

Decision of the European Ombudsman on complaint 1024/98/OV against the European Commission

Decision

Case 1024/98/OV - Opened on 05/10/1998 - Decision on 09/10/2000

Strasbourg, 9 October 2000 Dear Mrs A., Dear Mrs M., On 31 July 1998 you made a complaint to the European Ombudsman on behalf of all the local agents working at the Commission Delegation in Rabat (Morocco) concerning an alleged maladministration in the management of the sickness-insurance scheme of the local agents. On 5 October 1998, I forwarded the complaint to the President of the European Commission. On the same day I sent you the comments which the Commission had made on a similar complaint lodged by Mrs B. (ref. 1148/97/OV). The Commission sent its opinion on 13 November 1998 and I forwarded it to you with an invitation to make observations, if you so wished. On 27 November and 23 December 1998 I received your observations on the Commission's opinion. I am writing now to let you know the results of the inquiries that have been made. I apologise for the time it has taken to deal with your complaint.

THE COMPLAINT

The complainants complained on behalf of all the local agents working at the Commission Delegation in Rabat about maladministration in the management of the sickness-insurance scheme of the local agents. They mentioned the complaint lodged by Mrs B. (1148/97/OV) and referred to the documents annexed to this complaint. According to the complainants, the relevant facts were as follows: Until the end of 1996 the local agents were covered by the local insurance "Al Wataniya" which reimbursed 85 % of the medical costs, and the Commission Delegation reimbursed the outstanding 15 %. This resulted in a 100 % cost coverage including costs made in Europe. However, in January 1997, when the Specific Conditions of Employment for the local agents in Morocco entered into force, they were obliged to adhere to the Commission's sickness insurance scheme for local agents. At several occasions during the negotiations and after the signature of the Specific Conditions of Employment (SCE), the local agents had however expressed their preference for the existing Al Wataniya insurance. The main reason why the local agents wanted to maintain the existing insurance was that the Commission's insurance scheme did not, contrary to the previous Al Wataniya insurance scheme, reimburse the medical costs made abroad. Having been requested to choose between the Al Wataniya insurance and the Commission's insurance scheme (note of 21 November 1996), the local agents clearly opted for maintaining the Al Wataniya insurance (note of 29 November 1996). However, they were not informed until April 1997 when the Head of Delegation took the initiative to install a temporary system (note of 7 April 1997). After one year



of application of this temporary system, it appeared that in fact the Commission's insurance scheme was applied. The local agents were therefore submitted to an insurance system which they had refused and which was less advantageous than the previous one. As regards costs made abroad, the complainants observed that the Vademecum mentioned a proposal according to which interested local agents could subscribe to a private sickness insurance with the Commission contributing 50 %. However, the local agents were never informed about the adoption of this proposal by the Commission. The complainants pointed out that there exists three categories of insurance for the non-officials staff of the Delegation: 1) local agents member of the Commission's insurance scheme, 2) local agents voluntary member of the insurance scheme for the French abroad (CFE) which reimburses costs made abroad and 3) non statutory local staff member of a private Moroccan insurance which reimburses costs made abroad. They observed that the local agents of the Delegation are employees of the European Commission with contracts for undetermined period and that, therefore, they should be entitled to a similar treatment as officials with regard to the basic social conditions. The sickness insurance scheme of the local agents should contain the following elements comparable with the Common Sickness Insurance Scheme of the officials: 1) the reimbursement of costs made in Europe, 2) the 100% reimbursement of long or chronic diseases, 3) the reimbursement of the same scale of services as for officials, and 4) coverage after retirement. The complainants finally observed that, contrary to the Commission's statement that it is amongst the best employers on the spot with regard to the sickness insurance, the Commission's scheme is situated below the level of other employers and all private Moroccan insurance foresee the reimbursement of costs made abroad. Not satisfied, the complainants complained on 31 July 1998 to the Ombudsman alleging that they were obliged to adhere to the Commission's sickness insurance scheme which replaced the Al Wataniya insurance and no longer reimbursed the medical costs made in Europe.

