

Decision in case 218/2018/JF on the European Commission's refusal to pay a higher daily fee to an expert in a twinning project

Decision

Case 218/2018/JF - Opened on 13/02/2018 - Decision on 24/05/2019 - Institutions concerned European Commission (Solution achieved) | European Commission |

The case concerned an error contained in a proposal for a twinning project, submitted by two Member States to the EU Delegation to the Republic of Azerbaijan. The error related to the fees of a senior expert involved in the project. Whilst the expert was entitled to a fee of EUR 1 750, she was paid only EUR 1 250 after completing the work. Once alerted, the EU Delegation refused to cover the remaining EUR 500 arguing that the error was of the Member States' responsibility. The expert then complained to the Ombudsman.

The Ombudsman pointed out that the complainant had not been paid the correct fee solely because of the error. She took the view that it would have been reasonable for the EU Delegation simply to acknowledge that an error had been made and to release the funds necessary to pay the correct fee. Whilst acknowledging the Commission's duty to protect the financial interests of the EU, the Ombudsman took the view that that duty should not be interpreted as preventing the Commission from correcting a manifest error committed to the detriment of an individual. She, therefore, made a proposal for a solution to the Commission that it pay the additional EUR 500.

The Commission accepted the proposal and the complainant is satisfied to have received the correct fee. The Ombudsman thereby closes the case.

Background to the complaint

1. In October 2015, the EU Delegation to the Republic of Azerbaijan (the 'Delegation') signed a contract with the Federal Foreign Office of Germany and the Office of the Human Rights Defender of Poland (the 'Member States') for a project to " *support the strengthening of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan* " (the 'twinning contract') [1] . A service provider in the field of international cooperation (the 'manager') worked with the two Member States during the project.



2. The complainant, who is a senior member of staff of the Spanish Ombudsman, participated in the project as the expert proposed by the two Member States.

3. After the complainant had completed the assignment, the manager realised that the complainant would be paid a EUR 250 daily fee instead of the higher fee of EUR 350 to which she was entitled. It contacted the Delegation with a request that the amount of the fee be reviewed. The Spanish Ombudsman was a “*mandated body*” under the twinning contract and the complainant, as a senior staff member, was entitled to a EUR 350 daily fee [2]. The manager made the point that the complainant’s CV had been attached to the twinning contract and asked whether the Delegation could cover the remaining EUR 500 due to the complainant.

4. The Delegation refused to pay the higher fee and the complainant turned to the Ombudsman.

Issue

5. The complainant was concerned that she did not receive the full remuneration for her work on the twinning project. She received EUR 1 250 while she should have been paid EUR 500 more. As a senior expert from a mandated body, she was entitled to the higher fee.

6. The Delegation refused to pay the higher expert fee because, in its view, it was not for it to assume responsibility for any errors made by the two Member States. They had drafted and submitted the proposal to the Delegation and they had not identified the complainant as senior staff member from a mandated body.

The Ombudsman's proposal for a solution

7. The complainant was entitled to a higher daily fee and it was because of an error that she did not receive it. The complainant’s CV was attached to the twinning contract. The Delegation should have noticed therefore that the complainant was a senior staff member from a mandated body. It would have been reasonable for the Delegation simply to acknowledge the error and pay the remainder of the correct fee to the manager for it to be transferred to the complainant. While the Commission’s duty to protect the financial interests of the Union is of great importance, it should not be interpreted in such a way that it prevents the Commission correcting a manifest error committed to the detriment of an individual.

8. In light of the above, the Ombudsman proposed, on 3 December 2018, as a solution to the complaint, that the Commission pay the additional EUR 500 to cover the remainder of the complainant’s daily fees.

9. The complainant informed the Ombudsman, on 21 January 2019, that the manager had agreed to pay her the correct fee. She thanked the Ombudsman for her help.

10. On 6 May 2019, whilst reiterating that the Delegation had acted in accordance with the applicable rules, the Commission informed the Ombudsman that it would reimburse the remainder of the complainant’s fee to the manager.



The Ombudsman's assessment after the proposal for a solution

11. The Commission has accepted the Ombudsman's proposal and settled the complaint. The Ombudsman welcomes the Commission's acceptance of her proposal and closes the case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The Commission has accepted the Ombudsman's proposal and settled the complaint.

The complainant and the Commission will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 24/05/2019

[1] According to the Commission, twinning is “ *a European Union instrument for institutional cooperation between Public Administrations of EU Member States and of beneficiary or partner countries. Twinning projects bring together public sector expertise from EU Member States and beneficiary countries with the aim of achieving concrete mandatory operational results through peer to peer activities. ... To set up Twinning projects, the European Union relies on the co-operation and administrative experience of EU Member States (MS) which mobilise public expertise both from public administrations and semi-public bodies..* ” (https://ec.europa.eu/neighbourhood-enlargement/tenders/twinning_en [Link])

[2] Annex 1e to the twinning contract: “ *3.2.3.2 Mission of staff from mandated bodies... Class 2 senior expert: Rate of reimbursement per day worked...: EUR 350. Personal experience in the implementation of institutional aspects targeted by the Twinning projects: minimum 8 years...* ”