

Decision of the European Ombudsman on complaint 242/2004/PB against the European Commission

Decision

Case 242/2004/PB - Opened on 23/02/2004 - Decision on 10/12/2007

THIS COMPLAINT WAS TREATED AS CONFIDENTIAL. THE DECISION HAS THEREFORE BEEN ANONYMISED. THE MASCULINE FORM HAS BEEN USED THROUGHOUT.

Strasbourg, 10 December 2007

Dear Mr X,

On 21 January 2007 you made a complaint to the European Ombudsman concerning per diem rates in the context of a twinning project in Bulgaria, alleging that the Commission had reduced certain specified per diem rates without valid reasons and claiming that the rates applicable before 7 July 2003 should, with effect from that date, be reintroduced. On 23 February 2004, I opened an inquiry into this allegation and claim.

The Commission sent its opinion on 30 March 2004. I forwarded it to you with an invitation to make observations, which you sent on 14 June 2004. On 18 October 2004, I conducted further inquiries. The Commission sent its reply on 1 December 2004. I forwarded it to you with an invitation to submit observations. You sent your observations on 31 January 2005. On 21 March 2005, you visited the European Ombudsman, presenting certain arguments and information orally to the legal officer in charge of the present inquiry. On 18 May 2005, I decided that further inquiries were necessary, and I informed you of my relevant request to the Commission. The Commission sent its reply on 5 July 2005, and I forwarded it to you with an invitation to submit observations, which you sent on 30 August 2005. On 19 October 2005, I decided that further inquiries were necessary, and I informed you of my relevant request to the Commission. The Commission sent its reply on 1 February 2006, and I forwarded it to you with an invitation to submit observations. You submitted your observations on 31 March 2006. On 27 November 2006, I made a proposal for a friendly solution to your case, and informed you accordingly. On 8 March 2007, the Commission replied, in a negative way, to the said proposal. I forwarded the Commission's reply to you with an invitation to make observations, which you sent on 20 March 2007. On 11 September 2007, you informed me that you maintain your complaint.

I am writing now to inform you that, on the basis of my analysis and findings in my decision on complaint 756/2004/PB, which apply *mutatis mutandis* to the present case, I am closing my inquiry into your complaint with the following critical and further remark against the Commission:

Critical remark :



The Commission's decision to make payments for the complainant's subsistence allowance at issue (covering the period July-December 2003) basis on a per diem rate significantly lower than the one defined in the Covenant did not reflect, as it should, corresponding changes in the living expenses in Sofia, but rather exchange rate fluctuations between the US dollar and the euro during the period June 2001 – June 2003. This decision, thus, amounted to an instance of maladministration.

Further remark :

The Commission has stated that, under the present Financial Regulation the application of the USD-based UN system of calculation of per diems was compulsory at the time of the complaint and still is for all expert missions taking place under external assistance contracts. However, the Commission has failed to substantiate its above argument. In support of its position, the Commission did not invoke any specific provisions, apart from article 181 of the above-mentioned Implementing Rules, which does not make an explicit or implicit reference to any USD-based UN system of per diems. The Commission is, thus, invited to examine the matter more closely.

Please find enclosed a copy of my decision on complaint 756/2004/PB.

Yours sincerely,

P. Nikiforos DIAMANDOUROS