

## **Decision of the European Ombudsman on complaint 541/2004/TN against the European Commission**

Decision

**Case 541/2004/TN - Opened on 11/03/2004 - Decision on 23/03/2005**

Strasbourg, 23 March 2005

Dear Mr H.,

On 19 January 2004, with further information submitted on 6 February 2004, you made a complaint to the European Ombudsman against the European Commission concerning your removal from your position as team leader of the Design Study for a Support Program of Local Economic Development in the Eastern Cape Province of South Africa.

On 11 March 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 18 May 2004. I forwarded it to you with an invitation to make observations, which you sent on 19 July 2004.

On 15 October 2004, I wrote to the Commission, asking for further information relating to certain aspects of your complaint. I received the Commission's reply on 23 November 2004. I forwarded it to you with an invitation to make observations, which you sent on 23 January 2005.

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, the following:

On 8 December 2003, a decision was made to remove the complainant from his position as team leader of the Design Study for a Support Program of Local Economic Development in the Eastern Cape Province of South Africa. Following his removal, the complainant wrote to the project officer at the European Commission Delegation (hereafter "the Delegation") in South Africa on 18 December 2003, explaining that he refused to accept the decision to remove him as team leader and suggesting steps for completing the work of the study.

The Commission replied on 6 January 2004. However, the complainant was not satisfied with the response since he did not, as the Commission stated, withdraw from the project, but was



arbitrarily removed.

In his complaint to the Ombudsman, the complainant alleges that the Commission has:

- i) Wrongly removed him from the position as team leader of the Design Study for a Support Program of Local Economic Development in the Eastern Cape Province of South Africa; and
- ii) Failed to pay him for work completed and costs incurred.

The complainant claims that the Commission should reinstate him as team leader.

## **THE INQUIRY**

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

In its opinion, the Commission makes the following comments:

Under the European Programme for Reconstruction and Development in South Africa, the Commission concluded that it would need an "[i]dentification and appraisal study for a programme of support to Local Economic Development (LED) in the Eastern Cape Province of South Africa". In order to provide for such a study, a selection procedure under the Commission's external aid framework contract was carried out. In August 2003, the Commission signed a contract with the selected framework contractor, West Midlands Enterprise (hereafter "WM"). The complainant was contracted by WM to lead the design team.

Since the project came to suffer from serious problems, such as delays and poor quality of output, WM communicated its decision to bring in a new team leader on 10 December 2003. At the same time, WM asked for the Commission's approval to make such a change in the team. Since the Commission was aware of the existing problems, it agreed to the suggested restructuring of the team.

The Commission had no contractual relationship with the complainant and the decision to remove him from the position as team leader could not be, and was not, taken by the Commission. For the benefit of the project, the Commission endorsed WM's decision to change team leader.

As regards the payment, the Commission explains that the design study has a budget of EUR 197 850. An advance payment of EUR 98 925 was made to WM on 17 December 2003, in accordance with the framework contract procedures. Payments due by WM to its staff are beyond the competence and responsibility of the Commission. The payment concerned is thus a contractual matter between the complainant and his employer.

### **The complainant's observations**

In his observations, the complainant makes, in summary, the following remarks:

Despite the fact that his contract was with WM, it was in fact the Commission that was the main actor and decision-maker regarding his removal from the position as team leader.



To begin with, the Commission intervened in the selection process of the team by requesting the appointment of two people of its choice to replace the ones that he had suggested for the team. Furthermore, the Delegation's project officer intervened inappropriately in the team management to support two team members who were not delivering on time, making it impossible for the complainant to exercise effective management of the team. The tardy, and at times contradictory, responses from the project officer regarding the substance and direction of the study contributed to the problems that the complainant faced as team leader.

The delivery problems became apparent in early October 2003, and he informed the project officer of the problems, but no durable solution was found. He therefore extended the deadline for providing input for the two team members with delivery problems and he submitted an amended work plan to the project officer. Nevertheless, the problems continued and one of the team members first absented himself from the project without giving reasons and then on, 1 November 2003, resigned from the project. The complainant then had to take over the role of the team member who had resigned while attempting to recruit new team members and complete his own work.

It is true that at the quality control meeting on 10 November 2003, the work was not sufficiently developed conceptually and that not enough progress had been made. However, the reasons for this had nothing to do with the complainant's leadership or performance. He revised the work plan again and submitted it to WM. His understanding was that the revised work plan and the new team composition were informally approved by the Delegation. However, formal approval was never given. At this stage, it also emerged that there were problems relating to the transfer of funds from the Commission to WM and that one of the team members had not been paid for her work.

On 4 December 2003, WM asked the complainant to suspend the work on the project and to attend a meeting on 9 December 2003. The complainant's understanding was that the aim of the forthcoming meeting was to discuss a work plan for the completion of the study. He therefore prepared a work plan and a budget analysis to be presented at the meeting. However, at the meeting he was not allowed to present the work plan and the budget. Instead he was asked to provide an outline of the study's core concept, which he had to do off the cuff.

On 11 December 2003, he was contacted by WM which informed him that he would be replaced in his role as team leader and that he would not be paid for 18 days of work already completed since the Delegation was unwilling to pay for these days. He was nevertheless required to complete and assist with certain further work, for which he was not fully paid.

The complainant thus asserts that he was not given the opportunity to present his case to the Delegation prior to its decision to remove him from his position, notwithstanding the Delegation's request that he should address the problems and suggest a way forward. His offer to complete the work within the budget and within a time frame to be accepted by the Delegation was rejected.

#### **Further inquiries**



After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked the Commission to reply to the arguments, put forward by the complainant in his observations, that:

1. The Commission was the main actor behind the decision to remove him from the position as team leader;
2. He was not given the opportunity to present his case to the Commission Delegation before being removed from the position as team leader;
3. The problems from which the project suffered were not owing to his leadership or performance; and
4. The Commission refused to pay WM for some of the work carried out by him.

The Commission's reply

The Commission submitted the following reply to the Ombudsman's request:

*Argument 1:* The Commission reiterates that it had no contractual relationship with the complainant and that the decision to remove him from the post as team leader for the design study was made by WM. On 9 December 2003, WM communicated to the complainant its decision to restructure the team. No-one from the Delegation was present at this meeting. The complainant was then offered the possibility to contribute to the design process as an institutional expert, but he refused. On 10 December 2003, WM sent a fax to the Delegation in which it made a formal request to replace the complainant as team leader. The legal basis of the proposal to restructure the design team was confirmed by a letter of contract that the Delegation issued on 23 December 2003. The Commission explains that it monitored the implementation of the project and noted that the team leader's performance did not meet the expected standard. The Commission acknowledges having expressed its disappointment with the complainant's inadequate performance in previous discussions with WM, but it had at no time requested that he should be replaced. This was a decision made solely by WM.

*Argument 2:* The complainant argues that he was not given the opportunity to present his case to the Delegation mainly because of the alleged lack of availability of the Delegation staff. The complainant argues that the project officer was absent for a ten day period during the four months that the complainant managed the design study. However, during these four months, as many as 14 face-to-face meetings were held between Delegation staff and the complainant. The project officer also had almost daily e-mail and telephone contact with the complainant and received eight project management reports from him. In the project officer's absence, the complainant could always address himself to the First Secretary (Development), who was also fully involved in the design process. The complainant therefore had numerous opportunities to present his case to the Delegation. His failure to do so was not due to lack of availability from the Delegation's side.

*Argument 3:* The implementation of the design study was affected by some serious problems, such as significant delays in the design process and poor quality output. The study process was



scheduled to begin on 15 August 2003 and to end on 17 December 2003. When the complainant was removed as team leader in December 2003, the first phase of the project, which had been foreseen to be finalised before 17 October 2003, had still not been completed. The complainant postponed at short notice two consecutive scheduled reference group meetings (25 November 2003 and 9 December 2003) because of lack of sufficient work to merit discussion. In addition to the outputs being late, the work was of unsatisfactory quality. Despite a considerable amount of descriptive studies, the field study lacked a clear conceptual framework and hypotheses to be tested. It became evident that the team leader had difficulties in moving beyond the descriptive stage. The weaknesses of the study were mentioned already at the internal quality support group meeting of 10 November 2003, the conclusions of which were communicated to the complainant. He was asked to present the progress on the design study on 9 December 2003. However, the note on the progress review did not show positive changes regarding the project's weaknesses. The Delegation was aware of the internal problems in the team since mid October, but the complainant never put forward any formal proposal on how to solve the matter. By endorsing WM's decision to restructure the design team, the Commission sought to favour the project but did not intend to question the complainant's professional capacity. In fact, his knowledge was well appreciated and the Commission would have preferred his continued involvement in the design study, as expressed by the project officer by e-mail of 6 January 2004.

*Argument 4:* The Commission is merely the funding agency of the contract and has no contractual relationship with the complainant. The Commission has no knowledge of the terms of the complainant's contract and its only responsibility consists of transferring funds to WM in accordance with its contract with this company. The contract signed with WM was for a total sum of EUR 197 850. An advance payment of EUR 98 925 was made to WM on 17 December 2003. The Delegation received the final report on 30 July 2004 and by letter of 20 August 2004 it approved the report and formally requested the final invoice for the residual sum of EUR 98 925. The Commission will process this invoice without delay when it receives it. When this latter payment is made, the Commission will have provided the total funding in accordance with its contract with WM.

The complainant's observations

The complainant made, in summary, the following comments on the Commission's reply:

*Argument 1:* The complainant argues that from the time the Commission intervened in the team selection process to the date when he was removed from the post as team leader, WM played only a marginal role in his relationship with the Commission, namely to accept the Commission's requirements. The complainant points out that he was not invited to participate in any meeting with WM to discuss the composition of the team. Furthermore, he did refuse the offer to contribute to the design process as an institutional expert since it was unjustified to remove him from his position as team leader. The complainant acknowledges that the findings of the quality control meeting were correct, i.e. that the work was insufficiently developed conceptually and that not enough progress had been made. However, this had nothing to do with him as a team leader but was due to insufficient progress made by two of the team's members.

*Argument 2:* The complainant states that his complaint relates specifically to the six weeks



during which there was a crisis in the team. During this period, four meetings took place. However, during none of these meetings was the complainant allowed to present his case properly.

*Argument 3:* The complainant argues that the problems from which the projects suffered were due to late delivery by two of the team's members. The complainant requested an independent assessment of his own work, but this request was ignored. According to the complainant, the Commission seeks to pass the blame for the problems on to him, when, in fact, the Commission had intervened to secure the appointment of the two team members causing the problems. The Commission was then unwilling to deal with the consequences of the two team members' failure to deliver. The Commission created a line of direct accountability from these two team members to the Delegation's project officer, thereby bypassing the complainant as team leader and putting him in an untenable situation. The complainant argues that he submitted two proposals to the Commission on how to solve the problems in the team, but that he received no response.

*Argument 4:* The complainant maintains that WM has refused to pay him for 18 days of work carried out on the basis of the fact that the Commission was unwilling to pay for this time.

## THE DECISION

### **1 The allegedly wrong removal from the position as team leader**

1.1 The complaint concerns the European Commission's involvement in the complainant's removal from the position as team leader of the Design Study for a Support Program of Local Economic Development in the Eastern Cape Province of South Africa. The complainant argues that, although his contract was with the company West Midlands Enterprise (WM), the Commission was the main actor behind the decision to remove him from the post as team leader. According to the complainant, it is true that the design study did suffer from problems. However, these problems had nothing to do with him as team leader but was due to insufficient progress made by two team members. Again according to the complainant, the Commission had intervened in the team selection process by acting to secure the appointment of these two team members. The Commission was later unwilling to deal with these same team members' failure to deliver and the complainant was never allowed a proper chance to present to the Commission his proposal on how to solve the problems in the team. Finally, the complainant argues that the Commission never responded to his two proposals on how to solve the problems. Instead he was arbitrarily removed from the post as team leader. Since the decision to remove him from the position as team leader was unjustified, he refused an offer to contribute to the design process as an institutional expert.

The complainant alleges that the Commission wrongly removed him from the position as team leader of the Design Study for a Support Program of Local Economic Development in the Eastern Cape Province of South Africa.

