

Press and Information Division

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Judgment of the Court of Justice in Case C-234/02 P

European Ombudsman v Frank Lamberts

**THE COMMUNITY COURTS HAVE JURISDICTION TO HEAR AN
ACTION FOR DAMAGES BROUGHT AGAINST THE OMBUDSMAN**

Having regard to the specific nature of the Ombudsman's function, review by the Community courts must be limited and intended to verify whether the Ombudsman has committed a grave and manifest breach of Community law in the performance of his duties likely to cause damage to the citizen concerned.

The function of European Ombudsman was created under the Treaty of Maastricht in order to deal with complaints concerning maladministration by the institutions and bodies of the European Community. The Ombudsman is appointed by the European Parliament and may be dismissed by the Court of Justice at the request of the European Parliament. The Ombudsman submits an annual report to the European Parliament on the outcome of his inquiries.

In a selection procedure, Mr Lamberts failed the interview because he was under the influence of medication prescribed following an accident. He had not requested a postponement of his interview owing to a clause in the document inviting him to attend, under which "the organisation of the interviews does not permit any change in the times communicated". After unsuccessfully seeking to have his case re-examined by the Commission's services he made a complaint to the Ombudsman.

In his decision the Ombudsman stated that the Commission should in future include a clause in the letters of invitation, informing candidates of the possibility of a postponement in exceptional circumstances. In the present case, however, he considered that there had been no instance of maladministration because the Commission decision refusing to allow Mr Lamberts to re-sit the interview had not infringed any rule binding upon the Commission.

Mr Lamberts brought an action for damages before the Court of First Instance against the Ombudsman. The Ombudsman contended that the action should be dismissed as inadmissible on the ground that the Parliament alone may review his decisions.

On 10 April 2002, the Court of First Instance held that the action was admissible, but dismissed it as unfounded, since Mr Lamberts had not demonstrated that the Ombudsman had committed any breach of his administrative duties in dealing with his complaint.

The Ombudsman brought an appeal against the judgment of the Court of First Instance inasmuch as it declares the action for damages admissible. He considered it to be in breach of Community law for an action for damages, seeking a review of the legality of the inquiry and of his decision to close the procedure, to be brought against him. In that regard, the Court of First Instance exceeded the limits to which judicial review of his activity is subject. Moreover, the Ombudsman submitted that Mr Lamberts' action sought reparation of damage caused by the conduct of the Commission, and not by his conduct as Ombudsman.

The Court of Justice has found, first of all, that the Parliament's powers with regard to the Ombudsman are not akin to judicial review. Consequently, judicial review of the Ombudsman's activity does not duplicate review by the Parliament. A finding of liability owing to damage occasioned by the Ombudsman concerns not the personal liability of the Ombudsman but that of the Community. Thus the possibility that the Community may incur liability owing to conduct on the part of the Ombudsman does not call into question the Ombudsman's independence. Furthermore, judicial review of the Ombudsman's activity must be carried out with due regard for the specific nature of the Ombudsman's function. In that context, it should be borne in mind that the Ombudsman is merely under an obligation to use his best endeavours and that he enjoys wide discretion.

The Court has made it clear that even if review by the Community courts must consequently be limited, it is possible that in very exceptional circumstances a citizen may be able to demonstrate that the Ombudsman has committed a grave and manifest breach of Community law in the performance of his duties likely to cause damage to the citizen concerned.

Next, the action for damages is an autonomous form of action which must not be confused with the action for annulment which seeks a declaration that a legally binding measure is unlawful. However, one of the preconditions of the right to reparation is that there must be a sufficiently serious breach of a rule conferring rights on individuals. Consequently, in the context of an action to establish liability which seeks reparation for loss allegedly caused by the manner in which the Ombudsman dealt with a complaint, it is necessary to assess the lawfulness of the Ombudsman's conduct in order to determine whether the action is well founded.

Finally, the Court has held that the Ombudsman cannot in any event be held liable for the conduct of the Commission. However, the Court has stated that, in his action brought before the Court of First Instance, Mr Lamberts claimed to have suffered damage caused by the misconduct and negligence of the Ombudsman. His action did

not therefore seek reparation of damage caused by conduct of the Commission occasioning damage.

Consequently, the Court of First Instance did not err in law when it declared admissible the action brought by Mr Lamberts.

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Available languages: English, French and German*

*The full text of the judgment can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

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