

Decision of the European Ombudsman on own-initiative inquiry OI/3/2005/OV against the European Commission

Decision

Case OI/3/2005/OV - **Opened on** 19/05/2005 - **Decision on** 18/10/2005

Summary of decision on own-initiative inquiry OI/3/2005/OV (Confidential) against the European Commission

In April 2005, the Ombudsman received a complaint from a florist from a third country concerning an alleged failure of the Commission Delegation in that country ("the Delegation") to reimburse the complainant for the floral decoration he had provided during a period in 1996 for the decoration of the newly opened Press Centre of the Delegation. The complainant stated that there was an oral contract of USD 50 a day, but that, up to now, the Commission had still not paid him. In his complaint to the Ombudsman, the complainant claimed that the Commission should pay him for the services he provided.

The Ombudsman concluded that the complaint was outside his mandate, as the complainant was not an EU citizen and did not have his residence in an EU Member State (Article 195 of the EC Treaty). However, given that the issue raised merited an examination, the Ombudsman decided to open an own-initiative inquiry into the matter against the Commission.

In its opinion, the Commission observed that it had put the premises of the Delegation's Press and Information centre at the disposal of the Italian embassy and an associated Foundation for an event, and that, in that framework, the latter contacted the complainant for the supply of floral decoration. The Commission however pointed out that no contract was established between the Delegation and the complainant, but a contract was concluded with the Italian embassy and the said Foundation.

In his decision, the Ombudsman concluded that there indeed existed no contract between the Commission and the complainant with regard to the floral decoration, but that this service was the subject of an agreement with the Italian embassy, and that this conclusion was not altered by the fact that the decoration itself was made on the Delegation's premises. The Ombudsman therefore found that the complainant's claim for payment against the Commission could not be upheld and that there was no instance of maladministration.

The Ombudsman however informed the complainant that he could consider lodging a complaint



with the Italian Ministry of Foreign Affairs in Rome. Considering that the fact that the person in charge in the Italian embassy had left the embassy appeared to be one of the reasons for the problems encountered by the complainant, the Ombudsman also found it appropriate to send a copy of his decision to the Italian embassy in the country of the Delegation.

By e-mail of 24 October 2005, the complainant reacted and stated that the Ombudsman's decision was right and could help him in resolving his problem in a right way.

Strasbourg, 18 October 2005

Dear Mr B.,

On 19 May 2005, I informed you that I had decided to open an own-initiative inquiry concerning a complaint of 18 April 2005 by Mr X about an alleged failure of the Commission Delegation in a third country to reimburse him for the services he claimed to have provided to the Delegation as a florist in 1996.

The Commission sent its opinion on 28 June 2005. I forwarded it to Mr X on 11 July 2005 with an invitation to make observations. As no observations had been received from him by the deadline of 31 August 2005, my office contacted him by e-mail on 22 September 2005 to inquire as to whether he had sent or intended to send observations. In his e-mail reply of the same date, Mr X indicated that he had not received my letter of 11 July 2005 (1) including the Commission's opinion and made short observations.

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

THE REASONS FOR THE OWN-INITIATIVE INQUIRY

On 18 April 2005, the Ombudsman received a complaint from Mr X, concerning an alleged failure of the Delegation to reimburse him for the services he claimed to have provided to the Delegation as a florist in 1996.

Article 195 of the EC Treaty provides for the Ombudsman to receive complaints from "*any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union*".

Given that Mr X did not fall into any of these categories, the Ombudsman informed him on 19 May 2005 that he had no power to deal with his complaint. However, given that the Ombudsman considered that the issue raised in the complaint merited an examination, he decided to open an own-initiative inquiry into this matter.

According to Mr X, the relevant facts at the basis of his complaint are as follows:

Mr X runs a flower shop in the capital of a third country. From 25 July 1996 onwards, he provided floral decoration for the newly opened Press Centre of the Delegation. There was an



oral contract for payment of USD 50 a day, but up to now, the Commission has still not paid him, although the floral decoration is still in the office of the Delegation.

Mr X has written to the Head of the Delegation, and also to the Office of the Organisation for Security and Co-operation in Europe (OSCE) which transmitted his concerns to the Delegation. In 2002, Mr X was also in contact with the national Ombudsman with regard to this matter.

In his complaint to the Ombudsman of 18 April 2005, Mr X claims that the Commission should pay him for the services he provided for the floral decoration of the press centre of the Delegation from 25 July 1996 onwards.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

In July 1996, the Delegation put at the disposal of the Italian Embassy and a Foundation, the premises of its press and information centre (CDP) for an event. For this event, the Italian Embassy (Istituto Italiano di Cultura, represented by Mr F.) and the Foundation (represented by Mr C.) contacted Mr X's flower shop for the supply of floral decoration.

