

Decision of the European Ombudsman closing the inquiry into complaint 944/2014/AN against the European Commission

Decision

Case 944/2014/AN - Opened on 20/06/2014 - Decision on 25/06/2015 - Institution concerned European Commission (Settled by the institution) |

The case concerned an administrative investigation into alleged harassment by the complainants' line manager, in which the complainants took part as witnesses. The complainants expected to be informed of the outcome of the investigation, as the investigators had promised. However, this was not the case. The Ombudsman found that, in the circumstances of the case, the principle of fairness required the Commission to provide this information. During the inquiry, the Commission clarified that some of the complainants' allegations were confirmed and that certain action was taken as a result of the investigation. The Ombudsman's inspection of the Commission's files also corroborated this statement. Although the Commission did not fully disclose the outcome of the investigation, the Ombudsman considered it sufficient to settle the case, especially since the complainants stated that they did not wish to know the exact measures taken against their former line manager.

The background to the complaint

1. In 2010, the complainants were witnesses in a harassment procedure involving their line manager. They were told that, in accordance with the rules in force at the time, they would be informed of the outcome of the procedure. Three years later, having received no feedback, the complainants inquired about the outcome and were informed that the procedure was closed. However, they were not informed of the conclusions due to privacy concerns.
2. The complainants eventually complained to the European Ombudsman against the Commission's failure to provide them with the relevant information.

The inquiry

3. The Ombudsman opened an inquiry into the allegation that the Investigations and Disciplinary Office of the Commission ('IDOC') failed to inform the complainants of the outcome



of the harassment procedure in which they testified, even though the rules applicable at the time of the events [1] required it to do so, and the claim that the Commission should provide the information in question.

4. With a view to dealing with the complaint speedily, the Ombudsman's inquiry began with an exchange of e-mails with the relevant services of the Commission. Since a speedy solution could not be found, the Ombudsman then requested the Commission to submit a formal opinion on the above allegation and claim.

5. The Commission did so, and the complainants sent observations on the opinion. Moreover, the Ombudsman carried out an inspection of the Commission's files related to the harassment investigation in question.

6. In reaching this decision, the Ombudsman has taken into account the arguments and opinions put forward by the parties and the results of her inspection.

Alleged failure to provide information on the outcome of the harassment procedure and related claim

Arguments presented to the Ombudsman

7. In the **replies** submitted during the first stage of the Ombudsman's inquiry, the Commission informed the complainants that the harassment procedure was closed and that the information provided to witnesses does not include information on the nature of the action taken by the Appointing Authority following the harassment inquiry. The Commission added that, for confidentiality reasons, it could not provide any additional information.

8. In reply, the complainants **argued** that it is unlawful for the Commission to disregard the procedure in force at the time when they testified, and which provided for them to be informed of the outcome. The complainants acknowledged that they could not be informed of the nature of the action taken by the Appointing Authority, but wished to be informed whether the investigation had led to the conclusion that the accusations that had been made were justified or not. They also believed it is unfair for the Commission to raise privacy concerns in order to refuse that information to them, after it had disclosed their names and testimonies to the alleged harasser, who was their line manager. The complainants mentioned that several persons involved in the procedure had to change their workplace due to the pressure they suffered afterwards, while the alleged harasser has had a "successful career". In the complainants' opinion, such situations discourage potential witnesses from testifying in harassment procedures.

9. In its **formal opinion**, the Commission stated that the rules governing administrative inquiries in force at the time of the harassment procedure distinguished between inquiries resulting from a request for assistance, in which the Commission was obliged to inform the



witnesses of the results, and inquiries opened at the initiative of the disciplinary authority, in which the rules did not provide for such an obligation. The procedure in which the complainants took part belonged to the latter category.

10. Nevertheless, the Commission acknowledged that the complainants may have been led to believe, when they were being interviewed, that at the end of the inquiry they would be informed whether their allegations were considered well founded. The Commission also acknowledged that it needs to take into account the complainants' feelings, bearing in mind that they were deeply affected by the events about which they had testified.

11. Consequently, the Commission considered that in " *the very particular circumstances of this case* ", it could expand on the responses previously given, although the complainants had already received more information than any other witness interviewed during the same procedure. It thus stated that the inquiry concluded that certain actions which were the subject of their complaints could constitute breaches of the Staff Regulations liable to disciplinary action against their former line manager. Furthermore, the inquiry " *was not closed without further action* ". The Commission again apologised to the complainants for the delay in informing them that the inquiry had been closed.

12. In their final **comments** , the complainants said that the administrative inquiry was initiated following several complaints from members of staff. The inquiry was meant to ascertain whether there was any basis for the allegations of psychological harassment made against the manager in question. Therefore, the requests for support from staff were, in fact, at the basis of the inquiry. Besides, during their testimony the complainants stressed to the investigators that they had been subject to harassment, and were encouraged to speak out as regards that behaviour. The investigators asked detailed questions about the forms which the alleged harassment of the complainants had taken. Consequently, there was no need for them to submit a formal request for assistance.

13. In any event, the Commission has a duty to assist any official subject to harassment, regardless of whether the official in question has taken the initiative to ask for assistance.

The Ombudsman's assessment

14. The administrative procedures applied in disciplinary matters by the European Commission are detailed in the Manual of the Investigation and Disciplinary Office of that institution ('IDOC Manual'). That manual distinguishes between administrative inquiries and inquiries under Articles 24 of the Staff Regulations [2] . At the time of the events , paragraph 77 of the IDOC Manual provided that in Article 24 procedures " *all those questioned in the course of the investigation will also be informed of the outcome of the inquiry* ", when the latter involves alleged harassment.

15. However, the Commission clarified in its opinion that the procedure in which the complainants took part was not an Article 24 procedure, but an administrative investigation



governed by different rules. For this type of procedure, the IDOC Manual did not require that witnesses should be informed of the outcome of the investigation. Therefore, the Commission had no formal obligation to tell the complainants whether their allegations had been upheld or not.

16. Nevertheless, and for a number of reasons, the Commission accepted the need for a more nuanced approach in this case.

17. First, it is undisputed that the investigation in which the complainants testified concerned allegations of harassment and had been initiated in order to verify whether these allegations, which had been made by staff members, were founded. The complainants thus have a point when they say that **there was no reason to make an Article 24 request for assistance to the Appointing Authority**, given that their grievances in this regard were already being dealt with in the context of a pending investigation. Moreover, having seen the Commission's documents concerning the investigation, the Ombudsman has ascertained that, by their content, the complainants' declarations could have well been made in an Article 24 procedure. The Commission seems to be aware of the hybrid, out-of-ordinary nature of the investigation which it carried out when it refers to the "*very particular circumstances*" of the case at hand.

18. Second, it is also undisputed that the complainants were told by the investigators, at the beginning of their testimony, that they would be informed of the outcome of the investigation. Although this promise had no legal basis, it does show that even the investigators may have had doubts as regards the real nature of the procedure that was being carried out, or at least as regards the consequences of its hybrid character. In any event, **the complainants were reasonably entitled to rely on the investigators' promise that they would be informed of the outcome** and to expect it to be fulfilled.

19. Third, testifying against one's superior in an administrative investigation concerning alleged harassment is indeed a challenging decision which requires courage and commitment. It is also a decision which **places witnesses in a very disadvantageous position with regard to their superior**, given that the latter is informed of the testimonies and their authors, while witnesses are not entitled to any information. The argument that the investigation in question was not an Article 24 procedure, although its object was very much the same as if it were, is therefore rather formalistic.

20. It follows that, notwithstanding the fact that the inquiry in question was not based on Article 24 of the Staff Regulations, fairness required the Commission to inform the complainants whether their positions were confirmed or not.

21. In its opinion, the Commission eventually provided the complainants with such information. The Commission clarified that some of the actions reported by the complainants could constitute breaches of the Staff Regulations liable to disciplinary action, and that the investigation was not closed without further action. The Ombudsman's inspection confirmed that this was indeed so. While it does not specify which allegations were confirmed and which were not, this response allows the complainants to ascertain the outcome of the investigations to a reasonable degree,



while sufficiently protecting the privacy of their former line manager. In any event, the Ombudsman notes the complainants' statement that they do not wish to know the nature of the action taken by the Appointing Authority, but only to be officially informed whether the investigation was closed recognising or declining the accusations.

22. Consequently, the Ombudsman considers that the Commission has settled the matter.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

The Commission has taken steps to settle the matter.

The complainant and the Commission will be informed of this decision.

Emily O'Reilly

Strasbourg, 24/06/2015

[1] Those rules were updated in March 2014 and the obligation to inform witnesses of the outcome of the procedure was deleted.

[2] Also inquiries under Articles 73 and 90 of the Staff Regulations, which are irrelevant to this case. Article 24 of the Staff Regulations concerns the EU Institutions' obligation to assist their officials in procedures against persons threatening or insulting them by reason of their position.