

Otsus juhtumi 163/2006/(GK)MHZ kohta - Suutmatus selgitada asutuse töötaja negatiivset hindamist

Otsus

Juhtum 163/2006/(GK)MHZ - **Alguskuupäev:** {0} 27/01/2006 - **Otsuse kuupäev:** {0} 13/12/2006

Komisjoni ametnik saatis kirja Euroopa Keskkonnaagentuurile (EKA) probleemide kohta, mis tekkisid komisjoni koostöös EKA töögrupiga, mille tegevuse eest vastutas kaebuse esitaja. Hiljem töölt vabastatud kaebuse esitaja väitel oli kiri saadetud tema ülemuse palvel, et tema vastu tõendeid koguda. Kaebuse esitaja kirjutas selgituste saamiseks komisjonile. Kuna komisjon ei vastanud, pöördus kaebuse esitaja ombudsmani poole.

Komisjon tunnistas, et kaebuse esitaja ei ole oma kirjale vastust saanud, ja avaldas selle üle kahetsust. Samas võttis komisjon seisukoha, et oleks olnud kohatu arutada EKA üksiktöötajate või endiste töötajatega nende suhteid EKAgas. Komisjon ei oleks seetõttu saanud sisuliselt vastata kaebuse esitaja teabenõudele.

Kaebuse esitaja arvamuse järgi ootas tema, et vastavale komisjoni ametnikule saadetakse kirjalik hoiatus ja et koopia hoiatusest saadetakse talle.

Ombudsman leidis, et komisjon oli kaebuse esitajale tema taotletud teabe andmisest keeldumist mõistlikult põhjendanud. Samas on komisjoni poolt kaebuse esitaja kirjale vastamata jätmine haldusomavoli juhtum. Komisjoni kahetsusavaldus kirjale vastamata jätmise osas ei ole käsitletav ühemõttelise vabandusena, mis peaks kaebuse esitajat põhjendatult rahuldama. Ombudsman tegi seetõttu kriitilise märkuse.

Mis puudutab kaebuse esitaja tõstatatud teemasid, siis osutas ombudsman, et distsiplinaarkaristusi saab määrata üksnes asjakohaste personalieeskirjade sätete alusel. Kui ombudsman peaks näiteks osana temale esitatud kaebuse uurimisest uurima seda, kas antud juhtumi puhul tuleks algselt distsiplinaarmenetlust, siis viiks ta tegelikult läbi midagi eeldistsiplinaarmenetluse laadset, mille järeldusi tõenäoliselt tõlgendatakse kui järgneva distsiplinaarmenetluse eelotsustust või võetakse eelotsusena. Kuna kaebuse esitaja tähelepanekut saab tõlgendada uue nõudena, siis leidis ombudsman, et ta ei saa seda oma uurimises käsitleda.

Strasbourg, 13 December 2006

Dear Ms W.,



On 16 December 2005, you made a complaint against the European Commission. The complaint arose out of the same factual circumstances as a complaint that you submitted against the European Environment Agency (3933/2005/GK) on the same date. The latter complaint was declared inadmissible in accordance with Article 2(8) of the Statute of the Ombudsman since it concerned your work relationship with the EEA and you had not made an appeal under Article 90 (2) of the Staff Regulations.

On 27 January 2005, I forwarded your complaint against the Commission to the President of the Commission.

On 11 April 2006, the Commission sent an opinion, which I forwarded to you with an invitation to make observations.

On 23 June 2006, I received your observations.

On 7 August 2006, I informed you that your complaint had been reassigned to another legal officer.

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 are, in summary, as follows:

On 16 October 2004, the complainant started to work as a temporary agent in the European Environment Agency ("the EEA"), dealing with the marine and coastal environment. As part of her responsibilities, she co-chaired a working group of the EEA called European Marine Monitoring and Assessment ("EMMA").

On 15 April 2005, her probation period was extended for a further 6 months.

On 26 August 2006, the complainant's line manager, who was also her supervisor in the EEA during her probation period, handed her a copy of a letter from the European Commission's Directorate-General for the Environment ("DG Environment") which was signed by the Head of Unit D2 and addressed to him. That letter, which was undated, was entitled " *Subject: EEA Contributions in Relation to the Development of the Marine Strategy* ". In that letter the Head of Unit D2 expressed, in summary, the Commission's concerns as regards the EEA's contribution to the thematic strategy for the protection of the marine environment developed by the Commission. The letter stated that " *the rather low profile taken by the EEA (as represented by [the complainant] to date has tended to make other stakeholders suspicious (...)* ". The letter referred, in particular, to problems regarding the Commission's co-operation with the EMMA working group.



According to the complainant, the letter from the Commission Head of Unit had been sent at the request of her line manager, in order to produce negative evidence against her. Therefore, on 31 August 2005, she sent a letter to the Commission, by fax and by post. In her letter she asked: (i) on which basis the Head of Unit made " *such [a] strong negative opinion* " about her performance as a co-chairperson of the EMMA working group (she also mentioned in this regard that the Head of Unit was not present during the meetings co-chaired by the complainant); and (ii) why the Head of Unit sent the note in question to her line manager. In this regard, she asked for " *a written statement containing factual reasons for sending the note* " (1) . The Commission did not reply to her letter.

On 9 September 2005, the complainant received from her line manager (her supervisor) the final evaluation report on her probationary period, in which her overall performance was assessed negatively and it was proposed not to continue her contract. The report included a negative assessment of the complainant's role in co-chairing EMMA, and mentioned the above letter sent by the Commission (" *A letter (attached) from the relevant Head of Unit in DG Environment, complaining about a lack of active involvement from the EEA side in EMMA, seems to support this view, though the criticism is rightly aimed at the EEA itself.* ") The complainant signed the evaluation report on 14 September 2005 but did not agree with her evaluation and asked her line manager for clarification concerning the letter from the Commission Head of Unit that was mentioned in the report.

The complainant attached to her complaint to the Ombudsman, among other documents, a note dated 14 September 2005, which constituted the reply of her line manager to her request and which was marked confidential.

Subsequently, the complainant was dismissed from the EEA.

On 16 December 2005, the complainant lodged two complaints with the Ombudsman: one against the EEA (3933/2005/GK), and another against the Commission (the present complaint).

Her complaint against the EEA, which concerned her dismissal from the agency, was considered inadmissible in accordance with Article 2(8) of the Statute of the Ombudsman since it concerned the complainant's work relationship with the EEA and the complainant had not made an appeal under Article 90 (2) of the Staff Regulations.

The complaint against the Commission (that is, the present complaint) was considered admissible. In that complaint, the complainant alleged that the Commission failed to reply to her letter of 31 August 2005 and to provide her with information as regards the facts on the basis of which a Commission official formulated a negative opinion about her performance as an employee of the EEA.

THE INQUIRY

The opinion of the Commission

The Commission's opinion can be summarised as follows:



The complainant was employed by the EEA. At the end of her probation period her appointment as a temporary agent was not confirmed and she appeared to be pursuing a separate complaint against the EEA in this regard (2) . The complaint concerned the letter from a Commission official to the complainant's line manager expressing concerns in relation to the support provided by the EEA to the Commission in the development of the new marine protection strategy. On 31 August 2005, the complainant wrote directly to the Commission official in question and requested clarification regarding the basis upon which that official had formulated his negative opinion on her performance.

As regards the complainant's allegation concerning the failure to reply, the Commission acknowledged and regretted that the complainant did not receive a reply to her letter dated 31 August 2005. The Commission pointed out that, in accordance with the Commission's own Code of Conduct (3) , the complainant was entitled to receive such a reply. The Commission should have sent her a letter formally acknowledging receipt of her letter of 31 August 2005, and informing her that the Commission did not enter into discussions with individuals about its relationships with Community agencies.

As regards the complainant's allegation concerning the failure to provide information, the Commission stated that the letter in question had expressed the Commission's concerns regarding the quality of the support provided by the EEA to the Commission in a particular policy area. The Commission considered that sending such a letter was an appropriate action in the context of the on-going collaboration between the Commission and the EEA. The complainant's name was mentioned in this letter, given that, at the time, she was the desk officer dealing with the file on the above specific policy area. The Commission took the view that a discussion relating to the support provided by the EEA on an important policy file was clearly a matter between the Commission and the EEA. Therefore, it would be inappropriate for the Commission or its services to enter into a debate about it with individual employees or former employees of the EEA. According to the Commission, it would therefore not have been able to reply in substance to the complainant's request for information.

The complainant's observations

The complainant's observations can be summarised as follows:

First, the complainant pointed out that, contrary to the information provided by the Commission in its opinion, she was not pursuing a separate complaint against the EEA (4) .

Second, the complainant stated that she understood the Commission's point of view that it would not enter into a debate with individual employees of the EEA. However, she found it disturbing that a Commission official acting in collusion with the EEA's line manager could bring about the dismissal of an employee of the EEA, since that dismissal was based on a letter prepared by the official in question at the request of the above-mentioned line manager. She expressed the view that the result of the failure to reply to her request for information, as regards the basis of which the Commission official formulated his negative opinion about her performance, was that her case was " *nipped in the bud* ".



Third, the complainant noted that the Commission admitted that it had broken its own code of good administrative behaviour (5) . However, she stated that she feels completely ignored by the Commission and that the Commission should have followed, to the letter, the rules it itself established.

Finally, she expected that the Commission official in question would receive a written warning which should remain in his personal file and that a copy of the warning would be sent to her. She took the view that such a record of wrongdoing would keep the official in question from causing distress to other persons in the future. She also took the view that, in the absence of such steps, that official might regard himself as being "completely immune to taking full responsibility for his actions and to following the Commission's Code of Conduct".

THE DECISION

1 Preliminary remarks

1.1 In her observations on the Commission's opinion, the complainant stated that she expected that the Commission official in question would receive a written warning which should remain in his personal file and that a copy of the warning would be sent to her.

1.2 The Ombudsman points out that disciplinary sanctions can only be imposed in accordance with the relevant provisions of the Staff Regulations, which contain clear rules as to how disciplinary proceedings are to be conducted, including in particular the right of the official concerned to be heard. The Ombudsman is therefore unable to pronounce himself on a claim that such sanctions should be imposed in a given case. Moreover, if the Ombudsman were, as part of his inquiry into a complaint submitted to him, to investigate whether disciplinary proceedings should be opened in a given case, he would in effect carry out what might be called pre-disciplinary proceedings, the conclusions of which would be likely to prejudge, or be seen to prejudge, the outcome of any subsequent disciplinary proceedings.

1.3 Insofar as the complainant's observation could be understood as a new claim, the Ombudsman therefore considers that it cannot be dealt with in his inquiry.

1.4 The complainant's observations on the Commission's opinion also expressed the view that her dismissal from the European Environment Agency (EEA) had been brought about by a Commission official "acting in collusion" with her line manager at the EEA. The Ombudsman considers that questions relating to the reasons for non-renewal of the complainant's contract concern her work relationship with the EEA. The Ombudsman recalls that he has already informed the complainant (in response to her complaint 3933/2005/GK) that, in accordance with Article 2 (8) of the Statute of the Ombudsman, he cannot deal with the matter, since the complainant has not made use of the possibility to appeal under Article 90 (2) of the Staff Regulations.

2 Failure to reply to the complainant's letter

2.1 The complainant alleged that the Commission failed to reply to her letter of 31 August 2005.

2.2 In its opinion, the Commission admitted that it failed to answer the complainant's letter in



violation of the Commission's code of good administrative behaviour (6) and expressed its regret for this failure.

2.3 The Ombudsman recalls that, according to the Commission's own code of good administrative behaviour, a reply to a letter addressed to the Commission shall be sent within 15 working days from the date of receipt of the letter by the responsible Commission department. If a reply cannot be sent within the deadline mentioned above, a holding reply is to be sent, indicating a date by which the addressee may expect to be sent a reply.

2.4 The Ombudsman notes that, in the present case, the Commission acknowledged and expressed regret for its failure to reply to the complainant's letter. However, the Ombudsman does not consider that an expression of regret constitutes an unambiguous apology that could reasonably be expected to satisfy the complainant. The Ombudsman therefore considers it necessary to make a finding that the Commission's failure to acknowledge or reply to the complainant's letter of 31 August 2005 was an instance of maladministration and a critical remark will be made below.

3 The alleged failure to provide information

3.1 The complainant alleged that the Commission failed to provide her with information as regards the facts on the basis of which a Commission official formulated a negative opinion about her performance as an employee of the EEA.

3.2 The Commission stated, in summary, that the letter in question was sent in the context of the discussion between the Commission and the EEA relating to the support provided by the EEA on an important policy file. This was clearly a matter between the Commission and the EEA only and it would be inappropriate for the Commission or its services to enter into a debate about this issue with individual employees or former employees of the EEA. For that reason, the Commission could not provide the complainant with the information she asked for.

3.3. The Ombudsman considers that the justification given by the Commission as to why it did not provide the complainant with the information she asked for appears to be reasonable. The Ombudsman also notes that, in her observations, the complainant appeared to accept the Commission's view.

The Ombudsman does not therefore find that any further inquiries are necessary as regards the allegation concerning the failure to provide information.

4 Conclusion

On the basis of his inquiry into this case, the Ombudsman makes the following critical remark:

According to the Commission's own code of good administrative behaviour, a reply to a letter addressed to the Commission shall be sent within 15 working days from the date of receipt of the letter by the responsible Commission's department. If a reply cannot be sent within the deadline mentioned above, a holding reply is to be sent, indicating a date by which the addressee may expect to be sent a reply. In the present case, the Commission acknowledged and expressed regret for its failure to reply to the complainant's letter. However, the Ombudsman does not consider that an expression of regret constitutes an unambiguous



apology that could reasonably be expected to satisfy the complainant. The Ombudsman therefore makes a finding that the Commission's failure to acknowledge or reply to the complainant's letter of 31 August 2005 was an instance of maladministration.

Given that this aspect of the case concerns procedure relating to the specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The President of the Commission will be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) The Ombudsman notes that the complainant referred in her letter to the document sent by the Commission to the EEA as "the note", while in her complaint form she used the term "the letter". Therefore, the Ombudsman will use the term "the letter" throughout his decision when referring to the Commission document in question.

(2) The Ombudsman assumes that the Commission here refers to complaint 3933/2005/GK, which was declared inadmissible in accordance with Article 2(8) of the Statute of the Ombudsman since the complaint concerned the work relationship with the EEA and the complainant had not made an appeal under Article 90 (2) of the Staff Regulations.

(3) The Ombudsman understands that the Commission was referring to its Code of Good Administrative Behaviour.

(4) The Ombudsman notes that the complainant has not made a new complaint against the EEA, following the Ombudsman's rejection of her complaint 3933/2005/GK as inadmissible.

(5) Code of Good Administrative Behaviour of the Commission, available on the Commission's website (http://europa.eu.int/comm/secretariat_general/code/index_en.htm [Linki]).

(6) Code of Good Administrative Behaviour of the Commission, available on the Commission's website (http://europa.eu.int/comm/secretariat_general/code/index_en.htm [Linki]).