No contract was established between the Delegation and Mr X but a contract was established with the Italian Embassy and the Foundation. This was mentioned in the first invoice by Mr X of 31 October 1996 which indicated that *"the relevant agreement was concluded with the representative of the Institute of Culture at the Italian embassy, and in the presence of the chairman of the Foundation in [capital X], Mr. C., who gives his confirmation as attached hereto"* (2) .

The existence of this contract was also confirmed in the letter of 25 April 1997 by the Head of the Delegation at the time, Mr G.; in a letter by the Foundation of 24 April 1997; in the letter of 15 February 2002 by the Delegation's Head of Administration; and in a letter by the national Ombudsman of 30 June 2002.

By letter of 13 January 1998, Mr G. invited Mr X to remove the floral decoration from the premises of the Delegation.

On the basis of the above, the Commission regretted that it could not help Mr X, given that no contract had been established between him and the Delegation. The fact that an event took place on the premises of the Delegation did not mean that Delegation had a contract with or owed money to Mr X.

Mr X's observations

Mr X regretted the answer of the Commission and expressed his hope that the Ombudsman would take the right decision in his case.



THE DECISION

1 The Ombudsman's own-initiative inquiry

1.1 Mr X claims that the Commission should pay him for the services he provided for the floral decoration of the press centre of the Delegation from 25 July 1996 onwards.

1.2 The Commission observed that it put the premises of the Delegation's press and information centre (CDP) at the disposal of the Italian embassy and the Foundation for an event (3) , and that, in that framework, the latter contacted Mr X for the supply of floral decoration. The Commission pointed out that no contract was established between the Delegation and Mr X, but a contract was concluded with the Italian embassy and the Foundation. The Commission regretted that it could not help Mr X.

1.3 On the basis of the documents in the file, the Ombudsman comes to the following findings:

1.4 Mr X's invoice of 31 October 1996 for an amount of USD 4 500 mentions that *"the relevant agreement was concluded with the representative of the Institute of Culture at the Italian embassy, and in the presence of the chairman of [the] Foundation in (capital X), Mr. C., who gives his confirmation as attached hereto"*. The letter of the Head of the Delegation of 25 April 1997 also refers to the agreement between Mr X and Mr F. who represented the Italian Embassy. This is again confirmed in the reply of the national Ombudsman to Mr X of 5 September 2002, according to which *"[b]ased on the documents that you have attached to your complaint, the initiative to sponsor the activity of 25 July 1996, by decorating the Centre with flowers, had been taken by the Italian embassy, therefore you concluded such an agreement with this Embassy, more explicitly with one of its representatives at that time, Mr F. (...)"*.

1.5 On the basis of the above, the Ombudsman concludes that there exists no contract between the Commission and Mr X with regard to the floral decoration services he provided, but that those services were the subject of an agreement with the Italian Embassy. This conclusion is not altered by the fact that the decoration itself was made on the Delegation's premises, which had been put at the disposal of the Italian Embassy and the Foundation by the Commission. In a letter by Mr C., of the Foundation, of 24 April 1997, it appears that the fact that Mr F. subsequently left the Italian Embassy was one of the reasons for the problems encountered by Mr X (4) .

1.6 Given that there is no contractual obligation for the Commission to pay Mr X for the floral decoration he provided, it appears that his claim for payment against the Commission cannot be upheld. No instance of maladministration by the Commission is therefore found.

1.7 On the basis of the above evaluation, and considering that there is no national Ombudsman in Italy, the Ombudsman concludes that Mr X could however consider lodging a complaint with the Italian Ministry of Foreign Affairs in Rome (address: Ispettorato generale del ministero e degli uffici all'estero, Ministero degli Esteri, Piazzale della Farnesina 1, 00189 Roma (RM), Italy).

1.8 Considering the above, the Ombudsman finds it appropriate to send a copy of this decision,



for information, to the Italian Embassy in (capital X) and to inform the Italian Ministry of Foreign Affairs in Rome of the advice given to the complainant.

2 Conclusion

2.1 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 present own-initiative inquiry.

2.2 A copy of this decision will be sent to Mr X and to the Italian Embassy in (capital X).

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Mr X indicated that he had not received the Ombudsman's letter from the post. However, the letter to Mr X was not returned to the Ombudsman's office by the post.

(2) Translation by the Commission's services.

(3) The letter of the Foundation of 24 April 1997 refers to a "*painting exhibition of 25 July 1996*".

(4) "*(...) I confirm that Dr. F. of the Italian Embassy had agreed on the sponsorship of this initiative with decorative flowers at the expense of the Italian Embassy. We have advised both the flower man to take back the flowers and also the Embassy to conclude the economic report, both verbally and in writing. We believe that the leaving of Dr. F. is at the basis of such inconvenience, and also the reason of the flower man for not taking back the flowers, although our repeated invitations to do so, it due to his difficulty to contract the Italian Embassy and thus resolving this problem directly with them*".