

Decision of the European Ombudsman on complaint 735/2005/BU against the European Commission

Decision

Case 735/2005/BU - Opened on 12/04/2005 - Decision on 15/12/2005

Strasbourg, 15 December 2005

Dear Mr X.,

On 2 March 2005, you complained to the European Ombudsman against the European Commission and its Delegation to Mozambique (the "Delegation") concerning the limited medical insurance coverage of staff working for Commission delegations under ALAT (*Agent Local d'Assistance Technique*) contracts and concerning the Delegation's failure to reply to the e-mail sent to it on 5 October 2004 by the Delegation's staff representative.

On 9 March 2005, you supplied the documents relating to your complaint, including a copy of the e-mail of 5 October 2004.

On 14 April 2005, my services held a telephone conversation with the Delegation's administration in order to establish whether the e-mail of 5 October 2004 could be answered promptly, in which case it would be unnecessary for the Ombudsman to open a normal written inquiry into this aspect of the case. On 15 April 2005, the Delegation's administration informed my services by e-mail that the e-mail of 5 October 2004 was followed by an extensive discussion with the Delegation's staff in relation to the matters mentioned therein and that the Delegation's administration would, within the shortest possible time, call all concerned staff to an information meeting in order to explain the rules in question.

On 26 April 2005, I forwarded your complaint to the Commission and asked it to submit an opinion. The Commission sent its opinion on 4 July 2005.

I forwarded the opinion to you with an invitation to make observations, which you sent on 3 August 2005.

As you have requested, I treated your complaint as confidential.

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 as follows:

Since 5 April 2004, the complainant has been working for the Delegation as a local agent under an ALAT contract.

On 6 August 2004, the Delegation's administration, acting at the request of the new ALATs working at the Delegation, asked the Commission's Headquarters (Directorate-General External Relations) for information concerning the SOS Ambulance Cards (1) available to ALATs working at the Delegation.

In its reply of 2 September 2004, the Commission informed the Delegation's administration of ALATs' rights concerning insurance coverage and reimbursements relating to medical expenses incurred outside the country of employment and to repatriation on medical grounds. The Delegation's administration forwarded this information to all the local agents concerned as soon as the information was received.

By an e-mail of 5 October 2004, the Delegation's staff representative, acting upon the request made by the local staff members, asked the Delegation's administration for further information concerning the SOS Ambulance Cards and the medical insurance scheme for local staff. Up to the date of the present complaint, no written answer had been sent in reply to this e-mail.

On 2 March 2005, the complainant lodged a complaint with the Ombudsman.

The complainant alleged that the Delegation failed to answer the e-mail of 5 October 2004.

He also alleged that the current system of medical insurance coverage provided for ALATs is discriminatory. In support of this allegation, the complainant pointed out that the Commission decided to grant only limited medical insurance coverage to ALATs working at the Commission's delegations, compared to the more comprehensive coverage available to officials. While the latter benefit, in the case of an emergency, from full medical insurance coverage for expatriation on medical grounds and for medical expenses incurred outside the country of employment, ALATs are covered only as regards expenses related to the logistics of an eventual medical evacuation, but not as regards transport costs and medical expenses incurred outside the country of employment.

The complainant claimed that the Commission should change the current medical insurance coverage of ALATs so that it includes, in the case of medical evacuation, all related expenses.

THE INQUIRY

The opinion of the Commission

The Ombudsman forwarded the complaint to the Commission and asked it to submit an opinion on the complainant's allegations and his claim.



The Commission's opinion can be summarised as follows:

Following the e-mail of 5 October 2004, the Commission's Headquarters contacted the Delegation's staff representative by telephone concerning that e-mail. The staff representative confirmed to the Commission that he had obtained all the information he needed from the Delegation's administration and that this information had been transferred to all staff members concerned including the complainant. For this reason, neither the Delegation nor the staff representative in question considered it necessary to answer in writing the e-mail of 5 October 2004.

The Commission further stated that ALATs belong to the category of local staff. Their rights and obligations are clearly specified in their employment contract (in the complainant's case, in Article 9 thereof) and in the relevant provisions of the Framework Regulations and the Special Conditions of Employment. When signing their individual employment contract, the local agents confirm having received a copy of, and thus being aware of the contents of, the two above-mentioned documents.

The Commission added that the legal framework of the ALATs' employment contracts differs considerably from the rules provided for in the Staff Regulations of officials of the European Communities (the "Staff Regulations") and that, in consequence, differences between the working conditions of ALATs and those of officials cannot be considered to be discriminatory.

The Commission concluded that the complainant's claim is not based on legal grounds and does not take into account the provisions to be applied in his case.

The complainant's observations

In his observations, the complainant maintained his allegation concerning the discriminatory nature of the medical insurance coverage system of ALATs, as well as his claim. He stated that it is true that ALATs can be partially reimbursed for premiums relating to private insurance they may take for medical expenses incurred outside the country of employment as well as for repatriation on medical grounds. He pointed out, however, that in a situation where an ALAT decides not to take the private insurance for medical expenses incurred outside the country of employment and for repatriation on medical grounds, he or she would not be reimbursed for the costs incurred in this regard. The complainant emphasized that this dual system of medical insurance coverage for officials and ALATs constitutes the discriminatory treatment that had given rise to his complaint.

As regards the alleged failure by the Delegation to answer the e-mail of 5 October 2004, the complainant took the view that the Commission's position on this aspect of his complaint was in accordance with the facts and that the information he asked for had been given to him orally.

THE DECISION

1 Failure to answer the e-mail of 5 October 2005

1.1 On 5 October 2004, the Delegation's staff representation e-mailed the Delegation to ask for



further information concerning the SOS Ambulance Cards and the medical insurance scheme for local staff.

The complainant alleges that the Delegation failed to answer the e-mail.

1.2 The Commission, in its opinion, states that it contacted by telephone the Delegation's staff representative who sent the e-mail of 5 October 2004. The said staff representative confirmed to the Commission that he had obtained all the information he needed from the Delegation's administration and that this information had been transferred to all staff members concerned including the complainant. For this reason, neither the Delegation nor the staff representative in question considered it necessary to answer in writing the e-mail of 5 October 2004.

1.3 In his observations on the Commission's opinion, the complainant took the view that the Commission's position on this aspect of his complaint was in accordance with the facts and that the information he asked for had been given to him orally.

1.4 In the light of the above, the Ombudsman takes the view that the Commission has given an explanation which has satisfied the complainant. The Ombudsman therefore finds no instance of maladministration as regards the complainant's first allegation.

2 Medical insurance coverage of ALATs

2.1 The complainant alleges that the current system of medical insurance coverage for ALATs is discriminatory. In support of this allegation, he points out that whereas officials working at the Commission's delegations benefit, in the case of an emergency, from full medical insurance coverage for expatriation on medical grounds and for medical expenses incurred outside the country of employment, ALATs are covered only for expenses related to the logistics of an eventual medical evacuation, but not as regards transport costs and medical expenses incurred outside the country of employment.

He claims that the Commission should change the current medical insurance coverage of ALATs so that it includes, in the case of medical evacuation, all related expenses.

2.2 The Commission points out that ALATs belong to the category of local staff. Their rights and obligations are clearly specified in their employment contract and in the relevant provisions of the Framework Regulations and the Special Conditions of Employment. When signing their individual employment contract, the local agents confirm having received a copy of, and thus being aware of the contents of, the two above-mentioned documents.

The Commission adds that the legal framework of the ALATs' employment contracts differs considerably from the rules provided in Staff Regulations of officials of the European Communities (the "Staff Regulations") and that, as a consequence, differences between the working conditions of ALATs and those of officials cannot be considered to be discriminatory.

The Commission concludes that the complainant's claim is not based on legal grounds and does not take into account the provisions to be applied in his case.



2.3 The Ombudsman notes that in accordance with Article 120 in Title V of the Conditions of Employment of other servants of the European Communities (the "Conditions of Employment"), the conditions of employment of local staff, in particular the manner of their engagement and termination of their contract, their leave, and their remuneration shall be determined by each institution in accordance with current rules and practice in the place where they are to perform their duties.

Article 121 in the same Title provides that, as regards social security, the institution shall be responsible for the employer's share of the social security contributions under current regulations in the place where the servant is to perform his duties (2) .

2.4 Further, the Ombudsman notes that, unlike Title IV of the Conditions of Employment, which foresees application by analogy of certain provisions of Annex X to the Staff Regulations (*Special and exceptional provisions applicable to officials serving in a third country*) to contract staff serving in a third country, Title V of the Conditions of Employment does not provide for any such application of provisions of the Staff Regulations to local staff.

2.5 The Ombudsman also recalls that, according to the established case-law (3) , discrimination involves the application of different rules to comparable situations or the application of the same rules to different situations.

2.6 In the present case, the Ombudsman takes the view that the facts of this complaint do not constitute discrimination because the different categories of Communities staff are not in comparable legal situations. Given the different legal statute of ALATs and officials, their rights and obligations are regulated differently by the relevant legal provisions.

The conditions of employment of local staff are therefore detailed in the rules determined by the Commission in accordance with Article 120 of Title V of the Conditions of Employment (the Framework Regulations and the Special Conditions of Employment) and in their employment contracts, and are thus different from the conditions of employment of officials and from those of temporary, contract, or auxiliary staff, which are laid down in the Staff Regulations and in Titles II, III and IV of the Conditions of Employment respectively.

2.7 In the light of the above findings, the Ombudsman considers that the Commission's position is reasonable. The Ombudsman therefore finds no instance of maladministration as regards the complainant's second allegation and considers that the complainant's claim cannot be sustained.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, the Ombudsman concludes that the inquiry has not revealed an instance of maladministration. The Ombudsman therefore closes the case.

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

Yours sincerely,



P. Nikiforos DIAMANDOUROS

(1) The Ombudsman understands that these are issued to the local agents concerned on the basis of a group insurance policy which the Commission has concluded through a specialised financial services provider.

(2) "Article 120

Subject to the provisions of this Title, the conditions of employment of local staff, in particular:

(a) the manner of their engagement and termination of their contract,

(b) their leave, and

(c) their remuneration

shall be determined by each institution in accordance with current rules and practice in the place where they are to perform their duties.

Article 121

As regards social security, the institution shall be responsible for the employer's share of the social security contributions under current regulations in the place where the servant is to perform his duties."

(3) For example the case C-147/02 *Alabaster* (2004) ECR I-3101, paragraph 45.