THE INQUIRY

The Commission's opinion The Commission in its opinion first pointed out that the complainant had not complied with Article 2.8 of the Ombudsman's Statute which foresees that no complaint may be made to the Ombudsman 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. For the local agents in Morocco, Article 35 of the SCE, which is largely inspired by Article 90(2) of the Staff Regulations, foresees the internal administrative complaint's procedure. The Commission observed that the act adversely affecting the complainants was the termination of the Al Wataniya contract with effect from 1 January 1997 and the simultaneous adherence to the Commission's insurance scheme. The complainants however lodged no complaint. The Commission however wanted to explain the problems of the medical insurance of the local agents in general and in Morocco in particular: A fundamental characteristic of the legal situation of a local agent is his protection by the local social legislation. Moreover, the local agents of the Commission benefit from the SCE which are adopted by the Commission after approval of the staff, and which contain guarantees and advantages which go beyond those required by the local legislation. With the adoption of the SCE, new contracts were concluded which replaced the previous ones and which took into account the SCE. Therefore was it out of question to invoke the previous conditions even if certain could be considered more advantageous. The Commission observed that the new



situation of the local agents in Morocco was in conformity with Article 23 of the SCE which explicitly states that, in case of illness, the local agents benefit from a 100 % reimbursement of the local costs (and thus not of the costs made abroad). Moreover, the second paragraph foresees that the authority empowered to conclude contracts of employment can decide to diminish progressively the reimbursement rate to 75 %, or to affiliate the local agent to an insurance company with a participation of the interested person in the payment of one third of the insurance costs. The Commission contested the complainants' statement that they were obliged to adhere to the Commission's insurance scheme. The Commission observed that it proposed the local agents to maintain the Al Wataniya insurance under the conditions of the SCE, i.e. by participating in the costs of the insurance. The local agents have not accepted such a participation which foresees conditions that are less favourable than those applicable before the entry into force of the SCE. Given this refusal the Commission has affiliated to the its insurance scheme the local agents who did not oppose themselves, but not the complainants who asked not to be affiliated. Considering the problems linked to the fact that the Commission's insurance scheme only reimburses medical costs made in the country of employment, the Commission accepted on 30 October 1996 and 29 May 1997 to participate for 50 % in the payment of premiums of private insurance contracts concluded by local agents for covering medical costs made abroad. This possibility was available for all local agents. The Commission further observed that an increase in the level of coverage would necessarily imply an increase in the participation costs, and that a more permanent insurance scheme was being under consideration together with the staff representatives. **The complainants' observations** The complainants maintained their complaint. As regards the admissibility of the complaint, the complainants stated that it is up to the Ombudsman to decide whether it is admissible. They however concluded that, as the Commission commented on their complaint, as well as on the complaint of Mrs B., it considered the complaint to be admissible. On the substance the complainants observed that the affiliation to the Commission's insurance scheme was not simultaneous with the termination of the Al Wataniya contract. Between January and October 1997 the complainants were not covered. They received no reply to their letter 1811/96 of 29 November 1996 in which they expressed explicitly their wish to maintain the Al Wataniya insurance. This resulted nevertheless in a de facto adherence to the Commission's insurance scheme. The complainants stated that they expressed their wish not to adhere to the Commission's insurance scheme when it became clear that the temporary local scheme proposed by the Head of Delegation was in fact the Commission's scheme. It was in name of all the local agents who were affected by the management of this file that the complainants lodged the present complaint. With regard to the Commission's statement that it accepted to participate for 50 % in the payment of private insurance contracts concluded by local agents for medical costs made abroad, the complainants observed that they were never informed of the note of 29 May 1997 and that this proposal would bring no solution for diseases declared before the adherence to the new insurance. Moreover, in this case the local agents would have to pay twice for a coverage which they had before. As regards a the Commission's statement that a more permanent scheme was being studied, the complainants hoped that the 4 points indicated in their complaint would be integrated in the permanent scheme.

THE DECISION

1 The admissibility of the complaint 1.1 In its opinion on the complaint the Commission



alleged that the complainants had not complied with Article 2.8 of the Ombudsman's Statute, because they had not made a complaint to the Commission before on basis of Article 35 of the Specific Conditions of Employment (SCE). The Commission observed that the act adversely affecting the complainants was the termination of the Al Wataniya contract with effect from 1 January 1997 and the simultaneous adherence to the Commission's insurance scheme. The complainants stated that the Ombudsman decides whether the complaint is admissible and that, as the Commission finally commented on the complaint, it considered the complaint to be admissible. 1.2 The Ombudsman notes with satisfaction that the Commission has finally responded in substance on the allegations of the complainants. Therefore there is no need to deal with the question of admissibility anymore. **2 The alleged obligatory adherence to the Commission's insurance scheme** 2.1 The main allegation of the complainants consisted in the fact that they were obliged to adhere to the Commission's sickness insurance scheme which replaced the Al Wataniya insurance and no longer reimbursed the medical costs made in Europe. The Commission observed that the new situation of the local agents in Morocco was in conformity with Article 23 of the SCE which explicitly states that, in case of illness, the local agents benefit from a 100 % reimbursement of the local costs (and thus not of the costs made abroad). The Commission pointed out that it proposed the local agents to maintain the Al Wataniya insurance under the conditions of the SCE, i.e. by participating in the costs of the insurance. 2.2 The Ombudsman notes that the status of local agents is governed firstly by Articles 79 to 81 (Title IV, Local Staff) of the Conditions of employment of other servants of the European Communities. As regards social security in particular, Article 80 provides that the institution shall be responsible for the employer's share of the social security contributions under current regulations in the place where the servant is to perform his duties. The general conditions of employment of local staff serving in non-member countries are secondly governed by the Framework rules laying down the conditions of employment of local staff of the Commission serving in non-member countries, which were adopted by the Commission on 21 November 1989 and entered into force on 1 January 1990. 2.3 Article 1, § 2 of the Framework rules provides that the Specific conditions for each place of employment shall be laid down by the Director-General for Personnel and Administration, after consulting the Central Staff Committee, on a proposal from the Delegate or Head of Delegation who shall first consult representatives of local staff. The Ombudsman shall therefore determine whether the representatives of the local staff of the Rabat Delegation have been consulted before the adoption of the Specific Conditions of Employment. 2.4 The Rules laying down the Specific Conditions of Employment for the local agents of the Moroccan Delegation were adopted by the Director General of DG I.A on 12 June 1996 and entered into force on 1 July 1996. In application of the Specific Conditions of Employment, new contracts were concluded which replaced the previous ones with effect from 1 July 1996 and which foresaw the participation of the agents in the social security costs, further to a new rule applicable to all Commission Delegations. 2.5 From the file of the complaint it appears that the Staff Committee has given its agreement to the Specific Conditions of Employment, and more particularly to Article 23 concerning the reimbursement of health costs in case of sickness (see in particular the note of 29 October 1996 to the attention of the Head of Delegation). Article 23, § 1 provides that, in case of sickness, the local agent will be entitled to a reimbursement of 100 % of the local costs. The second paragraph foresees however that the authority empowered to conclude contracts of employment can decide to diminish progressively the reimbursement rate to 75 %, or to affiliate



the local agent to an insurance company with a participation of the interested person in the payment of one third of the insurance cost. 2.6 The Ombudsman notes that both new sickness insurances proposed by the Specific Conditions of Employment are indeed less advantageous than the previous Al Wataniya insurance because the latter resulted in a 100 % cost coverage, including the costs made in Europe. However, the introduction of this new insurance scheme, which is based on a new rule of the Commission demanding an increasing participation of the local agents in the social security costs, does not constitute an instance of maladministration.

2.7 With regard to an possible breach of contract in this case, the European Ombudsman deals 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 the competent court in accordance with to Article 36 of the Specific Conditions of Employment, and 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. **3 Conclusion** On the basis of the European

Ombudsman's inquiries into this complaint, there appears to have been no maladministration on the part of the European Commission. The Ombudsman therefore closes the file. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob SÖDERMAN