

Decision of the European Ombudsman on complaint 1949/2003/(TN)(IJH)TN against the European Commission

Decision

Case 1949/2003/TN - Opened on 04/11/2003 - Decision on 24/05/2004

Summary of decision on complaint 1949/2003/(TN)(IJH)TN against the European Commission

The complaint concerned alleged non-payment for services carried out on the instructions of the Statistical Office of the European Communities (Eurostat), which is a service of the Commission. The complainant had carried out a Global Assessment of the statistical system in Kazakhstan on Eurostat's instructions. The contracts were formally concluded with the organisation CESD-Communautaire, but the terms of reference were laid down by, and all the reporting was made to, Eurostat. Eurostat approved the complainant's work report in August 2003, but the complainant had not yet been paid at the time of submitting his complaint in October 2003. The complainant suspected that due to problems within Eurostat, its payments to CESD-Communautaire had been blocked. The complainant alleged that the Commission had failed to ensure payment for the services he had provided in accordance with Eurostat's instructions in relation to certain contracts. The complainant claimed that he should receive the outstanding payment for his services.

In its opinion submitted in January 2004, the Commission underlined that it had no contractual relationship with the complainant. According to the Commission, CESD-Communautaire could at the time still submit invoices to it in the framework of the contracts concerned. The invoices submitted by CESD-Communautaire for the complainant up to the date of the Commission's opinion to the Ombudsman had been paid without delay to CESD-Communautaire's bank account on 29 December 2003.

In April 2004, the complainant informed the Ombudsman's services that he had received the main part of the money owed to him and that the payment of the rest was subject to certain issues being solved between him and CESD-Communautaire. The complainant therefore considered that his complaint regarding the Commission had been brought to a satisfactory conclusion.

The Ombudsman found that the Commission had taken steps to settle the matter and had thereby satisfied the complainant. He therefore closed the case.



Strasbourg, 24 May 2004

Dear Mr G.,

On 13 October 2003, you made a complaint to the European Ombudsman against the European Commission concerning alleged non-payment for services that you had carried out on the instructions of Eurostat.

On 4 November 2003, I forwarded the complaint to the President of the Commission. I received the Commission's opinion on 28 January 2004. I forwarded it to you with an invitation to make observations, which you sent on 23 February 2004.

In a telephone conversation on 27 April 2004, you informed my services that you had received the main part of the remainder of the money owed to you and that you considered your complaint to have been settled.

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

THE COMPLAINT

In October 2003, a complaint was made to the Ombudsman against the European Commission concerning alleged non-payment for services carried out on the instructions of the Statistical Office of the European Communities (Eurostat), which is a service of the Commission (1) .

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

On Eurostat's instructions, he and another person carried out a Global Assessment of the statistical system of Kazakhstan. The work was carried out during two missions in May and July 2003. Between the missions, there was a debriefing at Eurostat's office in Luxembourg. The terms of reference were laid down by Eurostat and all the reporting was done to Eurostat. However, the contracts were formally concluded with an organisation called CESD-Communautaire, although CESD-Communautaire was only in charge of the administrative part of the assignment. The complainant has carried out similar assignments before, after which he has sent his invoices to CESD-Communautaire, which paid him as soon as Eurostat approved his reports. As regards the assignment in Kazakhstan, Eurostat approved his report in August 2003, but he has still not received any money. He has heard that Eurostat has internal problems, which seem to have led to its payments to CESD-Communautaire being blocked. However, he considers that Eurostat's problems should not be allowed to affect his own position.

The complainant alleges, in substance, that the Commission has failed to ensure that he receives payment for the services he has provided in accordance with Eurostat's instructions in relation to contracts CESD Nr 6202-06/05/03-VZ-VZ-ASTAT 5, Nr 6400-12/06/03-VZ-VZ-ASTAT 5 and Nr 6507-03/07/03-VZ-VZ-ASTAT 5.



The complainant claims that he should receive the outstanding payment for his services.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission makes the following comments:

The "Statistics 5 Programme" includes a set of projects for the benefit of counterpart countries such as Kazakhstan. The set-up and implementation of the Statistics Programme involve, on one side: the Commission (the Europe-Aid Co-operation office and Eurostat); the organisation CESD-Communautaire, which has been contracted by the Commission for the project; and Member States' Statistical Offices, or other sub-contractors. On the counterparts' side, the main partners are the National Statistical Institutes.

The individual project "Global Assessment of the National Statistical System of Kazakhstan" was sub-contracted to the complainant by CESD-Communautaire. The complainant, therefore, has no contractual relationship with the Commission. The invoices concerned were submitted by the complainant to CESD-Communautaire and not to the Commission.

CESD-Communautaire can still submit invoices to the Commission in the framework of the contracts concerned. It cannot, therefore, be guaranteed that the Commission has yet received all invoices that might concern the complainant. According to the Commission, the invoices submitted by CESD-Communautaire for the complainant up to the date of its opinion to the Ombudsman, were paid to CESD-Communautaire's bank account on 29 December 2003. As far as the Commission services are concerned, there was no delay in processing these invoices.

The complainant's observations

In his observations, the complainant maintains his initial complaint and makes, in summary, the following additional remarks:

The Commission denies that it has any responsibility for the delay in payment despite the fact that it has clearly blocked its payments to CESD-Communautaire. To date, he has received a total of 6 054 €, which corresponds to the work carried out during the mission in July. However, a sum of 11 984 € remains to be paid.

In a telephone conversation on 27 April 2004, the complainant informed the Ombudsman's services that he has now received the main part of the remainder of the money owed to him. The payment of the rest is subject to certain issues being solved between him and CESD-Communautaire, which is complicated by the fact that CESD-Communautaire has gone into liquidation. He is concerned that this happened because the Commission did not provide CESD-Communautaire with the necessary funds. However, as regards his own complaint against the Commission, he considers the matter to be solved.

THE DECISION

1 Alleged non-payment for services carried out

1.1 The complaint concerns alleged non-payment for services carried out on the instructions of



the Statistical Office of the European Communities (Eurostat), which is a service of the Commission (2) . According to the complainant, he carried out a Global Assessment of the statistical system in Kazakhstan on Eurostat's instructions. The terms of reference were laid down by Eurostat and all the reporting was done to Eurostat. However, the contracts were formally concluded with the organisation CESD-Communautaire. Eurostat approved his work report in August 2003, but it appears that due to problems within Eurostat, its payments to CESD-Communautaire have been blocked and the complainant has therefore not yet received any money. The complainant alleges, in substance, that the Commission has failed to ensure that he receives payment for the services he has provided in accordance with Eurostat's instructions in relation to contracts CESD Nr 6202-06/05/03-VZ-VZ-ASTAT 5, Nr 6400-12/06/03-VZ-VZ-ASTAT 5 and Nr 6507-03/07/03-VZ-VZ-ASTAT 5. The complainant claims that he should receive the outstanding payment for his services.

1.2 The Commission underlines that there is no contractual relationship between itself and the complainant. CESD-Communautaire can still submit invoices to the Commission in the framework of the contracts concerned, and the Commission cannot guarantee that it has yet received all invoices that might concern the complainant. According to the Commission, the invoices submitted by CESD-Communautaire for the complainant up to the date of its opinion to the Ombudsman, were paid to CESD-Communautaire's bank account on 29 December 2003. As far as the Commission services are concerned, there was no delay in processing these invoices.

1.3 In his observations, the complainant states that he has received a total of 6 054 €, but that another 11 984 € still remains to be paid.

On 27 April 2004, the complainant informed the Ombudsman's services that he has now received the main part of the remainder of the money owed to him and that the payment of the rest is subject to certain issues being solved between him and CESD-Communautaire. The complainant therefore considers that his complaint regarding the Commission has been brought to a satisfactory conclusion.

1.4 In view of the above, the Ombudsman considers that the Commission appears to have taken adequate steps to settle the complaint and has thereby satisfied the complainant.

2 Conclusion

It appears from the Commission's opinion and the complainant's observations that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS



(1) Commission Decision 97/281/EC of 21 April 1997 on the role of Eurostat as regards the production of Community statistics, 1997 OJ L 112/56 , 29/04/1997, Article 2.

(2) Commission Decision 97/281/EC of 21 April 1997 on the role of Eurostat as regards the production of Community statistics, 1997 OJ L 112/56 , 29/04/1997, Article 2.