

Decision of the European Ombudsman on complaint 1451/2000/ADB against the European Monitoring Centre for Drugs and Drug Addiction

Decision

Case 1451/2000/ADB - Opened on 24/11/2000 - Decision on 07/12/2001

Strasbourg, 7 December 2001

Dear Mr V.,

On 13 November 2000, you made a complaint to the European Ombudsman concerning the refusal of the European Monitoring Centre for Drugs and Drug Addiction (hereafter EMCDDA) to pay several allowances foreseen in the Staff Regulations.

On 24 November 2000, I forwarded the complaint to the President of the EMCDDA. The EMCDDA sent its opinion on 22 February 2001. I forwarded it to you with an invitation to make observations, which you sent on 27 March 2001. On 11 May 2001, the EMCDDA sent me some additional information which was sent to you for further observations. I did not receive any further observations from you.

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

THE COMPLAINT

The complainant worked as an auxiliary agent for the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) under a contract which ended on 31 March 2000. He was then hired as a temporary agent under a contract starting on 1 April 2000. While taking up his new post, he asked to be paid the daily allowances accordingly. He also asked for the installation allowances and the reimbursement of the travel expenses for his family when it moved from Brussels to Lisbon. The EMCDDA refused to pay for the daily allowances and for the travel expenses because it considered there had been no interruption between the two contracts. Concerning the installation allowances, it did not amount to what the complainant expected. The complainant followed the article 90 procedure but the EMCDDA did not change its position.

On 13 November 2000, the complainant therefore lodged a complaint with the European Ombudsman, and made the following allegations:



1. The EMCDDA failed to pay the complainant the daily allowances for the period of time he was entitled to receive them.
2. The installation allowance paid by the EMCDDA was below the amount the complainant expected and was entitled to receive.
3. The EMCDDA failed to reimburse the travel expenses for the complainant's family.

THE INQUIRY

The European Monitoring Centre for Drugs and Drug Addiction's opinion

The opinion of the EMCDDA on the complaint was in summary the following:

1. Concerning the daily allowances, and in accordance with a practice within the EMCDDA, the agents who have been working at the EMCDDA as auxiliary agents during one year and who perceived daily allowances during the whole year, are not entitled to perceive such allowances anymore when their contract is without any interruption followed by a temporary agent contract. The complainant worked as an auxiliary agent for the EMCDDA under a contract which ended on 31 March 2000. He was then hired as a temporary agent under a contract starting on 1 April 2000, without any interruption. He was therefore not entitled to perceive further daily allowances once he became a temporary agent.
2. As far as the installation allowance is concerned, the complainant is entitled to perceive such allowance, account being taken of the application of the weighting factor applicable in Portugal. An adaptation following his definitive grading, and a second payment have been made in his favour. The complainant has therefore been reimbursed for the total amount of his installation allowances.
3. Finally, concerning the travel expenses:

"An official shall be entitled to reimbursement of travel expenses for himself and his family on taking up his appointment from the place where he was recruited to the place where he is employed, on termination of service within the meaning of Article 47 of the Staff Regulations and on any transfer involving a change in the place where he is employed."

There has been no termination of service within the meaning of Article 47 of the Staff Regulations of Officials of the European Communities (hereafter Staff Regulations) since the complainant was hired as a temporary agent without any interruption with his previous contract as an auxiliary agent. In both contracts, the place of employment was Lisbon. There is accordingly no legal basis to reimburse travel expenses to the complainant.

The complainant's observations

The European Ombudsman forwarded the EMCDDA's opinion to the complainant with an invitation to make observations. In his reply, the complainant stated the following;

1. Concerning the daily allowances, the practice mentioned by the EMCDDA is contrary to the



Staff Regulations. This has been recognised by the Board of Heads of Administration. The EMCDDA cannot pretend to be unaware of this decision. The EMCDDA is therefore responsible for the delay in the payment of such allowances.

2. The installation allowance has been paid.

3. As far as the travel expenses are concerned, the EMCDDA's arguments are contrary to the Staff Regulations. The place of origin is Brussels. The travel expenses should therefore be reimbursed.

Further information received

Given some uncertainties regarding the file, the Director of the EMCDDA decided to ask the European Commission for advice on the issue.

The EMCDDA informed the Ombudsman of the results and follow-up of the Commission's consultation. The latter declared that in accordance with the Staff Regulations and the Conditions of Employment of other servants of the European Communities (1) , a temporary agent previously hired as auxiliary agent is still entitled to perceive daily allowances. This accorded with decision 115/85 of the Board of Heads of Administration of 23 January 1986.

On 8 May 2001, the EMCDDA informed the complainant that he would be paid the daily allowances, and that the installation allowance had been fully paid on the basis of the weighting factor applicable in Portugal. There was however, no legal basis under article 47 of the Staff Regulations to justify the payment of the travel expenses.

The EMCDDA's additional information were sent to the complainant for further observations. The Ombudsman did not receive any further observations from the complainant.

THE DECISION

1 Alleged failure to pay the daily allowances

1.1 According to the complainant, the EMCDDA failed to pay him the daily allowances for the period of time he was entitled to receive them.

1.2 The EMCDDA explained that in the complainant's case it acted in accordance with its common practice. The complainant worked for one year as an auxiliary agent for the EMCDDA and perceived the daily allowance. He was employed as a temporary agent immediately after his auxiliary contract. He was therefore not entitled to perceive further daily allowances once he became a temporary agent.

1.3 After submitting its opinion to the Ombudsman, the EMCDDA sought advice from the European Commission. On the basis of the information received, the EMCDDA then revised its position and paid the complainant the daily allowance foreseen by the Staff Regulations for his temporary contract. The EMCDDA also revised its practice. The Ombudsman therefore concludes that the EMCDDA has settled the matter as regards this aspect of the case.

2 Alleged failure to pay the full installation allowance



2.1 The complainant considered that the installation allowance paid by the EMCDDA was below the amount he expected and was entitled to receive.

2.2 The EMCDDA explained that the installation allowance had been duly paid, account being taken of the application of the weighting factor applicable in Portugal.

2.3 The Ombudsman notes that the complainant appeared to be satisfied with the payment. The Ombudsman therefore concludes that the EMCDDA has settled the matter as regards this aspect of the case.

3 Alleged failure to reimburse travel expenses

3.1 According to the complainant, the EMCDDA failed to reimburse the travel expenses for the complainant's family.

3.2 The EMCDDA explained that given that his contract as auxiliary agent had been immediately followed by a contract as temporary agent, there was no legal basis in the Staff Regulations to justify the payment of travel expenses.

3.3 The reimbursement of travel expenses is foreseen by article 7 of Annex VII to the Staff Regulations. By virtue of articles 22 and 67 of the Conditions of employment of other servants of the European Communities the reimbursement of travel expenses incurred on taking up an appointment or on termination of service also applies to Temporary and Auxiliary staff.

3.4 The Ombudsman notes however, that the complainant's auxiliary contract was immediately followed by a temporary contract. Nothing in the file indicates that the complainant or his family have actually incurred any travel expenses following the change in the contract. Hence, the EMCDDA's refusal to reimburse expenses appears to be reasonable. The Ombudsman has therefore concluded that there is no evidence of maladministration as regards this aspect of the case.

4 Conclusion

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

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

Yours sincerely,

Jacob SÖDERMAN

(1) See Article 10 of Annex VII of the Staff Regulations and Articles 22, 25 and 69 of the Conditions of Employment of others servants of the European Communities.