

## **Decision of the European Ombudsman on complaint 1297/2002/(IJH)BB against the European Commission**

Decision

**Case 1297/2002/BB - Opened on 10/09/2002 - Decision on 10/07/2003**

Strasbourg, 10 July 2003

Dear Mr L.,

On 10 July 2002 you made a complaint to the European Ombudsman concerning your replacement as Team Leader of the Coastal Embankment Rehabilitation Project - ALA/93/20 (CERP) in Bangladesh.

On 10 September 2002, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 13 January 2003 and I forwarded it to you with an invitation to make observations, which you sent on 28 February 2003.

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

### **THE COMPLAINT**

According to the complainant, the relevant facts are, in summary, as follows:

From 1996, the complainant was employed as a Community Development Advisor and later as a Team Leader of the Coastal Embankment Rehabilitation Project - ALA/93/20 (CERP) in Bangladesh. The overall objective of CERP, which is administered by the European Commission, is to help create a better living and working environment for the population of Bangladesh living in cyclone-prone areas and islands.

The complainant was employed by Jaakko Pöyry Development (hereinafter: "JP Development Oy"). JP Development Oy is the Technical Assistance Service Consultant for the project, under a contract signed with the Commission Delegation in Bangladesh.

During the preparations for the extension of the Technical Assistance Service contract beyond January 2002, the Commission Delegation in Bangladesh agreed not to continue the complainant's assignment as Team Leader as from 2 January 2002. A new Team Leader was assigned on 6 February 2002 with retroactive effect from 3 January 2002.



The complainant alleges that the Commission failed to observe Article 15 of its contract (BGB/B7-3000) with JP Development Oy, which foresees that the Commission should give prior approval for replacement of the Team Leader of the Project.

The complainant alleges that the Commission's subsequent approval of his replacement as Team Leader was based on false reasoning. According to him, he was neither incapacitated nor unsuitable, which are the conditions for replacement foreseen by Article 15 of the contract between the Commission and JP Development Oy. Furthermore, the complainant argues that the new Team Leader did not hold the same or better qualifications. According to him, this can be verified by comparing their CVs.

The complainant claims that the Commission should reimburse in full the economic loss caused to him by not being able to continue his work as Team Leader until the end of the project. Consequently, the Commission should reimburse the complainant his present salary of € 6070,75/month plus the responsibility allowance of € 1000/month, calculated from 3 January 2002 until the end of the (ALA/93/20) project on 30 June 2005. Alternatively, the complainant claims that the Commission should stop the change of Team Leader and continue allocating funds to the CERP project.

The complainant also claims that an investigation should be conducted into cases of misappropriation of the Commission funds regarding the CERP project.

## **THE INQUIRY**

### **The Commission's opinion**

In its opinion, the Commission made, in summary, the following points:

The complaint concerns the European Commission's administration of Coastal Embankment Rehabilitation Project - ALA 93/20 (CERP). The complainant was contracted by JP Development Oy, the Technical Assistance Service Consultant for the project, as a Community Development Advisor since the inception of the project in 1996 and became European Team Leader during the second stage of the project (3 August 2000).

The first Technical Assistance (TA) Service Contract with Jaakko Pöyry Development Oy was for three years. The entire TA-team was directed to assist the Executing Agency, Bangladesh Water Development Board, to implement the project. A first amendment to the TA Service contract was signed on 31 October 2001 adjusting the provisions for the TA Service contract to the total execution time. A second amendment was signed on 9 January 2002. In the course of the preparation of the second amendment, the complainant was not accepted as Team Leader for the proposed extended TA Service Contract. The government of Bangladesh proposed not to keep the complainant as Team Leader and to reduce the overall number of experts in the project in view of the phasing out of some project components during the extension year.

On 13 February 2002, the complainant contacted the Commission via e-mail claiming that his



replacement was being initiated due to false reasoning. The Commission answered on 10 March 2002.

*The complainant's allegations*

The Commission emphasised that there is no legal relationship between the complainant and the Commission. In addition, the TA Service Contract foresees that:

*" The Commission shall in no case, and under no circumstances, be held responsible for claims arising out of the present contract and relating to damages caused to the Consultant, its employees or a third party. No request for indemnity or re-instatement relating to such claims may be addressed to the Commission " (article 12 of the contract, annex 1).*

All parties in the project agreed not to consider a further continuation of the complainant as Team Leader in an extension phase. The Ministry of Water Resources and the Project Director appeared to have raised the issue that since the project should essentially focus on the afforestation component during the proposed extended period, the Social Forestry Expert was for them the most appropriate and relevant expert to act as the Team Leader.

The discontinuation of the Team Leader on the project was requested on grounds that from the date of the appointment of the current National Project Director, there have been numerous personal clashes between the Team Leader and the National Project Director, affecting the work of the TA team as well as the overall project performance. The Commission gave some examples of situations of conflict.

The Commission stated that at no time was the issue of misallocation of funds raised by the complainant in September 2001.

Following a formal request from the government of Bangladesh and the Executive Agency, and after consultation between the EC Delegation and the Headquarters, an agreement of principle was reached about the change of Team Leader. The Consultant's formal request for approval of the new Team Leader was presented on 6 February 2002, with retroactive effect from 3 January 2002.

According to the Commission, Article 15 of the contract between the Commission and the consultant did not apply since the change was mutually agreed. However, the procedure mentioned in Article 15 was followed. The Commission Delegation endorsed the transition from the complainant to the new Team Leader by amendment in the Financing Memorandum and the TA Service Contract.

**The complainant's observations**

The complainant maintained his complaint. The complainant found it difficult to understand that the Commission would be relieved from any responsibility based on Article 12 of the contract. The decision to replace him represented a lack of understanding of the managerial requirements of a large multidisciplinary project. The real reason for his replacement was that he made it difficult for the national Project Director to misuse Community funds by not countersigning unsubstantiated financial claims to Brussels. The complainant had sent on 3 December 2001 to the relevant offices an analysis of the situation. According to him, these



offices took no action.

The complainant argued that, in a situation of replacement, Article 15 of the contract provides that the Consultant should propose to the Commission " *new candidates with the same or better qualifications* ". According to the complainant, the fact that the Commission nominated his former subordinate as the new Team Leader was in clear violation of Article 15.

## THE DECISION

### **1 Alleged failure by the Commission to give prior approval for replacing the Team Leader of the Project under Contract BGB/B7-3000**

1.1 The complaint concerns the replacement of the Team Leader of the Coastal Embankment Rehabilitation Project in Bangladesh. The complainant alleges that the Commission failed to observe Article 15 of a Technical Assistance Service contract signed with a Finnish company, JP Development Oy. Article 15 provides that the Commission should give prior approval for replacement of the Team Leader of the Project.

1.2 The Commission argues that there is no contractual relationship between the complainant and the Commission. Furthermore, Article 15 of the contract does not apply, because the change of Team Leader was mutually agreed between the Commission and JP Development Oy.

1.3 The Ombudsman notes that the contract to which the complaint refers is between the Commission and JP Development Oy. The Ombudsman does not therefore consider that Article 15 of the contract creates a contractual obligation towards the complainant. The Ombudsman does not consider that the complainant has presented evidence to show that principles of good administration obliged the Commission to seek to invoke its contractual rights under Article 15 against JP Development Oy in the circumstances of this case. The Ombudsman therefore finds no maladministration by the Commission.

1.4 In view of the above finding of no maladministration, it appears that the complainant's claim for reimbursement does not arise.

### **2 Alleged false reasoning by the Commission**

2.1 The complainant alleges that the Commission subsequently gave its approval to the replacement of the Team Leader based on false reasoning. According to him, he was neither incapacitated nor unsuitable, which are the conditions for replacement foreseen by Article 15 of the contract between the Commission and JP Development Oy. Furthermore, the complainant argues that the proposed replacement did not hold the same or better qualifications.

2.2 The Commission argues that all parties in the project agreed not to consider a further continuation of the complainant as Team Leader in an extension phase. The Ministry of Water Resources of Bangladesh and the Project Director appeared to have raised the issue that since the project should essentially focus on the afforestation component during the proposed extended period, the Social Forestry Expert was for them the most appropriate and relevant expert to act as the Team Leader. According to the Commission, the discontinuation of the



Team Leader was also influenced by numerous personal clashes between the Team Leader and the National Project Director, affecting the work of the technical assistance team as well as the overall project performance.

2.3 The Ombudsman considers that the Commission's explanation of its reasons for approving the replacement of the Team Leader appears reasonable. Furthermore, the Ombudsman considers that the complainant has not demonstrated maladministration by the Commission as regards the approval of a new team leader. The Ombudsman concludes, therefore, that there is no maladministration on the part of the Commission.

2.4 In view of the above finding of no maladministration it appears unnecessary to examine the complainant's claim that the Commission should stop the change of Team Leader.

### **3 Claim concerning alleged misallocation of Community funds**

3.1 The complainant claims that an investigation should be conducted into cases of misappropriation of the Commission funds for the Coastal Embankment Rehabilitation Project.

3.2 The Commission states that at no time was the issue of misallocation of funds raised by the complainant in September 2001.

3.3 The Ombudsman points out that the complainant should communicate any evidence of misappropriation of Community funds to the European Anti-Fraud Office (OLAF, European Commission, B-1049 Brussels). A free phone provides the opportunity for getting in touch free of charge with OLAF in all the Member States. In Finland the free phone number is : 0800 112 595.

### **4 Conclusion**

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS