

Decision of the European Ombudsman on complaint 231/97/BB/XD against the European Commission

Decision

Case 231/97/XD - Opened on 06/05/1997 - Decision on 27/07/1998

Strasbourg, 27 July 1998 Dear Mrs M. On 17 March 1997, you lodged a complaint with the European Ombudsman against a decision made by the European Commission to recover an double payment which would have been made to you in error in 1990. On 6 May 1997, I forwarded your complaint to the President of the Commission. The Commission sent its opinion on 29 July 1997 and I forwarded it to you with an invitation to make observations, which you sent on 30 October 1997. I am writing now to let you know the results of the inquiries that have been made.

BACKGROUND

You are a French citizen who worked for the Commission between 1988 and 1993 under a variety of employment conditions. According to the Commission, you introduced multiple requests for daily allowances and travel expenses covering the same items between January and July 1990. The Commission states that it made two transfers to your bank account: a first transfer of 5892,39 ECUs in June 1990 covering your daily allowances and travel expenses from January to March 1990, and a second transfer of 409 836 BF in September 1990 related to your daily allowances and travel expenses between January and July 1990, again including the period between January and March 1990.

YOUR COMPLAINT

Your complaint is lodged against the decision of the Commission dated 29 November 1996 which aims to recover 5 892,39 ECUs, with an additional charge for interest, which would correspond to the payment made in error to you in 1990. You dispute the debt claimed by the Commission and you allege some administrative failures: 1. *With regard to the existence of the debt* You dispute the existence of the debt and you put forward that the Commission took too long before claiming the alleged debt. 2. *With regard to the alleged administrative failures* The Commission's decision states that the litigious payment was transferred to your bank account at the Bruxelles Lambert Bank; however, you state that you never had an account opened in this bank. The Commission did not produce any official document which could prove the transfer to your bank account. The Commission did not send you any official note related to a double payment. The first letter sent by the Commission about it is dated 15 October 1993, that is to



say three years after the litigious payment. Furthermore, the order for the alleged payment by the Commission refers to the 1989 budget whereas the alleged expenses are dated from 1990. You believe that the Commission set up the dossier in order to harm you.

THE COMMISSION'S OPINION

1. With regard to the existence of the debt The Commission confirms that you did receive the litigious payment. In order to prove this fact, the Commission has transmitted the copies of certain documents to the Ombudsman including most importantly: A note signed by you on 20 February 1990 in which you ask for daily allowances for "*January, February and why not March ...*" as well as the refund of your travel expenses Paris-Brussels/Brussels-Paris. A series of weekly declarations signed by you between January and July 1990 in which you ask for daily allowances and the refund of travel expenses Paris-Brussels/Brussels-Paris. A bank statement from your bank which mentions a payment of 5 892,39 ECUs to your bank account with the object: "daily allowances January March 1990 + 5 trips Paris Brussels". Another bank statement which mentions a payment of 409.836 BF on your account with the object "daily allowances from 8.1.90 until 13.7.90 included". The Commission considers that there was no delay in the procedure and that the facts contradict your allegations. The Commission's accounting department sent an official note to you in July 1990. However, it did not undertake any action because it hoped for a spontaneous refund from you. The Commission then sent various mails to you between 1993 and 1995. A meeting with the Commission's services took place in April 1994 in which you undertook to pay your debt by installment. Further to unsuccessful attempts to recover the debt, the Commission took the decision of 29 November 1996.

2. With regard to the alleged administrative failures The Commission recognizes that a writing mistake appears in the decision of 29 November 1996. The first number of the bank account was not correctly written. This led to an error in the bank name. However, the payment was correctly made to your own bank account. The Commission refers to the bank documents which confirm that you received a double payment and it states that it sent an official note to you in July 1990 as well as reminders. The payment of 5 892, 39 ECUs was ordered using the credits of the 1990 budget (carry over of 1989 credits). The Commission states that it treated you like it treats all the other debtors of the Institution and it formally denies any attempt to harm you. The Commission concludes its opinion by saying that it dealt with your file as diligently as it deals with all the other debtors of the Institution and that its accounting department acted in conformity with the provisions laid down in the internal procedure regarding the recovery of debts.

YOUR OBSERVATIONS

You maintain your complaint against the Commission and, in summary, you make the following points: The Commission alleges that it discovered the double payment in June 1990; however, it officially claimed the refund only three years later. The Institution could have deducted the litigious payment from your salary when you were still working for it. During the meeting with the Commission's services, you could not verify, four years later, the Commission's suspicions about the double payment. You deny the Commission's statement that you would have accepted the existence of the double payment during the meeting. Your specific situation in 1990 can shed light on some points of the dossier. During the first semester of 1990, you worked for the Commission under an unclear employment situation. The form of your salary was



not clearly defined and your financial situation was precarious. You ask for a total write-off of the debt which is claimed by the Commission as a complement of salary.

THE DECISION

1 The complaint is lodged against a decision of the European Commission dated 29 November 1996 which aims to recover an alleged payment made in error to the complainant in 1990 for daily allowances and refund of travel expenses. 2 The European Ombudsman carefully examined the material which was transmitted to him by the Commission and in particular copies of bank documents. It appears that the Commission did make two payments with the same object and covering the same period. It also appears that the complainant does not deny this double payment any longer in her observations. 3 The European Ombudsman also examined the administrative behaviour of the Commission in the recovery process of the debt. It appears that the European Commission sent various mails to the complainant between 1993 and 1995 and that a meeting took place between the Commission and the complainant in April 1994. It therefore seems that the Commission took the decision dated 29 November 1996 following unsuccessful approaches to the complainant to recover the debt. 4 In view of these findings, there appears to have been no instance of maladministration by the European Commission. 5 As regards the request made by the complainant to obtain a write-off of the debt claimed by the Commission, the European Ombudsman needs to mention that he has no power to deal with this request.

CONCLUSION

The European Ombudsman has not found any instance of maladministration by the European Commission. He therefore closes the case. Yours sincerely Jacob Söderman cc: Mr Jacques SANTER, President of the European Commission Monsieur J-C EECKHOUT, Director, General Secretariat of the European Commission Madame Hélène ROUSSEAU, Barrister, Complainant's legal advisor