

Complaint : ...1821/2008/P13
LO :P13
Date :30/07/08

Letter of inadmissibility

Brochures : o **EO**
 o **Committee on Petitions of the European Parliament**
 o **OTHER**

Original complaint
(Copy the complaint for the EO's file – Send by registered post)

Transfer of a complaint

Letter to Institution + Original of the complaint (Send by registered post)
 Letter to inform the complainant
 (Copy the complaint for the EO's file)

Opinion Request

+ Copy of letter to EC to OLEP

Letter to inform the complainant
 Letter to President of the Institution
 Copy of the complaint
 (cc :

Observations request

Letter to complainant
 Copy of the Institution's opinion
 Annexes

Further Inquiries / Friendly solution / Draft recommendation (circle as appropriate)

Letter to inform the complainant
 Letter to President of the Institution
 Copy of the complaint's observations
 (cc :

Direct transmission to Commissioner's cabinet: Yes If yes, contact person:
No

Decision

Original Decision to the complainant
 Letter to President of the Institution
 Copy of the decision in EN
 (cc :

CONFIDENTIAL (scroll down to change)

Date of complaint :	02 May 08	2 years rule :	x tick if within 2 years
Date registered :	02 May 08	Prior approaches :	x tick if made
Date of summary :	16 June 08	Petition :	x tick if no petition
		Legal proceedings :	x tick if no proceedings
		Grounds :	x tick if grounds

Name of complainant : Mr Guido STRACK
 On behalf of (if relevant) :
 Language : German
 Country of address : Germany
 Nationality : German

SUMMARY

Complaint against :

The European Commission (DG ADMIN)

Subject:

On 2 May 2008, Mr Guido Strack asked the EO to take up for inquiry the allegations that he had made in complaint 3591/2006/WP (rejected on 10 June 2006 - it was subsequently transferred to PB).

The background is the following:

On 2 March 2006, the complainant, who had retired in April 2005 due to invalidity, was granted access to his personal and medical file at the European Commission. The complainant considered that the access that he was granted to his medical file was (a) incomplete and (b) tainted by procedural shortcomings. He therefore made, on 26 July 2006, an Article 90(2) complaint to the Commission. The grievances that he made in that complaint can be summarised as follows:

(a) incomplete access

- The complainant stated in his Article 90(2) complaint that his access was "severely limited", indicating that, in his view, several documents were missing in the file. He described the file that he was given access to as a *potpourri* of documents ("sammelsurium"). However, the complainant only expressly referred to one specific document, namely a report/medical opinion authored by a Dr. Helmer (a report that appears to have concerned the complainant's medical condition).

(b) procedural shortcomings

- The complainant states that he had, wrongly, not been allowed to take photocopies or photos of, or even notes from, the content of the file.

In light of the above-mentioned allegations, the complainant claimed compensation for the costs that he had incurred by going to Brussels (he lives in Germany, the transport costs were EUR 76,-, his train journey)¹.

In relation to the above issues, the Commission's decision on the complainant's Article 90(2) complaint, dated 21 November 2006, dealt exclusively with the question of the report of Dr. Helmer. On that issue, the decision referred to the fact that the complainant had been informed, by e-mail of 27 February 2006, that "*as discussed Friday morning, the Medical report is not yet finalised since Doctor HELMER is still awaiting Dr Hirsch's report. Doctor HIRSCH will contact you to arrange an appointment during the month of April*". In light of this message, the decision concluded that "*Therefore, it was unambiguously clear that Mr. STRACK could not expect a finalised report of Dr. HELMER on 2 or 3 March 2006. Had the complainant his travel to Brussels depended on the finalised report [sic.], he had had the possibility to assure this by making contact with PMO after March 2006. Thus, the allegation of Mr. STRACK that his travel to Brussels took place under false pretences and hence he would suffer financial damages is unjustified.*"

As indicated above, the Commission's decision did not address the alleged procedural shortcomings also referred to by the complainant.

In his complaint 3591/2006/WP (later /PB), the complainant disputed the Commission's decision. However, he again referred exclusively to the (missing) report by Dr. Helmer when stating that he had been granted only incomplete access to the file.

In his letter of 10 January 2007 rejecting the complaint, the EO informed the complainant, on the above point, that (translation from German) "you request that the Commission should pay you the travel costs by way of compensation because you were only granted incomplete access to the file. In this respect also, it is not quite clear to me on the basis of your submissions, on what basis you request compensation."

The WP-summary on that complaint furthermore stated that "The question as to whether the file the complainant consulted on 2 March 2006 was incomplete is being dealt with in the context of further inquiries in complaint 723/2006/WP. Further observations from the complainant were received on 11 December 2006. Therefore, it appears likely that the EO will be able to reach a decision in this respect before the merits of the present case have to be assessed." Case 723/2006/WP concerned an allegation, also regarding the complainant's access to the file here concerned, which had been formulated as follows:

The Commission wrongfully rejected the complainant's request, formulated on the basis of Regulation 1049/2001, for access to his medical and personal files and to all files in connection with his application for recognition of an occupational disease.

The further inquiries in that case, referred to above, consisted of two questions and a new allegation to the Commission (quoting from the decision):

"The Ombudsman's request for further information and a supplementary opinion

¹ The complainant also claimed *reimbursement*, under the Staff Regulations, of the travel costs. The EO has already informed the complainant that there is no legal basis for such a claim (letter rejecting the complaint 3594/2006/WP, and subsequent letter of 6 September 2007 in response to further correspondence). At any rate, the issue is not raised in, or relevant to, the complainant's latest correspondence of 2 May 2008.

In his letter of further inquiry, the Ombudsman asked for information on the following:

(1) which documents the Commission had granted the complainant access to? and

(2) which documents the complainant was allowed to make copies of?

The Ombudsman furthermore asked the Commission to submit an additional opinion on the complainant's further allegation that "the most interesting documents" had been removed from the files before he was granted access."

The Commission's reply to these further inquiries was sent on 27 November 2007. The complainant sent his observations on 10 December 2007.

Before these dates, on 12 January 2007, the complainant had asked the EO to re-examine his allegations in complaint 3591/2006/PB. Due to an exceptional and temporary non-handling of all the complainant's cases (awaiting the outcome of an Article 90(1) request for mediation that he had made to the Commission), the EO only replied on 6 September 2007. In his letter, the EO informed the complainant that the lawfulness of the Commission's actions was under assessment in case 723/2006/(WP)PB, and for that reason it was not deemed appropriate to open a relevant inquiry at that time. The extent of the assessment eventually made in the decision on that case was less wide than the assessment requested by the complainant in 3591/2006/(WP)PB, which explains his renewed request of 2 May 2008¹. That request is examined in the following.

In his e-mail of 2 May 2008, the complainant, referring to his previous complaint 3591/2005/(WP)PB, states that "a complete examination of the lawfulness" of the Commission's actions should be carried out. He then refers expressly to the fact that he had made the above-mentioned Article 90(2) complaint.

In cases like the present, the EO can only conduct a complaint-based inquiry into the specific issues already raised in the Article 90(2) complaint concerned. It is therefore excluded that the EO conducts "a complete examination of the lawfulness" of the Commission's actions. The complainant should be informed accordingly.

With regard to the two above-mentioned specific issues raised in the complainant's Article 90(2) complaint, the following is noted and proposed:

(a) incomplete access

As mentioned above, the complainant only expressly refers to the report by Dr. Helmer. His indirect indications that other documents had been missing were not substantiated. It was therefore reasonable of the Commission to only address the issue of Dr. Helmer's report, and the question here is whether, in light of the relevant part of the Commission's decision, there are "sufficient grounds" for opening an inquiry into this part of the case.

The Commission essentially concluded that (a) the complainant had been given clear information to the effect that no final report from Dr. Helmer existed, or could exist, at the time

¹ The EO's relevant findings in that case were (a) that the Commission had rightly refrained from dealing with his access to file request under Regulation 1049/2001, and (b) the complainant had not submitted evidence that could rebut the presumption of truthfulness in the Commission's statement that it had not "removed" documents from the file before granting the complainant access.

of his access to the medical file; and (b) he could therefore not have expected to find a copy of the draft report in that file.

In his complaint 3591/2006/(WP)WP, the complainant essentially argued that the Commission did not draw his attention to the fact that the draft report would not be on his file, and that the Commission must have known that he would be interested in that report.

There appears to be no rule or principle requiring the Commission, in a case like the present, to keep draft medical reports on staff members' medical files. Since the Commission's factual account of the correspondence between itself and the complainant is accurate, it therefore appears reasonable of the Commission to have concluded, in its decision on his Article 90(2) complaint, that the complainant could not have expected to find a copy of the said report on his medical file. This part of the complaint should therefore be rejected on the basis of Article 195 ECT for lack of 'sufficient grounds'.

With regard to the alleged procedural shortcomings in the access that the complainant was granted, it is clear that an inquiry is justified because (a) the Commission, in the first place, did not address this issue, and (b) there appears to be no rules or principles according to which the Administration has either a right or an obligation to prohibit staff members from taking copies, notes or photos when they access their medical files. By way of comparison, Article 26(b) of the Staff Regulations provides that "*An official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and to take copies of them.*" Article 26a concerning access to the medical file provides that "*Officials shall have the right to acquaint themselves with their medical files, in accordance with arrangements to be laid down by the institutions.*" A brief search by PB (in the Commission's list of administrative notices) has not revealed any such 'arrangements'. The Commission should therefore be asked to provide a copy of any 'arrangements' that it has adopted, in whichever form, to implement Article 26a of the Staff Regulations.

In light of the above, it is proposed to open an inquiry into the following allegations:

- 1. The Commission wrongly denied the complainant the possibility of taking copies, notes or photos from his medical file.*
- 2. The Commission wrongly failed to address this issue in its decision on the complainant's Article 90(2) complaint.*

PB 16 June 2008

Approved by ID and JSA 27 June 2008

Visa HLT :

Date :

(cases where an inquiry takes place)

1. Please fill in this information sheet by circling the appropriate answer when several possibilities are given, or by filling in the blanks.
2. Attach the COMPLAINT SUMMARY on a separate sheet. Please also copy the COMPLAINT SUMMARY under

S:/Lega/Complaint summaries/Admiss/year of registration

name of the file : number of complaint (4 numbers)-year of registration-initials of the LO-language of complaint

ex : 0353-2007-BM-es

(please use Read-Only option)

Case reference : 1821/2008/PE Date of closure of file:.....

Confidential : Yes/No

On behalf of : (fill out when needed).....

Kind of complainant : Specify if it is a :

physical person (man or woman?) specify if Community staff or MEP -

legal person : company - lawyers office - association - NGO - or other.....

For both categories mention any information you have such as : nationality (if possible) German

Area of activity e.g. : journalist - farmer - student - doctor - dentist - vet - teacher - other.....

Transmitted : directly - by a MEP - by transfer from the Committee on Petitions of EP -

Other :

Institution or body complained against : ADMIN

Eur. Commission (+DG or service, when possible. See "E:\LEGALRESOURCES) - Eur. Parliament (+ DG, when possible); Council of the EU; Court of Auditors - Court of Justice

other.....

Keywords (for 2. and 3. : refer to the lists) :

1. Staff - access to medical office

2. staff - other matters

3. procedure

4.