

Decision of the European Ombudsman on complaint 721/2001/GG against Europol

Decision

Case 721/2001/GG - Opened on 28/05/2001 - Decision on 19/11/2001

Strasbourg, 19 November 2001

Dear Mr X.,

On 9 May 2001, you sent me a complaint against Europol in relation to your previous employment relationship with Europol.

On 28 May 2001, I forwarded the complaint to Europol for its comments.

Europol's opinion on your complaint dated 10 August 2001 was received by me on 23 August 2001, and I forwarded it to you on 30 August 2001, with an invitation to make observations, if you so wished, by 30 September 2001. On 22 October 2001, you sent me your observations on Europol's opinion.

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

THE COMPLAINT

The complainant, a German national, was recruited by Europol in August 2000 as an administrative assistant. For this purpose, he travelled from Switzerland to The Hague in the Netherlands (where Europol has its headquarters) to take up his employment. On 4 January 2001, the complainant was informed of Europol's decision to dismiss him as from 1 February 2001. Several days later (on 11 January 2001) the complainant was told that he should no longer come to work.

On 25 March 2001, the complainant lodged a complaint with the Ombudsman in which he raised eight allegations relating to Europol's behaviour (complaint 468/2001/GG). This complaint was dismissed on 2 April 2001 on the grounds that the complainant had not exhausted all internal remedies (in so far as the first allegation was concerned), that there were no grounds for an inquiry (allegations 2, 6 and 8) and that he did not appear to have made the appropriate administrative approaches (allegations 3, 4, 5 and 7).



On 9 May 2001, the complainant turned to the Ombudsman again. In his new complaint, he partially renewed his previous complaint and submitted further allegations and claims.

The complainant took the view that Europol had grossly violated its contractual duties. According to the complainant, Europol had provided him with a document certifying that he had worked for Europol but not with a proper reference, given that his field of activity, his tasks and the knowledge and skills required had not been mentioned. The complainant also claimed that Europol had failed to pay his removal costs, the costs of his journey to The Hague upon taking up employment and the indemnity foreseen in case of departure. He further claimed that Europol had failed to transfer his pension rights to the German pension fund and to reimburse him for 11 days of leave that he had been unable to take. According to the complainant, Europol also ought to have reimbursed the costs of the lawyer whom he had entrusted with the task of defending his interests vis-à-vis Europol. The complainant further alleged that he had been obliged to put his furniture into storage in the Netherlands at a monthly cost of NLG 300, and that Europol should therefore pay him the sum of NLG 900 for the period from March until May 2001. Finally, the complainant claimed to have suffered immaterial damage due to the behaviour of Europol. He therefore considered that Europol ought to pay him a compensation of \approx 25 000.

In substance, the complainant thus made the following allegations and claims:

- 1) Europol failed to issue a letter of reference to him
- 2) Europol failed to reimburse his removal costs, the costs of his journey to The Hague upon taking up employment and the indemnity foreseen in case of departure
- 3) Europol failed to transfer his pension rights to the German pension fund
- 4) Europol failed to reimburse him for leave not taken
- 5) Europol failed to reimburse his costs of legal representation
- 6) Europol failed to reimburse storage costs of NLG 900
- 7) Europol should pay him a compensation of \approx 25 000

THE INQUIRY

The complaint was sent to Europol for its comments.

Europol's opinion

In its opinion, Europol made the following comments:

- 1) The complainant had received a letter of reference on 26 January 2001. In this letter, the position of the employee had been left out deliberately since the complainant had worked in two



positions during his probationary period. The decision had been made to move the complainant from one position to another during his probationary period in order to give him a second chance. Europol had considered that mentioning the positions the complainant had occupied during his short stay with Europol could be misinterpreted by future employers. Europol was however willing to provide the complainant with a new letter of reference, mentioning the positions he had worked in.

2) Europol submitted a copy of a letter it had sent to the complainant's lawyer on 2 May 2001 with a specification of the removal costs and the costs of the complainant's journey to The Hague when he started working for Europol (¤ 5.361, 59) and also a specification of the calculation of the dismissal compensation (¤ 6.599, 19). Both amounts had been paid on 14 May 2001.

The complainant had been asked on 3 August 2000 to submit the documents necessary for processing the application to refund his travel expenses. On 4 August 2000, the complainant had replied that he had lost the tickets and that he was not applying for the reimbursement of his travel expenses. Despite the message from Europol's Human Resources Unit the same day that this would not be an insurmountable problem, the complainant had not reacted before 11 January 2001.

The letter of 2 May 2001 had also asked for information on the complainant's move back to Switzerland. Europol had waited until it had been able to check with the removal company that its invoice had been paid (5 June 2001). The complainant had been reimbursed on 25 June 2001 (¤ 3.060, 00).

The method of calculating the dismissal compensation was laid down in Europol's Staff Regulations. Since this case had been the first where such compensation had to be paid, it had taken Europol more time than expected to determine how the rules should be interpreted.

The Council had decided on 15 March 2001 to increase the salaries of Europol's staff by 3.7 % with retroactive effect as from 1 July 1999. The resulting amount had been paid out to the complainant. The amount resulting from the latest increase (2.5 % effective as from 1 July 2000) would be paid to the complainant as soon as possible.

3) According to Article 72 of Europol's Staff Regulations, an official is entitled to a retirement pension if he has completed at least ten years in office. Otherwise a severance grant had to be paid (Article 77 of the Staff Regulations) in accordance with Article 10 of Appendix 6 of these Regulations. The actuarial equivalent of the retirement pension could only be transferred in accordance with Article 9 of this Appendix. However, since there was not yet any agreement with other pension funds on such transfer, the payment of a severance grant was the only possibility. This grant was paid to the complainant on 19 April 2001 (¤ 3.321, 06). The adjustment on account of the 3.7 % increase of salaries was paid to the complainant on 25 June 2001 (¤ 115, 79). The adjustment resulting from the further 2.5 % increase would be carried out as soon as possible.



4) Europol's Staff Regulations did not foresee a payment on account of unspent holidays. Furthermore, account had to be taken of the fact that the complainant had been told on 11 January 2001 that he did not need to return to work anymore, although he had been legally obliged to work until 31 January 2001.

5) It had been the complainant's choice to use the services of a lawyer, and Europol saw no reason why it should reimburse the costs of this legal representation.

6) On 15 December 2000, the complainant had submitted three quotes from removal firms to Europol for approval. Europol's administration had recommended that the complainant should wait until the end of his probationary period before proceeding to move his belongings to The Hague. The complainant had nevertheless shipped his belongings to The Hague. Despite this reaction, Europol had agreed to reimburse (and actually reimbursed) the removal costs to and from The Hague. As to storage costs, the standing policy at the time had been not to reimburse such costs to anyone. This policy had been applied in the present case.

7) The complainant had been paid a compensation on account of his dismissal (see point 2). Europol considered that it had shown exemplary conduct as an employer and had acted fully in accordance with its rules and regulations. It could therefore not accept any liability for immaterial damages or other claims for compensation.

The complainant's observations

In his observations, the complainant made the following comments:

1) Europol should provide him with a proper letter of reference including information on his activity, tasks, knowledge and abilities. The complainant submitted a draft for such a letter and asked the Ombudsman to forward it to Europol. The letter of reference should be sent to his lawyer in the Netherlands.

2) There was nothing in the relevant rules to suggest that tax and other contributions should be levied on the dismissal compensation. Furthermore all costs arising in the context of a move necessitated by work-related reasons (e.g. hotel costs while looking for accommodation) should be borne by Europol. In addition to that, interest should be paid on account of the unduly long period it had taken to handle the matter. Regarding travel expenses, he had submitted his application on 1 August 2000, together with the invoice from the travel agency (since he had not kept the ticket) and a receipt from the taxi driver. All costs for accommodation ought to be reimbursed. In so far as the costs of the move were concerned, a copy of the bank statement recording payment had been submitted to Europol. On account of the unduly long period it had taken to handle the matter, interest should also be paid on the amount due to him in respect of the expenses caused by the move.

3) The German pension fund needed form E 207 recording the fact that he had worked for Europol. The latter should therefore provide his lawyer with this form.

4) He had not applied for leave regarding the 11 days that had still been due to him. It was common practice that the employer should compensate an employee on his or her departure for



leave not taken.

5) The lawyer had helped him obtain the sums that were due to him.

6) The storage costs should be reimbursed. Administrative acts ought to be laid down in writing and apply equally to all employees.

7) Europol's claim that it had shown exemplary conduct as an employer was unfounded. There had been several irregularities. Books had been purchased for private purposes using the rebate of 10 % that was only available for official orders. There was no inventory of books and information materials in the library. In the unit "Open Sources", commercial data-bases had been consulted for private purposes at considerable expense for Europol. Documents were available regarding incidents in relation to the "Financial Crime Information Centre".

THE DECISION

1 Europol's alleged failure to comply with contractual duties

1.1 The complainant, a German national, was recruited by Europol in August 2000 as an administrative assistant. On 4 January 2001, he was informed of Europol's decision to dismiss him as from 1 February 2001. Several days later (on 11 January 2001) the complainant was told that he should no longer come to work.

1.2 In his complaint to the Ombudsman, the complainant makes the following allegations and claims: (1) Europol failed to issue a letter of reference to him; (2) Europol failed to reimburse his removal costs, the costs of his journey to The Hague upon taking up employment and the indemnity foreseen in case of departure; (3) Europol failed to transfer his pension rights to the German pension fund; (4) Europol failed to reimburse him for leave not taken; (5) Europol failed to reimburse his costs of legal representation; (6) Europol failed to reimburse storage costs of NLG 900 and (7) Europol should pay him a compensation of \approx 25 000.

1.3 In its opinion, Europol replies to these allegations and claims as follows: (1) Europol did provide the complainant with a letter of reference. In this letter, the position of the complainant had been omitted deliberately since Europol believed that mentioning the positions the complainant had occupied during his short stay with Europol could be misinterpreted by future employers. Europol was however willing to provide the complainant with a new letter of reference. (2) The removal costs and the costs of the complainant's journey to The Hague when he started working for Europol (\approx 5.361, 59) and the dismissal compensation due to the complainant (\approx 6.599, 19) were paid on 14 May 2001. Adjustments of the latter on account of two increases in the salaries of Europol's staff were paid or would be paid as soon as possible. (3) No transfer of pension rights being possible in the present case, the complainant was paid a severance grant on 19 April 2001 (\approx 3.321, 06). Adjustments of this grant on account of two increases in the salaries of Europol's staff were paid or would be paid as soon as possible. (4) Europol's Staff Regulations did not foresee a payment on account of unspent holidays. Furthermore, the complainant had been told on 11 January 2001 that he did not need to return to work whilst he would have had to work until the end of January. (5) The complainant having



himself chosen to use the services of a lawyer, Europol saw no reason why it should reimburse the costs of this legal representation. (6) Europol's standing policy at the time was not to reimburse storage costs, and this policy was applied in the present case. (7) The complainant received a compensation on account of his dismissal, and Europol could not accept any liability for immaterial damages or other claims for compensation.

1.4 In his observations on Europol's opinion, the complainant maintained his complaint. He further claimed that Europol should pay interest on account of his removal costs and the costs of the journey to The Hague. The complainant also claimed that Europol should provide him with form E 207.

1.5 In the light of his appraisal of the original claims, the Ombudsman considers that it is not appropriate to deal with these further claims (on which Europol has not yet had the possibility to comment) in this decision. The present decision thus only concerns the allegations and claims raised in the original complaint.

1.6 In his observations on Europol's opinion, the complainant has furthermore described or alluded to what he considers to be irregularities in Europol's activities. However, no concrete claims were made by him in this respect. It appears therefore that the complainant could submit these matters to the Court of Auditors of the European Communities (12, rue Alcide De Gasperi, L-1615 Luxembourg). The Ombudsman will consequently not deal with them in the present decision.

1.7 The Ombudsman considers that it is appropriate to consider all the allegations and claims raised by the complainant together. These allegations and claims concern the obligations arising under a contract concluded between Europol and the complainant.

1.8 According to Article 195 of the EC Treaty, the European Ombudsman is empowered to receive complaints "concerning instances of maladministration in the activities of the Community institutions or bodies". The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle binding upon it (1) . Maladministration may thus also be found when the fulfilment of obligations arising from contracts concluded by the institutions or bodies of the Communities is concerned.

1.9 However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. In particular, the Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. 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 to evaluate conflicting evidence on any disputed issues of fact.

1.10 The Ombudsman therefore takes the view that in cases concerning contractual disputes it is justified to limit his inquiry to examining whether the Community institution or body has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman



will conclude that his inquiry has not revealed an instance of maladministration. This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.

1.11 In the present case, Europol has put forward a coherent and reasonable account of the reasons on which it based its approach, both in what concerns the claims that it accepts and in relation to those that it does not accept. The Ombudsman notes that Europol is ready to provide the complainant with a completed letter of reference. He further notes that Europol has announced that it will pay the small amounts that are still outstanding (on account of the second increase in the salaries of Europol's staff) to the complainant as soon as possible. The Ombudsman has no reason to believe that Europol will fail to comply with these undertakings.

1.12 In these circumstances, there appears to be no maladministration on the part of Europol.

2 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it appears that there is no maladministration on the part of Europol. The Ombudsman therefore closes the case.

The Director of Europol will also be informed of this decision. In accordance with your wishes, your address will be deleted from the copy of this decision to be forwarded to Europol. A copy of your observations on Europol's opinion will also be forwarded to Europol.

Yours sincerely,

Jacob SÖDERMAN

(1) See Annual Report 1997, pages 22 sequ.