1.2 The Commission stresses that it had no contractual relationship with the complainant, whose contract was with the framework contractor WM. It further argues that since the design study came to suffer from serious problems, such as delays and poor quality of output, WM



communicated to the Commission its decision to bring in a new team leader and asked for the Commission's consent in this regard. Since the Commission was aware of the problem affecting the study, it agreed to the suggested restructuring of the team. The decision to remove the complainant as team leader could not, and was not, made by the Commission, which merely endorsed WM's decision. By endorsing WM's decision to restructure the design team, the Commission sought to favour the project but did not intend to question the complainant's professional capacity. The Commission at no time requested WM to replace the complainant. In fact, the complainant was offered continued involvement in the study as an institutional expert. The Commission also argues that the complainant had numerous opportunities to present his case to the Delegation and that his failure to do so was not due to lack of availability from the Delegation's side. The complainant never put forward any formal proposal on how to solve the problems within the team.

1.3 The Ombudsman notes the complainant's argument that although his contract was with WM, the Commission was the main actor behind the decision to remove him from the post as team leader, a decision the complainant considers to be wrong. The Ombudsman further notes that the only available evidence pertaining to the decision to restructure the team and to remove the complainant from the post as team leader is a fax message from WM to the Delegation, dated 10 December 2003. This fax message opens by stating that "*following our meeting this week and the discussions regarding the progress of the /.../ project, I am writing to ask for some changes to the team and to bring in a new team leader to complete the tasks on this project*". In the fax message, WM asks whether the Commission agrees to the proposed changes to the letter of contract and, if so, whether it could confirm its acceptance in writing as soon as possible. The Ombudsman finds nothing in this fax message to suggest that the Commission had requested the removal of the complainant from his position as team leader. The Ombudsman therefore finds no evidence to support the complainant's argument that the Commission was the main actor behind the decision to remove him from the post in question.

1.4 The Ombudsman also notes the complainant's arguments that the Commission intervened in the team selection process by acting to secure the appointment of the two team members who later proved to make insufficient progress and that it did not allow the complainant a proper chance to present to it his proposal on how to solve the problems in the team before being removed as team leader. The Ombudsman understands these arguments to imply that the Commission bears a certain responsibility for the events leading to the complainant's removal from the post as team leader. However, recalling that WM, and not the Commission, appears to have been the initiator and decision maker as regards the complainant's removal, the Ombudsman does not consider the complainant's arguments to have any bearing on his allegation that the Commission wrongly removed him from his position as team leader. The Ombudsman further notes that the complainant has presented no argument suggesting that the Commission should have opposed WM's proposal to restructure the team.

1.5 In view of the above, the Ombudsman does not find any maladministration by the Commission as regards this aspect of the complaint.

## **2 The alleged failure to pay for work and costs**

2.1 The complainant argues that when he was informed that he would be replaced as a team





leader, WM also informed him that he would not be paid for 18 days of work already completed, since the Delegation was unwilling to pay for these days. The complainant alleges that the Commission failed to pay him for work completed and costs incurred.

2.2 The Commission argues that it merely acts as the funding agency and that it has no contractual relationship with the complainant, nor any knowledge of the terms of the complainant's contract with WM. Its only responsibility consists of transferring funds to WM in accordance with its contract with this company. The contract signed with WM was for a total sum of EUR 197 850. An advance payment of EUR 98 925 was made to WM on 17 December 2003. The Delegation received the final report on 30 July 2004 and by letter of 20 August 2004, it approved the report and asked WM to submit the final invoice for the residual sum of EUR 98 925. The Commission will process this invoice without delay when it receives it. When this latter payment is made, the Commission will have provided the total funding in accordance with its contract with WM.

2.3 The Ombudsman notes that the complainant does not seem to question the Commission's explanation of the terms of funding agreed between the Commission and WM, which furthermore does not appear to have changed during the course of the project. The Ombudsman has found no other evidence to support the complainant's argument that the Delegation was unwilling to pay WM for 18 days of work already completed by the complainant.

2.4 In view of the above, the Ombudsman finds no maladministration by the Commission as regards this aspect of the complaint.

### **3 The complainant's claim**

3.1 In his complaint, the complainant claims that the Commission should reinstate him as team leader.

3.2 In view of the findings in part 1.3-1.5 above, the Ombudsman finds no ground to sustain the complainant's claim.

### **4 Conclusion**

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS