Swedish newspaper and were attributed to Mr LEMMEL.

- 1.2 No disciplinary proceedings against Mr LEMMEL were initiated.
- 1.3 A letter was addressed to Mr LEMMEL by Commissioner LIIKANEN. According to the Commission's opinion on the complaint, the letter reminded Mr LEMMEL of the duty of reserve to which officials are subject. In this context, the Commission referred to Articles 12 and 17 of the Staff Regulations.

## 2 The Staff Regulations

- 2.1 The first paragraph of Article 12 of the Staff Regulations provides that:

*An official shall abstain from any action and, in particular, any public expression of opinion which may reflect on his position.*

In its opinion, the Commission also quoted from the first paragraph of Article 17 of the Staff Regulations:

*An official shall exercise the greatest discretion with regard to all facts and information coming to his knowledge in the course of or in connection with the performance of his duties; ...*

- 2.2 In considering the duty of allegiance owed to the Communities by officials, the Court of Justice stated in its decision in *Oyowe and Traore v Commission*<sup>1</sup> that:

*"the Staff Regulations cannot be interpreted in such a way as to conflict with freedom of expression, a fundamental right which the Court must ensure is respected in Community law".*

- 2.3 According to the case law of the Court of Justice, the European Convention on Human Rights, which is also mentioned in Article F (2) of the Treaty of the European Union, provides a basis for human rights as general principles of Community law.
- 2.4 Article 10 of the European Convention on Human Rights guarantees the freedom of expression, which includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Article 10 § 2 of the Convention mentions that the exercise of these freedoms carries with it duties and responsibilities and envisages that, under certain conditions, limits on freedom of expression may be prescribed by law.

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<sup>1</sup> Case C-100/88 [1989] ECR 4285 at 4309.



- 2.5 According to the decision of the European Court of Human Rights in *Vogt v Germany*,<sup>1</sup> although it is legitimate to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 of the Convention. The Court mentioned in the same case the need to ensure that a fair balance has been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic state in ensuring that its civil service properly furthers the purposes enumerated in Article 10 § 2. In this context, the Court also remarked that, whenever civil servants' right to freedom of expression is in issue, the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance.
- 2.6 The Commission did not take disciplinary proceedings against Mr LEMMEL, but confined its actions to sending a letter reminding him of his duties under the Staff Regulations. According to the Court of Justice of the European Communities, these duties cannot be interpreted in such a way as to conflict with freedom of expression.
- 2.7 On the basis of the Ombudsman's inquiries, therefore, there appeared to be no evidence of an interference with freedom of expression in this case or, more generally, of any intention by the Commission not to strike a fair balance between the fundamental right of the individual to freedom of expression and the duties and responsibilities of officials.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### **FURTHER REMARKS BY THE EUROPEAN OMBUDSMAN**

According to the Court of Justice, the Staff Regulations cannot be interpreted in such a way as to conflict with freedom of expression. The Commission's opinion on the complaint in this case focused on the restrictions which the Staff Regulations impose on the public expression of opinion by officials. It did not expressly acknowledge, however, that officials have a fundamental right to freedom of expression.

As it appears in Article 10 of the European Convention on Human Rights, freedom of expression includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Article 10 § 2 of the Convention envisages that, under certain conditions, limits on freedom of expression may be prescribed by law.

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<sup>1</sup> Judgement of 26 September 1995, Series A no. 323.

In this context, it is also worth remarking that the Commission's opinion to the Ombudsman in this case quoted only the first part of the first paragraph of Article 17 of the Staff Regulations. The paragraph continues:

(an official) "*shall not in any manner whatsoever disclose to any unauthorised person any document or information not already made public. He shall continue to be bound by this obligation after leaving the service.*"

If read literally, without regard to the statement by the Court of Justice that the Staff Regulations cannot be interpreted in such a way as to conflict with freedom of expression, this part of Article 17 could be thought to forbid officials from putting any information whatsoever into the public domain, thereby preventing them from engaging in any public discussion of their work. Such an interpretation would be incorrect.

The Commission may wish to consider whether it could provide guidance to its officials on what it considers to be a fair balance between their individual right to freedom of expression, which includes the freedom to impart information and ideas, and their duties and responsibilities as officials, in particular under Articles 12 and 17 of the Staff Regulations.

The issuing of such guidance could help ensure fulfilment of the requirement under Article 10 § 2 of the European Convention on Human Rights that restrictions on freedom of expression be "prescribed by law", by putting officials in a position to foresee the risks that particular courses of action may involve.

Publication of such guidance including, in particular, acknowledgment of the fact that officials have a fundamental right to freedom of expression, could also help enhance relations between the Commission and European citizens by avoiding possible confusion and misunderstandings on this question.

### **CAR IMPORTS INTO ANOTHER MEMBER STATE: HANDLING OF COMPLAINTS LODGED WITH THE COMMISSION**

*Decision on complaint 822/16.8.96/SJH/PO/VK/XD against the European Commission*

#### **THE COMPLAINT**

In August 1996, Mr H. complained to the Ombudsman against the European Commission. He sent additional material in September and November 1996.

In October 1995, Mr H. had made a complaint to the Commission alleging that the Portuguese authorities did not comply with Community Law in matters related to the importation of cars into Portugal. Non-Portuguese citizens were facing difficulties with the lengthy and expensive registration procedure for vehicles which had previously been registered in other Member States.

In October 1996, the Commission decided to close the file on the grounds that detailed examination did not provide sufficient evidence regarding an infringement of Community Law by the Portuguese authorities. However, the Commission services then decided to undertake an own initiative inquiry into the matter. The case was still under examination when the complainant wrote to the European Ombudsman.

The complainant first alleged that the Commission was taking too long to deal with the complaint and second, that the Commission did not take any positive action to solve the alleged infringements of Community Law by the Portuguese authorities.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary the Commission's comments made the following points:

- 1 The complaint was filed because detailed examination showed that it did not provide sufficient evidence that there was an infringement of Community law.
- 2 Subsequently, an own initiative inquiry by the Commission was intended to ensure a thorough examination on aspects related to the free movement of goods mentioned in the complainant's further correspondence. A meeting between the services of the Commission and the Portuguese authorities was held to discuss the case.
- 3 The Commission contested the allegation that it failed to deal with the complaint within a reasonable period of time and the alleged lack of positive action to resolve the alleged infringements of Community Law. It pointed out that the services of the Commission had made a thorough analysis of the alleged problems and that they had written very detailed explanatory letters to the complainant concerning all the aspects successively raised in the various letters he had sent to the Commission.

### **The complainant's observations**

In his observations on the Commission's comments, the complainant stated that he found it difficult to believe that there was not sufficient evidence to start infringement proceedings. He mentioned a series of facts which he claimed demonstrated that there was a clear breach of Community Law. He also alleged that the Commission had met the wrong department of the Portuguese administration during its inquiry.

The complainant also stated that it was urgent to deal with the problem. He recognised that he had received a lot of information from the Commission. However, in his view, the situation remained unresolved and the Portuguese authorities were still infringing Community Law. He could not understand why the Commission had failed to act over two years.

### **THE DECISION**

#### **1 With regard to the alleged delay taken by the Commission to deal with the complaint**

1.1 Under the Commission's internal rules, a decision to close the file without taking any action must be taken within a maximum period of one year from the date of its registration, except in special cases. In the present case, it appeared that the complainant had lodged a complaint with the Commission in October 1995 and that the Commission decided to close the file without taking any action in October 1996. Therefore the one year time limit was respected. It also appeared from the copy of the correspondence sent by the Commission to the Ombudsman that the complainant was kept well informed about the processing of the complaint.

1.2 The Commission decided to start an own initiative inquiry into the matter in November 1996. It appears that the Commission sent a letter to the Portuguese authorities in December 1996 and that it met the Portuguese authorities in February 1997. The fact that it launched an own initiative inquiry and contacted the Portuguese authorities demonstrates the willingness of the Commission to deal with the problem. It must also be mentioned that the Commission has to decide which inquiries need to be undertaken as well as the forms of these inquiries.

#### **2 With regard to the alleged lack of positive action taken by the Commission**

2.1 According to the case-law of the Court of Justice, the Commission alone, as the guardian of the Treaty, is competent to decide whether it

is appropriate to bring proceedings against a Member State for failure to fulfil its obligations<sup>1</sup>.

2.2 It must also be mentioned that the Commission needs a certain time to carry out a legal analysis of the alleged problem before taking a decision to start infringement proceedings against a Member State. In dealing with this case, nothing seems to indicate that the Commission failed to comply with principles of good administrative behaviour.

### **CONCLUSION**

On the basis of the Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the Commission. The Ombudsman therefore closed the case.

### **RECRUITMENT: EXCLUSION FROM AN OPEN COMPETITION**

*Decision on complaint 827/22.8.96/YS/FIN/IJH against the European Commission*

#### **THE COMPLAINT**

On 19 August 1996, Mr S. complained to the European Ombudsman that he had been excluded from an open competition (COM/A/972) organised by the Commission to create a reserve list of medical advisors of grade A5/A4 of Austrian, Finnish or Swedish nationality. The competition was based on qualifications and an oral test. The Selection Board had decided not to invite Mr S. to the oral examination.

Mr S. stated that he had participated previously in an open competition (COM/A/956 for recruitment of the Head of the Commission's Delegation to international organizations in Vienna), the Selection Board for which had asked him to send his *curriculum vitae* in addition to an application form. Mr S. alleged that the *curriculum vitae* he sent for competition COM/A/956 was knowingly used to fix the eligibility criteria for competition COM/A/972.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments were as follows:

The Selection Board for competition COM/A/956 asked all candidates to provide a *curriculum vitae* in addition to an application form. The *cur*

<sup>1</sup> Case 431/92 Commission of the European Communities v. Federal Republic of Germany [1995] ECR I-2189, par. 22.

*riculum vitae* served no other purpose than to facilitate and accelerate the proceedings of the Selection Board.

Candidates for open competition COM/A/972 were required to be holders of a higher university degree in medicine and a certificate on specialized occupational health studies. Furthermore, the candidates were required to have professional experience, amongst other things, of tropical medicine and radiation safety. The former requirement was due to the fact that many Commission officials have to work in or travel to tropical regions, and the latter requirement because certain staff either work in nuclear installations or with nuclear materials.

Mr S. was not invited to the oral examination because he did not hold the required qualifications and there was no other reason for his exclusion from the competition.

### **The complainant's observations**

In his observations, the complainant maintained his original complaint to the Ombudsman.

### **THE DECISION**

Annex III, Article 2 of the Staff Regulations provides that candidates shall complete a form prescribed by the appointing authority and that they may be required to furnish additional documents or information. There was therefore a legal basis for requiring candidates in open competition COM/A/956 to provide a *curriculum vitae* as well as an application form.

According to the Commission, the *curricula vitae* in open competition COM/A/956 served no other purpose than to facilitate and accelerate the proceedings of the Selection Board in that competition. The Ombudsman's inquiries revealed no evidence to contradict the Commission's statement.

According to the Commission, Mr S. was excluded from open competition COM/A/972 because he did not hold the required qualifications and for no other reason. The Ombudsman's inquiries revealed no evidence to contradict the Commission's statement.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

**HANDLING OF A COMPLAINT LODGED WITH THE COMMISSION**

*Decision on complaint 996/5.11.96/JC/IRL/BB against the European Commission*

**THE COMPLAINT**

In October 1996, Mr C. complained to the Ombudsman concerning the Commission's handling of a complaint he had made to it against the University of East London (UEL) in the UK.

Mr C. stated that he had participated in a new two-year course programme at the UEL leading to an MSc degree in Architecture. He said he had been assured that the second year would be the final year unit of the Diploma course, on the basis of college documents stating that this two-year programme had exemption from Part 2 of the requirements of the Royal Institute of British Architects (RIBA).

Mr C. passed the first part of the MSc degree in December 1991. Later, he was informed that he had failed 'MSc Architecture: RIBA. Part 2', but that he could repeat the year.

Mr C. sent a letter to an MEP, Mrs McKenna, who transmitted the letter to Mrs Cresson, Member of the European Commission. In May 1996, the Commissioner replied that the complaint concerned the non-award of the Diploma in Architecture and concluded that it was a matter of academic judgment of the University and not a case in which the European Commission could intervene.

In October 1996, Mr C. wrote again to Commissioner Cresson and the Head of Unit of DG XXII to explain that he wanted to have his complaint against the UEL examined in terms of Directive 85/384/EEC<sup>1</sup>.

In his complaint to the Ombudsman, Mr C. alleged maladministration in the form of lack or refusal of information in the Commission's handling of his complaint against UEL.

**THE INQUIRY****The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission made the following points:

The Commission had come to the conclusion that Mr C.'s complaint solely concerned the fact that he had failed to obtain his degree in architecture.

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<sup>1</sup> OJ 1985 L 223/15.

In May 1996, Mr C. was informed that his problem was a matter for the University and that there were no grounds for action by the European Commission.

In reply to Mr C.'s second letter, the DG XXII informed him in December 1996 that, in the light of his new request, Mr C.'s complaint had been formally registered as N° 96/4785.

In January 1997, DG XV wrote a reasoned letter to Mr C. explaining that the two-year programme he undertook was not in breach of Article 7 of Directive 85/384/EEC. Subsequently, DG XV had decided to propose that the Commission should take no further action in pursuit of Mr C.'s complaint. In April 1997, DG XV informed Mr C. that the Commission had decided in March 1997 to file his complaint N° 96/4785 against the University on the grounds that there was no breach of Community law.

### **The complainant's observations**

In his observations, Mr C. maintained his complaint.

### **THE DECISION**

According to the case-law of the Court of Justice, the Commission alone is competent to decide whether it is appropriate to bring proceedings against a Member State for failure to fulfil its obligations in its role as guardian of the Treaty.<sup>1</sup>

It appeared from the Ombudsman's inquiries into this complaint, that after having formally registered Mr C.'s complaint the Commission had examined it in the light of Directive 85/384/EEC. In its decision to file the complaint N° 96/4785, the Commission appeared to have given a legal reasoning in support of its conclusion that it had found no breach of Directive 85/384/EEC in the case at hand.

The Ombudsman's inquiries into this complaint did not reveal any instance of maladministration by the Commission in the interpretation of Community law, or in the application of Community law to the facts and to the national legal context of the case.

In view of these findings, there appeared to be no maladministration by the Commission. The Ombudsman therefore closed the case.

<sup>1</sup> Case 431/92 *Commission v Germany* [1995] ECR I-2189, para. 22.



**VAT EXEMPTION ON SERVICES PROVIDED TO A COMMISSION CONTRACTOR**

*Decision on complaint 1000/8.11.96/VILA/IT/PD against the European Commission*

**THE COMPLAINT**

Mr S. complained in October 1996 to the Ombudsman on behalf of a Cooperative concerning the Commission's actions in relation to a VAT problem that he had encountered with the Italian authorities. He put forward that the Commission had wrongly assessed the rules on VAT exemption that apply to the Commission.

The background to this grievance, as it appeared from the file, was in substance the following:

By decision C(93)256/5 of 16 February 1993 the Commission awarded the Cooperative a grant from the Regional Fund. The grant was intended for financial contributions to projects improving access of small and medium sized enterprises to technological innovations. It was stipulated that Mr S. should run this programme including necessary publicity campaigns and checks with the enterprises to which funds were channelled. It was provided that the Cooperative was entitled to keep 1 % of the grant as remuneration and that he should undertake all necessary steps with regard to tax exemption of its services supplied to the Commission.

It appeared that having regard to the provision on tax exemption, the Cooperative requested its suppliers to invoice it without charging VAT, and as legal basis for his, it referred to the relevant Italian VAT Statute. Subsequently, the competent Italian authorities objected to this way of proceeding and by implication, took the stand that the Cooperative could not be exempted from VAT. Under these circumstances, Mr S. addressed the Commission on 15 May 1996 to have its view.

By letter of 9 July 1996, the Commission replied to this request. It stated, in the first place, that it was not vested with authority to interpret national legislation. In the second place, it wrote that the financial contributions from the Community were exempted from VAT as well as the part of the grant which constituted the remuneration for the entity which ran the Community programme. In the third place, it stated that, in so far as the entity itself acquired services and goods for the performance of its tasks, these operations were submitted by the relevant rules in the Sixth VAT Directive to VAT taxation. Finally, the Commission observed that the relevant Italian Statute

only referred to Community funded research projects and thus not to the running of any Community programme.

Not being satisfied by this reply, Mr S. complained to the Ombudsman that the VAT exemption that applied to the Commission should apply equally to the Cooperative when it bought goods and services.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that as a result of the complaint, it had re-examined the case and that it maintained its position communicated by its letter of 9 July 1996. In addition, it sketched out a solution to the problem that the Cooperative had encountered with the Italian authorities.

The Commission's comments were forwarded to Mr S. with an invitation to submit observations if he so wished. No observations were received.

### **THE DECISION**

The Commission has no authority to deliver authentic interpretations on provisions of national law. The question at issue was thus whether the Commission's stand as concerns Community law was well founded. The relevant provisions are contained in Council Directive No 77/388<sup>1</sup> of 17 May 1977 - the Sixth VAT Directive. Art 15.10 of the Directive provides for VAT exemption for international organizations. According to its wording, the exemption does not extend to the services delivered to a subject who is a contractor with the international organization. This understanding of the provision is in conformity with the case law of the Court of Justice, according to which exemptions shall be construed narrowly and exemptions in favour of one person cannot be extended to those with whom that person makes contracts.<sup>2</sup>

Thus, the Commission's stand as communicated to the Cooperative without undue delay by its letter of 9 July 1996 in reply to Mr S.'s letter of 15 May 1996 appeared well founded. It shall be recalled, however, that the Court of Justice is the highest authority on Community law.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

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<sup>1</sup> OJ L145

<sup>2</sup> Case 107/84, *Commission v Germany*, [1985] ECR p. 2655.

**RECRUITMENT: EXPIRY OF RESERVE LIST**

*Decision on complaint 1036/15.11.96/AM/IT/PD against the European Commission*

**THE COMPLAINT**

Mr M. from Italy complained to the European Ombudsman in November 1996 about the failure of the Commission to offer him a job.

The background was that in 1988, he succeeded in the general competition COM/B/520, organised by the Commission. Thus, his name figured on the reserve list for possible future permanent jobs with the Commission. The validity of the reserve list, originally foreseen to end in December 1988, was prolonged several times. In September 1989, Mr M. was offered an auxiliary post but he declined the offer for personal reasons. Subsequently, in 1992, he addressed the Commission on two occasions in order to seek a job offer. On 31 December 1992, the validity of the reserve list expired, as it had not been further prolonged. Thereafter, there were written and telephone contacts between the complainant and the relevant Commission services, in which he asked for a job and the Commission in substance referred to the fact that the reserve list had expired and thus, it was not able to offer Mr M. a permanent post.

In his complaint to the Ombudsman, Mr M. claimed that two letters addressed to the Commission in 1992 remained unanswered; that the Commission should have offered him a permanent post and that it never communicated to him that he would not be offered a post.

**THE INQUIRY****The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that it had no record of having received Mr M.'s letters in 1992. As to not offering him a post, the Commission stated that it was legal to put more names on a reserve list than the number of posts available; thus it was under no legal obligation to proceed to the recruitment of all the persons listed. As to the allegation that the Commission had failed to communicate its decision not to offer Mr M. a job, the Commission stated that it followed from his own correspondence that he had received the Commission's communications prolonging the validity of the reserve list. Thus, having received a communication prolonging the validity of the list to 31 December 1992 and not receiving any further communication of this nature, Mr M. was implicitly informed that the list expired on 31 December 1992. The Commission furthermore referred to the fact that in subsequent

correspondence with Mr M., it made it clear that the list could no longer constitute a base for recruitment.

### **THE DECISION**

The Commission declared that it has not received the complainant's letters from 1992; therefore the Ombudsman could not consider it an instance of maladministration that these letters remained unanswered.

As for the lack of job offer, it followed from the case law of the Court of Justice that the fact that the name of a person was on a reserve list did not confer upon that person an entitlement to a post with the Community institutions. Having regard to this and since there was no evidence of any procedural irregularity on the part of the Commission, the Ombudsman concluded that there appeared to be no maladministration in relation to this aspect of the complaint.

The remaining question concerned the allegation by the complainant that he was not informed of the expiry of the reserve list and thus of the fact that it was no longer possible for him to be recruited on the basis of the list. It appeared from the file that the validity of the list had been prolonged several times, on the last occasion up to 31 December 1992. Mr M. was informed about these prolongations. In the absence of any further prolongations, it was clear that the list had expired.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

## **TAXATION OF REMUNERATION PAID TO EXPERTS**

*Decision on complaint 1060/28.11.96/BK/DK/PD against the European Commission*

### **THE COMPLAINT**

Mr K. from Denmark complained to the Ombudsman in November 1996 that the Commission had not dealt correctly with the question of whether he was liable to pay Community taxes on certain earnings.

The background to the complaint was as follows: In 1988 and 1990 Mr K. worked in China and South America within the framework of the Community's development and assistance programmes. The remuneration he received was subsequently taxed by the Danish authorities. He considered such taxation to be unjustified and approached the Commission. The Commission did not share his view.

The essence of the complaint was that the Commission did not ensure that the Danish authorities complied with Community law which, in Mr K.'s opinion, meant that he should not pay tax in Denmark. He also claimed that the Commission did not answer his letters after 1994, including a complaint he lodged against the Danish authorities in February 1996, and that the Commission office in Denmark did not duly forward his letters to the Commission's central departments.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments the Commission stated that Mr K. was engaged by it as an independent 'expert' and that he was not, therefore, covered by Article 13 of the Protocol on the privileges and immunities of the European Communities under which only officials and other servants of the Communities are exempt from national taxes on remuneration paid by the Communities.

According to the Commission Mr K. did not fall into the category 'other servant'. In support of its opinion, the Commission referred to Council Regulation No 549/69 of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the privileges and immunities of the Communities apply.

The Commission also stated that it informed Mr K. in 1992 of its opinion that he was not exempt from national taxes. Lastly, it claimed that its representation office had always forwarded his letters to the central departments in Brussels.

#### **The complainant's observations**

In his observations on the Commission's comments, Mr K. maintained that the Commission's interpretation of Article 13 of the above Protocol was wrong, and upheld his complaint.

### **THE DECISION**

The question in this complaint was whether the Commission had correctly evaluated Mr K.'s complaint against the Danish authorities.

Article 13, second paragraph, of the Protocol on the privileges and immunities of the European Communities provides that '*they* [officials and other servants] *shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.*' Under Article 16 of the Protocol, the Council must determine the categories of officials and other servants to

whom the provisions of the second paragraph of Article 13 apply. The Council did so in Regulation No 549/69, Article 2 of which provides that:

*"the provisions of the second paragraph of Article 13 of the Protocol on the privileges and immunities of the Communities shall apply to the following categories:*

- (a) Persons coming under the Staff Regulations of Officials or the Conditions of Employment of Other Servants of the Communities, including those who receive the compensation provided for in the case of retirement in the interests of the service, with the exception of local staff;*
- (b) Persons receiving disability, retirement or survivors' pensions paid by the Communities;*
- (c) Persons receiving the compensation provided for in Article 5 of Regulation (EEC, Euratom, ECSC) No 259/68 in the case of termination of service."*

It was clear that Mr K. was covered neither by (b) nor (c). Since it was also clear that he was not an official, the question was whether he was covered by the phrase *"persons coming under ... the Conditions of Employment of Other Servants of the Communities"* in (a).

This phrase does not apply to everyone who provides a service to the Community. In fact, it appears to relate to a specific legal document, Council Regulation No 259/68, laying down the 'Conditions of Employment of Other Servants'. The 'other servants' covered by these conditions of employment are 'temporary staff', 'auxiliary staff', 'special advisers' and 'local staff'. It is clear that at no time did the Commission employ Mr K. as 'temporary staff', 'auxiliary staff', 'special adviser' or 'local staff'. He would thus not be covered by the 'Conditions of Employment of Other Servants' and consequently could not be deemed covered by the tax exemption under Article 2(a). The Commission's evaluation of his case thus appeared correct.

As regards Mr K.'s allegation that the Commission failed to answer his letters, it appeared from the file that in 1994 he wrote to the Commission to obtain confirmation of the services he performed in China. The Commission provided this confirmation in its letters of 26 October and 17 November 1994. As regards the complaint he lodged in February 1996 against the Danish authorities, the file showed that the Commission responded in letters dated 3 September and 6 December 1996. The file did not show that the Commission representation office was in any way negli-

gent in forwarding Mr K.'s letters to the relevant central departments in Brussels.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### SELECTION OF CONTRACTORS IN CALL FOR TENDERS

*Decision on complaint 1138/31.12.96/JAON/UK/JMA against the European Commission*

#### THE COMPLAINT

In December 1996 Mr O. lodged a complaint with the Ombudsman on behalf of a firm (TASIL), alleging maladministration in a call for tenders organized by the European Commission for the selection of a consultant to carry out a TACIS programme.

Following the invitation to submit proposals on projects related to development of the tourist industry in Russia, TASIL, acting on behalf of a consortium of various firms from several European countries, lodged an expression of interest with the Commission.

Even though its proposal was supported by some Russian governmental agencies, TASIL was excluded from the tender list prepared by the Commission. The complaint contested this exclusion.

#### THE INQUIRY

##### The Commission's comments

The complaint was forwarded to the Commission. In its comments, the Commission indicated that contracts for services of the kind in question must be awarded through calls for tender. Under the TACIS programme, the Commission acts as Contracting Authority, and its services (Directorate C of DG IA) are responsible for launching, evaluating and deciding on the tenders.

In the case in question, as a result of the Commission's evaluation of the tenders, TASIL was not included in the short-list of eight consortia. The exclusion of TASIL came therefore as a result of a standard selection procedure. The Commission included a series of annexes concerning general information on the programme, the complete list of all expressions of interests which had been received, and the tables for comparative assessment of relative merits of all participants.

### The complainant's observation's

In his observations on the Commission's comments, Mr O. referred to the unrivalled experience of TASIL's consortium and renewed the complaint of unfair treatment.

### THE DECISION

In his decision, the Ombudsman stated that the Commission enjoys a large degree of discretion in deciding to award a contract following an invitation to tender.<sup>1</sup> That discretion cannot justify, however, manifest errors in the selection procedure.<sup>2</sup> In using its discretion, the institution must base its decision on some objective criteria which can be reviewed.<sup>3</sup>

In this case, the Commission based its assessment in a number of *prima facie* objective criteria which were reflected in the tables of comparative assessment of the merits of participants. Even though the complainant's consortium showed expertise and competence in the field of this particular project, there was no evidence that the Commission used its discretion in an arbitrary or discriminatory way.

On the basis of the Ombudsman's inquiries into the complaint, there appeared to have been no maladministration by the Commission. The Ombudsman therefore decided to close the case.

## CONTESTED RECRUITMENT

### *Decision on complaint 14/97/PD against the European Commission*

### THE COMPLAINT

In January 1997, Mr V. complained to the Ombudsman concerning a vacancy published in June 1994 by the Commission, COM 1898/94. The vacancy established that the career bracket was LA 8 - 4 and that the denomination of the post was "traducteur réviseur juriste". Under the heading "particular qualifications" it was indicated that the applicant should have

*"a complete legal training, certified by a university degree. In-depth knowledge of the Dutch language, fair knowledge of two other Community languages, knowledge of legal terminology in Dutch. Experience in translation and revision."*

<sup>1</sup> Case 19/95, *Adia Interim SA v Commission*, [1996] ECR II-321, para 49

<sup>2</sup> Case 56/77, *Agence Européenne d'Interims v. Commission* [1978] ECR 2215, para 20

<sup>3</sup> Case 166/94, *Koyo Seiko v. Council* [1995] ECR II-2129. par. 103



On 4 July 1994 Mr V. applied for the post. From the *curriculum vitae* annexed to the application it appeared that during many years, Mr V. had been working at the Dutch translation division at the Court of Justice; as a "lawyer-linguist" from 1982 to 1989 and then as a "principal lawyer-linguist". As from 1991 his head of service regularly gave him language revisions to do and in 1994 he was appointed "language revisor" (LA 5). The relevant service in the Commission interviewed Mr V. but eventually filled the post with another applicant who happened to be a colleague of Mr V.'s at the Court of Justice. The person appointed was a "principal lawyer-linguist" (LA 5) at the Court of Justice.

In his complaint Mr V. put forward two main arguments.

1 The nomination of his colleague was contrary to the drafting of the notice of the vacancy. In Mr V.'s view, the colleague should never have been considered for the job because as a principal lawyer-linguist, he did not have any experience of revision and the notice requested experience in both translation and revision. Mr V. found support for this point of view in the fact that subsequently, in 1996, the Commission had changed its notices of vacancies of this kind to the effect that applicants should have experience in translation or revision. Furthermore, he stated that according to the French dictionary "*Le Petit Robert*", the word "experience" means practice, habitude and routine. Thus, even though a principal lawyer-linguist may occasionally do language revision, he would not be experienced.

2 Even in case his colleague could have been taken into account as a candidate, a comparative examination of the merits of the applicants would have led to the result that he should not be retained for the job. In support of this allegation, Mr V. referred in particular to the fact that his colleague had less experience than he as a lawyer-linguist and was promoted later than him to a post as principal lawyer-linguist.

## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. In summary the Commission's comments made the following points:

1 In substance that the job descriptions in force at the Court of Justice mentioned the task of revision, both for the post of principal lawyer-linguist and for the post of revisor. It furthermore stated that the principal lawyer-linguist did the revision himself, as the job description mentioned that he should normally translate texts without revision.

2 The Appointing Authority had wide discretionary powers when filling a post and it had respected the limits of these discretionary powers when it filled the post in question.

### The complainant's observations

In his observations on the Commission's comments, Mr V. maintained in substance his complaint.

### THE DECISION

In taking a stand on the issue of this complaint, it was in the first place important to recall the job descriptions for the posts in question, both at the Court of Justice and at the Commission, as they appeared from the documents submitted. The tasks of a principal lawyer-linguist at the Court of Justice were described in general as follows:

*"Qualified official in charge of carrying out the translation of texts, usually without revision, and in certain cases, the revision of the translations, of controlling the terminology and documentation work, or specialised work in other linguistic fields; participates in the professional training of translators."*

The tasks of a language revisor at the Court of Justice were described as:

*"Qualified official in charge of carrying out the revision of translations, and in certain cases, the translation of texts with or without revision, and of controlling the terminology and documentation work, or specialised work in other linguistic fields; participates in the professional training of translators."*

The tasks of the "*traducteur réviseur juriste*" at the Commission were stated as follows in the notice of vacancy in question:

- *checking that the Dutch version of statutory texts and draft statutory texts of the Commission is legally in agreement with the other versions of the texts;*
- *controlling that the presentation of the statutory texts respects the general rules applied in this field;*
- *carry out research in formal legistics and national law".*

It appeared that the job descriptions at the Court of Justice varied considerably from the ones in question at the Commission.

Against this background, the Commission's handling of this matter could be assessed. Concerning the question whether the Commission could take

into account applications lodged by principal lawyer-linguists at the Court of Justice, it was a fact that the notice of vacancy established that applicants ought to have experience in both translation and revision. It must be for the recruiting service to assess which degree and kind of experience the interest of the service requires; there appeared to be no reasons for considering that the interest of the service required the recruiting service in general not to take into consideration applicants, whose formal job description did not mention the tasks of revision.

Furthermore, it appeared from the documents submitted that in practice, principal lawyer-linguists at the Court of Justice could be given revision work on a regular basis and that their formal job description did mention revision tasks. If principal lawyer-linguists translated without revision from another person, it appeared to be justified to consider that the implication was that they did the revision themselves.

Finally, the notice clearly indicated the career bracket of the post to be filled as LA 8 - 4 and therefore even "lawyer-linguists" could apply for the job.

Thus, it appeared that the Commission was entitled to take into account the application of Mr V.'s colleague. The fact that the Commission subsequently amended the standard notice of vacancy for the sake of clarity did not appear to justify another conclusion. It must be recalled, however, that the Court of Justice is the highest authority on questions of Community law.

As for the question whether the Commission had rightly assessed the merits of the applicants, there appeared to be no elements at hand that indicated that the Commission should have transgressed the limits of the discretionary powers that it holds in this field. To request that priority should automatically be given to the applicant with most seniority could deprive the Appointing Authority of these powers with which it is vested according to the case law of the Court of Justice.

On the basis of the European Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the European Commission. The Ombudsman therefore closed the case.

### **UNSUCCESSFUL APPLICATION UNDER THE COPERNICUS PROGRAMME**

#### *Decision on complaint 98/97PD against the European Commission*

In January 1997, Mr A. complained to the European Ombudsman that the Commission had wrongly rejected an application that he had lodged under the Copernicus programme, a Commission programme for cooperation in Science and Technology.

The complaint was forwarded to the Commission on 5 February 1997. In its opinion, the Commission stated that Mr A.'s application could not qualify under the rules in force which required that applications should concern at least two participants, established in different Member States. Mr A.'s application involved two participants, but both were established in Italy. Consequently, the Commission had rejected the application.

In his observations on the Commission's comments, Mr A. maintained his original complaint.

On the basis of the Ombudsman's inquiries, it appeared that the Commission's decision on Mr A.'s application had been made in full accordance with the rules applicable. There were no elements in the file that indicated that the Commission had decided wrongly on his application.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

### **THE COMMISSION'S INQUIRY INTO THE ANNUAL TAX ON ITALIAN PASS-PORTS**

*Decision on complaint 190/97/DT against the European Commission*

#### **THE COMPLAINT**

In 1995, Mr I. complained to the Commission about the fact that Italy obliges its citizens to pay a special tax every year for the use of their Italian passports.

In February 1996, the Commission informed Mr I. that it was dealing with the question and it apologized for the late answer to his letter. It also informed him that it had received many letters raising the same issue and that it would like to examine these cases carefully before taking a decision on the matter.

In February 1997, Mr I. complained to the Ombudsman that the Commission had not yet taken any decision, a year after its first answer to him.

#### **THE INQUIRY**

The Ombudsman's inquiry was directed towards establishing whether there was an instance of maladministration in the way the Commission had handled Mr I.'s complaint.

The complaint was forwarded to the Commission in March 1997. In summary, the Commission's comments were as follows:

On the basis of two parliamentary questions and several citizens' letters it was decided to examine carefully the problem and to carry out a general survey by asking all Member States to provide information concerning their conditions and charges for issuing passports. The complainant was informed of this action.

The Commission received the last answer from a Member State in March 1997. It took its decision on the matter and wrote to Mr I. on 2 May 1997.

In its letter of 2 May 1997, the Commission informed Mr I. that Community law requires Member States to issue a passport or an identity card to their citizens. The fact that Italy imposes an annual tax on the passport is compatible with Community Law, because "the costs of the passport and the procedure of issuing it fall within the competence of the Member States". The Commission did not consider that "the system of issue of passports impedes the free movement of persons in the light of Community law".

The Commission's comments were forwarded in July to Mr I. who, in summary, made the following observations:

Either the Commission was not really interested in the question of free movement of persons or it had not examined the problem; the proof of this point was the two years' delay before it took its decision.

The Italian passport was based on the model of the European passport, in which no place is foreseen for the stamps which demonstrate the payment of the tax. This meant that "the intention of Community law was to exclude this tax". This interpretation is justified by international law, which considers the passport as a document that permits to pass from one country to another.

In view of the fact that no other Member State imposed this kind of tax, and that the tendency of the EU Treaty was to cancel the differences between Member States, Italy should not be not allowed to impose these "atypical" taxes.

The duty of the Commission is to be the Guardian of the Treaty and it should have begun infringement proceedings against Italy.

## ***THE DECISION***

### **1 The Commission's handling of the complaint**

- 1.1 It appears from the file that, following the complaints and questions from Members of the European Parliament, the Commission conducted an inquiry to find out from the Member States their procedures and charges for the issue of passports. It also appears that the Commission examined the annual tax on the passports of Italian citizens as a possible infringement of Community Law.
- 1.2 The Commission reached the conclusion that there was no infringement of Community law by the Italian State, because costs of passports and the procedures for issuing them do not fall within the sphere of the Community competences, but exclusively in that of the Member States.
- 1.3 Article 169 of the EC Treaty empowers the Commission to begin infringement proceedings only if it considers that a Member State has failed to fulfil an obligation under the Treaty.
- 1.4. On the basis of the above findings, there appeared to be no evidence of maladministration by the Commission in dealing with the complaint.

### **2 Delay in responding to the complainant**

- 2.1 The Commission wrote a first letter to the complainant on 13 February 1996, five months after he asked for information. It justified this delay because the problem was "not easy to resolve" and that it would like to examine the case carefully. On 16 October 1996, the Commission sent a second letter to the complainant to inform him about its inquiry in the Member States. The last letter, with its decision on the matter, was sent to the complainant on 2 May 1997.
- 2.2 In view of the complexity of the matter, which was also the subject of two written questions by Members of the European Parliament who could not receive an answer without the survey involving all Member States, the Ombudsman reached the conclusion that, in the present case, the delay of approximately two years before the Commission reached its final decision could not be considered as maladministration.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

**REJECTION OF A CALL FOR TENDER**

*Decision on complaint 199/97/PD against the European Commission*

**THE COMPLAINT**

In March 1997, Mr T. complained to the Ombudsman about a tendering procedure followed by the Commission.

In 1996, his company tendered for a contract with the Commission to provide services in relation to the Drinking Water Directive.

In the section of the tender documents headed "the expertise required of the contractor", it was stated that contractors

"need to demonstrate that they have a wide breadth of knowledge and expertise, and a proven track record in the field of water science, including microbiology, toxicology, water and sanitary engineering. Furthermore it is essential that the contractor possesses an in-depth knowledge of the Drinking Water Directive, and the proposal for its revision."

In the section headed "Selection criteria" it was indicated that the tenders would be evaluated in two stages. Only tenders that met the selection criteria at the first stage would continue to the second stage (the award stage). One of the criteria in the first stage was:

"Tenderers must demonstrate that they have the necessary experience and record in the water research field as demonstrated by the qualifications, citations of previous works and composition of the proposed team, including curriculum vitae."

By letter of 7 January 1997, the Commission informed Mr T. that his tender had not been selected. On 13 January 1997, 31 January 1997 and 15 February 1997 Mr T. asked the Commission to inform him of the reasons for the refusal. By letter of 13 March 1997, the Commission informed Mr T. that, applying the selection criteria, it had found that the company lacked the necessary experience in the water research field understood as the research, development and design of water treatment works.

Mr T. did not find the Commission's response satisfactory and therefore addressed the Commission again. By letter of 10 April 1997 the Commission communicated to him more detailed reasoning for the decision taken. According to this letter, the decisive factor in not selecting Mr T.'s tender continued to be that, in the Commission's view, his company

lacked the necessary experience in water and sanitary engineering, i.e. in design of water treatment works.

Mr T. remained dissatisfied with the Commission's stand and complained to the Ombudsman, putting forward three allegations.

- 1 The words "necessary experience" in the selection criteria quoted above must be interpreted in a broad way, as meaning water research which relates to the Drinking Water Directive. The Commission could not request the experience needed to be in the field of sanitary and water engineering as this was not specifically stated in the tendering documents. This approach was supported by the fact that the Drinking Water Directive primarily dealt with aspects of drinking water quality and health aspects and not with engineering.
- 2 In any case, his company did have the necessary experience in water and sanitary engineering and therefore the Commission's assessment was wrong.
- 3 The Commission had acted in breach of Article 12 of the Services Directive 92/50/EEC which required an answer to be given within 15 days of receipt of a written request for the reasons for rejection of an application or tender.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission made the following points in its comments:

- 1 The requirement of "necessary experience" had to be understood in the light of the expertise required; that is, a "wide breadth of knowledge and expertise and a proven track record in the field of water science including (...) water and sanitary engineering". The tenderer had to demonstrate in particular the necessary experience in sanitary and water engineering in relation to the Drinking Water Directive. This should have been clear to a potential contractor who could, in any event, have asked the Commission for clarification.
- 2 The Commission continued to maintain that Mr T.'s company did not have the required experience in the area of water and sanitary engineering although it was well qualified in other areas of water research.



3 The Commission had answered Mr T.'s letters in due time and given reasons for the decision taken.

### **The complainant's observations**

In his observations, Mr T. maintained his complaint. Furthermore he stated that the Commission should offer his company compensation for damage and lost opportunities.

### ***THE DECISION***

As concerns Mr T.'s first allegation, the crucial question was whether, under the selection criteria, the Commission was entitled to take into account experience in the field of water and sanitary engineering. It was true that under the heading "selection criteria" it was merely stated in general terms that the contractor should have the "necessary experience" in the water research field. However, when the criterion was read in conjunction with the previous heading concerning "the expertise required of the contractor" it did not appear inappropriate to consider that the "necessary experience" related to the requirements laid down concerning the expertise of the contractor; that is "wide breadth of knowledge and expertise, and a proven track record in the field of water science, including microbiology, toxicology, water and sanitary engineering." Therefore, it appeared that the Commission was entitled to take into account tenderers' experience in water and sanitary engineering when evaluating the tenders.

As for the Commission's assessment of the company's capabilities in the water and research field, there were no elements in the file to indicate that this assessment had not been carried out properly.

As for Mr T.'s allegation that the Commission had failed to observe the time limit of 15 days established by Article 12 of the Services Directive 92/50, the Directive only applies to contracts exceeding the relevant threshold value. There was no breach of the general principles of good administration since the Commission had given reasoned answers to Mr T.'s letters in due time.

On the basis of the Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the Commission and no basis for the claim that compensation should be awarded to Mr T.'s company. The Ombudsman therefore closed the case.

**PROCEDURES FOR THE ADJUDICATION OF A CALL FOR TENDERS IN PAKISTAN**

*Decision on complaint 160/97/JMA against the European Commission*

**THE COMPLAINT**

On February 1997 Mr. G. complained to the Ombudsman against the Commission, alleging maladministration in the adjudication of a call for tenders.

The complainant's firm participated in a call for tenders published by the government of Pakistan for the project n. ALA/85/18 entitled "Second Rural Vocational Training Project", financed by the Commission. The firm's proposal related to one part of that project, namely package number 5 ("demonstrators and trainers in electronics and electricity refrigeration"). It was not chosen by the evaluation committee because it was not in accordance with the technical specifications.

The complainant asked the Commission to check whether there had been any irregularities in the tender procedures or in the actions undertaken by its officials in Pakistan, which could have led to the annulment of the bid's results. In its reply, the Commission wrote that "package n. 5" had been awarded to company H. Mr G. then wrote to the Commission asking it to assess whether the decision on the tender procedure had been vitiated by formal or substantive irregularities.

Although the complainant had suggested that the package of the project which had been awarded be divided between the winner and his own firm, the Commission rejected such a possibility.

**THE INQUIRY****The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that the Government of Pakistan was the authority responsible for the development of the project, assisted by a technical group in the Pakistani Ministry of Labour and the International Labour Organisation (ILO) and that the Commission merely monitored the whole process.

As regards the non-selection of the complainant's proposal, the Commission explained that his offer had not been in accordance with the technical specifications for different reasons: (i) the training material being offered was designed for demonstration purposes rather than for a contin-

uous use in vocational education environment; (ii) the material was not in accordance with the technical specifications; (iii) some information given by the complainant's company was unclear and incomplete; (iv) an urgent request from the evaluation committee to the complainant's company requesting additional information received no reply.

With respect to the complainant's request to divide the content of the "package n.5", the Commission pointed out that the need to submit proposals for the complete package had been stated beforehand by the Government of Pakistan and the Commission in line with the conditions of the call for tenders. Moreover, it underlined that several firms had been able to put forward proposals for the whole contents of package 5.

### **The complainant's observations**

In his observations on the Commission's comments, Mr. G. stated that no reply was sent to the evaluation committee's request for further information because, in his view, the decision had already been taken.

### **THE DECISION**

It appeared from the complaint, the supporting documents and the inquiries that had been conducted that the final adjudication of the project was made by the Government of Pakistan in its capacity as contracting authority. The decision, however, was based on an evaluation report of all offers prepared by the Evaluation Committee - National Training Bureau of the Pakistani Labour Ministry (NTB), and the International Training Centre of the International Labour Organisation (ITC/ILO) - which had also to be agreed by the Commission.

According to the Commission's comments, the evaluation report considered the complainant's proposal inadequate on a number of grounds and although it had tried to review those deficiencies directly with the complainant's firm, there was no reply. The complainant did not contest these points.

The Ombudsman therefore found that the selection process had been carried out in conformity with the rules of the call for tenders, and that the Commission appeared to have followed good administrative principles in its surveillance of the process.

As regards the indivisibility of the "package n. 5", since the advice given by the Commission on this point complied with the rules of the call for tenders, the Ombudsman concluded that the Commission had not breached any principles of good administration.

The Ombudsman therefore closed the case.

### CONTESTED GRADING OF AN OFFICIAL

*Decision on complaint 198/97/PD against the European Commission*

#### THE COMPLAINT

In February 1997, Mr R. complained to the Ombudsman about his grading as a Commission official.

According to the complaint, he graduated from university in 1988 and started working in February 1989. On 16 June 1994 he became a Commission official (Grade A/8, step 2). Following successful participation in the general competition COM/A/764, he was appointed as an administrator as from 16 February 1995 in grade A/7, step 1, and with seniority in the step as from 1 February 1994. This grading decision was the object of his complaint.

Before complaining to the Ombudsman Mr R. had submitted an appeal to the Commission against this grading decision under Article 90 of the Staff Regulations. He considered that the Commission has wrongly applied its own Decision of October 1983 concerning grading. According to the complainant, correct application of the Decision would have meant that the Commission recognized that he had professional experience as from December 1989. However, the Commission only recognized the professional experience as from December 1990 and rejected the arguments set out in the complaint.

The legal background to the complaint is Article 32 of the Staff Regulations which provides:

"An official shall be recruited at the first step in his grade.

However, the appointing authority may, taking account of the training and special experience for the post of the person concerned, allow additional seniority in his grade; this shall not exceed 72 months in grades A/1 to A/4, LA/3 and LA/4 and 48 months in other grades."

The more detailed rules for grading have been laid down by the above-mentioned Decision of October 1983. Article 2 of the Decision implies that A/7 officials who have 3 years previous professional experience at the moment of recruitment shall be graded in step 1. Article 3 in the Decision and Annex II to the Decision concern additional seniority and imply that an A/7 official with 4 years previous professional experience shall be granted

12 months additional seniority and an A/7 official with 5 years previous professional experience shall be granted 24 months additional seniority and thus would be graded A/7, step 2. However, annex 1 to the Decision establishes an exception to these rules:

"Since the duration of university studies varies in the Member States between 3 and 8 years, which can lead to distortions in grading, measures have been taken to reduce the gap in practice from five years to two years.

Where university studies are short (degree corresponding to studies of less than 4 years duration), the period of professional experience taken into account begins to run one year after graduation.

Where university studies are long (degree requiring studies of more than 6 years duration), professional experience is taken into account from the seventh year of post-secondary studies."(underlining added here).

Mr R. graduated in December 1988 after university studies of 2 years duration. In view of that fact the Commission counted his professional experience as from December 1990. Mr R. considered that his professional experience should at least have been counted as from December 1989; instead of being graded A/7, step 1, he should therefore have been graded A/7, step 2.

In substance Mr R. put forward that the rule in annex 1 concerning short university studies is discriminatory to nationals of Member States where university studies are short and that the Commission had not abided by its Decision of October 1983. In that context Mr R. particularly stressed the fact that although the duration of his university studies was 2 years, they were in fact 3 years condensed studies.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that the aim of the Decision of October 1983 was to establish a number of criteria to ensure an even-handed approach to grading. Given that the duration of university studies in the Member States varies considerably, the Commission felt justified in adopting measures to reduce the effects of these discrepancies on the careers of officials, who must be recruited from as wide a geographical spread as possible, there-

by ensuring that all were treated equally in practice. Thus, the Commission contested that the Annex 1 to the Decision is discriminatory.

As for the application of the Decision, the Commission stated that it had reviewed Mr R.'s grading, maintaining that the Decision was correctly applied. In particular, the Commission stressed that the aim of Annex 1 was to reduce the gap in duration of university studies from 5 to 2 years. Reaching this aim implied that in Mr R.'s case, professional experience could not be recognized before December 1990.

### **The complainant's observations**

In his observations, the complainant maintained in substance his complaint.

### **THE DECISION**

As concerns the principle of equal treatment, it implies, according to the case law of the Court of Justice, that identical situations cannot be treated differently and different situations cannot be treated identically. The crucial question in applying this principle is to establish what is an identical or different situation.

On the one hand, one can consider that professional experience should be considered as such independently of any consideration concerning duration of university studies. In case two persons had the same professional experience, it could appear difficult to justify that the experience of one of these two persons could not be taken into account simply because of the duration of the university studies preceding the professional experience.

On the other hand, one has to concede to the Commission certain discretion in the way it decides to deal with the discrepancies in the length of university studies. The Commission has considered that duration of university studies is a relevant element to take into account when taking a decision on the grading of its officials which evidently will be reflected in their further careers. If one did not take into account the length of university studies, the implication could be that officials from Member States where the duration of university studies is short systematically had better career prospects than officials from Member States, where university studies are long.

Thus the Commission appears to be entitled to consider that differences in the duration of university studies justify a different treatment between officials with short university studies and officials with long university studies.

It is therefore not evident that the Annex 1 to the Decision of October 1983 amounts to a violation of the principle of equal treatment. However, it must

be recalled that the Court of Justice is the highest authority on questions of Community law.

As for the application of the Annex 1 to this concrete case, the Annex provides that in case of short university studies, that is degrees corresponding to less than 4 years studies, the professional experience to be taken into account begins to run one year after graduation. As Mr R. graduated in December 1988, it seemed that according to its wording, the Annex would have implied that the professional experience in his case should have been counted as from December 1989. On the other hand, the Annex presupposes that the shortest university studies are of 3 years duration and the aim is to reduce the gap between the shortest university studies and the longest ones to 2 years. According to the underlying aim, Mr R.'s professional experience should be counted as from December 1990 and the Commission has thus decided to interpret the Annex in conformity with this underlying aim. The Commission appears to be entitled to opt for such an interpretation. However, it must be recalled that the Court of Justice is the highest authority on questions of Community law.

On the basis of the European Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the European Commission. The Ombudsman therefore closed the case.

### ADMISSION TO COMPETITION REFUSED

*Decision on complaint 233/97/PD against the European Commission*

#### THE COMPLAINT

In March 1997, Mr F. complained to the Ombudsman concerning the Commission's refusal to admit him to a competition. On 6 February 1996, the Commission had published an open competition based on diplomas and oral examinations, KOM/A/975, for establishing a reserve list for a post in the career bracket A5/A4.

One of the conditions for being taken into consideration concerned work experience:

"The applicants must, after termination of the education that entitles them to participation in the competition, prove 12 years work experience in a position corresponding to the education, of which at least 6 years shall be in a field related to the nature of functions described in the competition."

The nature of functions was stated as follows in the notice:

"Leader of the Commission delegation at International Organisations in Vienna, Austria, under Directorate General I.A, Foreign relations: Europe and new independent States, the Common Foreign and Security Policy, Foreign Service.

The leader of the Commission delegation has the following tasks:

- Representing the Commission in all fields of competence and in all activities;
- Ensuring an uniform implementation of all Commission measures in foreign affairs;
- Observing, deepening and enlarging contacts with the International Organisations in place;
- Establishing and maintaining regular contacts between the Organisations and Commission services.

Moreover, applicants shall have profound knowledge of Community policies and the functioning of the Union (economical, commercial and political aspects, foreign affairs) and be able to lead a team."

In March 1996 Mr F. applied for the post. It appeared from his curriculum vitae that he holds a Ph. D. in natural sciences and that for more than eight years he worked as a scientist within this field in the USA, France and Germany. Thereafter he had been working for ten years with the Austrian Ministry for Research and Technology and his current activities involve coordination and supervision of research in the fields of electronics, data processing and communication, microsystem technics and laser technics. Within that period he had undertaken a three months course on the European Communities. It appeared, furthermore, that he was in charge of the Ministry's relations to an international organisation in questions related to information technics and communication.

In May 1996 the Selection Board informed Mr F. of its decision not to allow him to participate in the competition. On a form attached to the letter it was indicated that the Board considered that he did not possess six years of work experience in a position which corresponded to the requirements laid down in the notice of the competition. Mr F. wrote to the Selection Board asking it to review its decision. However, the Selection Board informed him that it maintained its decision because it found that Mr F.'s work experience lacked, in particular, a relevant diplomatic experience as well as a relation to the different policy areas of the European Union. Mr F. contested this decision, but the Selection Board informed him that its decision was final and that it had terminated its work.



In his complaint Mr F. claimed that the Selection Board's reasoning for not admitting him to the competition was inappropriate and contrary to the conditions published in the notice on the competition.

### ***THE INQUIRY***

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission maintained the Selection Board's position in substance. In particular it stressed that the Selection Board's decision in Mr F.'s case was fully covered by the wording of the notice of the competition. Furthermore it underlined that the Selection Board had tried to explain the reasons to Mr F. why it did not consider his work experience relevant in relation to the post to be filled.

#### **The complainant's observations**

In his observations, the complainant maintained his complaint. Furthermore, he added that the reasoning given by the Selection Board for not admitting him to the competition was drafted in a non-transparent way.

### ***THE DECISION***

Under the case law of the Court of Justice, Selection Boards have wide discretionary powers. In the exercise of these powers, Selection Boards shall respect the legal framework for their activities, laid down by the notice on the competition. Furthermore, by its very nature, the assessment of applicants involves a comparative element.

The crucial question in this case is whether the Selection Board had respected the wording of the notice on the competition. It appeared from the conditions related to working experience that, in order to be admitted to the competition, the applicant needed to have worked in relation to international organizations and to possess a profound knowledge of Community policies. The Selection Board interpreted this to the effect that the applicant should have a diplomatic experience relevant for the post to be filled which involved a relation to the policy areas of the Union. In doing so, it appeared that the Selection Board acted in accordance with the notice.

As for the allegation that the Selection Board's reasoning lacked transparency, it must be recalled that according to the case law of the Court of Justice, the reasoning of a decision must allow the addressee and a judge, in case proceedings are brought against the decision, to identify the reasons on which the decision is based. Furthermore, the Court of Justice has stated that when assessing the adequacy of the reasons given, one should

bear in mind the context in which the reasoning has been given. It was true that the Selection Board's reasoning in its letter to the complainant was very short. However, the reasons stated appeared to allow Mr F., or a judge in case Mr F. had lodged legal proceedings against the decision as well as the European Ombudsman, to identify the two particular points on which the Board found Mr F.'s experience insufficient. Thus, the reasoning appeared to be adequate.

On the basis of the Ombudsman's inquiries into this complaint, there appeared to have been no maladministration by the Commission. The Ombudsman therefore closed the case.

### **FURTHER REMARKS**

Given the considerable number of complaints that the Ombudsman received concerning the lack of transparency in the procedures for the competitions organized by the Community Institutions, he opened an inquiry on his own initiative on this matter on 7 November 1997, including the question whether the Commission could communicate evaluation criteria to applicants who so request.

## **3.1.6 THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES**

### **RECRUITMENT: CRITERIA FOR THE SELECTION OF CANDIDATES IN AN OPEN COMPETITION**

*Decision on complaint 869/10.9.96/EP/IT/DT against the Court of Justice*

#### **THE COMPLAINT**

In September 1996, Mr P. complained to the European Ombudsman concerning his exclusion from a competition for legal administrators organised by the Court of Justice (CJ/A/11). Following his application on 30 August 1995, the Selection Board informed him on 23 May 1996 that he had been excluded because he had failed to prove his good knowledge of a second Community language. He appealed and the Selection Board reconsidered its decision as regards the foreign language requirement. However, it informed Mr P. that he still could not take the written test, since during the second stage of the selection, the Selection Board had established that his average university marks were inferior to the criterion established for the competition (99 out of 110 points).

In the complainant's view, this criterion for the selection of candidates was "new and unfounded". Following a second appeal, the Selection Board confirmed its decision not to admit him to the written examinations.

On the basis of the above, Mr P. complained about the long delay in the selection procedure. He also alleged discrimination in the decision of the Selection Board to establish a minimum mark level (99/110) with no consideration of his professional experience of six years as a company lawyer and of one and a half years as an attorney.

### **THE INQUIRY**

#### **The comments of the Court of Justice**

The complaint was forwarded to the Court of Justice. In its comments, the Court explained that the selection of the candidates to be admitted to the written tests in competition CJ/A/11 consisted of two stages. The two stages were explained in the competition guide. In the first stage, the Selection Board established a list of candidates who met the requirements defined in the announcement of competition (acquired title and degree, professional experience, linguistic experience and age limit). In the second stage, the Selection Board, established and then applied criteria for evaluation of degrees in order to decide on the candidates to be admitted to the examination.

After evaluation of the candidates, the Selection Board decided not to admit the application of Mr P. since it did not contain a justification of the language skills required under section III.B.2 of the announcement of competition. However, following the complainant's request, the Selection Board re-examined the matter and found that a document was in fact annexed to the candidature justifying knowledge of the required language skills.

Having taken Mr P.'s application to the second stage of the selection procedure, the Selection Board decided to exclude him since his degree did not have the minimum mark established as the criterion by the Selection Board.

The Court also commented that, in its view, the case should not fall within the mandate of the Ombudsman, because as far as staff matters were concerned the procedure to be followed was that foreseen in Article 90(1) and (2) of the Staff Regulation. It added that the Ombudsman might inform Mr P. that the most appropriate action would be an appeal to the Court of First Instance.

#### **The complainant's observations**

In his observations, Mr P argued that the written guide for the competition should have clearly indicated, in order of importance, the relevant requirements to be taken into account by the Selection Board for the selection pro-

cedure for the competition. The complainant also insisted on his dissatisfaction at the length of time taken by the selection procedure.

### **THE DECISION**

#### **1 Admissibility of the case**

Under the scheme established by the Treaty and the Statute of the Ombudsman, the admissibility of complaints is determined by the Ombudsman in accordance with Community law.

Article 2 (8) of the Statute provides that no complaint can be made to the Ombudsman concerning work relationships between the 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*". This procedural requirement applies only to officials and other servants of the Communities. A candidate in an open competition is not an official or other servant of the Communities.

A candidate in an open competition may appeal to the Court of First Instance in accordance with Article 91 of the Staff Regulations. Alternatively, the candidate may complain to the European Ombudsman.

Mr P. chose to complain to the Ombudsman. There is no provision in the Statute of the Ombudsman which imposes on the complainant the obligation to wait until the time-limit for possible legal proceedings has been exhausted. Only if the complainant actually began legal proceedings, should the Ombudsman declare the complaint inadmissible.

#### **2 Use of the average point criterion**

Section VI of the announcement of competition gave the Selection Board the discretion of choosing among different selection criteria. As regards the marks obtained during the university studies, such criterion is explicitly referred to in the last paragraph. Thus, it does not appear unreasonable to make a choice on the basis of a pre-established mark average, even if such criterion may not appear as a perfect one.

#### **3 Time foreseen for the first stages of the competition**

The timing of the selection procedure in Section XII of the announcement of competition was presented as an estimate not a fixed schedule. The

large number of candidates who participate in this type of competition can make it necessary to postpone dates initially foreseen for the first tests.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the case.

## 3.2 CASES DROPPED BY THE COMPLAINANT

### 3.2.1 THE EUROPEAN COMMISSION

#### DELAY IN REPLYING TO COMPLAINANTS

*Decision on complaint 732/17.7.96/BAWA/NL/VK against the European Commission*

In July 1996, a Dutch law firm complained to the Ombudsman on behalf of two Dutch companies about the Commission's alleged failure to reply to complaints relating to infringements of Directive 92/50/EEC<sup>1</sup> by the Netherlands.

The complaint was forwarded to the Commission. In its comments, the Commission stated that - due to a misunderstanding in the Commission's services - a delay arose and that it had taken measures to improve internal procedures. As regards the infringement by the Netherlands, the Commission stated that there was no legal basis to bring formal action against the Netherlands.

The Commission's comments were sent to the complainant, who replied that he wished to drop the case.

The Ombudsman therefore closed the case.

#### RECRUITMENT: WRONG INFORMATION

*Decision on complaint 919/2.10.1996/LJ/B/PD against the European Commission*

In October 1996, Mr J., a Belgian citizen, complained to the Ombudsman about administrative irregularities in the filling of a post for the Tri-national Commission for a development project in Latin America. He claimed that the Commission had given him wrong information concerning the qualifications needed to fill the post.

The complaint was forwarded to the Commission. In its comments, the Commission stated that all the candidates for the post had received the

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<sup>1</sup> OJ 1992 L 209/1.

same information. Any possible error would therefore have prejudiced all the candidates.

The complainant's observations stated that, since the Commission had recognized that his complaint was well-founded, he did not wish to pursue the matter further.

In view of the complainant's wish not to pursue the matter further, the Ombudsman closed the case.

### ANTI-DUMPING DUTIES

#### *Decision on complaint 349/97/PD against the European Commission*

In April 1997, a company complained to the Ombudsman concerning the imposition of an Anti-Dumping Duty on zinc without prior notice. The directors had made several inquiries whether a duty was to be imposed or not during the spring of 1997. They were always informed that duty would be imposed but that this was not imminent and that 6 to 8 weeks notice would normally be given. The company directors tried to contact the Commission for further information on the matter without any success.

The complaint was forwarded to the President of the Commission. Even before the Commission replied, the Ombudsman received a further letter from the complainant indicating his wish to withdraw the complaint as the company was at the time in direct contact with the Commission.

The Ombudsman therefore closed the case.

### RESEARCH: REFUSAL OF INFORMATION

#### *Decision on complaint 474/97/VK against the European Commission*

Mrs B., a Greek student, complained to the Ombudsman in June 1997 concerning a request for information which she had addressed to the Commission representation in Athens. She claimed that the office staff and in particular, the director of the documentation department, were rude and that they refused to provide information to research students.

During the course of the inquiries, the complainant informed the Ombudsman that she no longer wished to pursue her complaint because a new director at the Commission representation had been appointed and the situation had now improved.

In view of the fact that the complainant no longer wished to pursue her complaint, the Ombudsman closed the case.

### 3.3 CASES CLOSED FOR OTHER REASONS

#### 3.3.1 THE EUROPEAN PARLIAMENT

##### **DISMISSAL BY THE PARLIAMENT**

*Decision on complaint 458/27.2.96/HS/B/KT against the European Parliament*

On 15 February 1996, Mr S. made a complaint to the European Ombudsman concerning his dismissal by the European Parliament.

On 11 March 1996, the complaint was forwarded to the President of the European Parliament. After receiving the comments of the Parliament and the observations of the complainant on those comments, the Ombudsman decided to continue his inquiries into the case.

On 17 July 1997, the European Parliament informed the Ombudsman that the complainant had initiated legal proceedings before the Court of First Instance in relation to the subject matter of his complaint. A copy of the pleadings in the case was forwarded to the Ombudsman.

Because the alleged facts had become the subject of legal proceedings, the Ombudsman terminated his consideration of the complaint on 21 July 1997 in accordance with Article 138e of the Treaty establishing the European Community.

In accordance with Article 2 (7) of the Statute of the Ombudsman, the outcome of the Ombudsman's inquiries carried out up to that point was filed without further action.

#### 3.3.2 THE EUROPEAN PARLIAMENT AND THE EUROPEAN COMMISSION

##### **WITHHOLDING OF COMMUNITY TAX BY THE EUROPEAN COMMISSION AND THE EUROPEAN PARLIAMENT TO FREE-LANCE INTERPRETERS**

*Decision on complaints 463/28.2.96/RK/CH/PD, 770/29.7.96/MAC/CH/PD and 1017/13.11.96/AVL/FR/JMA against the European Commission and the European Parliament*

Mr K., Ms A.-C. and Ms L. each complained separately to the European Ombudsman concerning the withholding of Community tax by the European Parliament and the Commission from the remuneration of free-lance interpreters. The complaints were lodged in February 1996, in July 1996 and in November 1996, respectively.

The complainants had worked for a number of years as free-lance interpreters for the Parliament and the Commission. Both institutions deducted a Community tax from their remuneration. The Parliament adopted this practice in 1983, on the basis of a decision by the Bureau of the Parliament. This decision modified Article 78 of the Rules Applicable to Other Servants, so as to assimilate free-lance interpreters to auxiliary session staff. The Commission adopted the practice by means of an agreement concluded in 1989 with the "Association Internationale des Interprètes des Conférence" (AIIC).

The complainants, who live in Switzerland, were subject to double taxation on their remuneration from 1989-1994, i.e. they paid Swiss income tax and the Community tax. In 1994, the AIIC agreement was modified to allow for repayment of the national taxes. However, the Commission demanded detailed documentation of the national taxes already paid. The complainants argued that this requirement violated their right to privacy.

During the course of the Ombudsman's inquiry, two of the complainants, namely Ms A.-C. (770/29.7.96/MAC/CH/PD) and Ms L. (1017/13.11.96/AVL/FR/JMA), began proceedings against the Commission in the Court of First Instance (Cases T-202/96 and T-204/96). These proceedings appear to involve the same alleged facts as the complaints to the Ombudsman.

In accordance with Article 2 (7) of the Statute of the Ombudsman, in the case of these two complaints, the outcome of the Ombudsman's inquiries carried out up to that point was filed without further action.

The Ombudsman considered that he could not continue his inquiries into the third complaint, submitted by Mr K. (463/28.2.96/RK/CH/PD) without taking a stand on the issues of fact and law which are currently before the Court of First Instance in cases Cases T-202/96 and T-204/96.

The Ombudsman therefore suspended further consideration of this complaint, pending the outcome of the cases.



### 3.3.3 THE EUROPEAN COMMISSION

#### LACK OF RECOGNITION OF MEDICAL DEGREES IN PUBLIC HEALTH BY THE SPANISH AUTHORITIES

*Decision on complaint 713/11.07.96/LMV/ES/PD against the European Commission*

#### **THE COMPLAINT**

In June 1996 Mr M. complained to the Ombudsman about the refusal of the Spanish authorities to recognise his qualifications, awarded in France, as a public health specialist and the alleged failure by the Commission to ensure the correct application by Spain of Directive 93/16/EEC<sup>1</sup>.

Having completed his medical degree in France, Mr M. sought to have it recognized by the Spanish authorities. As with other applicants, the Spanish authorities refused since, at the time, the relevant Community legislation (Directive 75/262/EEC) had not been transposed the Spanish law. Although Directive 75/262 was subsequently modified by Directive 93/16/EEC, its most relevant obligation laid down in Article 8 remained unchanged. Article 12bis of the Spanish implementing legislation (RD 2072/95) incorporated the provisions of Article 8 of the Directive, although only partially.

The Commission started infringement proceedings against Spain on this matter in 1990, although it never reached the stage of sending of a reasoned opinion. The infringement procedure was begun again in 1996 since Spain modified its original implementing legislation at that time. A complementary letter of formal notice had to be forwarded in 1996. For the six years in which the procedure had been lasting, the Commission indicated that its services had been assessing the Spanish legislation, through some contacts and meetings with the Spanish authorities.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In tis comments, the Commission stated its intention to pursue the infringement proceeding against Spain for its incorrect transposal of Directive 93/16/EEC and to take the necessary actions to bring the matter before the European Court of Justice. The complainant was invited to submit observations on the Commission's comments.

From the information supplied to the Ombudsman, it appeared that Mr M. had also sent a petition on the same subject to the European Parliament, and that the Committee on Petitions of the Parliament was dealing with the matter.

### **THE DECISION**

In view of the fact that the Committee on Petitions was dealing with Mr M.'s petition, there were no grounds for the Ombudsman to conduct further inquiries into the complaint. The European Ombudsman decided therefore to close the case.

### **ALLEGED DISCRIMINATION IN AN EXAMINATION**

*Decision on complaint 944/15.10.96/JBW/B/BB against the European Commission*

Mr W. had participated in an internal competition of the European Commission (COM/T/A/96). He passed the written examinations, but failed the oral examination.

In his complaint to the Ombudsman on 3 October 1996, he alleged that an unfair and discriminatory question was asked of him at the oral examination.

The complaint was forwarded to the Commission. By letter dated 17 February 1997, the Commission informed the Ombudsman that Mr W. had submitted an appeal on 5 November 1996 against the decision of the Selection Board in accordance with Article 90 of the Staff Regulations and that the appeal was still being dealt with.

According to Article 2.8 of the Statute of the European Ombudsman:

*“No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all possibilities for 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”.*

As it appeared that the procedures referred to in Article 90 of the Staff Regulations were still pending, the Ombudsman closed the case without pursuing his inquiries further.

**STAFF: PENSION RIGHTS OF A LOCAL AGENT**

*Decision on complaint 970/24.10.96/DBR/B/BB against the European Commission*

In October 1996, Mrs R. complained to the Ombudsman about problems related to the recognition of her pension rights based on her status as a local agent of the Commission.

The complaint was forwarded to the Commission, which informed the Ombudsman that Mrs R. had submitted an internal appeal on 23 October 1996 under Article 35 of the regime applicable to local agents in service in Bénin.

According to Article 2.8 of the Statute of the European Ombudsman:

*“No complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all possibilities for 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”*

As it appeared that this condition was not met, the Ombudsman closed the case without pursuing his inquiries further.

**3.3.4 THE COURT OF AUDITORS****ADMISSIBILITY: TIME LIMIT EXCEEDED**

*Decision on complaint 525/25.3.96/HDC/FR/PD/IJH/XD against the Court of Auditors*

In July 1995, Mr C. complained to the Ombudsman against the Court of Auditors concerning events that took place in the 1980s. The Ombudsman declared the complaint inadmissible under Article 2.4 of the Statute of the Ombudsman, because the facts on which the complaint was based had been known to the complainant for more than two years.

In March 1996, Mr C. made a further complaint against the Court of Auditors, alleging new facts. After considering the comments of the Court of Auditors and the complainant's observations on the comments, the Ombudsman determined that the new complaint did not involve new facts in comparison with the earlier complaint. He therefore closed the case as inadmissible under Article 2.4 of the Statute.

## 3.4

## CASES SETTLED BY THE INSTITUTION

## 3.4.1 THE EUROPEAN PARLIAMENT

**RECRUITMENT: LANGUAGE DISCRIMINATION**

*Decision on complaint 627/5.6.1996/PS/B/VK against the European Parliament*

Mr. S, a Belgian national, complained to the European Ombudsman in June 1996 about a call for applications, published in the *Official Journal*, for vacancies in the surveillance and security services of the European Parliament in Brussels. According to the call for applications, the required language qualification was French only. The complainant stated that this appeared to discriminate against the Flemish language.

The complaint was forwarded to the European Parliament for comments. The Parliament replied that the call for application concerning posts in the security services in Brussels had been withdrawn as of 21 January 1997.

The reply of the Parliament was forwarded to the complainant with an invitation to submit observations if he so wished. No observations were received.

On the basis of the Ombudsman's inquiries, it appeared that the Parliament had taken measures to prevent any possible language discrimination in the particular call for applications for posts in the security services of the Parliament in Brussels.

The European Parliament appeared to have settled the matter in a satisfactory way for the complainant and the Ombudsman therefore closed the case.

**EXCLUSION FROM AN INVITATION TO TENDER**

*Decision on complaint 7/97/BB against the European Parliament*

**THE COMPLAINT**

On 3 January 1997, Ms de V., a Belgian citizen, complained to the Ombudsman about her exclusion from an invitation to tender published by the European Parliament. The Parliament published an international invitation to tender with the topic "*Accessibilité des handicapés au Parlement Européen*". The complainant sent her offer in due time and went on holiday. Meanwhile, the Parliament sent a letter to all the tenderers explaining that, due to an administrative problem in the reception of the mail, the

Parliament was unable to open the tender offers. Therefore, the Parliament requested that the tenderers send copies of their offers within a new deadline. On her return from holiday, Ms de V. found that this new deadline had already elapsed. She immediately sent a fax to the Parliament explaining the situation and proposing to send a copy of her offer the following Monday. The Parliament replied stating that Ms de V. was not authorized to participate in the invitation to tender. The complainant requested that the invitation to tender should be annulled on grounds of maladministration relating to the procedures and that a new invitation be launched.

### **THE INQUIRY**

On 6 February 1997, the European Ombudsman forwarded the complaint to the President of the Parliament with a request for comments.

Ms de V. wrote to the Ombudsman on 25 February 1997 stating that the Parliament had informed her by letter dated 20 February that it had decided to annul the original invitation to tender and that it would launch a new invitation in the near future. Ms de V. expressed her satisfaction and thanked the Ombudsman for his investigation into the matter.

### **The Parliament's comments**

The Parliament informed the European Ombudsman on 9 April 1997 that the invitation to tender had been annulled by notice in the *Official Journal* of 15 March 1997 and that a new invitation would be launched in the near future. The Parliament explained that the reason to annul the tender procedure was an unfortunate clerical error on 30 October 1996 while opening the offers. The Parliament mentioned that it had informed both Ms de V. and her lawyers of this.

### **THE DECISION**

The European Parliament appeared to have settled the matter in a satisfactory way for the complainant and the Ombudsman therefore closed the case.

## **AMOUNTS PAID TO TRAINEES**

### *Decision on complaint 37/97/JMA against the European Parliament*

Ms P., jointly with several other complainants, complained in January 1997 to the European Ombudsman that the amount paid to them as trainees by the European Parliament did not correspond to the figure initially offered.

When the Traineeship Service of the European Parliament informed the complainants of the acceptance of their applications for traineeships it stated that they would receive a payment of approximately 49 000 Belgian Francs per month. Subsequently, however, the complainants were informed that the monthly payment would be only 35 054 Belgian Francs.

The European Parliament justified this change on the grounds that, between the two communications, a new Regulation on traineeships, with different financial conditions, had been approved by the Secretary-General of the Parliament.

The application of these new conditions was contested by the complainants before the responsible services of the Parliament and also by complaint to the Ombudsman.

As a result of these initiatives, the Parliament reconsidered its position and decided to pay to the complainants the amount originally offered. Ms P. therefore informed the Ombudsman that the complainants' demands had been satisfied and they did not wish to pursue the complaint.

