

Decision of the European Ombudsman on complaint 485/97/VK/OV against the European Commission

Decision

Case 485/97/OV - Opened on 10/09/1997 - Decision on 30/07/1998

Strasbourg, 30 July 1998 Dear Mr W., On 3 June 1997 you made a complaint to the European Ombudsman concerning the conditions in which your contract as audiovisual correspondent in the Representation of the European Commission in the Hague has not been renewed. On 10 September 1997, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 17 December 1997 and I forwarded it to you with an invitation to make observations, if you so wished. No observations have been received from you. On 25 June 1998, I received complementary comments from the Commission in which it informed me that a friendly solution had been reached with you. 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 were as follows : Mr W., a journalist who is working as an audiovisual correspondent in the Representation of the European Commission in the Hague, complains about the conditions in which his contract has not been renewed. Firstly, he complains that the Head of the Commission Representation refused to sign the last renewal of his three years contract, because he ought the function to be superficial. This happened on 1 April 1997, i.e. one month after the expiration date of the contract, and without any consultation of audiovisual unit of DG X (Information, Communication, Culture and Audiovisual Media) of the Commission. Secondly, the complainant who had worked normally for the whole month of March, was also informed that he would not be paid for that month. According to the complainant, by acting this way, the Commission Representation committed administrative procedure faults.

THE INQUIRY

The Commission's opinion As regards the non-renewal of the contract, the Commission observed in its comments that the initial duration of the contract of the complainant, signed on 25 April 1996 by the outgoing Head of the Commission Representation in the Hague, was one year, renewable for a further year. Given that the new Head of Representation only took up his duties on 3 March 1997, the decision as to renew the complainant's contract was postponed until his arrival. The complainant was orally informed of the decision not to prolong his contract



in meetings with the Head of Representation on 11 March and 1 April 1997. The Head of Representation decided that it was inappropriate to prolong the contract. Further to a written note dated 3 April 1997 in which the complainant criticised the decision, the Head of Representation informed the complainant in a letter of 7 April 1997 that there were no grounds to review the decision. The complainant finally introduced a demand for payment for the month of March 1997 to the amount of 2,500 ECU, which corresponded to one twelfth of the payment due for the initial period. This request was refused. The Commission finally observed that there was some confusion as regards the exact nature of the complainant's contractual rights. The Commission declared that it was prepared to try to find a friendly solution with the complainant. In its complementary comments, the Commission informed the Ombudsman that a friendly solution had been reached and that the complainant would be paid the 2,500 ECU which he claimed for his activities during the month of March 1997. **The complainant's observations** No written observations have been received from the complainant. However, on 6 July 1998 the complainant informed the office of the Ombudsman by phone that he was satisfied with the friendly solution. He thanked the Ombudsman for his intervention.

THE DECISION

1 The alleged failure to inform the complainant in due time about the non-renewal of the contract 1.1 The complainant claims that he was not informed of the non-renewal of the contract in due time. More particularly he alleges that he has been informed of it only one month after the expiration date of the contract. The Commission however observed that the initial duration of the contract, signed on 25 April 1996, was one year, renewable for a further year, and that the complainant was orally informed about the non-renewal on 11 March and 1 April 1997, and by letter on 7 April 1997. 1.2 The European Ombudsman deals with complaints of maladministration that arise from contractual relationships. He does not, however, seek to determine whether there has been a breach of contract by either party. This question could be dealt with effectively only by Dutch courts which, according to article 7 of the contract, are competent for litigations between the parties, and which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact. 1.3 As regards the obligation to inform in due time, it appears that the expiration date of the initial contract was 25 April 1997 and not 1 March 1997 as indicated by the complainant. It further appears that the complainant was informed of the non-renewal, first orally in meetings with the Head of Representation, on 11 March and 1 April 1997 (date also mentioned by the complainant), and later by letter, on 7 April 1997. This means that the Commission Representation informed the complainant of the non-renewal 25 days before the expiration date of the contract, and not one month after it as indicated by the complainant. Therefore, as regards the obligation to inform in due time, there appeared to be no instance of maladministration by the Commission. *2 The friendly solution with regard to the payment of 2,500 ECU for the month of March 1997* 2.1 Given that the complainant had worked normally for the whole month of March 1997, he introduced a request for payment for this month to the amount of 2,500 ECU, which was refused by the Commission Representation. However, in its comments, the Commission observed that there had been some confusion about the exact nature of the complainant's contractual rights. Therefore, further to the Ombudsman's request, the Commission was prepared to find a friendly solution with the complainant and agreed to pay 2,500 ECU for the complainant's activities during the month of March 1997. The complainant



informed the Ombudsman that he was satisfied with the agreement which had been reached.

2.2 The Ombudsman takes note of the fact that this agreement eliminates the possible instance of maladministration and that the complainant has expressed his satisfaction with the agreement.

3. *Conclusion* 3.1 On the basis of the European Ombudsman's inquiries into point 1 of this complaint, there appears to have been no maladministration by the European

Commission. 3.2 As regards point 2 of this complaint, a friendly solution has been agreed

between the institution and the complainant. The Ombudsman therefore closes the case. Yours

sincerely Jacob Söderman cc: Jacques SANTER, President of the European Commission

Jean-Claude ECKHOUT, Director