

Decision of the European Ombudsman on complaint 307/98/IJH against the European Commission

Decision

Case 307/98/IJH - Opened on 23/04/1998 - Decision on 23/09/1999

Strasbourg, 23 September 1999 Dear Mr L., On 13 March 1998, you made a complaint to the Ombudsman against the Commission (DG 1A) concerning its handling of a complaint which was made against you whilst you were working for a Tacis consultancy. On 23 April 1998, I forwarded your complaint to the Commission. On 19 May 1998 you wrote to me again, specifying your main concern. The Commission sent its opinion on 29 July 1998 and I forwarded it to you with an invitation to make observations, if you so wished. No observations were received from you. In June 1999 my services attempted unsuccessfully to contact you by telephone and e-mail. On 16 September 1999 my services contacted you by telephone and on 21 September 1999 you sent an e-mail which included observations on the Commission's opinion and on the future handling of your complaint. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

According to the complainant, the facts on which the complaint is based are, in summary, as follows: From October 1995 to September 1996, the complainant worked as a resident monitor of the EC-funded Tacis (1) programme in Central Asia and Mongolia. He was employed under contract by a consultancy company. In February 1996, he was informed by his team leader that the Commission services in Brussels had asked for his dismissal, apparently as a result of a complaint made against him by the leader of the European Union Tacis programme coordinating unit. The complainant in fact continued to work as a monitor until the expiry of his contract in September 1996. However, his contract was not renewed by the consultancy company and he was subsequently not accepted for employment on certain other Tacis projects. On 7 November 1997, the complainant wrote to the acting head of Unit of DG1A/C4 of the Commission in Brussels. He explained the circumstances surrounding the non-renewal of his contract, his subsequent difficulties in obtaining alternative employment and that he considered that the Commission had, in practical terms, blacklisted him. He asked for comments on these points. He also asked a number of specific questions: what was the complaint that the Commission received against him in February 1996?; why did the Commission not inform him at the time either that the complaint had been made or of its content?; and why had the Commission not approached him to seek his response to the complaint? On 4 December 1997, the Commission services sent a three-paragraph reply. The first paragraph stated that all questions related to the complainant's contract should be referred



to the company which employed him. The other two paragraphs were as follows: *"Please allow me further to stress that it is impossible to comment on the reasons why tenders from consultants tendering for Tacis projects in which you have taken part has not led to any work. As you might know all tender procedures are confidential and the best way to have knowledge about the reasons that a consultant did not win a tender is to ask the consultant. As part of the procedure all tenderers receive a letter stating the reasons for not winning the tender and the name of the winner. You seem to be speculating in the relations between an eventual complaint and the fact that consultants have not won a tender. Please understand that I don't analyse and comment speculations."* Being dissatisfied with this reply, the complainant addressed the Ombudsman. He claimed that the Commission should have informed him of the complaint made against him and given him a chance to answer it.

THE INQUIRY

The Commission's opinion The Commission's opinion included the following points: The Commission has no direct influence on a Contractor's staff policy and cannot decide to terminate an expert's contract of employment. It is limited to a quality control of experts when awarding a contract and can only intervene with the Contractor if the performance of his staff in the execution of his contractual obligations is not satisfactory. It is then for the Contractor to take the necessary measures for improving his performance. The Commission was aware of difficulties in cooperation with local authorities in the discharge of this assignment, but did not take action, leaving it to the Contractor to sort out his staff problems on the ground. Nor did the Commission exert pressure on the Contractor in order to terminate the complainant's employment. When the monitoring contract was to be renewed in December, the Contractor proposed a slightly different team of monitors, not including the complainant. As far as the Commission is concerned, such replacements are a common as regards longer term assignments. The Commission has not blacklisted the complainant for further work: *"the allegations put forward in this respect in the complaint are largely based on conjecture and are not substantiated enough to allow verification."* **The complainants' observations** Not having received any observations from the complainant, the Ombudsman's services attempted to contact him by telephone and e-mail. In an e-mail sent on 21 September 1999, the complainant informed that Ombudsman that from September 1998 to January 1999 he had worked on a Tacis project in Russia and since February 1999 he is employed in Russia as resident team leader of a UK Know How Fund project. He pointed out that the Commission's opinion ignores a number of points made in his complaint, but also indicated that he was no longer interested in seeking any further answers from the Commission in view of the time that had passed since the events in question.

THE DECISION

1 The complainant believed that his contract with a Tacis consultancy was not renewed because of pressure from the Commission following a complaint against him. He wrote to the Commission asking what the complaint was, why he had not been informed of it or its content and why he had not been given the opportunity to answer it. 2 In its reply to the complainant's letter, the Commission failed to answer his questions. Nor did the Commission invoke any grounds of confidentiality as a reason for not providing the information requested. In its opinion on the complaint to the Ombudsman, the Commission similarly failed to respond to the



complainant on these matters. 3 The principles of good administrative behaviour require that answers to correspondence shall as far as possible be helpful and reply to the questions which are asked. The Commission's evasive and unhelpful responses to the complainant constitute an instance of maladministration. **Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark: In its reply to the complainant's letter, the Commission failed to answer his questions. Nor did the Commission invoke any grounds of confidentiality as a reason for not providing the information requested. In its opinion on the complaint to the Ombudsman, the Commission similarly failed to respond to the complainant on these matters. The principles of good administrative behaviour require that answers to correspondence shall as far as possible be helpful and reply to the questions which are asked. The Commission's evasive and unhelpful responses to the complainant constitute an instance of maladministration. Since the complainant is no longer interested in seeking any further answers from the Commission, it is not possible to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision. Yours sincerely, Jacob SÖDERMAN

(1) Technical Assistance to the Commonwealth of Independent States