The European Parliament appeared to have settled the matter in a satisfactory way for the complainant and the Ombudsman therefore closed the case.

### ACKNOWLEDGEMENT OF A PETITION TO THE EUROPEAN PARLIAMENT

*Decision on complaint 569/97/IJH against the European Parliament*

#### **THE COMPLAINT**

On 21 June 1997, Mr P. made a complaint to the European Ombudsman alleging that the European Parliament had failed to acknowledge receipt of a petition that he had addressed to the President of the Parliament on 26 April 1997. He had written again on 18 May 1997 and 5 June 1997 to ask for an acknowledgement.

#### **THE INQUIRY**

##### **The Parliament's opinion**

On 2 July 1997, the complaint was forwarded to the President of the European Parliament. In summary, the Parliament made the following points in its opinion:

Since 1991, Mr P. had sent a steady flow of letters, often drafted with identical wording, requesting Parliament to encourage the use of Esperanto. Three of the letters were registered as petitions (515/91,

364/93 and 270/95. Each time the Committee on Petitions concluded its consideration of the petition and informed him of the main decisions taken by the Parliament on the use of languages.

Mr P. wrote several times to complain about the decisions taken and to insist on the value of Esperanto. More recently, he asked for a new petition to be registered. Since its substance and wording was the same as that of the petitions that had been dealt with, his correspondence was not registered by the Parliament as a new petition. Instead, it was forwarded to the Committee on Petitions as correspondence relating to his last petition, no. 270/95.

The Chairman of the Committee on Petitions intended to consult the Committee, at a meeting in June or July 1997, on the follow up to be given to Mr P.'s letters. He indicated to the Committee's secretariat that, in the meantime, it was not necessary - or even appropriate - to acknowledge correspondence from someone who had sent a steady stream of letters to the Parliament over the years, which on several occasions had been registered as petitions, translated into all languages and examined and replied to by the Committee on Petitions.

The Committee on Petitions did not have time to deal with the matter at its meetings in June and July 1997. On 11 July 1997, the Chairman of the Committee on Petitions wrote to inform Mr. P. that the matter would be submitted to the Committee at a later date and that he would be informed of the outcome.

### **The complainant's observations**

The Parliament's opinion was forwarded to Mr P. on 28 October 1997. His observations referred to the Parliament's opinion as giving a full explanation of his complaint and indicated that he was satisfied that the Committee on Petitions would be dealing with the matter. He stated that the European Ombudsman could now close the file on the complaint.

### **THE DECISION**

On the basis of the opinion from the European Parliament and the complainant's observations, the Parliament appeared to have settled the matter in a satisfactory way for the complainant. The Ombudsman therefore closed the case.

### 3.4.2. THE COUNCIL

#### CONSERVATION OF DRAFT AGENDAS OF THE COUNCIL OF JUSTICE AND HOME AFFAIRS MINISTERS

*Decision on complaint 1054/25.11.96/STATEWATCH/UK/IJH against the Council*

In November and December 1996, Mr B. made six complaints to the European Ombudsman against the Council.

Following the Ombudsman's decision to begin inquiries into the six complaints, the Council questioned the competence of the Ombudsman to deal with them. On 15 April 1997, the Ombudsman wrote to the Council explaining his decision that the complaints fell within his mandate and on 20 June 1997 the Council sent its opinion on the merits of the complaints.

The issue of the Ombudsman's competence is dealt with in chapter 2 (pp 17-27 above).

This summary deals with the Ombudsman's decision on the merits of one of the complaints. At the end of 1997, the Ombudsman's inquiries into the other five complaints were still continuing.

#### **THE COMPLAINT**

The complaint stated that the Council appeared to be destroying agendas of meetings held under the Council of Justice and Home Affairs Ministers after one year.

In summary, the evidence presented by Mr B. was as follows:

He wrote to the Council in 1995 requesting the agendas of 11 meetings of groups coming under the K4 Committee and the agendas of the meetings of the Steering Groups and their Working parties during 1994. In both cases, the reply from the Council stated that the Agendas existed only as telexes which are not kept for more than one year.

In May 1996, he wrote to the Council with a similar request relating to meetings held under the Justice and Home Affairs Ministers from July 1994 to June 1996. In its reply, the Council stated that the relevant documents are not conserved. He wrote again to the Council in July 1996 requesting that it re-consider its policy of not conserving the documents. He received a reply from the Council which he considered failed to address his request.



The requests were made under the Council Decision of 20 December 1993 on public access to Council documents.<sup>1</sup>

In his complaint to the Ombudsman, Mr B also referred to Council Regulation 354/83 concerning the opening to the public of historical archives<sup>2</sup> which foresees the transfer to historical archives of all documents and records that have administrative or historical value. He claimed that the agendas of meetings relating to Justice and Home Affairs matters contain essential information for the citizen in establishing the historical record of the Council's activity and that these documents should be preserved.

### **THE INQUIRY**

#### **The Council's opinion**

The complaint was forwarded to the Council in January 1997. Following the Ombudsman's confirmation of his competence to deal with the matter, the Council sent its opinion on the merits of the complaint. The opinion stated:

*"This complaint refers to the conservation and incorporation in the historical archives of telexes sent to delegations concerning the convening of meetings.*

*Such telexes are retained in the existing computerized system for despatching telexes for approximately one year. After that period, systematic classification of such documents falls within the internal organization of each department of the Council General Secretariat.*

*A record of each meeting convened is moreover drawn up solely on the basis of the agenda for the meeting, which is adopted at the beginning of the meeting itself on the basis of the draft agenda sent by telex but which may differ from that draft.*

*However, since the problem arose as a result of the requests made by Mr B., draft agendas for Justice and Home Affairs (JHA) meetings have been systematically kept by the General Secretariat departments concerned."*

#### **The complainant's observations**

The Council's comments were forwarded to Mr B. in June 1997. His observations stated that the complaint was satisfied.

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<sup>1</sup> OJ 1993 L 340/43.

<sup>2</sup> OJ 1983 L 43/1.

### **THE DECISION**

According to the comments of the Council, it responded to the complaint by altering its practices so that draft agendas for Justice and Home Affairs meetings are systematically kept by the General Secretariat departments concerned.

The complainant's observations stated that the complaint was satisfied.

It therefore appeared that by systematically keeping draft agendas of its Justice and Home Affairs meetings, the Council had satisfied the complainant. The Ombudsman therefore closed the case.

### **3.4.3 THE EUROPEAN COMMISSION**

#### **FAILURE TO REPLY TO CORRESPONDENCE**

*Decision on complaint 604/21.5.96/SW/IRL/IJH against the European Commission*

#### **THE COMPLAINT**

On 16 May 1996, Mrs W. made a complaint to the European Ombudsman alleging that the Commission had failed to reply to correspondence.

She had sent a letter to the European Commission office in Dublin concerning the refusal of the Irish authorities to recognize teaching qualifications she had acquired in the UK. On 26 July 1995, the Commission office in Dublin replied to her, stating that her letter would be forwarded to an official in the Secretariat General of the Commission and that she should hear from him in the near future.

Mrs W. complained that she had received no further communication from the Commission about the matter.

#### **THE INQUIRY**

##### **The Commission's opinion**

The complaint was forwarded to the Commission. In its opinion, the Commission stated that the Secretariat-General had forwarded Mrs W.'s letter of 12 July 1995 to the appropriate Directorate-General and that:

*"an internal inquiry has revealed that the letter was not dealt with because of a large volume of correspondence in the department concerned, which also deals with other matters relating to citizens. The Commission regrets any inconvenience which may have been caused to Ms W. It would also point out that a clear answer to the particular*

*question she asked could be found in the user guide to the general system of recognition of professional qualifications..."*

As regards recognition of her teaching qualifications in Ireland, the Commission's opinion stated that her case fell within the scope of Directive 89/48/EEC<sup>1</sup> which provides that, in cases where there are substantial differences between the training acquired by the migrant and that required by the host State, the latter may require either an adaptation period or an aptitude test, whichever the person concerned prefers.

The opinion concluded by stating that the Commission would contact the national co-ordinator for the application of Directive 89/48/EEC to obtain further information on Mrs W.'s case and that it would inform her of the result.

The Commission's opinion was forwarded to Mrs W. with an invitation to submit observations if he so wished. No observations were received.

### **FURTHER INQUIRIES**

On 16 October 1997, the Ombudsman's services contacted Mrs W. by telephone. She stated that she had not received the further communication from the Commission which it had promised in its opinion.

The Ombudsman's services then contacted the Commission to inquire about the position.

On 14 November 1997, the Commission sent to the Ombudsman copies of correspondence about Mrs W.'s case which DG XV had addressed to the Irish authorities on 16 October 1997 and 12 November 1997, together with a reply from the Irish authorities dated 13 November 1997.

On 19 November 1997, the Commission sent to the Ombudsman a copy of a letter that it had addressed to Mrs W. on 18 November 1997, following its correspondence with the Irish authorities. This letter advised her to contact the relevant national authorities to indicate her choice of an aptitude test or adaptation period. The letter gave her the name, address, telephone and fax numbers of the person to contact.

The letter also stated that the Community institutions have no power to revoke an administrative decision taken by national authorities and that Article 8 of Directive 89/48/EEC gives the right of appeal before a national court or tribunal.

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<sup>1</sup> OJ 1989 L 19/16.

### THE DECISION

- 1 In its opinion, the Commission stated that the complainant's letter of 12 July 1995 was not dealt with because of a large volume of correspondence in the department concerned. It expressed regret for any inconvenience which may have been caused.
- 2 Whilst an unexpectedly large volume of correspondence could explain delay in replying to a letter, it does not constitute an acceptable reason for failure to reply. This is especially so when, as in the present case, the Commission has specifically informed the person concerned that a reply will be given.
- 3 The Commission's opinion also pointed out that an answer to the complainant's question could be found in the user guide to the general system of recognition of professional qualifications. It would, therefore, have been helpful if the Commission office in Dublin had referred the complainant to the user guide in response to her inquiry. In this context, the Ombudsman noted that, since August 1996, the Commission (DG X) has provided a service called "Europe Direct" which is intended to give quick answers to general requests for information which are addressed to the Commission.
- 4 The Commission's letter of 18 November 1997 to the complainant appeared to deal with the questions raised in her letter of 12 July 1995.

In view of point 4 above, the Commission had acted to settle the complaint in a satisfactory way. The Ombudsman therefore closed the case.

### FAILURE TO REPLY TO LETTERS

#### *Decision on complaint 723/16.7.96/EJ/IRL/KH against the European Commission*

In July 1996, Mr J. complained to the Ombudsman concerning the failure of the Commission to reply to a letter and a reminder from him. In July 1995 he addressed the Commission representation office in Ireland on a question concerning insurance. The letter was transmitted to the Commission in Brussels. As Mr J. did not hear from Brussels, he sent a reminder. Finally, he complained to the Ombudsman.

The complaint was forwarded to the Commission. In its comments, the Commission apologized for not having answered Mr J.'s letter in time. It stated that failure was due to a malfunction in the internal mail system of the Commission and that measures had been taken to ensure a better follow-up of incoming mail. Furthermore, the Commission annexed a letter of

18 October 1996 it had addressed to Mr J., replying to the issue he had put forward in his initial letter.

The complainant did not make any observation on the Commission's comments.

The Commission had recognized and apologized for the error that had occurred and had taken steps to put the matter right and thereby settle the matter in a satisfactory way for the complainant. The Ombudsman therefore closed the case.

### HANDLING OF A COMPLAINT ON BARRIERS TO SOCIAL SECURITY PAYMENTS

*Decision on complaint 785/2.8.96/PKP/IT against the European Commission*

#### **THE COMPLAINT**

On 29 July 1996, Ms P. complained to the European Ombudsman that the Commission had taken no action following the failure by the Italian authorities to comply with the Regulation on the application of social security schemes to employed persons and their families moving within the Community.<sup>1</sup>

Ms P. arrived in Italy on 8 October 1994, after being unemployed in Finland since June of that year. She registered with the labour office in Padua on 10 October 1994. The labour office demanded that she obtain a 'work card' from her local authority in order to receive unemployment benefits. As Ms P. was not resident in Padua, this document could not be issued to her until the end of October 1994. During this period the Italian authorities refused to pay her any unemployment benefit.

Ms P. complained that the demand by the Italian authorities that she fulfil certain administrative requirements in order to receive unemployment benefits was contrary to Article 69 of Regulation 1408/71.

Ms P. initially complained to the EFTA supervisory authority, but as a result of Finland's accession to the European Union on 1 January 1995, her complaint was transferred to the European Commission (DG V) on 28 March 1995. She also wrote to the Commission on 30 May 1995 about the problem.

<sup>1</sup> Council Regulation (EEC) 1408/71, of 14 June 1971.

## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments were as follows:

After receiving the complaint, it had contacted the Italian authorities informally.

When it appeared that no progress was being made, it wrote to the Italian Ministry for Labour and Social Affairs asking that the relevant authorities apply the rules laid down in Article 69 of Regulation 1408/71 to the case. Subsequently, the Commission's services contacted the Italian authorities by telephone, and were assured that the problem would be resolved immediately.

The Commission had taken the view that, in the light of other similar cases, the situation would be resolved in the near future without any need for further action. This is why it did not feel it necessary to contact the complainant again.

Having been contacted regarding this matter by the Ombudsman, the Commission realised that insufficient progress had been made and once again contacted the Italian authorities, who confirmed that the matter would be resolved.

### **The complainant's observations**

The Commission's comments were forwarded to Mrs P. She subsequently informed the Ombudsman that the unemployment benefits she claimed had been paid to her on 26 March 1997.

## **THE DECISION**

Since Mrs P. had received the unemployment benefits which she claimed, the matter appeared to have been settled in a satisfactory way for the complainant. The Ombudsman therefore closed the case.

## **DISCLOSURE OF DOCUMENTS CONCERNING INFRINGEMENT PROCEDURES**

*Decision on complaint 790/5.8.96/GM/IT/DT against the European Commission*

## **THE COMPLAINT**

Mr M. complained in July 1996 to the European Ombudsman that the Commission had failed to make available to him documents concerning an

infringement procedure against Italy under Article 169 of the Treaty. The infringement procedure concerned the award of a public contract for building a bridge over the Messina Straits.

Mr M. had a professional interest in the development of a road link over the Messina Straits, for which he had designed a special bridge. He informed the then President of the Commission, Mr DELORS, of his ideas and asked for his support in implementing the scheme. The Commission thanked Mr M. for his interest and informed him that it could participate in projects of this type only if requested to do so by the Italian Government.

The Italian authorities awarded the contract to a company in which the majority shareholder was the Italian public holding company, IRI. Following the award, the Commission opened infringement proceedings against Italy. Mr M. wrote to the Italian Foreign Ministry on 9 February 1996, requesting a copy of the relevant correspondence with the Commission. A copy of the letter was forwarded to the Commission.

The Commission replied that it was up to the Italian authorities to resolve the issue. The Italian Foreign Ministry replied that various consultations with the Commission had revealed that the documents requested could not be made public.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments were as follows:

Mr M. had never asked the Commission directly for the documents in question; he had merely sent to the Commission a copy of the request he had addressed to the Italian Foreign Ministry.

When consulted by the Italian Foreign Ministry about the request, the Commission replied that, as far as the Commission's services were concerned, confidentiality applied, but made it clear that the Italian authorities were free to decide their own policy in this connection.

If the request had been addressed to it directly, the Commission would not have been able to grant it, since documents concerning infringement procedures come under the exceptions provided for in the Commission Decision concerning public access to documents.<sup>1</sup>

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<sup>1</sup> Commission Decision of 8 February 1994 on public access to Commission documents *OJ* 1994, L46/58.

### **The complainant's observations**

In his observations on the Commission's comments, Mr M. stated that the request for funding from the company originally selected to carry out the building work had not been approved, and hence the project would not be carried out. The complainant expressed satisfaction at this result, which appeared to put an end to the problem, thanking the Ombudsman for his involvement and the steps he had taken.

### **THE DECISION**

Since the complainant's observations indicated that the matter had been resolved in a satisfactory way for him, it appeared unnecessary to carry out further inquiries. The Ombudsman therefore closed the case.

## **FAILURE TO REPLY TO LETTERS**

*Decision on complaint 835/22.8.96/GL/F/VK against the European Commission*

### **THE COMPLAINT**

Mr L., who worked at the French national statistics institute (INSEE), complained to the Ombudsman in August 1996 that the Commission had failed to reply to his letters concerning standards established by the International Standards Organisation (ISO).

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. The Commission's comments stated that Mr L.'s first letter was addressed to the editorial office of the Bulletin of the European Union. The letter took the form of a note drawing attention to certain facts without asking for a response. The second letter, which was addressed to the Secretariat General, did require a response. The Commission expressed regret that - due to problems of internal coordination - the complainant's letters had remained unanswered. A letter of reply, dealing with the matter of substance concerning the ISO standards, had been sent to the complainant.

#### **The complainant's observations**

The Commission's comments of the were forwarded to the complainant, with an invitation to submit observations if he so wished. As a reply, the complainant sent to the Ombudsman a copy of his reply to the Commission's letter. In this reply, the complainant expressed his satisfaction with some issues of substance dealt with in the Commission's letter. He expressed a different opinion on other issues of substance.



**THE DECISION**

The Commission acknowledged that it should have replied earlier to the complainant's letters and apologised for its failure to do so. No further remark by the Ombudsman was therefore necessary.

It appeared from the European Commission's comments and the complainant's observations that the Commission had now replied to the letters and had responded to the points of substance which the complainant had raised concerning ISO standards.

The Commission therefore appeared to have settled the matter in a satisfactory way for the complainant and the Ombudsman closed the case.

**FREE MOVEMENT OF PERSONS: HANDLING OF COMPLAINT TO COMMISSION**

*Decision on complaint 1100/16.12.96/FS/UK/KH against the European Commission*

**THE COMPLAINT**

Mr S. complained to the Ombudsman in December 1996 that the Commission had not properly handled a complaint he had lodged with the Commission concerning the refusal by Denmark to issue a residence permit for his wife, who is a national of a third country.

**THE INQUIRY**

During the course of the Ombudsman's inquiries into the complaint, the complainant continued to correspond directly with the Commission which appeared to be settling matters in a way that was satisfactory to the complainant. After receiving the Commission's comments the complainant wrote to the Ombudsman stating that he no longer wished to pursue his complaint and he limited himself to putting forward remarks as to how he thought the Commission's complaint procedures could be improved in the future.

**THE DECISION**

The Commission appeared to have taken steps to settle the matter in a satisfactory way for the complainant and the Ombudsman therefore closed the case.

**FURTHER REMARKS BY THE OMBUDSMAN**

As regards the complainant's remarks on improving the administrative procedures within the Commission in the future, the Ombudsman informed

him that his inquiries into several other complaints had led him to conclude that it would be appropriate for there to be a more general examination of the Commission's administrative procedures for dealing with complaints from citizens concerning Member States' failure to fulfil their obligations under Community law. On 15 April 1997, therefore, the Ombudsman initiated an own-initiative inquiry into the possibilities for improving the quality of the relevant administrative procedures of the Commission.

### REQUEST FOR INFORMATION

*Decision on complaint 118/97/PD against the European Commission*

#### **THE COMPLAINT**

In February 1997, Mr E. complained to the European Ombudsman concerning the Commission's failure to answer a request for information.

Mr E. was a tour guide for foreign tourists in Austria. According to him, Austrian legislation implies that on such tours, the foreign guide is not allowed to give any explanations or background information but only to point out objects of interest. Mr E. wondered whether this was compatible with his freedom to provide services, enshrined in Article 59 of the EC Treaty. By letter of 14 August 1996 he addressed the Commission with a view to clarify the question.

As he did not receive any reply, he lodged the complaint with the Ombudsman.

#### **THE INQUIRY**

##### **The Commission's opinion**

The complaint was forwarded to the Commission. In its opinion, the Commission stated that the question raised was difficult and complex and had been under discussion for several years. The discussions finally resulted in the adoption of a Commission working paper on 13 May 1997. Pending the adoption of this document, the responsible services failed to reply to Mr E., a fact for which the Commission apologised. Furthermore, the Commission stated that it had now sent the complainant the quoted working paper as well as other relevant material.

The complainant did not submit any observations.

### **THE DECISION**

It appeared from the European Commission's comments that the Commission had taken steps to settle the matter and thereby satisfied the complainant. The Ombudsman therefore closed the case.

#### **FAILURE TO REPLY TO A LETTER**

*Decision on complaint 375/97/PD against the Economic and Social Committee*

In May 1997, Mrs F. complained to the Ombudsman that the Economic and Social Committee had not replied to her letters of July 1996, concerning her problems with social security payments in Greece.

The Ombudsman contacted the Economic and Social Committee which replied that it had no trace of Mrs F.'s letters. The official in charge was willing to answer Mrs F., although the object of her letter was outside the competence of the Economic and Social Committee. Consequently, Mrs F. was informed about the Euro-Jus network which could advise her about issues of Community law in relation to her social security problems.

The complainant was satisfied with the answer received and the Ombudsman therefore closed the case.

### **3.4.4 THE EUROPEAN AGENCY FOR THE EVALUATION OF MEDICAL PRODUCTS (EMEA)**

#### **REGISTRATION OF VETERINARY DRUGS ON THE LIST OF THE EMEA**

*Decision on complaint 345/97/VK against the European Agency for the Evaluation of Medicinal Products (EMEA)*

A company with a registered office in Germany, trading in biological veterinary medicine complained to the European Ombudsman in April 1997. The EMEA had refused to evaluate the complainant's application for registration of veterinary drugs on the grounds that the relevant documents had arrived after the deadline. The company complained that it was not given sufficient notice of the deadline.

By letter of 20 May 1997, the complainant informed the Ombudsman that meeting had been arranged in London with representatives of the EMEA and that misunderstandings among the parties could be solved. The complainant expressed his appreciation of the Ombudsman's intervention and thanked him for his work.

From the information given to the European Ombudsman by the complainant, the EMEA appeared to have taken action to settle the matter in a satisfactory way for the complainant. The Ombudsman therefore closed the case.

### 3.5 FRIENDLY SOLUTIONS ACHIEVED BY THE EUROPEAN OMBUDSMAN

#### 3.5.1 THE EUROPEAN COMMISSION

##### RECRUITMENT: PUBLICATION OF THE NAMES AND MARKS OF SUCCESSFUL CANDIDATES IN A COMPETITION

*Decision on complaint 16/17.1.95/GS/IT against the European Commission*

##### **THE COMPLAINT**

Mr S. participated in a competition (COM/A/770) organised by the Commission for the recruitment of assistant administrators at grade A8. By letter dated 16 December 1994, the Commission informed him that he had not been successful. The letter also informed him of the marks that he had received in the written tests and the subsequent oral tests and of the minimum mark required to be a successful candidate.

On 22 December 1994 Mr S. wrote to the Commission stating that there existed a distinct disproportion between the marks he had obtained in the oral tests as compared to the written tests. He requested the Commission to provide him with:

- 1 a list of the successful candidates and the marks obtained by them in each test;
- 2 a list of the members of the selection board who had conducted the oral tests and of the votes cast by each of them for all the candidates examined.

By letter dated 23 January 1995, the Commission declined to provide the information requested.

In his complaint to the Ombudsman in January 1995, Mr S. claimed that, since the competition had been financed by public money to recruit officials to be paid from public money, the Commission should have provided him with a list of the successful candidates and of the marks received by each of them. He also requested the Ombudsman to check the regularity of the proceedings in the competition and in particular:

- 1 whether for the oral tests the candidates had been examined by different Boards and, if so, whether this had led to significant differences of evaluation;
- 2 if the marks which he were awarded for the oral tests were properly reasoned, in the light of his marks in the written tests.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments made the following points:

- 1 1 800 candidates were admitted to the written tests of whom 600 were subsequently admitted to the oral tests. The number of successful candidates had been limited to the best 300 by the terms of the notice of competition. Mr S. had been informed that he had received for the written and oral tests 78.75 marks out of 120, whereas to figure in the best 300 he would have required a total of 88.58 points.
- 2 Mr S.'s request for a list of the successful candidates and the marks that each of them had obtained had been refused on the grounds that the work of selection boards is confidential, involving assessments of character of a personal and comparative nature which cannot be communicated to the candidate concerned except in the form of an overall mark.
- 3 It was not possible to comply with the request to know the results obtained by the successful candidates, except that they had all received total marks of at least 88.58.
- 4 Mr S. had the opportunity to bring proceedings in the Court of First Instance, but he had not done so.

#### **The complainant's observations**

Mr S.'s observations on the Commission's comments repeated his claim that the disproportion between his marks in the written and oral tests raised doubts about their accuracy. He repeated his original request to the Ombudsman to check the regularity of the proceedings in the competition.

He also claimed that it is unacceptable that the results of competitions financed with public money to recruit officials to be paid from public money should remain secret.

### Further inquiries

After careful consideration of the Commission's comments and the complainant's observations, it appeared that not all the points made in the complaint had been answered. The Ombudsman therefore asked the Commission to inform him of the reasons why the list of names of successful candidates in a competition cannot be made public. The Commission's reply included the following points:

- 1 Being on a reserve list does not give a candidate an automatic entitlement to obtain a job with the Commission. Most successful candidates are already working in jobs outside the Commission and it could therefore be harmful to their current career prospects to have such information made public. Therefore it is not the Commission's practice to make public reserve lists of successful candidates in open competitions.
- 2 In accordance with the Staff Regulations, the work of the selection boards is secret. It is not therefore the practice of the Commission to publish the names of selection board members, nor Board reports.

### The Ombudsman attempts to achieve a friendly solution

In accordance with Article 3 (5) of the Statute<sup>1</sup>, the Ombudsman wrote to the Commission, making, in summary, the following points:

- 1 The Union's public commitments to transparency<sup>2</sup> create a general presumption in favour of access to information unless there are important interests that outweigh the principle of transparency.
- 2 In its reply to the Ombudsman's further inquiries, the Commission explained its refusal to disclose the names of successful candidates on the grounds that it could be harmful to their current career prospects to do so.
- 3 It appears that the Commission's practice may have been adopted before the Union made the commitments to transparency referred to above and that the practices of the Council and the European Parliament are different from that of the Commission. It therefore seems appropriate to review the Commission's practice to determine whether the harm it definitely causes in terms of loss of transparency outweighs

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<sup>1</sup> "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 complainant".

<sup>2</sup> For example, Declaration n° 17 attached to the Final Act of the Treaty on European Union; Interinstitutional Declaration on democracy, transparency and subsidiarity of 25 October 1993, *OJ* 1993 C 329/133.

the hypothetical gains in protecting successful candidates' current career prospects.

In response, the Commission accepted that the complainant should be allowed to consult the list of successful candidates in competition COM/A/770. Furthermore, the Commission stated that in future notices announcing competitions, it will specify that it intends to publish the list of successful candidates.

The complainant was informed of the Commission's proposal for a friendly solution. In response, he stated two conditions for his acceptance. First, the Commission should provide him with the marks obtained by each successful candidate in competition COM/A/770. Second, the Commission should pay him the sum of 500.000 lire, as costs for pursuing the complaint.

As regards the first issue, the European Ombudsman asked the Commission to clarify its position. In its reply, the Commission relied, in summary, on settled case-law to the effect that, in view of the power of selection boards to evaluate the merits of candidates, the communication to a candidate of the marks that he has himself obtained satisfies the requirement that a selection board give reasons for its decisions.

As regards the claim for costs, the European Ombudsman informed the complainant that he had no power to award costs and that if he wished to pursue the matter, it would be necessary for him to address the Commission directly.

## **THE DECISION**

### **1 The refusal to supply the names members of the Selection Board and their votes**

- 1.1 Article 6 of Annex III of the Staff Regulations provides that the work of selection boards shall be secret. Secrecy was introduced with a view to guaranteeing the independence of selection boards and the objectivity of their proceedings, by protecting them from all interference and pressures.<sup>1</sup>
- 1.2 The Commission was therefore entitled to refuse the complainant's request for a list of the members of the selection board who had conducted the oral tests and of the votes cast by each of them for all the candidates examined.

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<sup>1</sup> See for example case C-254/95, *European Parliament v Angelo Innamorati* [1996] ECR I-3423.

1.3 There appeared, therefore, to be no maladministration by the Commission in relation to this aspect of the complaint.

## **2 Publication of the names of successful candidates**

2.1 In response to the Ombudsman's suggestion of a review of its practice in order to promote a friendly solution, the Commission agreed to make available to the complainant the list of names of successful candidates in competition COM/A/770 and to publish such lists for future competitions.

2.2 The Commission therefore appeared to have concluded that the definite harm caused in terms of loss of transparency from refusing to publish the names of successful candidates outweighs the hypothetical gains in protecting successful candidates' current career prospects.

2.3 By agreeing to publish the names of successful candidates in competitions, the Commission had taken an important step in improving transparency and appeared to have settled this aspect of the complaint to the satisfaction of the complainant.

## **3 Publication of the marks obtained by successful candidates**

3.1 It appeared that the Commission intends to maintain its present practice of informing candidates of their own marks and of the minimum mark required to be a successful candidate.

3.2 In justification of this position, the Commission relied, in summary, on settled case-law to the effect that, in view of the power of Selection Boards to evaluate the merits of candidates, the communication to a candidate of the marks that he has himself obtained satisfies the requirement that a Selection Board give reasons for its decisions.

3.3 The Commission had not therefore explained the reasons why it considers that the general principle of transparency should not apply in the case of the marks obtained by successful candidates.

3.4 It was appropriate to examine the question of publication of marks alongside other issues of transparency, in a forthcoming own-initiative inquiry by the European Ombudsman concerning recruitment to the Community institutions and bodies. In these circumstances, there appeared to be no grounds to pursue further inquiries into this aspect of the case.



#### 4 The regularity of the proceedings in competition COM/A/770

- 4.1 It appeared from the Commission's comments that 1 800 candidates were admitted to the written tests, of whom 600 were subsequently admitted to the oral tests. It further appeared that the marks for the oral test were an expression of a comparative value judgement of the candidates by the Selection Board. This is in accordance with the case-law of the Court of Justice.<sup>1</sup>
- 4.2 Given the nature of the assessment process, the disproportion in the marks which the complainant received in the written and oral tests did not appear to disclose any grounds for the Ombudsman to question the regularity of the proceedings in the competition.

#### 5 The complainant's claim for costs

The European Ombudsman has no power to award costs to a complainant.

### CONCLUSIONS

- 1 The Commission was entitled to refuse the complainant's request for a list of the members of the selection board who had conducted the oral tests and of the votes cast by each of them for all the candidates examined.
- 2 By agreeing to publish the names of successful candidates in competitions, the Commission has taken an important step towards improved transparency and appears to have settled this aspect of the complaint to the satisfaction of the complainant.
- 3 The question of publication of marks of successful candidates will be further examined, alongside other issues of transparency, in a forthcoming own-initiative inquiry by the European Ombudsman concerning recruitment to the Community institutions and bodies.
- 4 Given the nature of the assessment process, the disproportion in the marks which the complainant received in the written and oral tests did not appear to disclose any grounds for the Ombudsman to question the regularity of the proceedings in competition COM/A/770.
- 5 The European Ombudsman has no power to award costs to a complainant.

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<sup>1</sup> *ibid.*

On the basis of the above conclusions, the Ombudsman decided to close the case.

### **DELAY IN PAYMENT OF SALARY AND SETTling OF TRAVEL COSTS**

*Decision on complaint 748/22.7.96/LB/NL/PD against the European Commission*

#### **THE COMPLAINT**

In July 1996 Mr B. complained to the Ombudsman about a services contract between himself and the Commission. After the contract had been terminated, a dispute arose concerning pay and travel costs.

The background to the complaint was that Mr B. started working for the Commission during May 1994. It was undisputed that the Commission services forwarded a written contract to Mr B. for signature only on 10 June 1994. Mr B. signed and returned the contract to the Commission. The contract was not signed by the Commission official responsible until 28 June 1994. The contract stipulated that it "takes effect for a period of 3 months from the date of signature" and that it could be terminated "by either party upon one month's notice".

By fax of 30 June 1994 the Commission services terminated the contract with effect from 6 July 1994. The signed contract was not forwarded to Mr B. until 18 July 1994.

On 7 October 1994 Mr B. addressed his invoice to the Commission. The invoice stated that his pay including travel costs was 19.059,22 ECU minus an advance of 7.128,00 ECU received, so that the total amount due was 11.931,22 ECU. This invoice was based on the assumption that Mr B. had performed 44 working days at 373,58 ECU each. Mr B. later corrected this to 43 working days, performed in the period 6 May - 6 July 1994, so that the total of the amount due was 11.557,64 ECU.

The contract stipulated that in "consideration of the execution by the contractor of the tasks specified in this contract, the Community shall pay the latter a flat rate sum of 23.760 ECU." This amount is calculated on the basis of 63.6 working days at 373,58 ECU per day of work = 23.760 ECU."

It appeared from the correspondence annexed to the complaint that the Commission had taken different positions on Mr B.'s invoice, but finally stated that it could only accept to pay for working days performed after 3 June 1994, the argument being that the Financial Controller of the Commission had agreed on considering the date of the approval of the commitment proposal, that is 3 June 1994, as the starting date of the work. This point of

view of the Commission would lead to payment for 35 working days. Not being satisfied with the Commission's position, Mr B. then took the point of view that the contract entitled him to a flat rate sum, independent of the question how many working days had been performed, that is 23.760,00 ECU.

As for travel costs, it appeared that the individual contract made no specific provision. However, in the general conditions which were annexed to the contract and which had been drafted by the Commission, it was stated that "reimbursement of travel and subsistence expenses shall be paid, where appropriate, on production of supporting documents, including receipts and used tickets". It appeared from the correspondence annexed to the complaint that the Commission in the first place had considered that travel costs were not covered by the contract. Thereafter the Commission had accepted to pay travel costs incurred after 3 June 1994, the argument for choosing that date being the same as mentioned above in relation to pay.

In his complaint Mr B. claimed that the Commission's refusal only to pay him for work and travel costs after 3 June 1994 was ungrounded.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated the contract was not signed until 28 June 1994 because of administrative delay in the Commission.

As for pay, the Commission maintained that it was unable to pay for working days performed before the commitment proposal was approved on 3 June 1994.

As for travel costs, the Commission stated that the claim could not be accepted for legal reasons by the relevant services in the Commission.

#### **The complainant's observations**

In his observations the complainant maintained his complaint.

#### **The Ombudsman's attempt to achieve a friendly solution**

After considering Mr B.'s complaint, the Commission's comments and the complainant's observations, the Ombudsman addressed the Commission in accordance with Article 3 (5) of the Statute of the Ombudsman. In his letter to the Commission he made, in summary, the following points:

- As for pay, the Commission had not put forward any reason for not paying all the 43 days originally invoiced other than the argument concerning its own internal Financial Control's approval of the relevant commitment proposal. The Ombudsman noticed in particular that the Commission did not contest that Mr B. had actually performed 43 working days.
- As for travel costs, the Commission had taken different stands and had finally not detailed the legal reasons which had led to its opinion that travel costs were not covered under the contract.

Against this background, the Ombudsman found that the examination of this file had not reassured him that the Commission's doings had met the high standards that citizens are entitled to expect from the Community Institutions. He therefore suggested to the Commission to review its position with a view to a friendly solution.

In response, the Commission informed the Ombudsman that it had proposed to Mr B. to settle the outstanding amount of his original invoice, which offer Mr B. had accepted.

### **THE DECISION**

Following the Ombudsman's initiative, it appeared that a friendly solution to the complaint had been agreed between the Commission and the complainant. The Ombudsman therefore decided to close the case.

## **LATE PAYMENT FOR TRANSLATION SERVICES**

*Decision on complaint 1038/25.11.96/WS/UK/JMA against the European Commission*

### **THE COMPLAINT**

In November 1996 Mr S. lodged a complaint with the European Ombudsman concerning the delay by the Commission in settling an invoice for translation services. Mr S. undertook the translation into English of the document, "*Guide de l'artisanat et de la petite entreprise dans l'Union Européenne*". When the work was completed at the end of June 1996, Mr S. sent the invoice to the relevant Commission services.

In accordance with the complainant's contract, payment should have been made within 60 days of receipt of the invoice. Since he received no payment within this deadline, Mr S. sent two reminders to the Commission in August and October 1996. The Commission made the payment only in

November 1996, four and a half months after the invoice had been issued by the complainant.

Mr S. asked the Ombudsman to ensure that the Commission put an end to the uncertainty surrounding the rights of contractors and obligations of the institution in cases of late payment, and, if possible, to secure the payment of compensation for the financial loss which he had suffered.

### **THE INQUIRY**

#### **The Commission's comments**

The Commission indicated that the long delay in payment was because the responsible services had to carry out a detailed check of the quality of the translation of a long document (more than 200 pages), during the vacation period and in the midst of a administrative reorganization.

The Commission noted the good quality of the translation, and apologized for the long delay in the payment. As regards compensation, it stated that there were no provisions in the framework contract which provided for compensation in case of late payment, and therefore compensation could not be paid.

#### **The complainant's observations**

In his observations on the Commission's comments, Mr S. insisted that the Commission should set up a general mechanism for cases of late payments. He believed that, when the framework contract comes up for review, provisions should be incorporated in order to require payment of interest in the event of a delay beyond the 60-day limit for the settlement of invoices.

In accordance with Article 3 (5) of the Statute, the Ombudsman wrote to the Commission to seek a friendly solution. The Ombudsman referred to the fact that the Commission had recommended to the Member States that to recognize the right of creditors to interest on arrears at national level.<sup>1</sup> Furthermore, in a Communication of 10 June 1997 on late payment and interest on arrears,<sup>2</sup> the Commission had stated the right of the its creditors to obtain interest for late payment.

The Commission's refusal to compensate Mr S. therefore appeared inconsistent and the Ombudsman proposed that the Commission apply the policy stated in its own Communication of 10 June 1997 to this case, and accordingly pay interest to the complainant.

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<sup>1</sup> Commission Recommendation 95/198/EC of 12 May 1995 on payment periods in commercial transactions, OJ 1995 L 127/19

<sup>2</sup> SEC (97) 1205

In its reply, the Commission stated that it had already taken measures to ensure the payment of interest for late payments; accordingly the Commission was ready to offer Mr S. an ex-gratia payment. It also apologized for the inconveniences caused by the delayed payment.

The Ombudsman invited the complainant to consider the solution proposed by the Commission. In his reply, the complainant accepted the Commission's offer and its apologies. Mr S. also expressed his satisfaction for the efforts undertaken by the European Ombudsman to find a friendly solution.

### **THE DECISION**

Following the Ombudsman's intervention, a friendly solution to the complaint was agreed between the institution and the complainant. The Ombudsman therefore closed the case.

## **3.6 CASES CLOSED WITH A CRITICAL REMARK BY THE OMBUDSMAN**

### **3.6.1 THE EUROPEAN COMMISSION**

#### **FAILURE TO CARRY OUT SUFFICIENT CHECKS BEFORE APPOINTING A BRE REPRESENTATIVE.**

*Decision on complaint 171/09.10.95/HGF/UK against the European Commission*

#### **THE COMPLAINT**

The complaint was submitted to the European Ombudsman in October 1995 by Mr Tony Cunningham, Member of European Parliament, on behalf of a constituent, Mr F. In summary, the relevant facts alleged by Mr F. were as follows:

Mr F. designed a system for soil stabilisation. In 1993, he was introduced to a Mr A., who ran a company called Cumbria International Trade Centre (CITC). Mr A. showed to Mr F. a written agreement between himself and the European Commission. Mr F. understood this agreement to mean that Mr A. was a contracted representative of the Commission.

Mr A. offered to submit an application for funding under the European Community Investment Partnership (ECIP) scheme on behalf of Mr F.'s company. The application was for a soil stabilisation system involving research and partnership work in Pakistan, India and Afghanistan. Mr

A. later told Mr F. that the application had been successful and that he had obtained ECIP money in respect of it which he would pay to Mr F. Having received no money, Mr F. formed the view that Mr A. had obtained and diverted for his own use ECIP funding in respect of his project for a soil stabilisation system.

He contacted the Commission by telephone and was told by an official at the ECIP desk that funding for a similar project in Malaya had been drawn down and that questions about the matter should be addressed to Mr A.

Mr F. was subsequently told by Mr A. that he had a partner in the ECIP office who assisted him to obtain ECIP funding and divert it for his own use.

Mr F. claimed that the ECIP authorities should have checked Mr A. before appointing him as a representative and that they had failed to do so properly.

It appeared from the documents annexed to the complaint that the written agreement between Mr A. and the Commission was an agreement appointing Mr A. on behalf of CITC, as a BRE (*Bureau de Rapprochement des Entreprises*) Correspondent.

### **THE INQUIRY**

The complaint was forwarded to the Commission which, in summary, made the following comments:

The Commission had been aware of Mr F.'s allegations since March 1994 and had taken steps to investigate them. The Commission's anti-fraud unit (UCLAF) had undertaken a thorough investigation and they were satisfied that in the specific case raised by Mr F. no Commission funds were improperly requested, approved or disbursed. The Court of Auditors had also made inquiries and had told the Commission that they were satisfied that, as regards Mr F. and his companies, no disbursement or fraudulent use of ECIP funds had been identified.

The Commission never received any request for funding under the ECIP scheme for Mr F. or the companies in which he is involved. The Commission did receive in 1992 an ECIP application which involved a Mr A. The application was for the identification of investment projects and partners in Argentina and Chile and was approved for financing.

Mr F. had misunderstood his telephone conversations with a Commission official. He had not been told that funding for his project had been drawn down, nor that he must deal with or via Mr A.

The Commission totally rejected the allegations that Mr A. has a "partner in the ECIP office." UCLAF had undertaken a further double check which confirmed the Commission's rejection of the statements regarding ECIP disbursement mechanisms.

The application of Mr A. as a BRE Correspondent was accepted in view of his registration as a legitimate company ... and of the factual information he provided regarding his capacity to disseminate BRE cooperation opportunities to enterprises in this area. The location of Cumbria International Trade Centre in northern England, an area poorly covered by BRE Correspondents, was an additional argument in favour of his application.

If Mr A. declared to Mr F. that he was able to obtain Commission funding through the BRE, he misrepresented himself and the BRE, the latter being exclusively a scheme for partner identification, which grants no funding whatsoever.

The Commission's comments also described the contents of the BRE agreement between the Commission and BRE Correspondents.

The Commission's comments were forwarded to Mr Cunningham and to Mr F.'s solicitors. Observations were received from Mr F. via his solicitors. In substance, the observations maintained the original complaint.

## ***THE DECISION***

### **1 Introductory remarks on the role of the European Ombudsman**

- 1.1 The Treaty empowers the European Ombudsman to inquire into possible instances of maladministration in the activities of Community institutions and bodies. The Ombudsman's inquiries into this complaint were directed towards examining whether there was maladministration in the activities of the European Commission.
- 1.2 In dealing with allegations of maladministration that raise questions concerning the protection of the financial interests of the Community, the Ombudsman is mindful of the role both of the Court of Auditors and of the Commission's anti-fraud unit UCLAF.



1.3 The Ombudsman did not, therefore, seek to duplicate the investigations which the Court of Auditors and UCLAF carried out in relation to the subject-matter of this case. Nor were the Ombudsman's inquiries directed towards determining the truth of any of the allegations of fraud that were made in this case.

## **2 Disbursement procedures for ECIP funding**

2.1 The complaint raised the question of whether there had been a *prima facie* case of maladministration, in that ECIP funding intended for an application submitted on behalf of Mr F.'s company had been disbursed through a procedure which allowed the funding to be misappropriated.

2.2 It appeared from the Commission's comments that the Commission itself, UCLAF and the Court of Auditors had satisfied themselves that no such application was ever made.

2.3 More generally, it appeared from the Commission's comments that it had taken seriously the allegations of fraud in relation to ECIP funding and disbursement procedures and that it had co-operated fully with investigations by UCLAF and the Court of Auditors.

2.4 The Ombudsman therefore found no evidence of maladministration in relation to this aspect of the complaint.

## **3 Information supplied by telephone to Mr F. from the Commission ECIP desk**

3.1 Both in the original complaint and in observations on the Commission's comments, Mr F. stated that he was told on the telephone by a Commission official that questions about ECIP funding should be addressed to Mr A. The original complaint also stated that the Commission official had said that money for the soil stabilisation project had been drawn down.

3.2 Evidence about what was said in the telephone conversations is limited. However, a misunderstanding appears to be the most likely explanation of the differences in the accounts given by the parties. There is no evidence of any intention to mislead or negligent supply of incorrect information.

3.3 The Ombudsman therefore found no evidence of maladministration in relation to this aspect of the complaint.

#### 4 Did the Commission fail to make sufficient checks on the *bona fides* of a BRE correspondent ?

4.1 It is clear that a BRE Correspondent has no authority, by virtue of the BRE agreement, to hold himself out as a representative of the Commission in relation to applications for ECIP or any other Community funding.

4.2 The Agreement between the BRE Correspondents and the European Commission states that:

*The BRE is an instrument set up and operated by the Commission .... Operation of the instrument at a local level relies on a network of Correspondents..."*

"Correspondent" is defined by the Agreement to mean

*any person or body approved by the Commission to act locally - without any exclusive entitlement - as a representative of the network.*

4.3 BRE correspondents therefore appear to be persons approved by the Commission to represent at local level the BRE network which is operated by the Commission. As a matter of good administrative practice, therefore, the Commission should satisfy itself that a proposed Correspondent is a fit person to represent it for the purposes of the BRE network.

4.4 The Commission's comments on the complaint appeared to indicate that the only independent inquiry made before appointing Mr A. as a BRE Correspondent on behalf of CITC was to check that CITC was registered as a company. Normal administrative practice in dealing with a previously unknown company would involve further checks, for example by seeking references. This is even more important where a contract between the Commission and a company or individual involves the latter acting in a representative capacity, albeit for limited purposes.

4.5 The fact that northern England was an area poorly covered by BRE Correspondents could not justify the Commission failing to make inquiries concerning the *bona fides* of a person appointed to represent it for the purposes of the BRE network

4.6 It appeared, therefore, that the Commission failed to make sufficient enquiries before appointing Mr A. as a BRE representative.

## **CONCLUSION**

On the basis of the inquiries conducted by the Ombudsman, it appeared necessary to make the following critical remark:

BRE correspondents appear to be persons approved by the Commission to represent at local level the BRE network which is operated by the Commission. As a matter of good administrative practice, therefore, the Commission should satisfy itself that a proposed Correspondent is a fit person to represent it for the purposes of the BRE network.

The European Commission failed to make sufficient enquiries, for example by seeking references, before approving Mr A., on behalf of Cumbria International Trade Centre, as a BRE Correspondent representing, at local level, the BRE network operated by the Commission.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

## **MEASURES TAKEN BY THE COMMISSION TO ASSIST PORTUGUESE CUSTOMS AGENTS AFTER ENTRY INTO FORCE OF THE INTERNAL MARKET**

*Decision on complaint 262/27.11.95/APF/PO/EF-po against the European Commission*

### **THE COMPLAINT**

Mr F. complained to the Ombudsman in November 1995 about allegedly inefficient action by the Commission in protecting the interests of Portuguese customs agents.

According to the complainant, the entry into force of the internal market on 31 December 1992 had particularly negative effects for Portuguese customs agents. That was due to specific factors relating to the sector in Portugal, since despite its private nature, the sector had been heavily regulated by the government.

In the complainant's view, the measures adopted by the Community to tackle the problem were inadequate, both as regards their scope and the limited amount of funding involved. The complaint stated that the measures did not cover the areas where most Portuguese custom agents carried out their work; i.e. Porto and Lisbon, which are part of the Community's external borders. Furthermore, compliance with the specific requirements of these initiatives was not possible under the relevant Portuguese legislation.

Mr F. sent a petition to the European Parliament on the same subject in 1991 (Petition number 688/91). After taking into consideration the amount of aid that the European Commission had foreseen for the sector, the Committee on Petitions decided to close the case.

In his complaint to the Ombudsman in 1995, Mr F. argued that, by not acting as required, the Community might have incurred an extra-contractual liability.

Mr F. also complained that he sent a report on the matter to Commissioner PINHEIRO on 19 July 1995, to which he received no reply.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments were as follows. It acknowledged the seriousness of the problem for customs agents following the entry into force of the internal market. Although the restructuring of this sector was primarily the responsibility of the Member States, the importance of the problem led the Commission to support national efforts by accompanying measures. These consisted of three groups of actions: (i) individual actions through the European Social Fund; (ii) actions from the Regional Development Funds, in particular the INTERREG initiatives; and (iii) other actions intended specifically for this sector, under Council Regulation 3904/92/EEC. The latter initiative had a budget of 30 million ECUS of which 2,8 million was intended for Portugal.

The responsible Portuguese authorities chose the aid system for implementation of the Regulation, among the several possible means of assistance. This system could allow certain geographical areas which were excluded under INTERREG (in particular, the regions of Porto and Lisbon) to receive funding. The Commission stated that the complainant had been fully informed of these initiatives, which were published in the Official Journal of the Portuguese Republic, and that the group concerned had given their support to the type of funding chosen.

As for the funds allocated to the initiative, the Commission argued that the amount agreed for these initiatives is the responsibility of the EC budgetary authorities which enjoy complete discretion in the matter.

Although the complainant had written to Commissioner PINHEIRO, the responsible Commission services (DG V) were not informed of this, and therefore were unable to reply to the letter.

### The complainant's observations

In his observations on the Commission's comments, the complainant insisted that the Commission should have realized the lack of effectiveness of the type of aid chosen by the Portuguese authorities under Regulation 3904/92, since only seven Portuguese commission agents benefitted from the assistance. This situation was in contrast to that in countries such as Belgium, France or the Netherlands. On the other hand, the Portuguese government had not taken any initiative to improve the situation, by means such as early retirement schemes.

Although the Portuguese authorities claimed that the assistance was very successful, the responsible Portuguese agency itself had concluded that only three Portuguese official commission agents had benefitted from the INTERREG I scheme, and only 13 received assistance under Regulation 3904/92.

In conclusion, Mr F. considered that the Commission used the principle of subsidiarity to elude its responsibility, and that the European Ombudsman should grant them compensation for the damages which they had suffered.

## THE DECISION

### 1 The exercise of the Commission's responsibilities in the matter

1.1 The Commission's responsibilities under Article 7c of the EC Treaty, were to

- (i) "take into account the extent of the effort that certain economies showing differences in developments will have to sustain during the period of establishment of the internal market" *and*
- (ii) to consider the proposal of "appropriate provisions".

1.2 Although the Commission considered that assistance for the customs sector was primarily a responsibility for the Member States, it appears also to have considered it appropriate to undertake Community supporting measures.

1.3 In inquiring into a possible instance of maladministration, it is not appropriate for the European Ombudsman to seek to determine disputes concerning the effectiveness or adequacy of Community policies, where issues of political judgement are necessarily involved.

1.4 Since the Commission took action to discharge its responsibilities, there appears to be no evidence of maladministration in relation to this aspect of the case.

1.5 The Ombudsman notes, however, that the European Parliament has taken a position on this matter when it adopted several critical resolutions, such as those of 17 September and 20 November 1992 as well as the Jackson Report of 4 November 1992.

## **2 The claim for compensation**

2.1 The complainant asked the Ombudsman to recognize his right to obtain compensation from the Community for damage suffered by Portuguese official commission agents. In view of paragraph 1.3 above, it is inappropriate to examine this claim.

2.2 The Ombudsman notes that, under Article 215 of the EC Treaty, the Court of Justice has competence to award damages for non-contractual liability. The Court of First Instance will have to consider such a possibility in the area of the customs agents.<sup>1</sup>

## **3 The failure to answer the complainant's letter**

3.1 The complainant sent a report on the situation to Commissioner PINHEIRO, which was never answered. In its comments, the Commission justifies this lack of answer by the fact that the competent services (DG V) never received the report.

3.2 Under the Treaties, the Commission is a single legal entity. The different departments of the Commission cannot therefore be considered to be independent bodies, but rather parts of a single administrative structure. Whilst the Commission has power to regulate its own internal organization as it thinks best to fulfil its tasks, this internal organization cannot justify failure to reply to correspondence received from citizens, in accordance with principles of good administration.

3.3 In the present case, the complainant could reasonably have expected that correspondence addressed to the Portuguese Commissioner would be directed to the competent service for reply.

3.4 Given that this aspect of the case concerned procedures relating to specific events in the past, it did not appear appropriate to pursue a friendly settlement of the matter.

## **CONCLUSION**

On the basis of the European Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

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<sup>1</sup> Case T-113/96; OJ C 318, 26.10.96, p. 10.

Whilst the Commission has power to regulate its own internal organization as it thinks best to fulfil its tasks, this internal organization cannot justify failure to reply to correspondence received from citizens, in accordance with principles of good administration.

In the present case, the complainant could reasonably have expected that correspondence addressed to the Commissioner would be directed to the competent service for reply.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### **RECRUITMENT: UNREASONABLE AND DISPROPORTIONATE MEASURES AGAINST A CANDIDATE**

*Decision on complaint 448/2.2.1996/MS/B/PD-fr against the European Commission*

#### **THE COMPLAINT**

Mrs S., of French and Portuguese nationality, complained to the Ombudsman in January 1996 alleging that the European Commission had wrongly withdrawn a job offered to her through a temporary employment agency and that it had put her on a "black list" so that the agency should not put her forward for any future temporary employment with the Commission.

It appeared from the file that in December 1995 a temporary employment agency had given Mrs S. a contract according to which she should work for the Commission for five days as a B grade assistant in Directorate General X. Mrs S. presented herself to the Commission Staff Department on 6 December 1995 and was asked to sign a curriculum vitae and to write on it "*I the undersigned certify on my honour that the above information is true and complete*". The curriculum vitae was not established on any particular form for that purpose and according to the information in the file there are no requirements to that effect. The official dealing with the file disappeared for a while and then returned to state that Mrs S.'s curriculum vitae was not correct, the reason being that she had declared having a 3 year university Translator's diploma, while it appeared from the Commission's files that she also had a 5 year Master's Degree in applied languages. Given that fact, the Commission's Staff Department decided that the complainant could not be taken on for the envisaged five days. Furthermore, it contacted the temporary employment agency in order to annul her contract and to instruct it not to put her forward for any other jobs with the Commission until further notice.

## THE INQUIRY

### The Commission's comments

The complaint was forwarded to the Commission. In its comments, the Commission stated that whilst a 3 year diploma qualified an applicant for a B grade job such as the one in question, a 5 year diploma did not disqualify her. However, it put forward that Mrs S. had manifestly and deliberately concealed the fact that she had a full university degree (5 year diploma) and that this meant that her curriculum vitae was "faulty by omission". Signing a document that was "faulty by omission" implied a breach of the principle of loyalty which is inherent in any relation between public authorities and their agents.

As for the reason for this deliberate omission, the Commission supposed, partly on the basis of the complainant's own statements, that it was due to her exclusion from a competition the Commission had organized in 1994 for jobs of C category. The Commission excluded her from this competition, in accordance with its practice, on the grounds that she had a full 5 year university diploma. The Commission recognized that this practice was held to be illegal by the Court of First Instance in 1993<sup>1</sup>. Thus, Mrs. S's exclusion from the competition on those grounds was illegal. However, this did not change the Commission's view that she had infringed the principle of loyalty.

As for the legal basis of this principle, the Commission put forward that the principle, although not expressly stated by the Staff Regulations, was implied in the relations with all public servants. In this context, it referred to the decision of the Court of First Instance in case T-146/89, *Williams v Court of Auditors*<sup>2</sup> and to Article 50 (1) of the Conditions of Employment of Other Servants as underlining the importance given to false information by the Community legislator.

As for the complainant's legal rights to get the job that she was offered, the Commission stated that there was only a legal relation between her and the agency which put her forward for temporary jobs with any public or private body. So the Commission did not breach a contract with Mrs S. because there was no contract between her and the Commission.

Finally, in its last observations, the Commission stated that any instruction to temporary employment agencies not to put Mrs S. forward for a job with the Commission no longer existed.

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<sup>1</sup> Case T-60/92, *Noonan v Commission* [1993] ECR-II 911.

<sup>2</sup> [1991] ECR-II 1293.



### The complainant's observations

In her observations on the Commission's comments, the complainant maintained in substance that the Commission had dealt with her case wrongly and unfairly. She insisted on the fact that the Commission was not entitled to compare the information submitted in an applicant's curriculum vitae with documents submitted by that person on previous occasions. Furthermore, she claimed that there still existed an instruction to temporary employment agencies not to put her forward for jobs with the Commission. Mrs S. tried to obtain written confirmation from the agencies to that effect, but according to the complainant, the agencies were reluctant to give her anything in writing out of fear of the Commission.

### THE DECISION

The Ombudsman firstly noted that he was not aware of any rule preventing the Commission from checking the correctness of information supplied in a curriculum vitae.

As for the measures taken by the Commission in Mrs S.'s case, he remarked that it was uncontested that she had not mentioned her 5 year university diploma in the curriculum vitae submitted. It was equally uncontested that this diploma had no relevance whatsoever for the job she was contracted for. It was established that the Commission services qualified her failure to mention the 5 year diploma as "fault by omission", with the result that she could not be taken on for the job envisaged and that her agency was told not to put her forward again for a job with the Commission.

The question that the complaint thus raised was whether this reaction from the Commission was reasonable and proportionate. It was not material for assessing this question whether Mrs S.'s failure to mention the 5 year diploma was intentional or not.

As justification for the measures adopted the Commission invoked a principle of loyalty which applies in the relations between the institutions and all public servants, referring to the case of *Williams v Court of Auditors*. Furthermore, it stated that the Community legislator had given particular attention to false information supplied in the context of recruitment and it referred to Article 50 (1) of the Conditions of Employment of Other Servants.

The Ombudsman commented that the case of *Williams v Court of Auditors* concerned an official who by spreading slanderous declarations had not complied with his obligations under Articles 12 and 21 of the Staff Regulations and that Article 50 (1) of the Conditions of Employment of

Other Servants concerned temporary staff. It was clear that none of these elements of law could apply directly to Mrs S.'s case, in particular because she was engaged by an agency for 5 days work. Even if Article 50 could apply to such a case, it should first be noted that the Article concerns false information. Mrs S.'s curriculum vitae did not contain any information contrary to the truth. The same professional life can give rise to very many different curricula vitae, some more elaborate or extensive than others, without entailing the qualification of the short version as false. The curriculum vitae submitted was, at the most, incomplete. In the second place, if any false information shall entail sanctions, Article 50 provides that it has to be established that "the false information furnished was a determining factor in his [the agent's] being engaged." According to the Commission itself, it would not have any bearing whatsoever on the decision to engage her that she had the 5 year diploma. Thus, it appears that the mentioning or not of the 5 year diploma was irrelevant.

### **CONCLUSIONS**

Against this background, it therefore appeared necessary to make the following critical remark:

The measures which the Commission applied to the complainant were unreasonable and disproportionate. The Commission should not have withdrawn the job offered to Mrs S. on the grounds that she had submitted a false curriculum vitae, mentioning a 3 year university diploma, and it should not have issued the instruction to her employment agency not to put her forward for a job with the Commission.

Given the fact that the Secretary General of the Commission had given an assurance that the instruction had been withdrawn, the Ombudsman found that there were no grounds for further investigations and he therefore closed the case.

### **FAILURE TO TAKE ADEQUATE STEPS TO INFORM EXTERNAL STAFF OF THEIR POSITION**

*Decision on complaint 503/20.3.96/AS/L/KT against the European Commission*

### **THE COMPLAINT**

Mr S., who worked on the Systran machine translation project, complained in March 1996 to the Ombudsman against the Commission. The following is a summary of relevant facts as they appear from the complaint:

In 1979 Mr S. was offered a one-year contract as a linguistic programmer, by a company which had a contract with the European Commission for the development of the "Systran" machine translation system. In 1996, Mr. S. was still working on the same project.

From 1979 to 1996, Systran development work was carried out in Luxembourg under a series of up to 20 consecutive contracts, awarded successively to three separate companies.

During this period, the development team of which Mr.S was part worked continuously on the project, as employees of the company contracted to do the development work by the Commission. When the contract was awarded to a different company, the new company took over the employment of the development team as a body. There were clauses in the Commission contracts requiring that the Systran development staff be left free to move from one contractor to another and the Commission decided who should be employed and fixed the vacations and salaries of staff.

In 1996, the Commission planned to reduce its involvement in the Systran development project with the result that the development staff faced redundancy.

On the basis of the above facts, Mr S. complained that the European Commission was morally responsible, if not legally liable, towards the development team who came to Luxembourg only in order to work for an institution they trusted and who were now faced with redundancy. He claimed that the Commission should envisage an "institutional" framework for the development team within its services, or within the Translation Centre for bodies in the European Union.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments made the following points:

The Commission (DG XIII) investigated the domain of machine translation as early as 1975. This activity was speculative and hence was carried out under rules normally applied for development projects through a series of contracts for the supply of services financed under several multilingual Actions Plans.

During these 20 years, highly specialised personnel was needed so that despite proceeding through call for tenders and changing contrac-

tors, some of the personnel remained unchanged throughout the years.

The availability of funds depends on a political decision by the Community budgetary authority. The award of funds to a particular contractor is subject to compliance with procedures laid down by the Financial Regulation and other relevant rules. Contracts are concluded for a limited period, not exceeding three years.

In view of these factors, those involved in projects depending on finance from the Community budget cannot reasonably expect funding to continue indefinitely.

The Systran project has spent an unusually long period in the development phase. The project is also unusual in that the Commission also plays a prominent role as user of the finished product.

Those working on the project were warned by the change in the wording of their employment contracts in 1984 to include the following clause:

*"at no time can the contractor as a result of his performance of his tasks under this contract, pretend to have obtained a right or whatever moral or other engagement to be appointed as a staff member in the Commission's services".*

In 1993, following the conclusions of an expert panel, a presentation of the future of machine translation in the Commission for all project staff took place, with the recommendation that they should diversify within the field of language engineering and not rely exclusively on Community funding.

Since 1994, the Commission has explained the opportunities for diversification to the contractor and his staff on a number of occasions.

### **The complainant's observations**

In his observations on the Commission's comments, Mr S. re-stated his original claim in detail. The observations also contained a number of additional points, including in summary, the following:

The Commission has always had guidelines and rules of conduct regarding their relations with external contractors and suppliers of services to prevent abuses and nepotism. These limit the length of contracts to no more than 3 years. The Commission has deliberately used

the various temporary Systran contractors to circumvent the time limits as regards the services of Systran staff.

The contractual clause quoted in the Commission's comments refers to the contractor and not to the development staff. The development staff has always considered the Commission as its *de facto* employer. If the development staff is deemed the actual contractor then the Commission has incurred legal obligations towards the development staff under Luxembourg law.

### **THE DECISION**

#### **1 The claim that the Commission should envisage an "institutional framework" for the development team**

- 1.1 Recruitment as an official or other servant of the European Communities must be carried out only in accordance with the procedures and purposes laid down in the Staff Regulations.
- 1.2 Recruitment of the staff of an external contractor whose services are no longer required by the Commission would be in accordance neither with the procedures nor the purposes laid down in the Staff Regulations.
- 1.3 The claim that the Commission has an obligation to provide an institutional framework for the Systran development team within its services or within the Translation Centre for bodies in the European Union cannot therefore be sustained.

#### **2 The unusually long development period of the Systran project**

- 2.1 Rules exist restricting the length of time for which staff from companies providing services under specific programmes ("external staff") may work on Commission premises. These rules appear to be specifically intended to prevent the establishment of *de facto* employment relationships outside the framework of the Staff Regulations. A breach of these rules could constitute an instance of maladministration.
- 2.2 It appears from the inquiries that have been conducted that the European Commission has worked with the same development staff for the Systran translation system, through separate companies, for many years. The Commission has accepted in its comments that the period in question is unusually long. However, on the basis of the evidence available to the Ombudsman, it does not appear that there has been a breach of the rules.

- 2.3 As a matter of good administration, the Commission should ensure that external staff are made aware of their employment status and of the rules governing the use of external staff.
- 2.4 In the case of external staff employed for an unusually long period and who are developing an important product for the Commission as end user, the Commission has a particular responsibility to take positive steps to avoid the foreseeable danger that the external staff may be misled concerning their future prospects.
- 2.5 From the material available to the Ombudsman, it appears that the Commission failed to take adequate steps from 1979 to 1993 to ensure that Systran development staff were made aware that their career plans should not rely on continuation of the Systran programme.
- 2.6 The Ombudsman's inquiries into this complaint revealed no evidence that the careers of the Systran development staff suffered as a result of the unusually long period of Systran development. Furthermore, the Ombudsman's findings relate to a specific period which ended in 1993. It is not therefore appropriate for the Ombudsman to pursue a friendly settlement of this aspect of the case.

### **3 The claim that the Commission has obligations to the development staff under Luxembourg law**

- 3.1 The claim that the Commission has obligations to the development staff under Luxembourg law raises questions of national law and could involve disputes over facts and their interpretation.
- 3.2 These matters could only be dealt with effectively by a court of competent jurisdiction, which would have the possibility to hear testimony and evaluate conflicting evidence on issues of fact and the relevant national law.
- 3.3 In these circumstances, further inquiries into this claim by the European Ombudsman do not appear to be justified.

### **CONCLUSION**

On the basis of the above findings, it appeared necessary to make the following critical remarks:

As a matter of good administration, the Commission should ensure that external staff are made aware of their employment status and of the rules governing the use of external staff.

In the case of external staff employed for an unusually long period and who are developing an important product for the Commission as end user, the Commission has a particular responsibility to take positive steps to avoid the foreseeable danger that the external staff may be misled concerning their future prospects.

From the material available to the Ombudsman, it appears that the Commission failed to take adequate steps from 1979 to 1993 to ensure that Systran development staff were made aware that their career plans should not rely on continuation of the Systran programme.

The Ombudsman's inquiries into this complaint revealed no evidence that the careers of the Systran development staff suffered as a result of the unusually long period of Systran development. Furthermore, the Ombudsman's findings related to a specific period which ended in 1993. It was not therefore, appropriate for the Ombudsman to pursue a friendly settlement of this aspect of the case. The Ombudsman therefore closed the case.

### **RESPONSIBILITY FOR COMMUNITY-FINANCED PROJECTS: THE "LIFE" PROGRAMME**

*Decision on complaint 555/17.4.96/ALDM/ES/PD against the European Commission*

#### **THE COMPLAINT**

Mr M. complained to the Ombudsman in April 1996 on behalf of the city council of Isaba valley in Navarra, Spain against DG XI of the Commission.

The factual situation underlying the complaint resulted from the Commission's action to protect brown bears living in the Pyrenean region, through financial aid from the LIFE programme.

In 1995, the local and regional organisations who were recipients of the Community aid discussed the establishment of a cooperation agreement. The Council of the Valley of Roncal did not agree with the measures set out in the agreement, since their effect would be to limit the Council's control and management of the natural resources in the area. As a result, the city council of Isaba Valley, which is part of the Valley of the Roncal, decided not to take part in actions financed by the LIFE programme.

The position of the city council was criticised by a Dr P. who published statements which were presumed to reflect concerns of the Commission's services.

The complainant wrote on several occasions to DG XI requesting, i. a., that:

- (i) the city council of the Isaba Valley be considered a part in any Community initiative related to the protection of the brown bear and that the council be given the management of any such initiative to take place within its boundaries;
- (ii) DG XI forward to the city council the decision or the report prepared by the Commission's services in which, following the information published by Dr P., they made critical remarks regarding the position of the city council.

The complainant alleged that the Commission had not properly responded to these requests.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, its comments were as follows:

The Commission had already replied to all the issues raised by Mr M. In its letters to Mr M. the Commission had informed him that some of the issues he raised concern Member states exclusively.

In order to implement the Community's nature protection policy, the Commission should cooperate with authorities designated by the Member States. In application of the subsidiarity principle, these authorities are the responsible national bodies for those issues.

There had been no relationship between the Commission services and Dr P., even though the latter's scientific reputation was held in high esteem.

The Commission's comments were forwarded to Mr M. with an invitation to submit observations if he so wished. No observations were received.

### **THE DECISION**

On the basis of the available information, the European Ombudsman reached the following conclusions:

#### **1 Potential participation of the city council of the Isaba Valley in the selection and management of LIFE's projects**

Regulation 1973/92 on the LIFE programme places Member States in an intermediary role between the Community and any third parties. Thus, the main responsibility for the establishment of priorities among potential projects as well as their follow-up is largely entrusted to Member States.



Because of this special position, Member States are best placed to coordinate the role of different national authorities affected by the implementation or management of Community-financed projects.

Although its role is therefore a limited one, the Commission has responsibilities towards entities or individuals affected by Community-financed projects. It should properly inform them about the nature of its financial role and also indicate to them the appropriate channels at national level for dealing with their observations.

The Ombudsman considered that the reply of the European Commission to the requests of the complainant should have conveyed more clearly and thoroughly the powers of the institution as regards the implementation of the LIFE programme, as well as the appropriate national channels to which the complainant could have addressed himself for a solution of the problem.

## **2 Third parties' public statements on the city council of Isaba valley**

In its comments, the Commission stated that its services have no relationship with Dr P. The Ombudsman's inquiries revealed no evidence to contradict the Commission's statement.

### ***CONCLUSION***

On the basis of the European Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

The Commission has responsibilities towards entities or individuals affected by Community-financed projects. It should properly inform them about the nature of its financial role and also indicate to them the appropriate channels at national level for dealing with their observations.

The Ombudsman considered that the reply of the European Commission to the requests of the complainant should have conveyed more clearly and thoroughly the powers of the institution as regards the implementation of the LIFE programme, as well as the appropriate national channels to which the complainant could have addressed himself for a solution of the problem.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

**LATE PAYMENT OF FEES AND EXPENSES AND FAILURE TO ANSWER CORRESPONDENCE**

*Decision on complaint 606/22.5.96/AH/UK/IJH against the European Commission*

**THE COMPLAINT**

In May 1996, Mrs H. complained to the Ombudsman of excessive delay in the payment of fees and expenses for work she had undertaken for the Safety and Health Committee for Mining and Other Extractive Industries. In particular, at the date of the complaint, 15 May 1996, Mrs H. had not received payment of an invoice submitted on 13 December 1995, although the contract stipulated final payment within 60 days.

Mrs H. also complained that faxes she sent about the matter had not been answered.

**THE INQUIRY****The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments were as follows.

The first invoice issued by the complainant in September 1995 did not comply with the budgetary rules. The complainant submitted a revised invoice at the beginning of 1996. Since the financial year had changed, the department concerned had to recommence the financial procedure from the commitment stage as the appropriations required lapse at the end of each year.

Payment under the contract was also delayed for administrative reasons and was finally made during the second half of 1996.

The Commission also stated:

*"With regard to the dialogue between officials and the complainant, because no information was supplied by the departments dealing with this matter, or it came too late, it was not possible to provide a detailed explanation."*

**The complainant's observations**

The Commission's comments were forwarded to Mrs. H. In summary, her observations made the following points:

The comments dealt only with the question of the fee due under the contract and not with the delays in paying expenses.

The Commission had given no detailed explanation of the delays in paying the fee. The revised invoice was submitted by post and fax on 13 December 1995 and not at the beginning of 1996.

The fee was finally received on 4 October 1996, more than nine months after submission of the invoice.

The Commission should have offered recompense for the delay in paying fees and expenses.

### ***FURTHER INQUIRIES***

After considering the Commission's comments and the complainant's observations, it appeared that a number of aspects of the complaint remained unanswered. The Ombudsman therefore wrote again to the Commission enclosing the observations and asking, in particular, if the Commission proposed to offer any financial compensation.

In its reply, the Commission:

apologized for the delay in the final payment of expenses;

undertook to make every effort to ensure that such delays do not occur in the future;

stated that it had offered 245 ECU as compensation for this delay.

Mrs H. confirmed to the Ombudsman that she had accepted and was satisfied with the compensation payment. She stated, however, that the Commission's offer of compensation was made on 11 April and accepted by her on 12 April, that she was assured that payment would be made within a maximum of 30 days, but that payment was in fact made on 23 June.

Mrs H. also expressed the wish that her complaint might lead to an improvement in the efficiency of the Commission which would be beneficial not only to herself but to many others in her position.

### ***THE DECISION***

#### **1 Late payment of expenses**

The Commission had acknowledged and apologised for an unjustified delay in the payment of expenses to the complainant. It had paid compensation for the delay. This aspect of the complaint therefore appeared to have been settled by the Commission, to the satisfaction of the complainant.

## 2 Late payment of the balance of the fee

- 2.1 At the time of the original complaint, the balance of the fee due under the contract had not been paid. On the basis of the facts as presented by the complainant, which the Commission either confirmed or did not contradict, the balance was finally paid over nine months after the submission of the relevant invoice, whereas according to the contract payment should have been made within 60 days. The Commission offered no satisfactory explanation for this delay, nor did it apologize for it.
- 2.2 This aspect of the complaint was therefore upheld. The Commission fell below standards of good administration in making payment more than seven months later than it should have done according to the terms of its contract with the complainant.

## 3 Failure to answer correspondence

- 3.1 The Commission appears to have acknowledged that there was a failure to deal satisfactorily with correspondence from the complainant. However, the Commission offered neither a satisfactory explanation of why the failure occurred, nor did it apologize for it.
- 3.2 This aspect of the complaint was therefore upheld. The Commission fell below standards of good administration in failing to reply to correspondence from the complainant.

## CONCLUSION

On the basis of the European Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

The Commission fell below standards of good administration in making payment more than seven months later than it should have done according to the terms of its contract with the complainant and in failing to reply to her correspondence.

Given that these aspects of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### Further remarks by the European Ombudsman

The European Ombudsman noted the Communication from Commissioners GRADIN and LIIKANEN, in agreement with the President, concerning time-limits for payments by the Commission and interest on delayed payments (SEC (97) 1205, 10 June 1997). It appeared from this

Communication that the Commission is seeking to reduce delays in making payments and proposes to pay interest when delays occur.

The Ombudsman will keep under review the situation as regards complaints against the Commission concerning late payment of fees and expenses, in order to consider whether it may be appropriate to envisage an own-initiative inquiry into the subject.

### **ALLEGED INFRINGEMENT OF DIRECTIVE: HANDLING OF COMPLAINT LODGED WITH THE COMMISSION**

*Decision on complaint 620/3.6.96/DH/DK/PD against the European Commission*

#### **THE COMPLAINT**

Mr H. from Denmark complained to the Ombudsman in June 1996 that the Commission had not properly dealt with a complaint he had lodged with it against the Danish authorities. His complaint to the Commission alleged that the Danish authorities had infringed Directive 83/515/EEC and failed to transpose Article 23 of Regulation 4028/86/EEC, both concerning the Fisheries sector. In its answer to Mr H. the Commission stated that the examination of the complaint had not led to the establishment of infringements of Community law.

#### **THE INQUIRY**

##### **The Commission's comments**

The complaint was forwarded to the Commission. In summary the comments of the Commission were as follows:

The object of the complaint involves a decision by the Commission under Article 169 of the EC Treaty.

It is established case law that the Commission has a discretion in this respect, precluding the possibility for private persons to require it to bring a case before the Court of Justice. By deciding not to engage the procedure in this case, the Commission had acted within its powers in conformity with the case law of the Court.

The objective of the provisions of the Directive, which the complainant alleged that Denmark had infringed, is to lay down the detailed conditions for granting financial aid, in case the Member State decides to establish a scheme of financial aid. Since Denmark had not established a scheme of financial aid, there was no infringement. As concerns Article 23 of Regulation 4028/86 it is established case law that the Member States are not entitled to transpose the provisions of a

Regulation as regulations are directly applicable as law in the Member States.

### **The complainant's observations**

In his observations, the complainant maintained his complaint and asked the Ombudsman to initiate judicial proceedings against Denmark.

### **THE DECISION**

In his assessment of the complaint, the Ombudsman firstly recalled that the EC Treaty empowers him to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Ombudsman is not entitled to inquire into the activities of national authorities, nor to bring judicial proceedings against a Member State.

The Commission's reference in its comments to its discretionary powers under Article 169 of the EC Treaty was irrelevant. It followed clearly from the Commission's comments that it considered that there was no infringement by Denmark in this case. Consequently, no question could arise of discretion to bring proceedings under Article 169.

As for the Commission's assessment of the complaint, the Ombudsman recalled that the highest authority on the interpretation of Community law is the Court of Justice. No element at hand in this case made it apparent that the Commission's assessment was wrong.

As for the Commission's handling of the complaint, it appeared that the Commission had dealt with it and provided Mr H. with an answer to his allegations. However, the Commission had not provided Mr H. with the reasoning for its conclusion that Denmark had not infringed the provisions in question, until he complained to the Ombudsman. If it had provided the reasoning earlier, the need for a complaint to the Ombudsman would not have arisen. The Ombudsman therefore made a critical remark to the Commission to the effect that it should have made its reasoning known to the complainant in its answer to the complaint.

As the Commission had eventually provided the complainant with its reasoning, no further investigations were justified. The Ombudsman therefore closed the case.

**COMMISSION'S RESPONSIBILITY FOR "INTERMEDIARY ORGANISATIONS"**

*Decision on complaint 630/6.6.96/CJ/UK/IJH against the European Commission*

**THE COMPLAINT**

Mr C. was chairman of a Committee which organised the World Disabled Sailing Championship in the UK in August 1994. In November 1993, he applied to an organisation based in the Netherlands, FIPA (the Foundation for International cooperation of Projects and other activities for humanitarian affairs), for a grant to support the event. In March 1994, FIPA offered financial aid from the European Commission equal to 18% of total allowable expenditure, up to a maximum of 7130 ECU. The offer was subject to conditions, including public acknowledgement of Commission support and submission of audited accounts by 30 November 1994. Payment was to be made only after the Commission had received and approved the accounts.

Mr C. asked FIPA for payment in advance, in order to avoid interest charges on a loan. The request was refused and he therefore arranged a loan.

In November 1994, Mr C. submitted audited accounts to FIPA. However, in spite of repeated telephone calls, no payment was made until May 1995. The payment was for a smaller sum than the maximum originally offered. In view of the delay, the organising committee finally decided to make other arrangements to settle the outstanding loan and informed FIPA they needed no more grant aid.

In May 1996, Mr C., and Dr Caroline JACKSON, Member of the European Parliament, on his behalf, complained that

- 1 retrospective payment of grant aid leads to unnecessary extra costs;
- 2 it was unfair for the Commission to demand public acknowledgement when giving no definite promise to provide funding;
- 3 payment of the full amount due had been wrongly refused.
- 4 there had been unnecessary delay in making payment.

**THE INQUIRY****The Commission's comments**

The complaint was forwarded to the Commission. The Commission began its comments by pointing out that it frequently uses intermediary organisations such as FIPA to manage particular aid programmes.

In summary, the Commission commented as follows on the four aspects of the complaint:

- 1 Mr C. was informed by FIPA that interest on the loan could be included on the deficit side of the organisation's accounts. He was happy to sign the contract and to go ahead and apply for financial assistance.
- 2 Clauses requiring public recognition of Community aid are standard practice. There is a definite promise to provide funding if the organisation concerned respects the terms of its contract.
- 3 On the basis of the accounts submitted to FIPA, payment of the sum initially granted to Mr C. (7130 ECU) would have resulted in a 'profit', defined as a surplus of income over expenditure. This was forbidden by Article 3.1 of FIPA's convention with the Commission. Furthermore, clause 6 of Mr C.'s contract with FIPA reserved the right 'to waive any financial aid, if the statement of income and expenditure does not justify utilisation of any financial aid'. The need to avoid making a profit had also previously been made clear orally to Mr C. by FIPA. In May 1995, FIPA paid Mr C. an advance of 40% of the sum initially granted (2852 ECU). Thereafter Mr C. was offered a final payment of 2155 ECU, i.e. the balance of the amount of grant aid offered minus the apparent 'profit' shown in the accounts and the advance already received. Mr C. refused to accept the final payment that was offered.
- 4 According to the contract between the Commission and FIPA, the latter's financial statements should have been submitted by 31 December 1994. In fact, it was received only on 12 September 1995. This delay may have had knock-on effects for organisations awaiting payment from FIPA. Responsibility for the delay lay primarily with FIPA.

In late 1994, the Commission decided to apply more strictly the existing arrangements for payment of financial assistance. Until then, an individual organisation submitted its financial statement to FIPA, as and when it was ready. FIPA then passed it on to DG X of the Commission. Once satisfied that the accounts were correct, the Commission would pay an appropriate sum to FIPA which would, in turn, pay it to the organisation. This arrangement placed a very heavy administrative burden on the Commission's services.

The financial service in DG X therefore decided to implement a new method for financial year 1994. Cases would no longer be dealt with on an individual basis. FIPA would receive an advance of 40% of the over-



all contribution, but would only receive the balance of 60% once it had submitted its overall accounts.

FIPA forwarded Mr C.'s financial statement to the Commission as if the old arrangement still applied. Because the new arrangement now applied, DG X did not scrutinize the financial statement, since they had instructions to commence the scrutiny exercise only once FIPA's overall activity report and detailed accounts had been submitted.

Mr C.'s repeated telephone inquiries were made to FIPA not the Commission.

The Commission expressed regret for the delay, but stated that such problem cases are rare. The Commission also stated that both FIPA and the Commission have learnt from the case the need for explicit communication where potential problems arise.

### **The complainant's observations**

Mr C.'s observations included, in summary, the following points:

It is the duty of any charitable organisation to run their affairs cost effectively. This does not include taking on increased costs merely because the bill will be paid by another organisation. As a taxpayer, he did not accept the Commission's attitude on this point.

As a result of the delays by FIPA and the Commission, the final payment was offered some months after the organisation had already closed down after having completed its work. There was therefore no possibility of accepting it.

The Commission should have apologised for the delay which had occurred.

## **THE DECISION**

### **1 Retrospective payment**

1.1 The contract between the complainant and FIPA provided only for retrospective payment of grant aid. It appeared therefore that FIPA was entitled to refuse to make an advance payment and, therefore, that there was no maladministration in relation to this aspect of the complaint.

1.2 The complainant's observations raised the general issue that retrospective payment could result in increased costs to the Community tax-

payer. In specifying the financial conditions for Community grant aid, the Commission must comply with the Financial Regulation, including the requirement of sound financial management. The Commission's activities are subject to supervision in this regard by the Court of Auditors and the European Parliament. There appeared, therefore, to be no grounds for the Ombudsman to inquire into this general issue.

## **2 The requirement to acknowledge Community grant aid**

- 2.1 It appeared to be standard practice to require public recognition of Community grant aid.
- 2.2 Community grant aid is only paid in accordance with the terms of the contract. The promise of funding is therefore conditional rather than definite. However, it appeared from the Commission's comments that it considers that fulfilment of the conditions is within the control of the recipient.
- 2.3 It does not appear to be unfair for the Commission to require public recognition of conditional Community grant aid if fulfilment of the conditions is within the control of the recipient.
- 2.4 There appeared, therefore, to be no maladministration in relation to this aspect of the complaint.

## **3 The amount of grant paid.**

- 3.1 By letter dated 4 June 1995, Mr C. had thanked FIPA for payment of the 40% advance and stated that the organising Committee: had decided to close the accounts; had made alternative arrangements to settle its outstanding loan; and no longer required the balance of the grant from FIPA. There appeared, therefore, to be no existing contractual dispute between Mr C. and either FIPA or the Commission.
- 3.2 It was appropriate for the Ombudsman to examine whether, in its dealings with the complainant concerning the amount of grant aid payable, the Commission acted in accordance with normal standards of good administrative behaviour, including having a clear legal basis for its actions.
- 3.3 In its comments, the Commission explained the basis on which the final payment that was offered had been calculated. The amount of the original grant was reduced by an amount equal to the amount by which Mr C.'s accounts showed income as exceeding expenditure ('profit'). In justifying the reduction, the Commission referred to Article 3.1 of FIPA's

convention with the Commission and to clause 6 of the complainant's contract with FIPA. It also stated that FIPA had made clear to Mr C. orally the need to avoid making a 'profit'.

- 3.4 A provision of the contract between FIPA and the Commission does not appear to provide a legal basis for reducing a payment due under a contract between FIPA and Mr C.
- 3.5 Clause 6 of Mr C.'s contract with FIPA required him "*to waive any financial aid, if the statement of income and expenditure does not justify utilisation of any financial aid*". As noted in paragraph 2.2 above, it appears from the Commission's comments that it considers that fulfilment of the conditions of the grant aid contract is within the control of the recipient. It would be inconsistent with this approach to interpret Clause 6 of the contract as conferring on FIPA power to reduce the grant by reference to conditions which have not been made clear to the recipient in advance.
- 3.6 The Commission's claim that the need to avoid making a 'profit' was made clear by FIPA orally was not contradicted by Mr C. However, normal principles of good administrative behaviour require that a condition imposed on an offer of grant aid should be mentioned in writing, so that the authority concerned can satisfy itself and others that the condition has been communicated to the recipient of the grant. It appeared that the Commission fell below normal standards of good administrative behaviour in this case by relying exclusively on oral communication of such a condition.
- 3.7 Furthermore, it is not obvious that oral communication can provide a legal basis for the contractual validity of such a condition. The Commission had not, therefore, succeeded in demonstrating that its actions in relation to this aspect of the case had a clear legal basis.

#### **4 Administrative delay in making payment**

- 4.1 In its comments, the Commission acknowledged that organisations awaiting payment may have been affected the fact that FIPA's accounts, which should have been submitted on 31 December 1994, were not submitted until 12 September 1995. According to the Commission, responsibility for the delay lay primarily with FIPA.
- 4.2 It appeared from the Commission's reply that, in the specific case of the complainant, the delay occurred following new arrangements introduced by the Commission for the approval of accounts. According to

the Commission, FIPA forwarded the Mr C.'s financial statement to the Commission as if the old arrangements still applied. Because of the new arrangements, DG X did not scrutinise the financial statement when it arrived because they had instructions to wait until FIPA submitted its own accounts. According to the Commission, Mr C.'s repeated telephone inquiries about the matter were made to FIPA, not the Commission.

4.3 In its comments, the Commission expressed regret for the delay that occurred. No further remark by the Ombudsman therefore appears to be necessary.

### **CONCLUSION**

The Commission stated in its comments that both FIPA and the Commission have learnt from this case the need for explicit communication where potential problems arise. However, on the basis of the European Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

Normal principles of good administrative behaviour require that a condition imposed on an offer of grant aid should be mentioned in writing, so that the authority concerned can satisfy itself and others that the condition has been communicated to the recipient of the grant. It appears that the Commission fell below normal standards of good administrative behaviour in this case by relying exclusively on oral communication of such a condition. Furthermore, it is not obvious that oral communication can provide a legal basis for the contractual validity of such a condition. The Commission has not, therefore, succeeded in demonstrating that its actions in relation to this aspect of the case have a clear legal basis.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### **FURTHER REMARKS**

The Commission's comments in this case pointed out that it frequently uses intermediary organisations to manage particular aid programmes.

At a number of points, the Commission's comments could be interpreted as implying that, if an intermediary organisation fails to act in accordance with normal standards of good administrative behaviour, the Commission is not responsible for the failure.

In cooperating with the Ombudsman's inquiries it is essential for the Commission to specify exactly how and where any failure to comply with normal standards of good administrative behaviour has occurred. This can and should include making clear, if appropriate, that the failure has occurred within an intermediary organisation rather than in the Commission's own services.

The Commission remains responsible, however, for the quality of the administration which it carries out through an intermediary organisation.

### **RECRUITMENT: CRITERIA OF EVALUATION AND DISCLOSURE OF NAMES OF CORRECTORS**

*Decision on complaint 659/24.6.96/AEKA/FIN/IJH against the European Commission and the European Parliament*

#### **THE COMPLAINT**

In June 1996, the Central Union of Special Branches within AKAVA (the Central Trade Union of Academic Professions in Finland) complained to the Ombudsman about a recruitment of Finnish translators and assistant translators.

The Union stated that altogether 17 translators working for the Commission Representation in Helsinki participated in an open competition organized jointly by the European Commission and the European Parliament and that sixteen of them were rejected.

The Central Union complained that:

- 1 Candidates were unable to obtain information about the criteria of evaluation.
- 2 Neither the requirements for the selection of correctors nor their names were made public.
- 3 According to information it had received, translators from Finnish into French were treated particularly severely, as only two to three translators were selected for the oral examination.
- 4 It was necessary to increase transparency both in order to protect the candidates' legal rights and to ensure equal treatment.

The Central Union noted that for purposes of economy it would seem more reasonable to re-examine the rejected candidates' scripts than to organize a new competition.

### **THE INQUIRY**

The complaints were forwarded to the Commission and the Parliament.

#### **The Commission's comments**

In summary, the Commission's comments made the following points:

- 1 The translators for the Commission representation in Helsinki had been recruited on the basis of a written translation test and an interview, not through an open competition.
- 2 The basic principle underlying open competitions is that of equality of treatment of all candidates.
- 3 For each competition a Selection Board is appointed which works independently and confidentially. The Selection Board is composed of representatives of the administration and the staff committees. In order to protect the independence of the Selection Board and to avoid external pressure, the identity of the members of the Selection Board is not disclosed.
- 4 The Selection Board appoints correctors for the written tests. In order to assure a high quality of assessment the Selection Board appoints competent and experienced linguists as correctors. Each exam paper is assessed independently by at least two correctors.
- 5 The anonymity of the candidates is assured during the marking of the written tests.

#### **The Parliament's comments**

The Parliament made, in summary, the following points:

- 1 The Selection Board had corrected the candidates' scripts impartially. At least two correctors evaluated each script on the basis of the criteria of evaluation established by the Selection Board.
- 2 Communicating the results obtained is a sufficient reasoning to a rejected candidate. In the competition in question, all necessary reasoning had been given to the candidates.
- 3 The complainant's allegation concerning the degree of difficulty between different languages did not correspond to the facts. All languages had been treated equally. Furthermore, the allegation concerning the number of successful translators from Finnish into French was not correct, as their number had been considerably higher.
- 4 Disclosure of the identity of members of Selection Boards and correctors to all candidates was not consistent with the confidentiality of the

work of Selection Boards, for which the Staff Regulations and the established case-law provide. Confidentiality enables Selection Boards to work independently and impartially. The Parliament had followed all the rules concerning the selection of correctors.

- 5 The Parliament could not accept the Central Union's suggestion to upgrade the marks awarded in the competition.
- 6 In any case the rejected candidates had a possibility to participate again in competitions to be organized at the end of 1996.

### **The complainant's observations**

In its observations the Central Union maintained its complaint. As regards the Parliament's comments, the Union stated that it had not requested the upgrading of marks, but only their re-examination.

## **THE DECISION**

### **1 The criteria of evaluation applied in the competition**

- 1.1 Selection Boards, in accordance with the case-law of the Court of Justice and principles of good administrative behaviour, should provide applicants with the reasons and elements necessary for understanding the decisions they take.
- 1.2 The Ombudsman considered it insufficient that, despite the Union's requests, neither the Commission nor the Parliament gave out more detailed information on the criteria of evaluation of the Selection Boards.
- 1.3 The Ombudsman had received a number of complaints within the field of recruitment for the Community institutions. These complaints concerned, in particular, the lack of transparency in the procedures. Among other things the complainants had complained about not being able to obtain information about the criteria of evaluation, despite their requests.
- 1.4 According to Article 138e of the Treaty Establishing the European Community, the European Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of the Community institutions and bodies. By virtue of this provision, he opened an own initiative inquiry on 7 November 1997 concerning the procedures followed by the Commission in its recruitment of personnel.
- 1.5 In this inquiry, the Ombudsman draws the Commission's attention to the fact that, by communicating information on the criteria of evaluation

to the applicants, the Commission would considerably increase the transparency in the recruitment and could also alleviate the work of Selection Boards in dealing with queries and complaints from applicants.

## **2 Disclosure of names and criteria of selection of correctors**

- 2.1 In the present state of Community law there is no legal basis for considering that either the Commission or the Parliament is under an obligation to disclose the names and the criteria of selection of correctors to a candidate who so requests.
- 2.2 As part of this own initiative inquiry, the Ombudsman will investigate whether the Commission envisages taking measures in order to allow the disclosure of names of correctors to the candidate concerned.

## **3 Choice of language and equal treatment of the candidates**

- 3.1 The Ombudsman's inquiries did not reveal sufficient evidence to indicate an instance of maladministration either by the Commission or the Parliament in the treatment of candidates based on their choice of language.

### ***THE CONCLUSION***

On the basis of the Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

Selection Boards, in accordance with the case-law of the Court of Justice and principles of good administrative behaviour, should provide applicants with the reasons and elements necessary for understanding the decisions they take.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### ***FURTHER REMARKS***

The Ombudsman's inquiries into this complaint and other complaints on the recruitment of personnel indicated that it was appropriate to initiate a more general investigation on the matter.

The Ombudsman opened, on 7 November 1997, an inquiry on his own initiative into the procedures followed by the Commission in the recruitment of personnel.



**RECRUITMENT: PROCEDURES IN AN OPEN COMPETITION**

*Decision on complaint 675/1.7.96/AL/FIN/KT against the European Commission*

**THE COMPLAINT**

In June 1996, Ms L. complained to the Ombudsman concerning the procedures followed by the Commission in a recruitment competition.

She participated in open competition COM/A/907 and was among 40 candidates who were invited to the oral examination. However, she was not placed on the reserve list. In July 1995, the Commission informed Ms L. of the results specifying the marks she had obtained. On 17 August 1995, Ms L. wrote to the Chairman of the Selection Board requesting that her marks be re-examined and asking for copies of her corrected exam papers.

Ms L. complained to the Ombudsman that:

- 1 She had received no reply to her letter of 17 August 1995.
- 2 The Selection Board had refused to provide her with copies of her corrected exam papers.
- 3 She was never given any information about the criteria of evaluation or grading scale applied by the Selection Board.

**THE INQUIRY****The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission made the following points:

- 1 The notice of competition foresaw that a maximum of 20 applicants would be placed on the reserve list. Some 40 candidates were invited to the oral examination following success in the written tests. The marks awarded by the Selection Board meant that Ms L. was not among the 20 best candidates.
- 2 In a letter dated 27 June 1996, Ms L. stated that she had sent a letter to the Commission on 17 August 1995 asking for the re-examination of her file and requesting that her exam papers would be returned. The Commission's Recruitment Unit then examined Ms L.'s file, but did not find her letter of 17 August 1995.
- 3 Ms L. wrote to the Chairman of the Selection Board on 9 May 1996 enclosing a copy of her letter of 17 August 1995. The Commission replied to the letter of 9 May 1996 on 13 September 1996. In this let-

ter, the Commission apologized for the delay in replying Ms L.'s letter of 9 May 1996.

### **The complainant's observations**

Ms L. maintained her complaint. She annexed a certified copy of a receipt for registered mail dated 22 August 1995. This letter was addressed to the Chairman of the Competition COM/A/907 at the European Commission DG IX.

Furthermore, Ms L. pointed out that she had not asked for her exam papers to be returned, as mentioned in the Commission's opinion, but only copies of her corrected exam papers and their evaluation, in order to enable her to familiarize herself with them and to analyse them for the future.

## **THE DECISION**

### **1 Loss of a candidate's letter**

- 1.1 The complainant had provided the Ombudsman with a certified copy of receipt for registered mail of her letter sent on 22 August 1995.
- 1.2 The Commission had stated in its opinion that it had not found the complainant's letter of 17 August 1995.
- 1.3 The principles of good administration require that a letter which has arrived at the Commission should be answered. The fact that the Commission had lost the complainant's letter of 17 August 1995 constituted to an instance of maladministration. The Ombudsman therefore drew the Commission's attention to the fact that it should make sure that such instances should not occur in the future.

### **2 Copies of examination papers**

- 2.1 The Staff Regulations provide that, for each competition, a Selection Board is appointed which works independently and confidentially. In the present state of Community law, there is no legal basis for considering that the Commission is under an obligation to disclose a copy of corrected examination script to the candidate.
- 2.2 The European Ombudsman had received a number of complaints within the field of recruitment to the Community institutions. These complaints concern, in particular, lack of transparency in the procedures. Among other things, the complainants had complained about not being able to obtain copies of corrected examination scripts upon request.

- 2.3 According to Article 138 e of the EC Treaty, the Ombudsman is empowered to conduct inquiries on his own initiative in relation to possible instances of maladministration in the activities of the Community institutions and bodies. By virtue of this provision, he opened an own initiative inquiry on 7 November 1997 concerning the procedures followed by the Commission in its recruitment of personnel.
- 2.4 As part of this own initiative the Ombudsman will investigate, whether the Commission envisages taking measures in order to allow the disclosure of copies of corrected examination scripts to the candidate concerned.

### **3 The criteria of evaluation applied by the Selection Board**

- 3.1 Selection Boards, in accordance with the case-law of the Court and principles of good administrative behaviour, shall provide applicants with the reasons and elements necessary for understanding the decisions they take. The Ombudsman considered it insufficient that the Commission did not, despite the complainant's requests, provide more detailed information on the criteria of evaluation used by the Selection Board.
- 3.2 The Ombudsman drew the Commission's attention to the fact that, by communicating information on the criteria of evaluation to the candidates, the Commission would increase considerably transparency in the recruitment procedure and could also alleviate the work of Selection Boards in dealing with queries and complaints from candidates.

### **THE CONCLUSION**

On the basis of the European Ombudsman's inquiries into this complaint, it appeared, necessary to make the following critical remarks:

The principles of good administration require that a letter which has arrived at the Commission should be answered. The fact that the Commission had lost the complainant's letter of 17 August 1995 constituted an instance of maladministration. The Ombudsman therefore drew the Commission's attention to the fact that it should make sure that such instances should not occur in the future.

Selection Boards, in accordance with the case-law of the court and principles of good administrative conduct, shall provide applicants with the reasons and elements necessary for understanding the decisions they take. The Ombudsman considered it insufficient that the

Commission did not, despite the complainant's requests, provide more detailed information on the criteria of evaluation used by the Selection Board.

Given that these aspects of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### **FURTHER REMARKS**

The Ombudsman's inquiries into this complaint and other complaints concerning the recruitment of personnel indicated that it was appropriate to initiate a more general investigation into the matter.

On 7 November 1997 the European Ombudsman opened an inquiry on his own initiative into the procedures followed by the Commission in the recruitment of personnel.

### **RECRUITMENT: INFORMATION OF APPLICANT**

*Decision on complaint 686/3.7.96/GR/D/VK against the European Commission*

### **THE COMPLAINT**

In July 1996, Mr. R. complained to the Ombudsman about lack of information and considerable delays in a competition procedure of the Commission.

The complainant participated in a competition for posts in the field of biotechnology. He received an acknowledgement of receipt four months after he had sent in his personal documents. During a period of two years he did not receive any other information from the Commission. His regular requests for further information about the recruitment procedure resulted only in the sending of the same receipt form. The complainant stressed that the selection procedure appeared to be too lengthy. He doubted that the procedure was carried out correctly and that his file was being properly examined.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments the Commission stated that the selection procedure was meant to establish a reserve list for temporary agents. The list should enable the different services of the Commission to choose candidates. The candidates neither have a legal claim to be invited for an interview nor do successful partici-

pants have a claim to be employed. The delays were due to the large number of participants and other problems originating in the composition of the Selection Board. Mr. R.'s allegation that his file was not properly examined was unfounded, as the Selection Board inspected every application file separately.

### **The complainant's observations**

The complainant made the following points: the Commission seemed not to have acted for a period of two years; the research sector is constantly progressing and applicants for posts in this field therefore need up-to-date qualifications; the considerable delay in the selection procedure was incomprehensible.

Furthermore, the complainant pointed out that, in view of the current employment situation, the general notification of vacancies with a rather vague job description would certainly initiate a flood of applications. The Commission could have expected a high number of applications and should have taken appropriate measures to be able to deal with them accordingly.

### **THE DECISION**

From the information given to the Ombudsman, it appears that from February 1995 onwards, the complainant had not received any further information about his application. As a participant, he was naturally interested in the development of the selection procedure. In case of delays, it is part of good administrative behaviour to inform the candidates about the current state of the procedure within a reasonable amount of time, particularly when the candidate himself had specifically requested such information. The repeated sending of the same acknowledgement of receipt-letter did not appear to meet the need for information.

The Commission acknowledged that a delay had occurred. It stated that the complainant would be informed personally about the result of the selection committee.

On the basis of the European Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

It is good administrative behaviour to reply to requests in due time. In the present case, the complainant did not receive any information for the period of at least one-and-a-half-years. The complainant should have been informed by the Commission on the current situation of the selection procedure when he inquired about it. As the Commission was aware of the fact

that many applicants reply to notifications for vacancies, it should have dealt with the matter appropriately, so that applicants would have been informed about the situation in reasonable time.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### REFUSAL OF PUBLIC ACCESS TO DOCUMENTS

*Decision on complaint 709/9.7.96/TC/IRL/KT against the European Commission*

#### THE COMPLAINT

Mr C. from Ireland complained to the Ombudsman in July 1996 about the refusal of the European Commission to grant him access to an exchange of letters between the Commission and the Office of Consumer Affairs in Ireland. Mr C. had written to the Commission alleging that the Consumer Affairs Office in Ireland was in breach of its Community law obligations towards him. As a result of his complaint, the Commission had an exchange of correspondence with the Consumer Affairs Office in Ireland. On two occasions the complainant had asked the Commission for copies of this correspondence but was denied access.

In summary, the Commission put forward the following reasons for refusing access:

The Decision on public access to Commission documents expressly envisages that if a document originates from outside the Commission (e.g. the Consumer Affairs Office's letter to the Commission), the application must be referred to its author; moreover, the Consumer Affairs Office had requested confidentiality. Concerning the Commission's letter to the Consumer Affairs Office, the Commission maintained that disclosure would harm the Commission's interest in the confidentiality of its proceedings, which is one of the grounds on which the Commission may refuse access under its Decision on public access to Commission documents.

#### THE INQUIRY

The Ombudsman determined that the issue raised was within his mandate, as it concerned a request for access to documents in the possession of the European Commission.

### The Commission's comments

The complaint was forwarded to the Commission. In its comments, the Commission maintained the reasons it had originally advanced for refusing access to the letter from the Consumer Affairs Office to the Commission. However, concerning the Commission's letter to the Consumer Affairs Office, the Commission reviewed its original decision "in the light of two years' experience in applying its policy on access to documents" and considered "that it could accede" to Mr. C.'s request for access to the letter, which was consequently enclosed with the Commission's comments.

### The complainant's observations

In his observations on the Commission's comments, the complainant indicated that he had asked the Consumer Affairs Office for a copy of its letter to the Commission, but that he was denied access. He questioned whether policies on public access to documents should differ from one country to another.

### THE DECISION

In his assessment of the complaint, the Ombudsman first recalled that the EC Treaty does not contain a provision on transparency, nor is there any general rule, applicable to all Community institutions and bodies, granting a general right of public access to documents. He also recalled that he only has jurisdiction over Community institutions and bodies and, therefore, national policies on public access to documents are outside his mandate.

The Commission and the Council agreed a Code of Conduct on public access to documents that they have established (hereinafter: the Code), which, as far as the Commission is concerned, was implemented by Commission Decision of 8 February 1994.<sup>1</sup>

The Ombudsman's inquiries into the matters raised by the complainant were therefore directed towards the question whether the Commission had acted in conformity with these rules when refusing access to the correspondence in question.

The relevant provisions of the Code read as follows:

*Where the document held by an institution was written by a natural or legal person, a Member State, another Community institution or body or any other national or international body, the application must be sent direct to the author.*

<sup>1</sup> OJ 1993 L 340/ 41; OJ 1994 L 46/58.

*[The Institutions] may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings.*

Concerning the letter from the Consumer Affairs Office to the Commission, it appears from the quoted provisions that incoming letters to the Commission are outside the scope of application of the Commission's Decision on public access to documents. The Commission's decision on Mr. C.'s request thus appeared to be in conformity with the applicable rules.

As for the Commission's letter to the Consumers Affairs Office, the Ombudsman remarked that it follows from the ruling of the Court of First Instance in case T-194/94 *Carvel and Guardian Newspapers v Council*<sup>1</sup> that the institutions, when invoking the confidentiality of their proceedings, have to balance the interests of citizens in gaining access to their documents against any interest of their own in maintaining the confidentiality of their deliberations.

It did not appear from the Commission's decision to refuse access to its own letter that it had undertaken such a balancing. In the course of the Ombudsman's inquiries the Commission had itself taken steps to correct this error by releasing the document concerned. The Ombudsman therefore limited himself to making a critical remark to the Commission to the effect that, in future, it should comply with the requirement of balancing.

Against this background, the Ombudsman closed the case.

### **RECRUITMENT: APPEAL AGAINST DECISION OF A SELECTION BOARD**

*Decision on complaint 773/29.7.96/SS/FIN/PD against the European Commission*

#### **THE COMPLAINT**

In July 1996, Mr S. complained to the Ombudsman on behalf of himself and three other experienced translators and applicants. The complaint concerned a general competition, organized by the Commission, for Swedish-speaking translators (EUR/LA/76). Having failed the written examination, the complainant asked the Selection Board to review the marking and to forward him a copy of the corrected examination script.

In his complaint to the Ombudsman, Mr S. alleged that the reply sent to him by the Selection Board on 14 May 1996 constituted an instance of maladministration. In its letter, the Selection Board had stated that it had reviewed the marking and that the marking had been done in a correct and just way. As for the complainant's request for access to the corrected examination

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<sup>1</sup> [1995] ECR-II 2765.



script, the Board stated that unfortunately it could not grant him access, taking into consideration that the proceedings of the Board were confidential and in application of the principle of equal treatment of applicants. In his complaint, Mr S. also requested that a body other than the Selection Board should review the marking of his written examination.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated in general that the marking of the written tests in a competition is a comparative exercise which is covered by the statutory obligation of secrecy concerning the proceedings of Selection Boards and that the Community Courts have recognised that the Boards have a significant margin for appreciating the written tests of the applicants.

As for Mr S.'s case, the Commission stated that the Selection Board had appointed correctors who were competent and experienced linguists and that each examination script had been assessed independently by at least two correctors. The Board had subsequently decided the mark awarded to each candidate and, given the case-law of the Community Courts, it was *"out of the question that any other body than the Board should purport to determine the mark of the applicants."*

### **THE DECISION**

In taking a stand on the complainant's allegation concerning the Commission's letter dated 14 May 1996, the Ombudsman firstly remarked that the Commission referred to the principle of equal treatment of applicants to justify refusing Mr S. access to his corrected examination script. This principle implies that identical situations shall be treated equally and that different situations shall not be treated identically. The decision to disclose or not a copy of the corrected examination script to applicants is a decision to be taken within the legal framework laid down by the Staff Regulations and the case-law of the Community Courts, and the principle referred to does not appear to have any bearing on such a decision. Furthermore, the Ombudsman noted that the Commission had not reiterated this argument in its comments to him. Thus, the Ombudsman found the Commission's reference to this principle in its answer to the complainant misleading and made a critical remark to this effect.

In the present state of Community law, there is no legal basis for considering that the Commission is under an obligation to disclose a copy of a corrected examination script to an applicant. Having regard to this and to the

wide discretion of Selection Boards, recognized by the Community Courts, it is all the more important that the Selection Boards comply with the legal guarantees, laid down by the Community Courts, and with principles of good administrative conduct. In its reply to Mr S.'s request for a review of its decision, the Selection Board merely stated that it had "established that the marking of his exam had been made in a correct and just way." It did not provide the complainant with any indication as to which elements and which procedure applied had led to this result. The Ombudsman found this unsatisfactory and he therefore made a critical remark to the Commission to the effect that Selection Boards, with due consideration to the Community Courts' case-law and principles of good administrative conduct, should provide applicants with the reasons and elements necessary for understanding the decisions they take.

As for the complainant's request for a review of his examination script by a body other than the Selection Board, the Ombudsman remarked that the applicable rules in force do not provide for an appeal body which, within the framework of a competition, could review the Selection Board's marking of exams.

On the basis of the above findings, the Ombudsman closed the case.

### **RECOGNITION OF DIPLOMA : COMPLAINT NOT PROPERLY CONSIDERED**

*Decision on complaint 956/18.10.96/RM/B/PD against the European Commission*

#### **THE COMPLAINT**

In October 1996, Mrs B. acting through a Belgian lawyer, made a complaint to the Ombudsman against the Commission.

Mrs B., a Dutch citizen living in Belgium, holds a Dutch nursing diploma "*Diploma Verpleegkundige A*" which she obtained in 1965. In February 1994, she was informed by the Belgian authorities that the diploma could not be recognized as such.

In April 1994, Mrs B. lodged a complaint with the Commission about this refusal, which she considered to be contrary to Community law. She considered that recognition should have been granted under Council Directive 77/452 concerning the mutual recognition of diplomas, certificates and other evidence of the formal qualifications of nurses responsible for general care, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services.<sup>1</sup>

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<sup>1</sup> OJ 1977 L 176/1.

Mrs B. complained to the Ombudsman because she found the Commission's assessment of and dealing with her case unsatisfactory.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that Mrs B.'s diploma was delivered before Council Directive 77/452 became applicable. Furthermore, mutual recognition of a diploma under 77/452 is dependent on the diploma's conformity with the requirements laid down by Directive 77/453 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of nurses responsible for general care<sup>1</sup>. Mrs B.'s diploma, however, concerned an education which was not in conformity with the minimum criteria laid down by Council Directive 77/453

The Commission further stated that it was not possible for Mrs B. to benefit from the provisions of Article 4 in Directive 77/452 concerning diplomas which do not fulfill all requirements laid down by Directive 77/453 as she was not able to provide the work certificate required by Article 4.

However, on the basis of the case-law of the Court of Justice, the Commission considered that the Belgian authorities should try to facilitate Mrs B.'s access to her profession in spite of the inapplicability of the Directive to her case. The national authorities should compare the diploma in question with the requirements set out in Directive 77/453 and indicate to the citizen which qualifications they consider missing. By supplying this information, the authorities enable the citizen to decide whether to acquire the qualifications considered missing.

As for its dealing with the case, the Commission stated that it had submitted the case as well as other similar ones to the Committee of Senior Officials on Public Health which had been set up by the mentioned Directives in order to examine difficulties in the application thereof. Furthermore it enumerated its numerous contacts with the Belgian and the Dutch authorities about these cases. The Commission indicated that it was not until autumn 1996 that the Committee of Senior Officials reached its conclusions, which were in conformity with the Commission's legal assessment set out here above. Finally, the Commission stated that it had informed Mrs B. about its legal assessment by letter of 25 November 1996.

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<sup>1</sup> OJ 1977 L 176/8.

### THE DECISION

As for the Commission's assessment of the original complaint lodged with the Commission, it appeared that the Commission shared the Belgian authorities' opinion that the diploma in question did not comply with the minimum requirements laid down by Directive 77/453. In that case, it followed clearly from Article 4 of Directive 77/452 that the diploma could only be recognized if it was accompanied by a certificate. The certificate should have been to the effect that the holder had been "engaged in the activities of nurses responsible for general care for at least three years during the five years prior to the date of issue of the certificate."

In case the access to a profession and mutual recognition of diplomas has not been subject to regulation by the Community legislator, the right to freedom of movement must be exercised directly on the basis of the relevant Treaty provisions, in this case Articles 48 and 52 EC. These provisions have direct effect and can thus be applied by national courts. The Court of Justice has detailed the obligations that the Treaty provisions impose on national authorities in such situations.<sup>1</sup> The Court has held that

*"when the competent authorities of a Member State receive a request to admit a person to a profession to which access, under national law, depends on the possession of a diploma or a professional qualification, they must take into consideration the diplomas, certificates and other evidence of qualifications which the person concerned has acquired in order to exercise the same profession in another Member State by making a comparison between the specialized knowledge and abilities certified by those diplomas and the knowledge and qualifications required by national rules."*(Ruling in *Aranitis*, paragraph 31).

Thus, the Commission's position appeared to be grounded. It must be recalled, however, that the Court of Justice is the highest authority on questions of Community law.

The Ombudsman's inquiries into this complaint did not, therefore, reveal any instance of maladministration by the Commission in the interpretation of the two Directives.

As for the Commission's dealing with the complaint, it appeared from the enumeration in the Commission's opinion of its contacts with national authorities about this case and similar ones that the Commission actively processed the complaint. However, it also appeared from the complaint and

<sup>1</sup> Case C-164/94, *Aranitis*, [1996] ECR-I 135, case C-104/91, *Aguirre Borrel*, [1992] ECR-I 3003 and case C-340/89, *Vlassopoulou*, [1991] ECR-I 2357.

the Commission's opinion that at least during one whole year, the complainant was not kept informed about the Commission's dealings.

On the basis of the Ombudsman's inquiries into this aspect of the complaint, it appeared necessary to make the following critical remark:

Principles of good administration, to which the Commission itself is committed, require that a complainant is regularly informed about the ongoing processing of his complaint. The Commission should therefore have kept the complainant regularly informed about its dealing with the complaint. Thus, to leave the complainant without any information during a whole year does not appear to be in conformity with the said principles.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### SELECTION OF A CONSULTANT TO CARRY OUT A TACIS PROJECT

*Decision on complaint 999/07.11.96/SN/UK/JMA against the European Commission*

#### **THE COMPLAINT**

In November 1996, Mr Stan NEWENS, Member of the European Parliament, transmitted a complaint to the Ombudsman on behalf of Mr M. regarding the allegedly inefficient and unethical practices of the representative of the Commission in charge of a project funded through the TACIS programme.

The complainant put forward three claims:

- 1 In his view the EU institutions failed to establish and keep to realistic deadlines for the project.
- 2 The project conditions were unsatisfactory; in particular, time allocations for certain activities were inadequate and fees payable to consultants were too low.
- 3 The methodology he had developed for the project in his preparatory work was handed on to others.

## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission indicated that the project on "price statistics in construction" was part of a programme of technical assistance in statistics to the TACIS countries. According to the programme, most work was carried out by the national statistics institutes of the Member States (MSNSIs). Calls for interests to be funded through the programme were to be assessed and answered by an advisory Steering Group chaired by the Commission, with the participation of the TACIS countries' national statistical offices as well as MSNSIs. Private companies were invited to participate only if no MSNSI was willing and able to carry out the work.

The project on "price statistics in construction" came as a result of a request from several Central Asian countries in October 1994. Since no MSNSIs were ready to carry out the work, representatives from the UK Central Statistical Office (CSO/UK) took the initiative of approaching Mr M.'s consultancy firm (DLC) to explore its interest in the project. After DLC had been identified as a potential partner, the file had to wait until sufficient budgetary resources became available.

Immediately resources became available in March 1996, DLC was asked to make a specific proposal, that was submitted in May 1996. It was considered too expensive and, after some negotiations, DLC did not accept the financial conditions which TACIS could offer. These conditions were in line with the Commission's efficiency guidelines for the TACIS statistical programme.

The Commission then tried again to involve an MSNSI within the framework of the Steering Group. In September 1996, the German Federal Statistical Office accepted responsibility for the project. DLC was immediately informed of the new situation.

The proposal submitted by DLC was not handed over to other competitors. However, in the course of discussion on the project, the text had naturally come to the attention of all interested parties. The implementation of the project was not based on this text, since the German Federal Statistical Office followed its own approach for the statistical field in question.

No observations were received from the complainant.

## ***THE DECISION***

### **1 Length of the negotiations**

On the basis of the Ombudsman's inquiries, it appeared that DLC was first contacted about the project on "price statistics in construction" in November 1994. However, for budgetary reasons, the Commission made no final commitment to fund the project until March 1996. DLC was then invited to submit a specific proposal which was received in May 1996. The final decision that the project should be carried out by the German Federal Statistical Office was made in October 1996.

It therefore appeared that the main reason for delay was that sufficient budgetary resources were not available for the project.

As a result, there seemed to be no evidence of unnecessary administrative delay by the Commission or its agents.

### **2 The project conditions**

In its comments the Commission stated that the project conditions were in line with the Commission's efficiency guidelines for the TACIS statistical programme. No evidence had been presented to the Ombudsman to contradict this statement. The contents of the efficiency guidelines are a matter for the Commission, which is subject to supervision by the Court of Auditors and the European Parliament as regards issues of sound financial management.

However, when it agreed to contacts being made with DLC on its behalf, the Commission should have ensured that the Consultancy was informed about the conditions of a possible future contract. This would have avoided any possibility that DLC might be misled about the scope for negotiating such conditions, because it was not dealing directly with the Commission.

### **3 Handing on of the complainant's proposal to others**

From the evidence provided by the Commission, it appeared that the relevant TACIS programme was primarily intended to finance work by national Statistical Offices of the Member States and that private firms were only invited to take part if the national Statistical Offices were unable or unwilling to carry out the work.

It similarly appeared that the national Statistical Offices were involved in the Steering Group which considered funding proposals and so they would normally receive the texts of proposals made by private companies.

When DLC was invited to submit a proposal, the Commission should have expressly informed the Consultancy both, that its proposal would be transmitted to national Statistical Offices and that, if a national Statistical Office expressed a wish to carry out the work, it would be given preference. This would have avoided any possibility of the Consultancy being misled into thinking that its dealings with the Commission in this matter were governed by normal principles of fair dealing in tendering for contracts.

However, the Commission stated that implementation of the project by the Federal Statistical Office of Germany was not based on the text of DLC proposal. No evidence was provided to the Ombudsman to contradict this claim.

### **CONCLUSION**

In view of the above findings the Ombudsman considered it necessary to make the following critical remarks :

- 1 When it agreed to contacts being made with the complainant's firm on its behalf, the Commission should have ensured that the Consultancy was informed of the conditions of a possible future contract. This would have avoided any possibility that the Consultancy might be misled, because it was not dealing directly with the Commission, about the scope for negotiating such conditions.
- 2 When the complainant's firm was invited to submit a proposal, the Commission should have expressly informed the Consultancy both that its proposal would be transmitted to national Statistical Offices and that, if a national Statistical Office expressed a wish to carry out the work, it would be given preference. This would have avoided any possibility that the Consultancy might have been misled into thinking that its dealings with the Commission in this matter were governed by normal principles of fair dealing in tendering for contracts.

Given that these aspects of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.



**STAFF: WRONG CLASSIFICATION OF AN EXPERT**

*Decision on complaint 1034/19.11.96/MS/IT/PD against the European Commission*

**THE COMPLAINT**

Mr S. from Italy complained to the Ombudsman in November 1996 about the fact that the Commission had not acted on a note that he addressed to the Commission on 24 May 1995.

The background against which Mr S. addressed the note to the Commission was, in summary, as follows. On 3 October 1994 he signed a contract with the European Association for Development. The contract was signed by two officials of the Commission on behalf of the Association. The contract stipulated that Mr S. should accomplish, as an "expert in training", a stay of one year in the Commission's delegation in Buenos Aires, Argentina. In the sole recital to the contract it was provided that the stay should permit him to acquire work experience and a practical knowledge of the cooperation between the European Community and Developing Countries. In a document, established the same day, signed by Mr S. and the Commission, called "Mandat N° 1625/EF", Mr S. undertook to participate in general in the activities of the Delegation and to accomplish, at a level corresponding to his training, the tasks which were allocated to him by the Head of Delegation.

After having been with the Delegation for approximately eight months Mr S. wrote the above mentioned note of 24 May 1995 to one of the Commission officials in Brussels who had signed the contract. In the letter he mainly put forward that the work he had been assigned was below the level that he had expected and of a different nature. According to Mr S., this was related to the fact that the Delegation had expected an economist and not a person like him trained in agricultural matters. He concluded his note by declaring that he was open for any suggestion which would allow him to make use of his professional capabilities in Buenos Aires, in Brussels or in another Delegation.

The note being of an internal staff character, it had to be transmitted to its addressee through the Head of Delegation. This was done on 7 June 1995 and in his transmission note, the Head of Delegation in substance disagreed with the contents of Mr S.'s note. The Head of Delegation put forward that although the work carried out within the Delegation did not relate to rural or agricultural development, it did in deed concern development and that the work assigned to Mr S., although perhaps different from his expectations, was not below his professional capabilities. The Head of

Delegation finished his transmission note by suggesting that at the end of Mr S.'s contractual period, he could be assigned to another Delegation where the work was of a more rural and agricultural character. Mr S. received a copy of this note.

Afterwards there were contacts between Mr S. and the Commission services in Brussels. Apparently, it was suggested to Mr S. to stay in Buenos Aires and await the arrival of a new Head of Delegation. In October 1995 Mr S. signed a renewal of his contract for another period of one year. In a letter dated 6 October 1995, Mr S. stated that a change of Delegation would be an error, unless he was given, as a compensation for the damage he had suffered, the possibility to have a new two year period in another Delegation.

In his complaint to the Ombudsman, Mr S. emphasised that he was offered the post in Buenos Aires because the Commission services had mistaken him for an economist, although it was apparent from his papers that he was an expert in agricultural matters. He substantiated this allegation.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated firstly that the objective pursued by training contracts did not necessarily imply that the person in question received a supplementary training within his specialised field. The contents of the training programme were oriented towards the administration and management of programmes convened upon with the country of assignment concerned under a bilateral or multilateral agreement. Accordingly, there was no formal classification in training contracts according to the specialised fields of discipline of the person in question.

Secondly, the Commission stated that it considered the transmission note of the Head of Delegation dated 7 June 1995, of which Mr S. received a copy, as constituting a reply to his note of 24 May 1995. The Commission further stated that, in general, its services avoided embarking on formal direct discussion with different agencies in the Delegation which would ignore or overrule the mandate of the Head of Delegation as the Commission's representative, responsible for the implementation of the training programme.

Thirdly, the Commission stated that Mr S. was kept informed systematically about the administration's position, in particular by a note of 16 November 1995 addressed to the Head of Delegation, of which Mr S.

received a copy. This note stated that he should be assigned tasks according to the interest of the service.

The Commission did not comment on the question of whether its services classified Mr S. wrongly as an economist.

### **The complainant's observations**

In his observations, the complainant maintained his complaint and requested that the Commission should grant him another two year training period as a compensation for the damage he had suffered.

### **THE DECISION**

In assessing the complainant's substantiated allegation that he was wrongly classified as an economist, the Ombudsman firstly remarked that the contracts signed by Mr S., the Association for Development and the Commission, did not specify any particular field of work and that the objective of the training programmes was not necessarily to give the person in question a supplementary training in his specialised field. However, the Commission did not contradict the claim that a correct classification of Mr S. as a rural expert could have been relevant to the decision about his duty station, nor did it contradict the claim that its services had classified Mr S. wrongly. Against this background, the Ombudsman addressed a critical remark to the Commission to the effect that it should have classified Mr S. properly.

Secondly, it appeared that Mr S. did not receive an official and explicit written reply to all the points in his note of 24 May 1995. The transmission note of the Head of Delegation, of which Mr S. received a copy, could not be considered a full reply, as the Head of Delegation was not empowered to act upon all the points put forward in Mr. S.'s note. However, the contract assigning Mr S. to the Delegation in Buenos Aires was renewed by mutual agreement for another year in October 1995 and the note of 16 November 1995 from the headquarters in Brussels to the Head of Delegation, of which Mr S. received a copy, made clear that the Commission's stand was that he should be assigned tasks according to the interest of the service. The proposal to renew his contract for another year in Buenos Aires constituted an implicit reply to Mr S.'s possible wishes to be assigned to another Delegation. The two mentioned notes both dealt with his grievances about the assignment of tasks. Against this background, the Ombudsman found that the Commission had acted upon Mr S.'s note of 24 May 1995 and that there were no grounds for suggesting to the Commission that it should have awarded him another two year training period.

## **CONCLUSION**

On the basis of the European Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

The Commission should have proceeded to a proper classification of Mr S. as an expert in agricultural matters.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

## **FAILURE TO RESPECT MEDICAL SECRECY**

*Decision on complaint 1098/96/BB against the European Commission*

### **THE COMPLAINT**

In December 1996, X complained to the Ombudsman concerning (i) alleged violation of medical secrecy by the Medical Service of the Commission *and* (ii) unjustified delay in sending a document.

In accordance with Article 2 (3) of the Statute the complaint was classified as confidential at the request of the complainant.

X worked for the Commission on a freelance basis. The European institutions have concluded an agreement with an insurance company in order to cover the relevant category of freelance workers for loss of income if they fall ill during a contract.

The complainant had to undergo urgent medical treatment while working for the Commission. All the required certificates were handed in to the administration immediately including a "medical indicator" from the responsible doctor. This last document was in a sealed envelope addressed to the Head of the Commission Medical Service with the mention "medical secret".

The complainant was subsequently informed by the Commission that the claim had been accepted and the file forwarded to the insurance company. X alleged that there was a delay of several weeks before the insurance company actually received the file.

In December 1996, X realized that both an employee at the insurance company and the Commission service to which X was under contract were aware of the confidential medical information.

## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. In summary, the Commission's comments made the following points:

In accordance with the insurance policy, X submitted various medical documents to the Commission, including a certificate specifying the treatment X had undergone, for transmission to the insurance company.

Under Article 7 g of the insurance policy and the form in use at the time, the document indicating the nature of the operation should have been sent to the insurance company in a sealed envelope.

As a result of X's complaint, the officials concerned were reminded of the correct procedure to be followed in future in such cases. The Commission pointed out that the officials who dealt with X's complaint were bound to secrecy by the Staff Regulations.

The Commission received X's application on 16 October 1996 and sent it to the insurance company on 31 October 1996 after the Commission's Medical Service had examined it. The Commission asked for an acknowledgement of receipt, which the insurance company did not provide. The Commission therefore did not accept the allegation that it had delayed the transmission of these documents to the insurance company, which had replied to X on 4 December 1996.

As to the confidential nature of the medical information, the Commission claimed that it was in no way responsible for the actions of the insurance company. However, the Commission reminded the insurance company of its obligation regarding confidentiality following a meeting with the complainant.

As regards the general principles concerning confidentiality of medical documents, the Commission stated that the transmission of medical documents in sealed envelopes for the exclusive use of insurance company doctors, Commission doctors and the insured party, was an option under the terms of the insurance policy. Documents to be treated in this way may be specified by insured parties on the application form for compensation.

Members of the relevant category of freelance workers who have requested coverage under the sickness insurance policy must abide by its provisions and procedures.

### **The complainant's observations**

The complainant maintained the complaint and acknowledged that the Commission had sent a note on 31 October 1996. However, the complainant stressed that the insurance company had not received this document by 24 November 1996.

### **THE DECISION**

#### **1 Alleged violation of medical secrecy**

- 1.1 As a matter of good administration, the Commission should always ensure that documents covered by medical secrecy are treated with appropriate care.
- 1.2 It appeared from the Ombudsman's inquiries that the Commission had acknowledged that the document indicating the nature of the complainant's medical treatment should have been sent to the insurance company in a sealed envelope.
- 1.3 The Ombudsman considered that the Commission's failure to treat the complainant's medical documents with appropriate care was regrettable and constituted an instance of maladministration.
- 1.4 The Ombudsman therefore drew the Commission's attention to the fact that it should make sure that the criticism in his decision was brought to the attention of the officials dealing with documents covered by medical secrecy in order to guarantee that such mistakes in comparable cases are not made in the future.

#### **2 Alleged delay in forwarding the documents to the insurance company**

- 2.1 The Commission received the complainant's application on 16 October 1996. After examination by its Medical Service the Commission sent a letter to the insurance company on 31 October 1996.
- 2.2 The Commission provided the Ombudsman with a copy of the above-mentioned letter. In this letter the Commission asked for an acknowledgement of receipt, which the insurance company did not provide. However, in assessing whether there had been a delay by the Commission, it needed to be taken into account that the insurance company replied to the complainant on 4 December 1996, about one month after the letter of the Commission had been dated.

2.2 It appeared, therefore, from the Ombudsman's inquiries that there was not sufficient foundation to the allegation that the Commission would have delayed the transmission of the complainant's documents to the insurance company.

### **CONCLUSION**

In view of the above findings, it appeared necessary to make the following critical remark:

The European Ombudsman found that principles of good administration require that the Commission should always ensure that documents covered by medical secrecy are treated with appropriate care.

It appeared from the Ombudsman's inquiries that the Commission had acknowledged that the document indicating the nature of the complainant's medical treatment should have been sent to the insurance company in a sealed envelope.

The Ombudsman found that the Commission's failure to treat the complainant's medical documents with appropriate care was regrettable and constituted an instance of maladministration.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not possible to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### **LACK OF TRANSPARENCY IN THE RUNNING OF A COMPETITION**

*Decision on complaint 105/97/PD against the European Commission*

#### **THE COMPLAINT**

In January 1997, Mr D. complained to the Ombudsman about the Commission's running of an interinstitutional recruitment competition (EUR/LA/97) in which he participated in 1996.

By letter of 14 November 1996, the Selection Board informed Mr D. that the marks he had obtained in the preselection written test were insufficient, so that the remainder of his written tests would not be corrected. Mr D. asked the Selection Board to review the marks it had given him for the test in question. He also made the following request:

"Without prejudice to the review procedure, I should be grateful in addition if you would allow me to see the corrected test to enable me to make such observations as I might think fit to substantiate my case."

In answer to Mr D.'s main request, the Selection Board informed him in detail of the assessment criteria used for the test in question, stating that:

"We have reconsidered your test papers and wish to point out that the results of which you have been notified correspond to the marks awarded by the Selection Board.

The purpose of the tests, as was indicated in the notice to attend, was to compile a short list of candidates scoring the highest marks (144 in the case of the A7 competition and 96 in the case of the A8 competition). The examiners, experienced translators working in the Union institutions, observed the same rigorous assessment criteria in every instance.

Test (a) was designed to assess proficiency in the source language, proficiency in Spanish, and the ability to solve translation problems. For your information, the factors taken into account to determine the total mark included the following:

- \* As regards the source language: gross, serious, or minor errors of comprehension, and inaccuracy;
- \* As regards the target language, the assessment related to spelling (gross, serious, and slight mistakes), morphology and syntax (agreement, prepositional government, incorrect syntactical constructions, etc.), and vocabulary (omission of one or more words, omission of a sentence, incorrect terms, barbarism); stylistic faults and incorrect punctuation were likewise taken into consideration.

On the other hand, good style, correct translation of a relatively difficult passage, or brilliant translation of an especially difficult passage counted in the candidate's favour.

Each test paper was marked by two separate examiners, and the candidate's anonymity was preserved throughout. Some papers were marked by a third examiner when the Selection Board deemed it necessary.

The papers were marked with particular care, and I regret to inform you that the decision of the Selection Board regarding your test is final.

As for Mr D.'s request to have knowledge of the corrected test, the Selection Board stated that:



"Lastly, we would inform you that we cannot send you a copy of your test papers, because, as a matter of principle, we are required to treat all candidates equally and the proceedings of the Selection Board have to remain confidential."

In his complaint to the Ombudsman Mr D. stated that he did not contest the Selection Board's evaluation of his test. As he had no knowledge of the corrected test, he did not know whether the Selection Board had applied the evaluation criteria properly in his case. He claimed that the Selection Board's reasoning for not permitting him to have knowledge of the corrected test in question was inadequate and lacked transparency.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that the Selection Board had acted in conformity with the notice of competition and that the Selection Board was very open towards Mr D. by communicating to him the evaluation criteria for the test in question. As for the reasons that the Selection Board gave for not permitting Mr D. to have knowledge of the corrected test, the Commission stated in substance that it was a common practice within the Community institutions not to communicate the corrected tests to applicants and that according to the case law of the Court of Justice, Selection Boards had wide discretionary powers. According to the Commission, the only obligation imposed on Selection Boards in this field was to communicate the marks obtained to the applicants.

As concerned transparency, the Commission stated that transparency rules cannot override Article 6 of Annex III to the Staff Regulations, according to which the proceedings of Selection Boards are secret. According to the Commission, this secrecy permits Selection Boards to perform their work independently without being submitted to any kind of pressure.

#### **The complainant's observations**

In his observations, Mr D. maintained his complaint in substance. In particular he stressed that he did not ask for communication of the corrected test, but only to have knowledge of the corrected test, thus leaving it to the Selection Board to find a way in which he could obtain that knowledge. Mr D. stated that he would be fully willing to accept that signs which could permit the identifying of the corrector were deleted from the corrected test, as long as Mr D. could have knowledge of the corrections made.

As for transparency, Mr D. stated that the objective pursued by the provision in Article 6 in Annex III to the Staff Regulations, i.e. to ensure the independent work of Selection Boards, did not justify the refusal to inform him about the corrected test in a version that did not permit the identifying of the correctors.

### ***THE DECISION***

The question raised by Mr D.'s complaint was whether the Selection Board was entitled to refuse to inform him about the corrected test in question. In assessing this question, it was first noted that it did not appear to be unjustified that the Selection Board interpreted Mr D.'s demand for knowledge of the corrected test as a demand for communication of the test in question. The Selection Board justified its refusal of this demand by referring to the principle of equal treatment of applicants and the confidentiality of the proceedings of the Selection Board.

The principle of equal treatment of applicants implies that identical situations cannot be treated differently while different situations cannot be treated identically. The decision whether to communicate a corrected test has to be taken on the basis of the Staff Regulations and the case law of the Court of Justice and the said principle did not appear to have any bearing on such a decision. It should be noted that the Commission did not refer to this principle in its comments on Mr D.'s complaint to the Ombudsman. The reference by the Selection Board to the said principle was thus confusing. Principles of good administration require that adequate reasons are given to applicants for the decisions taken by Selection Boards. The reference to the principle of equal treatment did not appear to be adequate, as the principle had no bearing on the decision whether access should be granted to corrected tests or not. Against this background, the Ombudsman addressed a critical remark to the Commission.

Concerning the Selection Board's reference to the confidentiality of its proceedings as a reason for not communicating the corrected test, in the present state of Community law there is no obligation on the Commission to communicate corrected tests to applicants who so request. Thus, it appeared that the Selection Board was entitled to refuse the communication of the test by referring to the principle of the confidentiality of the proceedings of Selection Boards.

### **CONCLUSION**

On the basis of the Ombudsman's inquiries into this complaint, it appeared necessary to make the following critical remark:

The Commission should not have justified the refusal to communicate the corrected test in question by reference to the principle of equal treatment of applicants, as this principle did not appear to have any bearing on the decision whether corrected tests should be communicated or not.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore decided to close the case.

### **FURTHER REMARKS BY THE OMBUDSMAN**

Given the considerable number of complaints that the Ombudsman received concerning lack of transparency in the recruitment procedures organized by the Community Institutions, the Ombudsman opened an inquiry on his own initiative on this matter on 7 November 1997, including the question whether the Commission envisages allowing applicants to take with them the examination questions from the examination room and disclosing the corrected copies of examinations to the applicant concerned. In his letter, the Ombudsman has stated that the discretionary powers of Selection Boards and the confidentiality of their proceedings do not appear to hinder compliance with principles of good administration.

### **CRITICISM OF THE RUNNING OF A COMPETITION**

*Decision on complaint 142/97/PD against the European Commission*

#### **THE COMPLAINT**

In February 1997, Mr V. complained to the Ombudsman about the Commission's running of an interinstitutional recruitment competition (EUR/LA/98) in which he participated in 1996.

By letter of 14 November 1996, the Selection Board informed Mr V. that the marks he had obtained in one of the preselection tests, the test (a), were insufficient and therefore, the remainder of his tests would not be corrected.

By letters of 18 and 20 November 1996 Mr V. asked the Selection Board to review the marks given for the test (a) and to communicate the corrected test to him. He stated that he did not in any way doubt the rightness and

the impartiality of the corrections made but that he found it difficult to understand the very low mark he had obtained. Furthermore, he stated that in the test (b) the applicants had been asked questions which did not have any basis in the notice of the competition and that test (d) had not been in accordance with the provisions of the notice either.

As regards the two tests in question, the notice stated:

- (b) Test comprising a paper of questions on the principal stages of European unification and the different Community policies.
- (d) Translation into Spanish, using dictionaries, of a general text of about 45 lines on the activities of the European Union, in a language chosen by the candidate from those specified in section V, point B(3), but excluding the languages selected for tests (a) and (c).

As for test (b) Mr V. considered that a number of the questions asked did not relate to the the principal stages of European unification and the different Community policies. According to Mr V., that was the case with the following questions:

- a question concerning the Secretariat General of the European Parliament
- a question concerning the competences of the Court of First Instance
- a question concerning the Economic and Social Committee
- a question concerning the organisation of the Members of the European Parliament
- a question concerning the length of the mandate at the European Commission
- a question concerning the exact number of Commissioners from certain Member States
- a question concerning the Community legislation, including the application of Community regulations.

In the complainant's view, it was even more obvious that these questions were not covered by the drafting of the notice, when one took into consideration that the notice, as concerned the oral test, provided:

"Interview with the Selection Board to enable it to complete its assessment of the candidate's suitability to perform the duties described in section I. Proficiency in other languages and knowledge of Union institutions and policies will also be tested in the interview."

Mr V. claimed that by reading this, an applicant would consider that questions concerning the Institutions could not be asked in the written test (b).

As for test (d) Mr V. claimed that the set text did not consist of around 45 lines as provided by the notice, but of 61 lines.

By letters of 18 December 1996 and 16 January 1997, the Selection Board replied to the complainant's letters. As for his request for review, the Board informed him that his test had been reviewed and that the mark given was correct. Furthermore, the Board regretted to inform Mr V. that it could not disclose the corrected test to him given the principle of equal treatment of applicants and the principle of the confidentiality of its proceedings.

As for the allegation in relation to test (b) the Board stated that all the questions asked were related, directly or indirectly, to the provision in the notice. As regards both test (b) and test (d) the Board added that, according to the case law of the Court of Justice, it was completely autonomous and independent and had large discretionary powers as long as it respected the provisions of the notice.

Not being satisfied with these answers, Mr V. complained to the Ombudsman. He claimed that the answers from the Selection Board lacked transparency. According to him, it was normal for an applicant to have the possibility to see the corrected test or in another way have knowledge of the corrections made. In his view, the Selection Board gave the principle of the confidentiality of its proceedings a scope which was unjustified. Furthermore, he maintained that the contents of tests (b) and (d) were not justified.

## **THE INQUIRY**

### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that the Selection Board had acted in accordance with the notice of the competition. As for the reasons that the Selection Board gave for not permitting Mr V. to have knowledge of the corrected test, the Commission stated in substance that it was a common practice within the Community Institutions not to communicate the corrected tests to applicants and that according to the case law of the Court of Justice, Selection Boards had wide discretionary powers. According to the Commission, the only obligation imposed on Selection Boards in this field was to communicate the marks obtained to the applicants.

Concerning Mr V.'s allegation in relation to test (b), the Commission stated that given the good marks he had obtained in this test, his allegation was unfounded and not in his interest. As far as test (d) was concerned, the Commission stated that the Selection Board's decision to give the applicants a text of 61 lines fell within the discretionary powers with which Selection Boards were vested.

No observations on the Commission's comments were received from the complainant.

### ***THE DECISION***

Concerning the Selection Board's refusal to disclose the corrected test to Mr V., the Board justified this decision by referring to the principle of equal treatment of applicants and the confidentiality of its proceedings.

The principle of equal treatment of applicants implies that identical situations cannot be treated differently while different situations cannot be treated identically. The decision whether to communicate a corrected test has to be taken on the basis of the Staff Regulations and the case law of the Court of Justice and the said principle did not appear to have any bearing on such a decision. It should be noted that the Commission did not refer to this principle in its comments on Mr V.'s complaint to the Ombudsman. The reference by the Selection Board to the said principle was thus confusing. Principles of good administration require that adequate reasons are given to applicants for the decisions taken by Selection Boards. The reference to the principle of equal treatment did not appear to be adequate, as the principle had no bearing on the decision whether access should be granted to corrected tests or not. Against this background, the Ombudsman addressed a critical remark to the Commission.

Concerning the Selection Board's reference to the confidentiality of its proceedings as a reason for not communicating the corrected test, in the present state of Community law there is no obligation on the Commission to communicate corrected tests to applicants who so request. Thus, it appeared that the Selection Board was entitled to refuse the communication of the test by referring to the principle of the confidentiality of the proceedings of Selection Boards.

As concerns Mr V.'s allegation in relation to test (b), according to the notice, this test was to focus on the different stages of European unification and the different Community policies, while the notice indicated that, for the oral test, the subject would also include the Institutions of the European Union. The notice appeared to leave the impression that questions clearly limited

to the Institutions would not be asked in the test (b). However, it appeared that in test (b) questions were in fact asked which concerned the Institutions without any apparent relation to the different stages of European unification.

The Commission put forward two arguments in this context: In the first place, that Mr V. lacked interest in contesting the appropriateness of the questions, as in any case he had passed the test with good results. In the second place, that the questions did have a relation, either direct or indirect, with the topic indicated in the notice. As for the first argument, it has to be recalled that Article 138e of the EC Treaty concerning the citizens' right to apply to the European Ombudsman does not submit the exercise of this right to any conditions relating to the personal interest the citizen might have in the problem submitted to the European Ombudsman. As for the Commission's second argument, principles of good administration require that the citizens can rely on the accuracy of the public statements that the Commission makes. It therefore appeared unjustified to make use of specific wording which induced the citizens to believe that the topic of the test would be more narrowly defined than was in fact the case. Against this background, the Ombudsman addressed a critical remark to the Commission.

As for Mr V.'s allegation in relation to test (d), according to the case law of the Court of Justice, Selection Boards are vested with wide discretionary powers provided they respect the notice of competition. The notice of competition indicated that the text to be translated under test (d) would be of approximately 45 lines whereas the actual text set of 61 lines was around 33 % longer. This excess cannot be considered to respect the wording of the notice of the competition. Therefore the European Ombudsman addressed a critical remark to the Commission.

### **CONCLUSION**

On the basis of the European Ombudsman's inquiries into this complaint, it appeared to be necessary to make the following critical remarks:

The Commission should not have justified the refusal to communicate the corrected test in question by referring to the principle of equal treatment of applicants as this principle did not appear to have any bearing on the decision whether corrected tests should be communicated or not.

The Commission should have drafted the notice of the competition so that it did not mislead the citizens as to the contents of the tests and should have respected the wording of the notice of the competition.

Given that these aspects of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closed the case.

### **FURTHER REMARKS**

Given the considerable number of complaints that the Ombudsman received concerning lack of transparency in the recruitment procedures organized by the Community Institutions, the Ombudsman opened an inquiry on his own initiative on this matter on 7 November 1997, including the question whether the Commission envisages allowing applicants to take with them the examination questions from the examination room and disclosing the corrected copies of examinations to the applicant concerned. In his letter, the Ombudsman has stated that the discretionary powers of Selection Boards and the confidentiality of their proceedings do not appear to hinder compliance with principles of good administration.

### **REIMBURSEMENT OF MEDICAL COSTS**

*Decision on complaint 319/97/PD against the European Commission*

#### **THE COMPLAINT**

In April 1997, Mr K. complained to the Ombudsman about the failure of the Commission to reimburse him for medical costs that he had incurred on the Commission's request.

The complainant had successfully passed the competition COM/A/764, organized by the Commission. In view of a recruitment, the Commission asked him to undergo a medical examination in November 1994. In the course of this examination, he was asked to undergo a further special examination by a doctor of his own choice; the expenses related to this would be reimbursed by the Commission. In January 1995 he forwarded the doctor's bill to the Commission. In June 1995 the Commission offered Mr K. a job, but the delay in reimbursing the medical expenses as well as other negative experiences with the Commission during the competition made Mr K. decline the offer. In October 1995 he wrote to the Commission reminding it about the reimbursement that he had not yet received. In April 1996 he wrote again to the Commission in order to claim the reimbursement.



In his complaint Mr K. claimed that it was unacceptable that the Commission had neither reimbursed him the medical costs nor answered his two reminders.

### **THE INQUIRY**

#### **The Commission's comments**

The complaint was forwarded to the Commission. In its comments, the Commission stated that Mr K.'s medical costs had not been paid on time because the originals of the invoice and other evidence had been lost and that it had in the meantime made the payment that was due. It regretted the "inexplicable" delay in paying the costs. Furthermore, it explained that it had changed its procedures for settling such claims so that undue delays should not occur in the future.

The Commission did not comment on Mr K.'s allegation about its failure to reply his letters.

#### **The complainant's observations**

In his observations, Mr K. expressed satisfaction with the fact that his application to the Ombudsman had prompted the Commission to reimburse him the medical costs in question. However, he was dissatisfied both with the fact that it was necessary to apply to the Ombudsman in order to make the Commission comply with its reimbursement commitment and because the Commission had not commented on its failure to reply to his letters.

### **THE DECISION**

It appeared from the Commission's opinion and from the complainant's observations that the Commission had settled the claim for reimbursement. Furthermore, it appeared that the Commission had in the meantime changed its procedures for paying such claims so that in the future, they would be paid without undue delay. The Ombudsman did therefore not pursue this aspect of the complaint any further.

As for the two reminders to the Commission, it did not deny that it had failed to reply to them. The Ombudsman therefore addressed a critical remark to the Commission to the effect that it should have replied to Mr K.'s letters promptly.

Given that this aspect of the case concerned procedures relating to specific events in the past, it was not appropriate to pursue a friendly settlement of this aspect of the case. The Ombudsman therefore closed the case.

### 3.7 OWN INITIATIVE INQUIRIES BY THE OMBUDSMAN

#### RUNNING OF A COMPETITION

*Decision in own initiative inquiry 674/COMLA/F/PD*

In July 1996, the Ombudsman began an own-initiative inquiry prompted by a complaint about the running of competition EUR/LA/76, organised by the European Commission.

#### THE INQUIRY

The Ombudsman asked the Commission to provide him with information about the following two points in relation to the competition:

- 1 The qualifications in German of the persons in charge of correcting the candidates' examination scripts in the written German-Swedish translation test.
- 2 Whether the candidates were entitled to see the corrections made of their tests and if not, what were the reasons for this?

#### THE COMMISSION'S OPINION

The Commission replied to the Ombudsman by letter of 18 October 1996.

In its opinion, the Commission made the following points

- 1 The correctors used in the competition EUR/LA/76 were all experienced translators, whose first foreign language was German. Furthermore, the Commission stated that all scripts had been corrected independently by two correctors and where the Selection Board had considered it necessary, a third correction had been made by a third professional translator.
- 2 *"It has never been the Commission's (or other Community Institutions') practice to return examination scripts to candidates. The Staff Regulations stipulate that the work of the Selection Boards is secret. Selection Boards must operate in an independent manner and they have sole competence to judge the performance of candidates. Furthermore, it would be administratively burdensome: for example, two competitions COM/A/770 and 764 alone had a total of around 56.000 candidates. It could also result in an unequal treatment of candidates if papers were returned only to those who requested them."*

### **THE DECISION**

As concerns the question of the qualifications in German of the persons in charge of correcting the candidates' examination scripts in competition EUR/LA/76, the Ombudsman found that this inquiry had not revealed any instance of maladministration.

As for the applicants' access to their corrected examination scripts, the Ombudsman remarked that since the start of this inquiry he had received a considerable number of complaints either also concerning lack of access to corrected examination scripts or some other apparent lack of transparency in the recruitment procedures, organized by the Community institutions. The Ombudsman therefore decided to open an own initiative inquiry into the transparency of the recruitment procedures and within that inquiry, the question of access to corrected examination scripts would be addressed.

Against this background, the Ombudsman found that there were no grounds for further inquiries and he therefore closed the case.

### **THE COMMISSION'S ADMINISTRATIVE PROCEDURES FOR DEALING WITH COMPLAINTS CONCERNING MEMBER STATES' INFRINGEMENT OF COMMUNITY LAW**

*Decision in the own initiative inquiry 303/97/PD*

In April 1997 the Ombudsman began an own initiative inquiry under Article 138e of the Treaty establishing the European Community. The inquiry concerned the possibilities for improving the quality of the Commission's administrative procedures for dealing with complaints concerning Member States' infringement of Community law in the period before judicial proceedings may begin.

### **THE BACKGROUND TO THE INQUIRY**

The general background to this inquiry was in substance that an essential part of the Ombudsman's mission consists in enhancing relations between the Community institutions and bodies and European citizens. One of the important relations concerns one of the Commission's prime tasks, that is to act as the Guardian of the Treaty in accordance with Article 155 of the Treaty of Rome. The Commission has consistently recognized that it relies to a considerable extent on private citizens and firms to detect Member States' infringements of Community law. The citizens' confidence in the Commission's dealings with alleged infringements is thus crucial.

The more specific background was that the Ombudsman had received many complaints concerning the administrative procedures used by the Commission in dealing with complaints lodged by private citizens concerning Member States' failure to fulfil their Community law obligations. The object of these complaints was not the discretionary powers of the Commission to bring legal proceedings against a Member State under Article 169 of the Treaty, but rather the administrative process which takes place before judicial proceedings may begin. The allegations in the complaints submitted to the Ombudsman concerned, in particular, excessive time taken to process complaints, lack of information about the on-going treatment of the complaint and not receiving any reasoning as to how the Commission had reached a conclusion that there was no infringement by a Member State.

### ***THE INQUIRY***

Against this background, the Ombudsman was particularly concerned about the administrative procedures used by the Commission to deal with complaints. Without prejudice to the question whether principles of Community law might require more developed procedural rights for citizens who lodge a complaint with the Commission, it appeared to the Ombudsman that the Commission could itself decide to create more developed procedural rights for these citizens as a matter of good administrative behaviour, consistent with the case-law of the Court of Justice that individuals cannot challenge before the Court of Justice the Commission's decision not to bring proceedings under Article 169.

The Ombudsman therefore suggested that the Commission might communicate to registered complainants a provisional conclusion that there was no breach of Community law and its findings in support of that conclusion, with an invitation to submit observations within a defined period, before making its final decision. He pointed out the two advantages of such a procedure. Firstly, it would most likely contribute to a more effective administration, by giving complainants the opportunity to criticize the Commission's views and therefore give the Commission the opportunity to respond to this criticism. Secondly, it would enhance the citizens' trust in the Commission by allowing them to participate more fully in the Article 169 procedure and thereby making these activities more transparent.

### **The Commission's comments**

In its comments, the Commission stated that complaints from individuals remain the most important source on which the Commission bases its task of monitoring the application of Community law. For that reason, the

Commission acknowledged that complainants have a place in infringement proceedings and that, in the period before judicial proceedings may begin, they enjoy procedural safeguards which the Commission has constantly developed and improved. The Commission declared itself ready to continue along those lines.

The Commission furthermore stated that all complaints which reach the Commission are registered and that no exceptions are made to this rule. Once the Commission receives a complaint, it acknowledges receipt by letter to the complainant with an annex attached, explaining the details of the infringement proceedings. Once the complaint has been registered, the complainant is informed of the action taken in response to the complaint, including representations made to the national authorities concerned. The complainant is also informed about the outcome of the investigation of his complaint, whether no action has been taken on it or infringement proceedings have been instituted. The complainant is also notified if other proceedings on the same issue are already under way.

As for deadlines for processing complaints, the Commission stated that under its internal rules of procedure, a decision to close a file without taking any action or a decision to initiate official infringement proceedings must be taken on every complaint within a maximum period of one year from the date on which it was registered, except in special cases, the reasons for which must be stated. The Commission further pointed out that delays in processing complaints are often related to the fact that discussions and exchanges with national authorities take considerable time. The Commission considers it to be one of its priority objectives to reduce such delays.

As for informing the complainant of the draft decision rejecting the complaint, the Commission stated that in several cases, the complainant was informed beforehand that the complaint would be rejected, often with a statement of the reasons for the proposed rejection. The Commission declared itself prepared to extend this practice, leaving aside cases where the complaint is obviously without foundation and cases where nothing further has been heard from the complainant.

### **THE DECISION**

The Commission was constructive and service minded in its approach to this inquiry. The Ombudsman was pleased to see that the Commission appeared to be committed to constant development and improvement of the position of citizens in the Article 169 procedure, in the period before judicial proceedings may begin.

As for the processing of the complaints and the time involved, it appeared from the Commission's comments that:

- 1 the receipt of complaints is acknowledged;
- 2 the complainant is kept informed about the action taken by the Commission;
- 3 under the Commission's internal rules, a decision to close the file without taking any action or a decision to initiate official infringement proceedings must be taken within a maximum period of one year from the date when the complaint was registered, except in special cases, the reasons for which must be stated. These reasons may relate to the time taken by necessary discussions with national authorities concerned and awaiting reply to the Commission's requests for information from the same authorities.

The observance of these rules appears to be an adequate means for ensuring both that the citizen is kept informed about the processing of his complaint and that the complaint will be processed without undue delay and within a maximum period of one year, unless there are special reasons. The Ombudsman therefore found that the inquiry had not revealed any instance of maladministration in this respect.

The Commission has taken note of suggestions made to it with regard to improving citizens' procedural rights in the Article 169 procedure in the period before judicial proceedings may begin. It appeared that in future, the Commission would, in all cases, inform the complainant of its intention to close the file with the reasons why the Commission finds that there is no infringement of Community law, except where a complaint is manifestly unfounded or where the complainant appears to have lost interest in the complaint.

This is a valuable step in the process to which the Commission has committed itself, of constant development and improvement in the procedural position of the complainant in the Article 169 procedure in the period before judicial proceedings may begin. The citizens will thereby have the possibility to put forward views and criticisms concerning the Commission's point of view before it commits itself to a final conclusion that there is no infringement of Community law.

In view of these findings, there appeared to be no maladministration and the Ombudsman therefore closed the inquiry.

***FURTHER REMARKS BY THE EUROPEAN OMBUDSMAN***

The Commission has stated that when acknowledging receipt of a complaint, it forwards an annex to the complainant setting out the purpose and giving details of the infringement proceedings. In this annex the Commission also provides information about the role played by national courts in ensuring the proper application of Community law. In other contexts, the Commission equally stresses the crucial role of national courts in this respect.

In the Member States there also exist important extra-judicial mechanisms, such as national ombudsmen and similar bodies, created with a view to providing a remedy and redress to citizens exposed to an improper application of the law. The Ombudsman therefore suggested to the Commission that it consider the possibility of also providing information about these bodies when appropriate.

**4 RELATIONS WITH THE EUROPEAN PARLIAMENT,  
THE COUNCIL AND THE COMMISSION**

The mission of the European Ombudsman is to protect and promote, within the limits of his mandate, the rights of European citizens under Community law. However, the Ombudsman shares this mission with other organs of the Community. Effective action to secure the rights of citizens requires cooperation, good working relations, mutual trust and regular contacts between the Ombudsman and the other Community organs, in particular the European Parliament and the European Commission which also deal with citizens' complaints.

**4.1 THE EUROPEAN PARLIAMENT AND THE COMMITTEE ON  
PETITIONS**

Citizens of the Union have the right to petition the European Parliament and to complain to the European Ombudsman (Article 8d of the Treaty establishing the European Community). The Ombudsman and the Committee on Petitions of the Parliament are thus intended to be complementary institutions. Cooperation between the two bodies is therefore of special importance.

From the beginning of the office of the European Ombudsman, close cooperation has been established with the Committee on Petitions and there is regular contact between the two secretariats. The respective functions and working methods of the two bodies have been clarified and there is an agreement between them concerning the mutual transfer of complaints and petitions, in appropriate cases and with the consent of the complainant or petitioner.

A standard form on which a complaint to the Ombudsman may be made has been widely distributed. The form gives complainants the opportunity to state whether they consent to their complaint being transferred to another competent body in case the Ombudsman cannot deal with it.

In the case of complaints which are outside the mandate of the Ombudsman but which could be dealt with as petitions by the European Parliament, the Ombudsman transfers the complaint directly to the Parliament to be dealt with as a petition, provided that consent has been given. In cases where the complaint form has not been used, the Ombudsman writes to the complainant proposing to transfer the complaint to the European Parliament to be dealt with as a petition.



In the case of complaints which deal with matters that could potentially be the subject of a petition, but which are not clearly formulated or sufficiently documented, the Ombudsman informs the complainant of the possibility to submit a petition to the European Parliament, enclosing a copy of the leaflet about the right of petition.

In 1997, 2 petitions were transferred to the Ombudsman to be dealt with as complaints. 13 complaints were transferred to the European Parliament to be dealt with as petitions and 86 complainants were advised to petition the European Parliament.

The Committee on Petitions examines the Annual Report of the Ombudsman and makes its own report about it to the Parliament. The Ombudsman presented his Annual Report for the year 1996 to the Committee on Petitions in Brussels on 21 April.

On 14 July 1997, Mr Söderman presented the Annual Report for 1996 to the plenary session of the European Parliament in Strasbourg. This was followed by discussion in the Parliament of the Annual Report and of the Committee on Petitions' report. The Ombudsman accepted an invitation to attend a press conference arranged by the Committee on Petitions on 15 July, together with Mr Alessandro FONTANA, Chairman of the Committee on Petitions, and Mr Nicolaos PAPAKYRIAZIS, *Rapporteur* for the Committee's report.

In accordance with Article 3 (7) of the Statute, the European Ombudsman has the opportunity to present a special report to the European Parliament in cases where the Parliament can take action to assist the Ombudsman in accordance with the Statute.

On 15 December, the Ombudsman presented his first Special Report to the President of the European Parliament, Mr José María GIL-ROBLES. The Special Report followed an own-initiative inquiry into public access to documents held by 15 Community institutions and bodies. The inquiry was launched in June 1996 and was concluded by a decision of the Ombudsman dated 20 December 1996 in which draft recommendations were addressed to fourteen Community institutions and bodies.<sup>1</sup>

All the institutions and bodies sent detailed opinions to the Ombudsman, as required by Article 3 (6) of the Statute. The Special Report analysed the detailed opinions and drew attention to matters which the European

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<sup>1</sup> Annual Report 1996, pp. 81-87.

Parliament might wish to pursue further. However, it contained no formal recommendations.

In addition to the contacts with the Committee on Petitions, Mr SÖDERMAN also attended a meeting of the Committee on the Rules of Procedure on 24 September in Brussels at which proposed amendments to the Parliament's Rules of Procedure were discussed. Proposed amendments to the Rule 161 were presented in a draft report by the *Rapporteur*, Mr Brian CROWLEY. The Committee on Petitions gave its opinion on 10 November 1997.

During his visit to Belgium on 25-27 November, the European Ombudsman attended a meeting of the Committee on Legal Affairs and Citizens' Rights of the European Parliament for an exchange of views in the context of the Committee's report on the Fourteenth Annual Report of the Commission on the monitoring of the application of Community law (*rapporteur* Astrid THORS).

Mr SÖDERMAN addressed the Committee to inform it of his own-initiative inquiry into the Commission's administrative procedures for dealing with complaints concerning infringements of Community law by Member State. (*Note: on 29 January 1998, the European Parliament adopted the Committee's report and a Resolution welcoming the Ombudsman's initiative*).

## 4.2 THE EUROPEAN COMMISSION

The other European institution with which the Ombudsman maintains a regular dialogue and cooperation is the European Commission. Most of the complaints that lead to an inquiry by the Ombudsman concern alleged instances of maladministration in the activities of the Commission. This is normal, since the Commission is the main Community organ that makes administrative decisions which have a direct impact on citizens.

Under Article 155 of the Treaty establishing the European Community, the Commission has responsibility to ensure that Community law is observed, in particular by Member States. It can bring proceedings in the Court of Justice for this purpose under Article 169 of the Treaty. As "Guardian of the Treaty", the Commission has an important responsibility for ensuring that the legal rights of citizens of the Union are respected. Citizens have the possibility to complain to the Commission if they feel their rights are being infringed, particularly by a Member State. To facilitate such complaints the

Commission has published a standard complaint form in the *Official Journal*.<sup>1</sup>

During the year, the Ombudsman launched and concluded an own-initiative inquiry into the Commission's administrative procedures for dealing with complaints concerning infringements of Community law by Member State. The Ombudsman's decision concluding the inquiry is summarised in chapter 3.

The European Ombudsman had a meeting with the Commissioners, chaired by President SANTER, on 23 April and presented his Annual Report for 1996. The Commissioners and Mr SÖDERMAN exchanged views on matters of common interest.

On 4 July, Mr SÖDERMAN, accompanied by his Principal Officer Ian HARDEN, had a meeting with the Directors General of the Commission.

On 10 October, Mr José MARTINEZ ARAGON, Senior Legal Officer, and Mrs Ursula GARDERET, Administrative Assistant of the Ombudsman, met with officials from Directorate of Employment, Industrial Relations and Social Affairs (DG V) to carry out an inspection of documents in relation to a complaint.

Mr SÖDERMAN and his Principal Officer Ian HARDEN met the Secretary-General of the Commission, Mr Carlo TROJAN, and Mr Jean-Claude EECKHOUT, Director of Directorate E of the General Secretariat in Strasbourg on 21 October. The Ombudsman and the Secretary-General agreed that, in some cases, an informal meeting could provide an appropriate way to pursue a friendly solution in accordance with Article 3 (5) of the Statute and discussed the possibility of the Commission adopting a Code of good administrative behaviour for its officials. They also agreed to cooperate in organising a further seminar for liaison officers of national ombudsmen and similar bodies. Finally, the Ombudsman informed the Secretary-General that he considered the work done by the Euro-Jus network of part-time legal advisors working at the Commission representations of the Member States to be of great value in providing effective advice to European citizens concerning their rights under Community law.

#### 4.3 THE COUNCIL OF THE EUROPEAN UNION

Mr SÖDERMAN met Mr PIRIS, Director General of the Legal Service of the Council on 22 April in Brussels. He also met Mr BOIXAREU, Director

<sup>1</sup> OJ C 26/6 1/2/89, 89/C 26/07

General in the Council Secretariat for Budget, Administration and Relations with the Community institutions.

The Secretary-General of the Council, Mr Jürgen TRUMPF, informed the Ombudsman that the Council had adopted on 9 June a new procedure for the treatment of complaints concerning alleged maladministration by the General Secretariat of the Council acting as appointing authority under the Staff Regulations. Henceforth the General Secretariat of the Council is competent to deal with such complaints and to provide relevant information directly to the European Ombudsman.

Mr SÖDERMAN was invited to lunch with COREPER in Brussels on 25 July. He gave an overview of his work as European Ombudsman and answered questions.

## 5 RELATIONS WITH NATIONAL OMBUDSMEN AND SIMILAR BODIES

To safeguard the rights of European citizens, a flexible system of cooperation is being developed between the European Ombudsman and ombudsmen and similar bodies in the Member States.

The implementation of many aspects of Community law is the responsibility of national, regional or local administrations in the Member States. Complaints from citizens who consider that such authorities have infringed their rights under Community law are outside the mandate of the European Ombudsman, even when a right of Union citizenship is involved, such as the freedom of movement guaranteed by Article 8a of the EC Treaty. In many cases, such complaints could be dealt with effectively by national Ombudsmen or similar bodies (such as petitions committees), who are increasingly involved with matters that concern the implementation of Community law by national administrations.

### 5.1 THE LIAISON NETWORK

At a seminar held in Strasbourg in September 1996, the national Ombudsmen and similar bodies and the European Ombudsman agreed to establish a network of liaison officers. The network is intended to promote a free flow of information about Community law and its implementation and to make possible the transfer of complaints to the body best able to deal with them.

The European Ombudsman organised a seminar for the liaison officers in Brussels, on 23-24 June 1997, dealing with the supervision of the application of Community law on a national level. Speakers included Mr Jacob SÖDERMAN, Mr Alessandro FONTANA, Chairman of the Committee on Petitions of the European Parliament, Mr Lars CLEVESKÖLD from the Swedish Ombudsman's office, Mr Axel VOSS, the Euro-Jus representative from the Commission information office in Germany, Mr Peter DYRBERG from the European Ombudsman's office, Mr VAN NUFFEL of the Legal Service of the European Commission and Mr Saverio BAVIERA from the Committee on Petitions of the European Parliament. Participants in the seminar also attended part of a meeting of the Committee on Petitions.

During the final session of the seminar, chaired by Michael BROPHY of the Irish Ombudsman's office, the participants formulated proposals for the practical possibilities of future co-operation, including the production of a

regular liaison letter by the European Ombudsman and the organisation of further seminars.

The first liaison letter was distributed at the end of October 1997. It is intended that the liaison letter should eventually be published in electronic form. To facilitate this development and the possibility of an Internet user group for the network, the European Ombudsman's office undertook a survey of e-mail and Internet usage by the national Ombudsmen and similar bodies.

Mr Claude DESJEAN, Secretary-General of the French Ombudsman visited the offices of the European Ombudsman on 5 June 1997 and was informed by Ian HARDEN about management and budgetary questions relating to the provision of administrative services to the European Ombudsman.

## 5.2 COOPERATION IN DEALING WITH COMPLAINTS

The 1996 Strasbourg seminar agreed that the European Ombudsman would be willing to receive queries from national Ombudsmen about Community law and either provide replies directly, or channel the query to an appropriate Union institution or body for a response.

During 1997, two such queries to the European Ombudsman were dealt with. They were sent by the Irish Ombudsman and concerned complaints with which he was dealing. The first query, sent on 14 March 1997, concerned the interpretation of Community law provisions concerning the payment of extensification premiums. The second, sent on 20 June 1997, concerned compensation following repayment of milk super levy under Council Regulation 2055/93.

The queries were forwarded to the Commission, with a request for a reply within three months. The replies received were transmitted to the Irish Ombudsman.

The European Ombudsman transferred three complaints which were against national authorities and therefore outside his mandate to be dealt with by the relevant national ombudsman: *17/97/BB* (a confidential case) and *1006/97/BB* were transferred to the Finnish Parliamentary Ombudsman and *650/97/PD* was transferred to the national Ombudsman of the Netherlands. Complaint *705/97/VK* was similarly transferred to the Luxembourg Parliament to be dealt with as a petition.

In another case (257/97/IJH), a Member of the European Parliament complained about the way in which the secretariat of the Committee on Petitions had dealt with a petition from one of his constituents. The European Ombudsman decided that there were no grounds for him to open an inquiry. However, he requested information from the Portuguese Ombudsman (*Provedor de justiça*), Mr José Menéres PIMENTEL about the underlying issue, which involved the confiscation by the Portuguese authorities of a vehicle belonging to the MEP's constituent. Mr PIMENTEL informed the European Ombudsman that the matter had been the subject of a decision by a Portuguese court and forwarded a copy of the relevant court order. The European Ombudsman transmitted this information to the MEP.

### 5.3 COOPERATION WITH REGIONAL OMBUDSMEN AND SIMILAR BODIES

In order to promote effective cooperation between the European Ombudsman and his colleagues at regional level, the Ombudsman of Catalonia, *El Síndic de Greuges de Catalunya*, Mr. Anton CAÑELLAS, organized a two-day seminar on 28-30 October in Barcelona. The European Ombudsman attended the meeting, accompanied by Mr Peter DYRBERG and Mr José MARTINEZ ARAGON from his secretariat. Other participants in the meeting were the representatives of regional ombudsmen and regional committees on petitions of Member States, the Chairman of the Committee on Petitions of the European Parliament, Mr Alessandro FONTANA, and the Head of the Committee's secretariat, Mr Saverio BAVIERA.

Mr SÖDERMAN gave a speech dealing with the objectives of cooperation between the European institutions and regional ombudsmen and similar bodies in the supervision of the implementation of Community law ("*El papel del Defensor del pueblo*").

Mr DYRBERG gave a speech analysing the recent case-law of the Court of Justice in a number of areas including free movement and the principle of non-discrimination. Mr MARTINEZ ARAGON made a speech on the role of local entities and regions in the Union's work, particularly as regards their responsibility for the correct application of Community law.

The final declaration of the seminar stressed the need for closer cooperation. It was agreed that regional ombudsmen and similar bodies would also appoint liaison officers to coordinate their cooperation with the European Ombudsman in the field of Community law. A follow-up seminar was fore-

seen to take place during 1998, to be organised by the Ombudsman of the Flemish Region of Belgium, Mr Jan GOORDEN.

#### 5.4 MEETING OF THE EUROPEAN NATIONAL OMBUDSMEN

On 9-11 September, Mr SÖDERMAN attended the sixth annual meeting of the European national Ombudsmen held in Jerusalem, Israel. He was accompanied by his Principal Officer, Ian HARDEN, and his Press Officer, Ms Ilta HELKAMA.

The meeting was hosted by Judge Mrs Miriam BEN-PORAT, Public Complaints Commissioner and State Comptroller. The participants came from over 20 countries.



*Justice Mrs Miriam BEN-PORAT, host of the 6th meeting of the European Ombudsmen in Israel in 1997, together with Mr SÖDERMAN and Mr Ian HARDEN.*

Mrs BEN-PORAT gave the opening speech on the topic "The Ombudsman as a Defender of Democracy and Human Rights". During the speech, she announced that in her role as Public Complaints Commissioner she would henceforth be known as "the Ombudsman". She also cited with approval the explanation of the term "maladministration" given in the Annual Report of the European Ombudsman for 1995.

Mr SÖDERMAN gave a speech on "The role of the European Ombudsman" at the first session, chaired by Mr Claes EKLUNDH, Chief Parliamentary Ombudsman of Sweden (*Chefjustitieombudsman*).



Speeches dealing with the contents and impact of an Ombudsman's Annual report were made by Mr Marten OOSTING, Parliamentary Ombudsman of the Netherlands (*de nationale ombudsman*), and Mr Jacques PELLETIER, French Ombudsman (*Médiateur de la République*) and chairman of that session.

At the final session, chaired by Sir William REID, the former United Kingdom Parliamentary Commissioner for Administration, Katalin GÖNCZÖL from Hungary dealt with the issues of Asylum, Refugees and Immigration. During the debate that followed, it was agreed that the provisions of the Treaty of Amsterdam concerning asylum and immigration made it necessary to envisage closer cooperation on these issues between the European national ombudsmen. The European Ombudsman was invited to organise such cooperation.

## 6 PUBLIC RELATIONS

The information strategy of the European Ombudsman has two objectives. The first is to inform people who might have a real reason to complain about maladministration in the activities of a Community institution or body of their right to complain to the European Ombudsman and how to do so.

The second objective is to improve relations between the Union and its citizens by informing the broader public of the Ombudsman's role in helping to realize the Union's commitment to open, democratic and accountable forms of administration. At the same time, it is essential not to create false expectations that might simply result in an increase in the number complaints outside the European Ombudsman's mandate.



*Nathaneel, Andrea, Jessica, Laura and Manuel from the elementary school of Poggio, Italie, remembered the European Ombudsman office with a beautiful card after the successful "Giornata dell'Unione Europea" they had organized with their teachers on 9 May 1997.*

The information strategy has therefore mainly focused on targeting accurate information to groups of potential complainants. At the same time, both conventional publications and the Ombudsman's web-site are intended to be interesting and lively to allow them to be used also for educational purposes, particularly for young people learning about Europe.

During 1997, progress was made in achieving both objectives. The total number of complaints and the number of admissible complaints both increased. However, it is clear that much more needs to be done, particularly in relation to Member States such as Italy and Germany, to ensure that all those who may have a real reason to complain to the Ombudsman know of their right to do so.

## 6.1 HIGHLIGHTS OF THE YEAR 1997

### ***THE OFFICIAL INAUGURATION OF THE OFFICES IN STRASBOURG***

The official inauguration of the European Ombudsman's offices in Strasbourg took place on 8 April in the presence of the President of the European Parliament, Mr José María GIL-ROBLES, the French Minister for European affairs (*Délégué aux affaires européennes*), Mr Michel BARNIER and the French National Ombudsman (*Médiateur de la République*), Mr Jacques PELLETIER.

A joint press conference to mark the occasion was given by Mr BARNIER, Mr PELLETIER and Mr SÖDERMAN.



*Mr Michel BARNIER, French Minister of European Affairs, honoured the inauguration of the European Ombudsman office in Strasbourg with his presence.*

### ***THE CHADWYCK-HEALEY AWARD***

The European Information Association presented the first *EIA Chadwyck-Healey* award to Mr Jacob SÖDERMAN on 29 April for his achievements in European information in 1997. The *Chadwyck-Healey* award is given annu-

ally to the person who has achieved most in promoting and advancing access to information about the European Union and the wider Europe.

The Award was given to Mr SÖDERMAN in recognition of his contribution to promoting European citizens' right of access to official documents held by Community institutions, including his call for access to documents to be guaranteed in the revised Treaty on European Union. The amount of the award was donated to Amnesty International.

### ***THE OECD SEMINAR ON ETHICS IN THE PUBLIC SECTOR***

Mr SÖDERMAN attended a symposium on "Ethics in the Public Sector: Challenges and Opportunities for the OECD Countries" held on 3-4 November in Paris. The symposium was attended by government officials and academic experts and dealt with topics such as ethics and greater transparency in government, ethics and values for "the new public management" and the interpenetration between public and private sectors. Mr SÖDERMAN chaired the first working session on "Ethical challenges in a time of change."

### ***PRESENTATION OF THE ANNUAL REPORT FOR 1996 TO THE EUROPEAN PARLIAMENT***

The Annual Report of the European Ombudsman for the year 1996 was presented to the European Parliament at its plenary session in Strasbourg on 14 July 1997.



*Mr SÖDERMAN presenting his Annual Report to the European Parliament at its session in Strasbourg in July.*

### **PRESENTATION OF THE FIRST SPECIAL REPORT OF THE OMBUDSMAN**

The Ombudsman presented his first Special Report to the President of the European Parliament, Mr José María GIL-ROBLES, on 15 December. The report was made in accordance with Article 3 (7) of the Statute and deals with the outcome of the own Ombudsman's own-initiative inquiry into public access to documents held by Community institutions and bodies.



*In December, the European Ombudsman presented his first Special Report to Mr José María GIL-ROBLES, President of the European Parliament.*

### **6.2 CONFERENCES AND MEETINGS**

An information campaign to raise the level of awareness amongst European citizens of the existence of the European Ombudsman began in 1995. Significant contributions to this campaign are made by the Ombudsman's programme of official visits to the Member States, which began in 1996, as well as by public lectures and participation in conferences and meetings.

During 1997, Mr SÖDERMAN continued the programme of bringing the European Ombudsman among the European citizens and the media in the Member States.

The Ombudsman and his staff also continued giving lectures and making speeches on the role and functions of the European Ombudsman in

European and international congresses, seminars and meetings. In addition, Mr SÖDERMAN had meetings with numerous researchers and groups of visitors. As well as the specific visits detailed below, regular visits were made to Brussels and Luxembourg for meetings with other Community institutions (see also chapter 4).

## BELGIUM

On 18 March, the European Ombudsman met with the newly elected Belgian Federal Ombudsmen Mr Pierre-Yves MONETTE and Mr Herman WUYTS in Brussels and exchanged work experiences with them. Mr SÖDERMAN was accompanied by Peter DYRBERG

On 6 May, Peter DYRBERG participated in the conference "EU citizenship - Current state and future perspectives" in Brussels arranged by the European Citizens Action Service.

Mr SÖDERMAN made an official visit to Belgium on 25-27 November. During his stay, he visited the Belgian Federal Ombudsman Office and met the Federal Ombudsmen, Mr WUYTS and Mr MONETTE. He also gave a talk to the legal staff of the Office, about his experiences as a European Ombudsman and a former Finnish Ombudsman.

At the information Office of the European Parliament, Mr SÖDERMAN was welcomed by Mr THOMAS, Director of the Office, and Mr BOUMANS, Deputy Director. The exchange of views dealt with the work of the Ombudsman and the mission of the Information office as well as the possibilities of promoting citizens' awareness of the European Ombudsman on the Europe Day which will be held on 9 May 1998.

Mr SÖDERMAN also visited the Belgian Chamber of Representatives where he was welcomed by the Vice President of the Parliament, Mr VAN DER MAEL and other Members of the Belgian Parliament. He made a speech to the Committee on Petitions of the Belgian Parliament and to the Parliamentary Committee responsible for European issues.

The last day of the visit was devoted to a meeting with representatives from Belgian civil society, held in the European Parliament building. There was widespread participation in the meeting and numerous questions were addressed to the European Ombudsman. The press conference afterwards was attended by journalists from the most important Belgian newspapers, such as *De Morgen*, *Le Soir*, *La Libre Belgique*, *Het Laatste Nieuws* and *De Financieel Economische Tijd*. which gave a good coverage of the European Ombudsman's visit to Belgium.

During his visit to Belgium, Mr SÖDERMAN visited the Commission Representation in Belgium. He met with Mr VANDEBON, Director of the Representation, with Mr MOËS, Deputy Director, as well as with Mr P. VANDE CASTEELE from the Euro-Jus network who talked about his experience as a Euro-Jus Advisor.

## DENMARK

On 19-21 March, the European Ombudsman visited Denmark accompanied by Peter DYRBERG. He met and exchanged views with Mr Ove FICH, Chairman of the Danish Parliament's Committee on EU matters, Mr Bjørn ELMQUIST, Chairman of the Committee on Legal Affairs, and the members of the two committees. The Committee on EU matters subsequently made a report on the Annual Report of the European Ombudsman for 1996, which it published on 8 October 1997.

Mr SÖDERMAN also had a meeting with the Danish Ombudsman (*Folketingets Ombudsmand*), Mr Hans GAMMELTOFT HANSEN and his staff.

Mr SÖDERMAN had a meeting with Mr Thomas A. CHRISTENSEN, Director of the Commission representation in Copenhagen, and his staff, organisers of the visit, and gave a press conference. He also had a meeting with Mr Mikael BRAMSEN, Head of the Parliament's information office. At the Parliament information office, he met at lunch, i.a., with Mr Ole DUE, former President of the European Court of Justice.

## GERMANY

Mr SÖDERMAN paid a visit to Germany 3-5 March, accompanied by Ms Vicky KLOPPENBURG. In Mainz, he met with the Ombudsman of Rheinland-Pfalz, Mr Ullrich GALLE. They compared their different mandates and functions as well as discussing concrete cases concerning Community law. Mr SÖDERMAN also met the Vice-President of the Rheinland Pfalz Parliament, Mr Hans-Günter HEINZ and the chairman of its Committee on Petitions, Mr Klaus HAMMER. In a press conference, Mr SÖDERMAN gave an overview of his work and discussed cases he had dealt with.

In Bonn, Mr SÖDERMAN attended a conference on "The right to petition put on two feet" organized by Mrs Christa NICKELS, the President of the Committee on Petitions of the German Parliament (*Deutsche Bundestag*), in connection with an initiative to introduce a national ombudsman system in Germany. Mr SÖDERMAN also took the opportunity to have an

exchange of views with officials of the administration of the Committee on Petitions of the German Parliament, including. Dr Friederike FREIFRAU VON WELCK, Mr Franz KREMSEK and the liaison officer, Mrs Inge GERSTBERGER. Mr SÖDERMAN also met the Minister of State at the Foreign Office and German representative at the inter-governmental conference, Dr Werner HOYER for an exchange of views and information.

Mr SÖDERMAN was invited to give a speech on his work and mandate at a dinner organised by the Office of the European Parliament in Bonn to representatives of EU-related associations and organisations, high civil servants and journalists from Bonn. In addition, a round table discussion was held at the Office with representatives of associations dealing with consumer interests, environmental matters, agriculture, and trade and industry. Mr SÖDERMAN also met with the Head of the European Commission Office in Bonn, Mr Axel BUNZ, and the Citizens's Adviser, Mr Axel VOSS for an exchange of views. At the Press Club in Bonn, he had a meeting with journalists.

Peter DYRBERG gave a speech on "The European Ombudsman as a Component of the Union's Commitment to Transparency and Democracy" at a conference entitled "Civil Society Europe", held on 4 April in Loccum, Germany and organised by the German foundation *Mitarbeit*.

Mr GALLE, Ombudsman of Rheinland-Pfalz, paid an official visit to the European Ombudsman on 21 October. In the discussions, Mr GALLE and Mr SÖDERMAN stressed the importance of good cooperation between the European Ombudsman and national and regional ombudsmen of the Member States and discussed the possibility of a meeting with the ombudsmen at the *Länder* level in Germany.

Mr GALLE also had the opportunity to meet the chairman of the Committee on Petitions, Mr Sandro FONTANA, the Vice-Chairman Mr ULLMANN and Mrs SCHMIDBAUER, a member of the Committee on Petitions. He also met Mr Willi ROTHLEY, Vice-Chairman of the Legal Affairs Committee.

## SPAIN

Mr SÖDERMAN attended the meeting "*VI Jornadas Europeas en el Parlament de Catalunya*" organized by the Catalan Council of the European Movement in Barcelona, Spain. The Ombudsman gave a speech "*El papel del Defensor del Pueblo Europeo y la ciudadanía europea*" on 27 January. Among the speakers were the President of the Catalan Parliament, Mr Joan REVENTÓS, the President of the Catalan Council of European Movement, Mr Eduard SAGARRA and the President of the



Federal Council of the European Movement in Spain, Mr Carlos Ma BRU. The meeting had a good press coverage and Mr SÖDERMAN gave several radio interviews.



*Mr Anton CAÑELLAS, El Síndic de Greuges de Catalunya, Mr SÖDERMAN and Mr Eduard SAGARRA, President of the Federal Council of the European Movement, during the meeting in Barcelona in January.*

On 27-29 January, Mr José MARTINEZ ARAGON represented the Ombudsman at a conference "The ICG: Information and role for the citizens" arranged by *Universidad Alvalá de Henares* in Madrid, Spain. Among the speakers were the Spanish Secretary of State for European Affairs, Mr DE MIGUEL, Mr MORAN LOPES, Mr MEDINA, Mr ROBLES PIQUER and Mr VERDE I ALDEA (Vice-President of the European Parliament), the Spanish Ombudsman, Mr ÁLVAREZ DE MIRANDA Y TORRES, as well as academics and journalists. Mr MARTINEZ ARAGON gave a speech on the work of the Ombudsman in relation to transparency. The event received good press coverage.

The Second Annual Congress of Latin American Ombudsman took place in Toledo, Spain on 14-16 April. Following an invitation by the Spanish Ombudsman (*Defensor del Pueblo*), Mr Fernando ÁLVAREZ DE MIRANDA Y TORRES, Mr SÖDERMAN delivered the opening address on "Citizens's rights and processes of economic integration" ("*Derechos ciudadanos y procesos de integración económica: Reflexiones críticas desde la perspectiva de la unión europea*"). Participants in the Congress included all the national ombudsmen of Latin America, the presidents of the Human Rights Commissions of the region, the Ombudsmen from Spain and Portugal, and all the Spanish regional ombudsmen. The work of the

Congress focused on the human rights of indigenous peoples and the role of the ombudsman in supervising the judiciary.

Following an invitation by Professor Carlos MOREIRO of the Centre of European Legal Studies, Mr SÖDERMAN gave a lecture on the role of the European Ombudsman ("*El papel del Defensor del pueblo europeo*") on 16 April 1997 at the University Carlos III in Madrid. He described to the students the means available to the European citizens to protect their rights, and his own experiences as European Ombudsman.

On 27 October, following an invitation by Mr LIZÓN, Ombudsman of the Valencia region, Mr SÖDERMAN visited Valencia to lecture on the role of the European Ombudsman ("*El papel del Defensor del pueblo europeo*") in a conference organized by the "*Club de Encuentro Manuel Broseta*" to members of the administration, businessmen, professors and students. A press conference was arranged by the Club and Mr SÖDERMAN gave interviews to a number of newspapers including *El País*, *EFE*, *El Periodico* and *Avui*.

The First European Congress of the Gipsy Youth was held on 6-9 November in Barcelona. The event was one of the initiatives of the European year against Racism. It gathered around 300 young gypsies from all over Europe with a view to seeking ways to defend and promote Romany culture. The opening ceremony was chaired by HM Felipe de BORBÓN.

Mr SÖDERMAN was invited to participate in the Congress and to chair the closing session, at which the President of the Catalonian regional government, Mr PUJOL, was also present. Mr SÖDERMAN emphasized the importance for the development of a free society of fighting against all forms of discrimination. The Congress was widely reviewed the press, including *La Vanguardia*, *El País*, *ABC*, *El Periodico*, *Avui* and *El Punt*.

## FRANCE

Mr Ian HARDEN represented the European Ombudsman in a colloquium on the theme "European citizenship" held on 20-21 February in Corsica at the invitation of the Regional Institute of Administration of Bastia. The colloquium was organized in the framework of the French government's "National Dialogue for Europe".

The colloquium was opened by Mr Claude ERIGNAC, the Prefect of Corsica and Mr Jean BAGGIONI, MEP and President of the Executive Council of Corsica. Mr HARDEN delivered a paper entitled "*La fonction du*

*Médiateur européen depuis sa création dans le Traité de Maastricht*" ("The office of the European Ombudsman since its creation in the Treaty of Maastricht"). Other papers were given by Mr Pierre CHAUBON and Mr Philippe BARDIAUX, from the office of the French national Ombudsman, Dr Alberto OLIVO, *Difensore civico di Trento* and Mr Yves SALESSE, *Conseiller d'Etat*.

Mr HARDEN represented the European Ombudsman as a member of the panel at the Regional Forum "*l'Europe et la vie quotidienne*", held at Versailles on 27 March. The Forum was organized in the framework of the French government's "National Dialogue for Europe" and had three themes: training in Europe; working in Europe and being a European citizen. The French Minister for European Affairs, Mr Michel BARNIER presided over the Forum. Other panel guests included the French secretary of state, Mr GAYMARD, Vice President of the European Parliament Mrs Nicole FONTAINE and the French member of the European Court of Auditors, Mr BERNICOT.

Mr Jacob SÖDERMAN was invited by the French National Ombudsman, Mr Jacques PELLETIER, for a visit to his offices in Paris on 7-9 October. During the visit, the Ombudsman was assisted by Mr Olivier VERHEECKE and Mrs Daniela TIRELLI.

The main topics of discussion with Mr PELLETIER and his external relations adviser, Mr BARDIAUX were the experiences of the French Ombudsman in negotiating friendly solutions and with the application of the principle of equity. An overview of the working and the structure of the French Ombudsman system was given by the heads of the different units. At lunch Mr SÖDERMAN had the opportunity of meeting also Mr DENOIX DE SAINT MARC, Vice President of the *Conseil d'Etat*.

In Lille on 8 October, Mr SÖDERMAN paid a visit to the *Délégation Départementale du Médiateur* of the Nord-Pas-de-Calais Region and to the *Centre Interministériel des Renseignements Administratifs (CIRA)*. He met with Mr FIEMS, *Délégué Départemental* and Director of *CIRA*, who explained the role of a *Délégué Départemental* in the French Ombudsman system. After a meeting with the Prefect Mr Alain OHREL, Mr SÖDERMAN gave a press conference for local journalists. He also accepted an invitation from Mrs ROUGERIE, *Délégué à la Citoyenneté et à la Médiation*, to visit the town hall of Lille. Mrs ROUGERIE explained the initiative of the Municipality of Lille to set up a mediation service on the municipal level. The press conference given by Mr PELLETIER and Mr SÖDERMAN in Lille was reported in *L'Union*, *Nord Éclair* and *La Voix du Jeudi*.

In Paris on 9 October, Mr SÖDERMAN met the Presidents of the Bar Council of Paris and of the Conference of the Barristers of France, with whom he visited the law courts. At the Information office of the European Parliament and the Representation of the European Commission in Paris, he met with Mr Bernard CHEVALLIER and Mr Jean-Louis GIRAUDY, Directors of the two offices and gave a joint press conference with Mr PELLETIER.

Mr SÖDERMAN also visited the *Conseil Constitutionnel* and was received by its President, Mr Roland DUMAS.

Before concluding his visit, Mr SÖDERMAN delivered a speech on his role as European Ombudsman to a meeting of the national Ombudsmen involved in the creation of the Association for French-speaking Ombudsmen.



*Mr PELLETIER and Mr SÖDERMAN during the European Ombudsman's visit to Paris in September.*

Ian HARDEN delivered a speech on the topic of "*L'accès aux documents des Institutions et des organes de l'Union européenne*" at an information day on "*L'Europe: sources d'information*", organised by the *Centre d'Information sur les Institutions Européennes* in Strasbourg on 20 October.

**ITALY**

Peter DYRBERG attended a conference organized by the European University Institute on 28 February -1 March in Florence, concerning the decentralized agencies in the Community. Mr DYRBERG gave an outline of the work of the European Ombudsman and in particular of the Ombudsman's own-initiative inquiry into public access to documents.

Ms Vicky KLOPPENBURG attended a seminar on the "Rights of the Citizens of the European Union", organized by the division for European Affairs of the government of the autonomous province of *Südtirol* on 7 November 1997 in Bolzano, Italy. She gave a speech about the mandate and the role of the European Ombudsman as compared with those of the Committee on Petitions of the European Parliament. Other speakers were Professor Fausto CAPELLI, Director of the European College in Parma and Dr Walter OBERWEXER of the University of Innsbruck.

Ian HARDEN participated in a Forum on "New Ways for European Information" organised by the European Information Service, on 8-10 November in Florence, Italy. He gave a speech on the subject of "The European Ombudsman and public access to documents held by Community Institutions and Bodies". Other speakers included Mr Andrea PIERUCCI of the cabinet of Commissioner OREJA and Mr Peter DOYLE on behalf of DG X of the Commission.

**LUXEMBOURG**

On 15-16 May, Mr SÖDERMAN participated in the EURO-JUS meeting in Luxembourg accompanied by Peter DYRBERG. He gave a speech about his role as European Ombudsman and described his work.

**NETHERLANDS**

Mr Peter DYRBERG gave a speech on the European Ombudsman and transparency at a conference on the oncoming Amsterdam Treaty, organized on 31 May in Amsterdam by the Dutch Members of the Socialist Group in the European Parliament.

18-19 September, Mr SÖDERMAN, attended the seminar "Transparency and Openness" organized by the European Institute of Public Administration (EIPA) in Maastricht. He gave a speech "The role and impact of the European Ombudsman in access to documentation and the transparency of decision-making".

Ian HARDEN attended the colloquium on "Managing the New Treaty on European Union: coping with flexibility and legitimacy" held at the European Institute of Public Administration, Maastricht 26-28 November 1997, to discuss the impact of the Treaty of Amsterdam on the competences of the European Ombudsman.

## AUSTRIA

Mr SÖDERMAN paid a visit to Austria on 3-6 June. He had a meeting with Mrs Benita FERRERO-WALDNER, Secretary of State in the Ministry of Foreign Affairs, and with Ambassador Gregor WOSCHNAGG, Head of European Affairs Department, and other representatives of the Ministry. He also met with Mr Peter WITTMANN, Secretary of State in the Federal Chancellery. After a visit to the Austrian Parliament (*Nationalrat*) he attended a dinner with Mr Heinrich NEISSER, Second President of the Austrian Parliament, and Austrian journalists.



*Mrs Ingrid KOROSEC, Volksanwältin, and the European Ombudsman at the celebration of the 20th anniversary of the Ombudsman institution in Austria.*

On the occasion of the 20th. anniversary of the establishment of the Austrian national ombudsman institution (*Österreichische Volksanwaltschaft*) Mr SÖDERMAN gave a speech on the topic "Is there a classic Parliamentary Ombudsman?".

Mr SÖDERMAN also visited the Federal Academy of Public Administration and gave a lecture on the role and tasks of the European Ombudsman. During his visit, he met the Head of the Academy, Mr Walter DOHR, and held discussions with graduates of the Academy specializing in EU affairs.

During his stay in Vienna, Mr SÖDERMAN also had the opportunity to visit the Austrian Trade Union Headquarters ÖGB and meet with Mr Karl Heinz NACHNEBEL, Head of the International ÖGB Secretariat. He also visited: the Federal Chamber of Agriculture, meeting with President Rudolf SCHWARZBÖCK and other representatives; the Austrian Chamber of Labour, meeting with President Herbert TUMPEL; and the Austrian Chamber of Commerce. At a working lunch, he also met with Mr Wolfgang STREITENBERGER, Head of the European Commission representation in Vienna, and Mr Michael REINPRECHT, Head of the European Parliament Information office.

### FINLAND

Mr SÖDERMAN gave a speech at the meeting of *Nordiska Administrativa Förbundet* held on 21-22 August 1997 in Helsinki. The meeting was attended by about 200 members of the association, lawyers working at the judiciary, public administration or universities in Nordic countries.

### SWEDEN

On 29-31 January, Mr SÖDERMAN attended a seminar at the University of Gothenburg and gave a speech entitled "European Ombudsman - a real power or democratic cosmetics ?" A press conference followed, organized by the Representation of the European Commission.

Mr SÖDERMAN also participated in a seminar "*Nya dimensioner till välfärden*" together with Mr Pádraig FLYNN, Member of the European Commission, and Mrs Pauline GREEN, Member of the European Parliament, and attended a *Pressträff* or open house for citizens to discuss European questions at the Central Station of Gothenburg.

On 4 December, Mr SÖDERMAN gave a lecture on "The functioning of the European Ombudsman at an occasion arranged by *ELÅA*, an organization of students of Community law at the University of Gothenburg, Sweden, with the assistance of the Information office of the European Parliament. The lecture was attended by more than 100 persons including invited solicitors and senior lawyers from the region.

## UNITED KINGDOM

During his visit to the UK on 13-14 March, Mr SÖDERMAN gave the annual guest lecture at the *Institute of European Public Law* of the University of Hull. The lecture "Thousand and one complaints - The European Ombudsman en route" was later published in the journal *European Public Law* which is edited by the Director of the Institute, Professor Patrick BIRKINSHAW.

During his stay in London on 29 April, Mr SÖDERMAN had a meeting with Mr Geoffrey MARTIN, Head of the Representation of the European Commission, and Mr Martyn BOND, Chief of the Information office of the European Parliament in London.

Mr SÖDERMAN, accompanied by Legal Officer Benita BROMS, visited London on 8-10 July. On 8 July, Mr SÖDERMAN gave oral evidence to the House of Lords Select Committee on the European Community, chaired by Lord TORDOFF. The meeting was recorded for future transmission and a Report was later published by the Select Committee (4th Report, Session 1997-1998, HL 18). Mr SÖDERMAN also had a meeting with Mr Michael BUCKLEY, the Parliamentary Commissioner for Administration.

Mr SÖDERMAN was interviewed by Mr Norman SMITH at the BBC's Westminster studio for the *Radio 4* programme "Europe Now" on 8 July 1997. On 9 July 1997, the Ombudsman gave an interview in London both in English and Spanish for *Bloomberg Television* by Mrs Geraldine RIJS for the programme "Financial Markets Commodities News".

On 10 July, the Ombudsman met Mr Geoffrey MARTIN, Head of the Representation of the European Commission in London and had a working lunch hosted by Mr Martyn BOND, Chief of the Information office of the European Parliament in London, with the British section of *European Association of Journalists*.

At the Evening Meeting of the Solicitors' European Group Mr SÖDERMAN gave a lecture "The Role of the European Ombudsman" and attended a dinner with the Group's Vice-Chairman Mr Simon HOLMES, and members of the Group.

Ian HARDEN represented the Ombudsman at a workshop on transparency and access to documents of the European Agency for the Evaluation of Medicinal Products (EMA) organised by the EMA on 30 October in London. Other participants included Mr José-Luis VALVERDE LÓPEZ, MEP, and representatives of the industry, consumers, the press and the US



Food and Drugs Administration. Mr HARDEN addressed the workshop about the Ombudsman's own-initiative inquiry into public access to documents.

### 6.3 OTHER EVENTS

The press officers of all the Finnish Embassies to the Member States of the European Union met with the European Ombudsman on 15 January in Strasbourg.

Representatives of Nordic trade unions in Brussels, Mr Sven SVENSSON, Mr John SVENNINGSEN, Mr Knut-Arne SANDEN and Mr Heikki POHJA held a meeting with the European Ombudsman on 15 January in Strasbourg.

Mrs Benita BROMS and Ms Ilta HELKAMA attended the 9th "*Stammtisch Pierre PFLIMLIN*" on the theme "*Des Finlandais à Strasbourg*" on 29 January in Strasbourg, and gave an overview of the role and functions of the European Ombudsman.

On 14 February, Mr SÖDERMAN received a group of students from the University of Liège and gave a presentation on the role and responsibilities of the European Ombudsman.

A group of 25 International and European Law students from the Faculty of Law of the Erasmus University in Rotterdam visited the European Ombudsman on 19 February.

The Minister of Justice of Finland, Mr Kari HÄKÄMIES, accompanied by Mr Jan TÖRNQVIST, Director of Legislation, and Mrs Raija TOIVIAINEN, Senior Ministerial Secretary at the Ministry of Justice, visited the European Ombudsman on 8 April.

Professor Roy GREGORY of the Centre for Ombudsman Studies, University of Reading, had discussions with Mr SÖDERMAN in Strasbourg on 18 April in relation to his research project, funded by the Leverhulme Trust, on the European Ombudsman.

Mr SÖDERMAN gave a speech about the Ombudsman's role and work at the dinner of the *Nordic Women's Network* on 21 April in Brussels.

Members of the Petitions Committee of the Parliament of the German Land Rheinland-Pfalz were received on 22 April in Brussels by Mr Peter DYRBERG who gave a presentation on the work of the European Ombudsman.

A group of students from the Danish Business School, *Niels Brock*, were received on 29 April in Brussels by Mr Peter DYRBERG who gave a talk on the work of the European Ombudsman.

On 12 May Mr SÖDERMAN met a group of Finnish civil servants attending the course "*La France et l'Union européenne*" organized by *Centre des Etudes européennes de Strasbourg*.

A group of 17 students at the Tornio Polytechnic Unit of Business and Data Processing visited the European Ombudsman and a group of 40 Swedish pensioners and entrepreneurs, *Aktiva Seniorer*, visited the European Ombudsman on 13 May in Strasbourg.

Mr SÖDERMAN met with the Prime Minister of Sahravoui Republic, Mr Mahfoud Ali BEIBA on 14 May in Strasbourg.

Ms Benita BROMS, Legal Officer, participated in a colloquium entitled "The Social Charter of the 21st Century", organised by the Secretariat of the Council of Europe in Strasbourg, 14-16 May.

On 15 May and on 9 September 1997, Ms Vicky KLOPPENBURG gave an outline of the work of the European Ombudsman to groups of visitors from Lower Saxony, Germany, at the invitation of Ms Brigitte LANGENHAGEN, MEP.

The European Parliament organized an open house on 18 May in Strasbourg in the context of a European Day. The event was a success with a high number of visitors. At the Ombudsman's stand visitors were invited to participate in a quiz concerning the role and functions of the European Ombudsman. Successful participants received small prizes.

Mr SÖDERMAN visited Oslo, Norway, on 31 May. He attended the European Regional Meeting of *Lex Mundi*, a global association of 134 independent law firms, and gave a speech on the work of the European Ombudsman in relation to transparency "An open and transparent European administration".

Mrs Paulina OROS, Deputy Director at the Hungarian Ministry of Justice, and two of her staff visited the Brussels office of the Ombudsman on 3 June. Mr Peter DYRBERG gave an overview of the role of the European Ombudsman.

*The Open Day of the European Parliament in the Strasbourg premises invited citizens into taking a closer view of the activities of the Union ...*



*... and the visitors concentrated on finding right answers to the quiz concerning the duties and functions of the Ombudsman.*

On 4 June, Mr Peter DYRBERG gave a presentation on the work of the European Ombudsman to a group of doctoral students from the Institute of International Economic Law of the University of Helsinki, during their visit to Brussels.

Mr Claude DESJEAN, Secretary-General of the French Ombudsman visited the offices of the European Ombudsman on 5 June 1997 and was informed by Ian HARDEN about management and budgetary questions relating to the provision of administrative services to the European Ombudsman.

Ms Jennifer LONG, Assistant Clerk to the Treasury Committee of the UK House of Commons, visited the offices of the European Ombudsman on 12 June and was informed about the work of the Ombudsman by Mr HARDEN.

On 18 June, Mr Peter DYRBERG received a group of teachers from the German Land of *Sachsen-Anhalt* in Brussels and gave a presentation on the work of the European Ombudsman.

Mr Giuseppe GUARNERI former head of the Human Rights Division of Council of Europe addressed the staff of the Ombudsman about the his work on 11 July at an informal lunch.

On behalf of the German government, a German production office, *l'image*, made on 14-15 July a video portrait of the European Ombudsman targeted at young people.

A group of 28 judges and lawyers from Finland met the European Ombudsman during their study visit to Strasbourg on 22 September.

The Deputy Parliamentary Ombudsman of Finland, Mrs Riitta-Leena PAUNIO and a delegation from her office in Helsinki paid a visit to the European Ombudsman on 26 September.

On 3 October, the Ombudsman had a meeting with Mr Ulf ÖBERG, *Referendaire* at the Court of Justice of the European Communities, who is preparing a doctoral thesis on transparency.

A group of students from the municipality of Vihti, Finland, visited the European Ombudsman on 14 October. Another group of visitors from Finland was received on 20 October.

Ms Linda REIF, Professor at the University of Alberta, Edmonton, Canada, and editor at the International Ombudsman Institute paid a visit to the

Ombudsman's office in Strasbourg on 20-24 October to conduct research on the work of the European Ombudsman.

On 22 October 1997 and on 17 December 1997, Ms Vicky KLOPPENBURG was invited by Mr Gerhard SCHMID, MEP, to speak to representatives from local and regional administration in Bavaria about the relevance of the work of the European Ombudsman to German citizens.

On 18 November, Mr SÖDERMAN received in Strasbourg a group of 18 students following the programme on International Legal Cooperation at the Faculty of Law of the *Vrije Universiteit Brussel* and gave them an overview of his role as European Ombudsman.

Mr SÖDERMAN had lunch with Mr Olof SALMEN, President of the Nordic Council, on the occasion of his visit to Strasbourg on 19 November. Mr SALMEN was accompanied by Mrs Berglind AUSGEIRSDOTTIR, Director General of the Secretariat of the Nordic Council, Mrs Susanne ERIKSSON, Senior Advisor from Ålands Lagting and Mr Guy LINDSTRÖM, Secretary-General of the Finnish Delegation of the Nordic Council.

Mr SÖDERMAN received a group of 24 teachers from *Handelsskolen i Ballerup*, Denmark on 21 November and gave an overview of the work of the European Ombudsman.

Mr Peter Gjerloeff BONNOR, a doctoral researcher from the Law Department of the European University Institute visited the European Ombudsman's offices on 24-25 November and conducted interviews with Mr SÖDERMAN and Mr HARDEN.

Mr Leif SÉVON, Judge at the Court of Justice of the European Communities, and Mrs Virpi TIILI, Judge at the Court of First Instance, visited the European Ombudsman's office in Strasbourg on 1 December. Mr SÖDERMAN gave an overview of his work. Mr SÉVON and Mrs TIILI gave lectures on the jurisprudence of the Courts to the legal officers of the Ombudsman's office.

Mr PALLICER, Local Ombudsman for residents and tourists in the city of Calvià in Majorca visited the offices of the Ombudsman on 2 December. Mr PALLICER and Mr SÖDERMAN informed each other about their respective roles and functions and had an exchange of views.

Professor MOREIRO from the Centre for European Legal Studies at the University Carlos III in Madrid, accompanied by his students, paid a visit to the European Ombudsman on 12 December.

On 16 December, the Ombudsman was the invited speaker at a lunch of the *Kangaroo Group*. The occasion was attended by some 50 Members of the European Parliament, supporters of the Kangaroo Group and guests. Mr SÖDERMAN gave a speech explaining the kinds of problems which are submitted by European citizens to the European Ombudsman.

#### 6.4 PUBLICATIONS

*"The European Ombudsman - Questions and answers"* is a brochure intended both for potential complainants and to inform the broader public about the work of the Ombudsman. The brochure is widely distributed through the information offices of the European Parliament and the European Commission in the Member States, the offices of the National Ombudsmen and similar bodies, and the relays and networks, such as Info centres in Europe, Euro Info-points, European documentation centres, Euro-Libraries and a number of specific targets, such as consumer organisations, Chambers of Commerce and professional organisations. During 1997, demand for the brochure was high so that the original print run of 100.000 copies was exhausted and re-printing was necessary.

The European Ombudsman also figures in general Union publications and information programmes such as *Citizens First*, a joint initiative of the European Parliament and European Commission, part of the *"Information Programme for European citizens"*.

The Ombudsman intends to make full use of the new opportunities for information and interaction provided by the Internet. During 1997, the Ombudsman established a separate address for his Website (<http://www.euro-ombudsman.eu.int>) where basic information about the Ombudsman, such as the Annual reports, the most important speeches and decisions of the Ombudsman as well as the brochure and the complaint's form are available. This site can be easily accessed directly from the European Parliament's Website and *vice versa*. There is also a link to and from the "Europa" server. From the beginning of 1998, a much wider range of material, such as press releases and summaries of the Ombudsman's decisions will be included and updated on a regular basis.

The information on Internet, however, is an addition to and not a substitute for conventional forms of publication, which continue to be accessible to a much greater proportion of the population than has access to the Internet.

The Annual Report of the Ombudsman for 1996 was presented to the European Parliament on 14 July 1997 and distributed to European institutions, international Ombudsman institutions, Ombudsmen in the Member

States, University libraries, European documentation centres and to the media. It was also printed in the *Official Journal* and made available on the Ombudsman's Website.

## 6.5 MEDIA RELATIONS

Effective use of the mass media is important for both objectives of the information strategy. The mass media reach people who might have a real reason to complain about maladministration in the activities of a Community institution or body, as well as informing European citizens generally of the existence and functions of the Ombudsman.

Press conferences (9 in all) were arranged regularly in Member States during Mr SÖDERMAN's visits, as well as on other special occasions, such as the inauguration of the European Ombudsman's offices in Strasbourg on 8 April. The inauguration was covered by around 20 journalists.

On the occasion of the presentation of the Ombudsman's Annual report 1996 to the European Parliament in Strasbourg on 14 July, Mr SÖDERMAN met a group of journalists from different Member States. He also attended a press conference on 15 July with Mr Alessandro Fontana, Chairman of the Committee on Petitions and Mr Nikolaos PAPAKYRIAZIS, rapporteur.

20 February, Mr SÖDERMAN was invited to the traditional Thursday lunch of the Strasbourg Press Club. He gave a speech on his role and duties as the European Ombudsman to the members of the club.

In addition, Mr SÖDERMAN met with several groups of journalists during his visits to the Member States, during his visits to Brussels and in Strasbourg, including the the British section of the *European Association of Journalists* in London on 10 July, a group of 17 Nordic journalists, members of the *Nordisk Journalistcenter* on 10 April in Brussels and a group of 12 radio journalists from *Daily News of Denmark's Radio* on 17 September in Strasbourg. He also attended the meeting in Brussels of the *National Union of Journalists* in September and received in Strasbourg several groups of journalists from various Member States.

Mr SÖDERMAN gave an interview to Roman school children on 17 April for an Italian television programme dealing with children's ideas on the European Union. The programme was produced in cooperation with DG X of the Commission.

Mr BORDRY interviewed the European Ombudsman for *Lettres des Européens* on 6 November in Strasbourg.

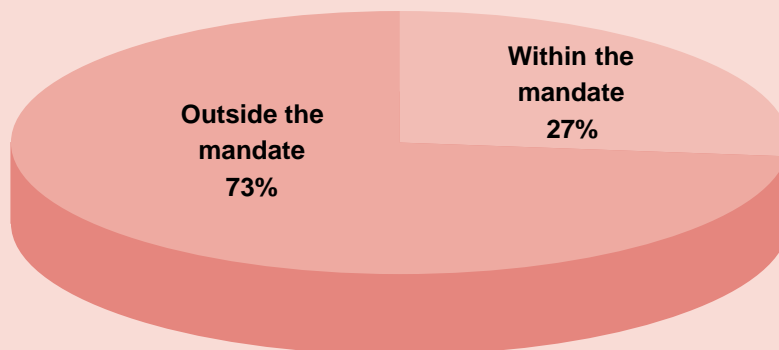
In addition to the interviews given to the media during his visits to the Member States (mentioned above), Mr SÖDERMAN gave around 50 interviews to journalists from newspapers, magazines, radios and televisions of the Member States, i.a., the *European Voice*, *The European*, *The Insider*, the Dutch *Algemeen Dagblad* and *NRC Handelsblad*, the Belgian *De Morgen*, the German *Badische Zeitung*, the Swedish *Dagens Nyheter* and *Finanstidningen*, the Finnish *Turun Sanomat*, *Keskisuomalainen*, *Ilkka* and *Nykypäivä*, *The Times*, the German *Wirtschaftswoche* and *EU Magazin*, the Dutch *Plus*, *BBC Radio*, *France Inter*, *Radio France Internationale*, *Deutsche Welle*, *Radio Nederland*, *Radio Portuguesa*, the Italian *RAI*, the Swedish *Sveriges radio* and *Sveriges radio/Gotland*, the Finnish radio *YLE*, *Television Española*, *Danmarks television*, the Swedish *STV* and the Finnish televisions *YLE* and *MTV*.

Mr SÖDERMAN also gave interviews to media outside the Union, for example the Chilean newspaper *El Mercurio*, the Hungarian newspaper *Magyar Hirlap* and a Japanese television station *Japan Broadcasting Company*.



**ANNEX A: STATISTICS CONCERNING THE WORK OF  
THE EUROPEAN OMBUDSMAN IN 1997****A- CASES DEALT WITH DURING 1997**

<b>1. Total caseload from 1.1.97 to 31.12.97</b>	<b>1412</b>
*Complaints and inquiries not closed on 31.12.96 (of which 2 own initiatives of the EO and 106 admissible complaints)	227
* Complaints received in 1997	1181
* New own initiatives of the European Ombudsman	4
<b>2. Examination of admissibility/inadmissibility completed</b>	<b>97%</b>
<b>3. Classification of the complaints</b>	
a) According to the mandate of the EO	
* within the mandate : 368 (27%)	
* outside the mandate : 998 (73%)	

**ACCORDING TO THE MANDATE OF THE EO**

**b) Reasons for being outside the mandate**

* not an authorized complainant	10
* not against a Community institution or body	946
* does not concern maladministration	42

**c) Analysis of complaints within the mandate****Admissible complaints : 230**

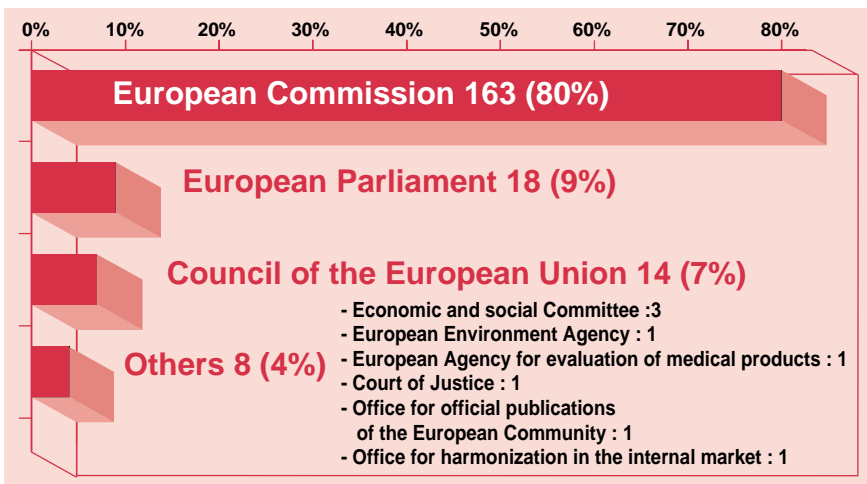
* inquiries initiated :	196
* no grounds for inquiry :	34
-dealt with or being considered by Committee on Petitions	17
- others :	17

**Inadmissible complaints : 138**

Inadmissible because :	
* Author/object not identified	48
* Time limit exceeded	4
* Prior administrative approaches not made	64
* Being dealt with or settled by a Court	17
* Internal remedies not exhausted in staff cases	5

**B- INQUIRIES INITIATED 200**

(196 admissible complaints and 4 own initiatives of the EO)

**1. Institutions and bodies subject to inquiries <sup>1</sup>**

<sup>1</sup> Some cases concern 2 or more institutions or bodies

## 2. Type of maladministration alleged

*(in some cases, 2 types of maladministration are alleged)*

	<b>Lack of refusal for information, transparency 60 (25%)</b>
	<b>Discrimination 42 (17%)</b>
	<b>Procedures, rights of defence 32 (13%)</b>
	<b>Unfairness; abuse of power 23 (9%)</b>
	<b>Avoidable delay 22 (9%)</b>
	<b>Negligence 22 (9%)</b>
	<b>Failure to ensure fulfilment of obligations 20 (8%)</b>
	<b>Legal error 14 (6 %)</b>
	<b>Other maladministration 9 (4%)</b>

## C - TOTAL NUMBER OF DECISIONS CLOSING THE FILE ON A COMPLAINT OR CONCLUDING AN INQUIRY : 1271

<b>1. Complaints outside the mandate :</b>	<b>998</b>
13 complaints have been transferred as petition to the European Parliament,	
3 to national Ombudsmen,	
1 as a petition to a national Parliament and	
490 complainants have been advised to contact another agency :	
* National/regional ombudsman or petition to the Parliament	254
* To petition the European Parliament	86
* European Commission	76
* Court of Justice	1
* Others	73
<b>2. Complaints within the mandate, but inadmissible</b>	<b>138</b>
<b>3. Complaints within the mandate, admissible but no grounds for inquiry :</b>	<b>34</b>
<b>4. Inquiries closed with reasoned decision :</b>	<b>101<sup>1</sup></b>
<i>(An inquiry can be closed for 1 or more of the following reasons)</i>	
* No maladministration found	59 <sup>1</sup>
* With a critical remark addressed to the institution	21
* Settled by the institution	16
* Friendly solution	3
* Special report	1
* Dropped by the complainant	2
* Other	6 <sup>2</sup>

## D - INFORMATION CONCERNING THE COMPLAINTS REGISTERED IN 1997 (1181 COMPLAINTS)

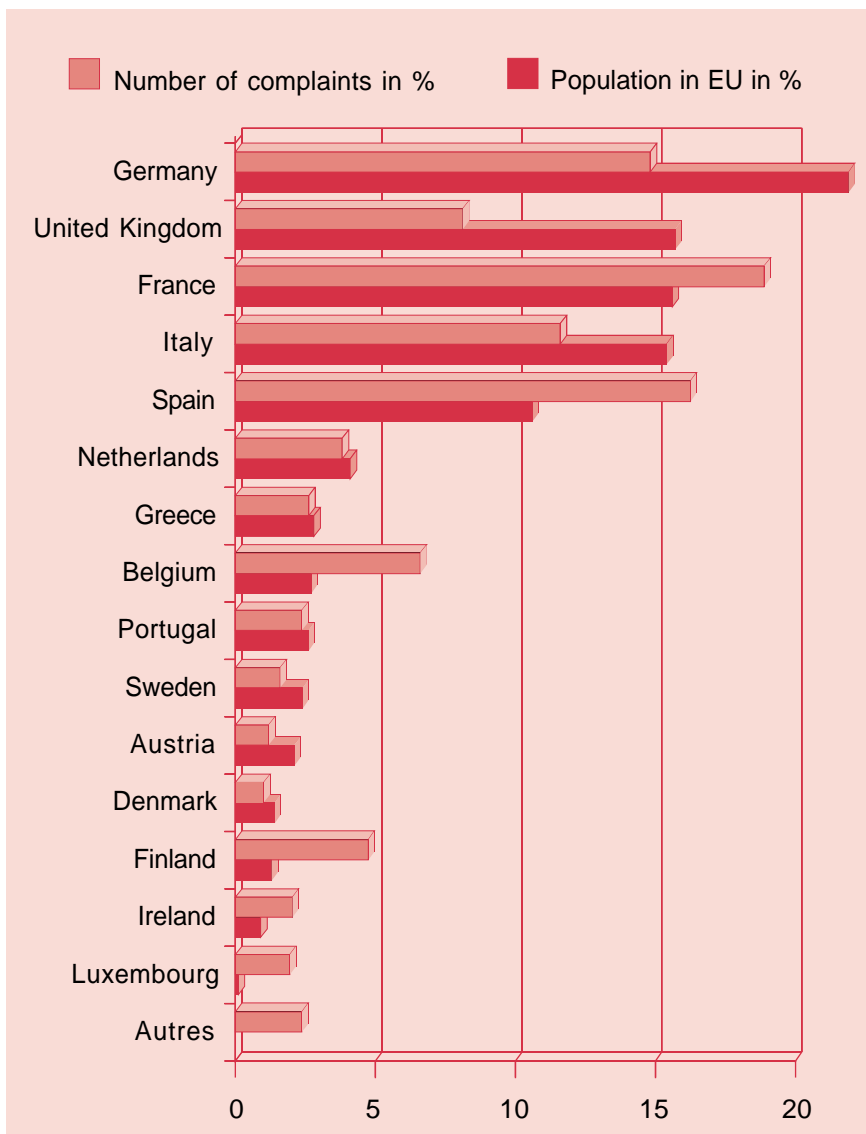
<b>1. Source of complaints</b>	
* Sent directly to the European Ombudsman :	1162
- by individual citizens :	1067
- by companies :	38

<sup>1</sup>.Of which 2 own initiatives

<sup>2</sup> Terminated because of the commencement of legal proceedings, 3 closed because after an inquiry had begun the Ombudsman was informed of facts which showed that the complaint was inadmissible.

- by associations :	57
* Transmitted by a Member of the European Parliament :	17
* Petitions transferred to the European Ombudsman :	2

## 2. GEOGRAPHICAL ORIGIN OF THE COMPLAINTS



## ANNEX B: THE OMBUDSMAN'S BUDGET

Article 12 of the Financial Regulation of the European Communities provides for the Ombudsman to transmit to the European Parliament before 1 May each year an estimate of his revenue and expenditure for the following year.

The Statute of the European Ombudsman provides for the Ombudsman's budget to be annexed to section 1 (European Parliament) of the general budget of the European Communities, which is published in the Official Journal.

Salaries, allowances and other costs related to employment are contained in Title 1 of the Budget. This Title also includes the cost of missions. Title 2 of the budget covers buildings, equipment and miscellaneous operating expenditure.

To avoid unnecessary duplication of administrative and technical staff, many of the services needed by the Ombudsman are provided by, or through, the European Parliament. Where these services involved additional direct expenditure by the Parliament a charge was normally made during 1997, with payment being effected through the liaison account. Rental of offices and translation services are the largest items of expenditure dealt with in this way.

From the beginning of 1997, the establishment plan of the Ombudsman consisted of 16 posts, three more than at the end of 1996. All the posts are temporary.

The total amount of appropriations available in the Ombudsman's budget for 1997 was 2.581.819 ECUs. Title 1 (Salaries, allowances and other costs related to employment) amounted to 1.815.819 ECUs. Title 2 (Buildings, equipment and miscellaneous operating expenditure) amounted to 764.000 ECUs.

The following table indicates actual expenditure in 1997 in terms of available appropriations committed.

Title 1	1.519.865 ECUs
Title 2	599.120 ECUs
Total	2.119.852 ECUs

Revenue consists of deductions from the remuneration of the Ombudsman and his staff. In terms of payments received, total revenue in 1997 was 209.413 ECUs.

The 1998 budget, prepared during 1997, provides for an establishment plan of 17, representing an increase of one from the establishment plan for 1997.

Total appropriations for 1998 are 2.782.178 ECUs. Title 1 (Salaries, allowances and other costs related to employment) amounts to 2.003.178 ECUs. Title 2 (Buildings, equipment and miscellaneous operating expenditure) contains 772.000 ECUs.

The 1998 budget provides for total revenue (deductions from the remuneration of the Ombudsman and his staff) of 264.421 ECUs.

## ANNEX C: THE PERSONNEL OF THE OMBUDSMAN

## EUROPEAN OMBUDSMAN

**Jacob SÖDERMAN**

## SECRETARIAT OF THE EUROPEAN OMBUDSMAN

**Ian HARDEN***Head of secretariat*

Tel. 00 33 3 88 17 2384

**Olivier VERHEECKE***Legal Officer (from 1.9.1997)*

Tel. 00 33 3 88 17 53 46

**Benita BROMS***Legal Officer*

Tel. 00 33 3 88 17 2423

**Ilta HELKAMA***Press Officer*

Tel. 00 33 3 88 17 2398

**Daniela TIRELLI***Assistant*

Tel. 00 33 3 88 17 2402

**Nathalie CHRISTMANN***Secretary of the European Ombudsman (until 13.7.1997)**Administrative Officer**(from 14.7.1997)*

Tel. 00 33 3 88 17 2383

**Isabelle FOUCAUD***Secretary*

Tel. 00 33 3 88 17 2391

**Patrick SCHMITT***Usher (from 1.2.1997)*

Tel. 00 33 3 88 17 7093

**Xavier DENOËL***Trainee**(from 1.7.1997)***José MARTINEZ ARAGON***Principal Legal Adviser*

Tel. 00 33 3 88 17 2401

**Vicky KLOPPENBURG***Legal Officer*

Tel. 00 33 3 88 17 2383

**Ms Katja HEEDE***Legal Officer**(until 14.2.1997)***Francesca MANCINI***Assistant**(until 30.9.1997)***Panayotis THANOU***Assistant*

Tel. 00 33 3 88 17 2403

**Murielle RICHARDSON***Secretary (until 13.7.1997)**Secretary of the European Ombudsman**(from 14.7.1997)*

Tel. 00 33 3 88 17 2388

**Stephanie KUNZE***Secretary (from 1.9.97)*

Tel. 00 33 3 88 17 2393

**Ida PALUMBO***Trainee**(from 1.10.1997)*



MAIN OFFICE IN STRASBOURG



## THE BRUSSELS ANTENNA

**Peter DYRBERG***Principal Legal Adviser*

(from 16.2.97)

Tel. 00 32 2 284 2003

**Ursula GARDERET***Secretary*

(from 1.2.1997)

Tel. 00 32 2 284 2300

**Anna RUSCITI***Secretary*

(until 30.6.1997 in Strasbourg)

Tel. 00 32 2 284 6393

**Hanna Mari ANTTILAINEN***Trainee*

(from 1.7.1997)

## HOW TO CONTACT THE OMBUDSMAN

## STRASBOURG



- By mail  
The European Ombudsman  
1, av. du President Robert Schuman  
B.P. 403  
F - 67000 Strasbourg Cedex



- By telephone  
00 33 3 88 17 2313  
00 33 3 88 17 2383



- By fax  
00 33 3 88 17 90 62



- By e-mail  
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<http://www.euro-ombudsman.eu.int>

## BRUSSELS

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Eastman  
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- By telephone  
00 32 2 284 21 80

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00 32 2 284 49 14