



Decision of the European Ombudsman on complaint 136/2000/PB against the European Commission

Decision

Case 136/2000/PB - Opened on 01/03/2000 - Decision on 11/07/2001

Strasbourg, 11 July 2001

Dear Dr F.,

On 1 February 2000, you made a complaint to the European Ombudsman on behalf of Tourconsult International SA.

On 1 May 2000, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 20 December 2000. I forwarded it to you with an invitation to make observations, which you sent on 18 September 2000. On 16 November 2000, I requested the Commission for additional information and invited it to submit further comments. The Commission sent its second opinion on 15 January 2001, and I forwarded it to you with an invitation to make further observations. You sent your further observations on 4 June 2001.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complaint was submitted in February 2000, on behalf of Tourconsult International (TI). It concerned a dispute over payment for consulting services provided by TI in the Philippines in 1996.

The complainant stated, in summary, that the Commission had reached a wrong conclusion regarding the amount that it owed TI. According to the complainant, the Commission owed TI ECU 120 313. The Commission had concluded that out of this amount, ECU 20 313 were not payable under the contract. The Commission was therefore only ready to pay ECU 100 000.

The complainant alleged, in summary, that the Commission wrongfully and without justification reduced the amount to be paid from ECU 120 313 to ECU 100 000.

THE INQUIRY **The Commission's opinion**

The complaint was forwarded to the Commission for opinion.

In its opinion, the Commission confirmed that TI's final invoice of ECU 120 313 had been reduced to ECU 100 000. This reduction was made because TI had added items to the invoices which were not payable under the contract and not or only partially delivered, nor supported by the necessary documentation. The Commission enclosed documentation relating to the dispute.



The Commission further explained that each item had been extensively discussed with the complainant. The payment of ECU 100 000 had been offered as a relatively generous proposal for a definite and amicable settlement of the dispute. The complainant had been given extensive explanation in a number of meetings and is perfectly aware of all the details.

The Commission also stated that out of the ECU 100 000, it had paid ECU 99 812.74 directly to one of TI's subcontractors following a judgement by a court in Luxembourg. The remaining amount due to TI was therefore ECU 187,26.

The complainant's observations

The complainant maintained his allegation regarding the Commission's reduction of the ECU 120 313 to ECU 100 000. He furthermore disputed the Commission's view that only ECU 187,26 were due to TI as a consequence of the Luxembourg court judgement.

Further inquiries

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary in regard to the complainant's view on the effects of the Luxembourg court judgement. The Ombudsman therefore requested the Commission for a copy of the judgement. The Ombudsman also invited the Commission to submit any additional comments on the complainant's observations.

In its second opinion, the Commission enclosed a copy of the Luxembourg court judgement, and provided a more detailed explanation of the circumstances giving rise to the court case. The Commission furthermore maintained its position with regard to the complainant's main allegation concerning the reduction of the claim for ECU 120 313.

The Commission's second opinion was forwarded to the complainant for observations. In his observations, the complainant maintained his position. He also added that unless the Commission recognises TI's claims at this stage, he would only be left with the possibility of going to court.

Having examined the Luxembourg court judgement and the Commission's comments, the Ombudsman decided that it would be appropriate to keep the focus of this inquiry on the complainant's original allegation concerning the Commission's reduction of the ECU 120 313.

THE DECISION 1 The reduction of the complainant's payment claim

1.1 The complainant alleged that the Commission wrongfully and without justification reduced the amount to be paid from ECU 120 313 to ECU 100 000. The Commission has explained that this reduction was made because TI had added items to the invoices which were not payable under the contract and not or only partially delivered, nor supported by the necessary documentation.

1.2 From the documentation enclosed to the Commission's first opinion, the dispute appears to arise primarily out of a disagreement concerning an interpretation of the contract. In that regard, the Ombudsman draws attention to his method of review in contract related disputes, as stated in his Annual Report for 1997:

In many Member States, the Ombudsman does not deal with contractual disputes, either



because of the general characteristics of such contracts under national law, or because the law establishing the Ombudsman's mandate expressly excludes contractual matters. As stated in the Annual Report for 1995, part of the mission of the European Ombudsman is to help relieve the burdens of litigation, by promoting friendly solutions and by making recommendations that avoid the need for proceedings in courts. The European Ombudsman, therefore, does deal 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 a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and a matter of good administration, a public authority engaged in a contractual dispute with a private party should always be able to provide the Ombudsman with a coherent account of the legal basis for its actions and why it believes that its view of the contractual position is justified. to evaluate conflicting evidence on any disputed issues of fact. However, as a matter of good administration, a public authority engaged in a contractual dispute with a private party should always be able to provide the Ombudsman with a coherent account of the legal basis for its actions and why it believes that its view of the contractual position is justified.

1.3 Taken together, the opinions and the documentation submitted by the Commission enables the Ombudsman to conclude that the Commission's responses provide an adequate account of why it believes that its view of the contractual position is justified. The Ombudsman therefore concludes that there is no maladministration by the Commission. This finding is without prejudice to the complainant's right of taking legal action against the Commission.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

The President of the Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN