



Decision in case 699/2019/AMF on how the EU Delegation to Algeria handled the contract termination of an expert in an EU-funded project

Decision

Case 699/2019/AMF - Opened on 04/07/2019 - Decision on 25/03/2020 - Institution concerned European Commission (No maladministration found) |

The complainant worked as an expert for an external contractor of the EU Delegation to Algeria. The purpose of the contract was to provide technical assistance to the Algerian authorities in the context of an EU funded programme in the transport area. The Delegation asked that the complainant be replaced, with the result that the external contractor terminated his contract on the same day. The complainant turned to the Ombudsman arguing that the Delegation had not heard him before requesting his replacement.

While there may have been no legal obligation for the Delegation to hear the complainant, the Ombudsman has consistently taken the view that individuals whom the institutions ask to be replaced should be heard before they are dismissed. In this case, the Delegation did not do enough to reassure itself, after it had made its request, that the complainant had been heard. While this is regrettable, the Ombudsman notes that the complainant had been made aware of the issues, during the project. The Ombudsman further notes improvements that have been introduced in the meantime that should avoid similar incidents in the future. On this basis, she closes the case.

Background to the complaint

- 1.** The EU Delegation to Algeria signed a service contract [1] with a company (the contractor) to provide assistance to the Algerian authorities in the context of an EU funded programme in the transport area. In August 2015, the contractor employed the complainant as an independent expert to work on the programme.
- 2.** In May 2017, the Delegation informed the contractor that the Algerian authorities had requested that the complainant be replaced because he had failed to fulfil the tasks that had been assigned to him. The Delegation said that, based on the factual arguments put forward by the Algerian authorities, it supported this request and asked for *“the expert to be replaced immediately and without any delay”*.
- 3.** The contractor terminated the complainant’s employment contract that same day.
- 4.** The complainant considered that the Delegation had breached the rules applicable to service contracts for external actions financed by the EU. When the complainant’s contract



was signed, these rules stated that “ *in the course of performance, and on the basis of a written and justified request to which the Contractor shall provide its own and the agreed personnel's observations* , the Contracting Authority can order an agreed personnel to be replaced” [2] (emphasis added).

5. Extensive correspondence ensued, from July 2017 to April 2019, between the complainant and the Delegation. The Delegation told the complainant that he had been replaced because of his “lack of capacity” to fulfil his duties. The Delegation also stated that the contractor had not provided any observations on its request to replace the complainant. The Delegation emphasised that the complainant did not have a contractual relationship with it [3] and that he should therefore turn to the contractor with his complaint.

6. Dissatisfied with how the Delegation had handled the termination of his contract, the complainant turned to the Ombudsman in April 2019.

The inquiry

7. The Ombudsman opened an inquiry into how the Delegation had handled the complainant’s contract termination. The Ombudsman asked the European Commission [4] to explain how the Delegation had guaranteed the complainant’s right to be heard prior to the termination of his contract. In particular, the Ombudsman asked whether the Delegation had obtained assurances from the contractor that the complainant had been heard before his contract was terminated.

8. In the course of the inquiry, the Ombudsman received the reply of the Commission and, subsequently, the comments of the complainant in response to the Commission's reply.

Arguments presented to the Ombudsman

9. The complainant stated that he was not notified in advance of the intention to terminate his contract, nor was he asked to submit his observations. Because his relationship with the contractor existed in the framework of an EU service contract, the Delegation should have respected his right to be heard before requesting that his contract be terminated. The complainant would like to receive financial compensation and a statement by the Delegation that he is not guilty of any wrongdoing.

10. The Commission said that although technical assistance contracts in the context of EU external action-funded programmes are signed by the Delegation, the actual assistance is provided by the contractor directly to the national authorities of the country that is the beneficiary of the programme (in this case Algeria). Therefore, trust and confidence between the national authorities and the technical experts employed by the contractor is essential. It is in this context that the Delegation has to consider a request from the national authorities to replace an expert. In their request to the Delegation that the complainant be replaced, the national authorities referred to a difficult working relationship that had required their intervention on several occasions.

11. The Commission pointed out that the contractor had accepted the request to replace the



complainant without making use of the possibility to provide observations (neither its own nor the complainant's).

12. The Commission recognised that while it has no legal obligation to hear the complainant [5], the Ombudsman's framework for assessing cases is broader. The Commission emphasised that the termination of the complainant's contract followed several warnings from the national authorities. The Delegation gave the complainant the reasons for the termination of his contract after the contract had been terminated, but before the new expert had been recruited. The Commission therefore considered that the Delegation had respected its obligations under the applicable rules.

The Ombudsman's assessment

13. While there may have been no legal obligation for the Delegation to hear the complainant, the Ombudsman has consistently taken the view that individuals whom the institutions ask to be replaced should be heard before they are dismissed. This follows from the principle of fairness.

14. The contractor in this case terminated the complainant's employment contract **on the same day** as the Delegation made the request that he be replaced. The Commission points out that the contractor accepted the request to replace the complainant without making use of the possibility to provide observations.

15. The Ombudsman's view, again as a matter of fairness, is that in this case the Delegation should have sought to reassure itself that the complainant had been heard before he was dismissed. While the Delegation was entitled to ask for *"the expert to be replaced immediately and without any delay"*, it would have been preferable — to ensure the complainant was heard — had the Delegation included in its request *"after hearing the expert"*.

16. It is regrettable that this was not done. At the same time, the complainant's claim for financial compensation and a statement from the Delegation cannot be sustained. During this inquiry, the Commission has convincingly explained that the complainant was made aware that the national authorities were not satisfied with his work. The Delegation gave the complainant the reasons for the termination of his contract after the contract had been terminated, but before the new expert had been recruited.

17. To protect the individual to the greatest extent possible, going forward, the Ombudsman trusts that the Commission will word its reasoned requests to dismiss an individual more carefully. The Ombudsman is also of the view that the new version of the rules applicable to service contracts for external actions, adopted in August 2018, will better protect individuals [6]. The Ombudsman welcomes this modification and trusts that the Commission will honour this commitment in the future. On this basis, no further inquiries are justified in this case.

Conclusion

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



It is regrettable that the Delegation did not reassure itself, after it had made its request, that the complainant had been heard before he was dismissed. For the reasons set out above, however, no further inquiries are justified.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 25/03/2020

[1] “ *Algérie-Alger: Recrutement de l'assistance technique d'appui au programme d'appui aux réformes du secteur des transports (ATA-Transport II) 2014/S 015-021750*”:

<https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?do=publi.welcome&nbPubliList=15&>

[2] See Article 17.2 of the General Conditions for Service Contracts for External Actions financed by the EU (the General Conditions), 2013 version, available at:

<http://ec.europa.eu/europeaid/prag/previousVersions.do>

[3] See Article 16.6 of the General Conditions (footnote 2): “ *No recruitment of an expert by the Contractor can create contractual relations between the expert and the Contracting Authority*”.

[4] The European Commission is responsible for implementing EU development aid. See the dedicated website of the Commission’s Directorate-General for International Cooperation and Development.:

https://ec.europa.eu/europeaid/reactions-eeas-eu-institutions-and-member-states_en

[5] The Commission referred to the Order of the General Court (Seventh Chamber) of 14 November 2018, case 793/17, *Bruel v Commission*, paragraphs 55-59. Available at :

<http://curia.europa.eu/juris/liste.jsf?num=T-793/17&language=EN#>

[6] See Article 17.2 of the General Conditions, 2018 version, available at:

<http://ec.europa.eu/europeaid/prag/previousVersions.do> It reads as follows: “ *In the course of performance, the contracting authority can order an agreed staff to be replaced. This shall be done on the basis of a written and justified request to which the contractor and the agreed staff have had the opportunity to provide observations*”.