

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARK S. MILOSCH)
213 Baden Street)
Silver Spring, MD 20901,)
)
Plaintiff,)

v.

ALCEE HASTINGS, in his official)
capacity as Chairman of the)
Commission on Security and)
Cooperation in Europe,)
2353 Rayburn House Office Building)
Washington, DC 20515,)
)
and)
)
COMMISSION ON SECURITY AND)
COOPERATION IN EUROPE,)
234 Ford House Office Building)
Washington, DC 20515,)
)
Defendants.)
_____)

Case: 1:07-cv-00594
Assigned To : Robertson, James
Assign. Date : 3/28/2007
Description: MILOSCH v. HASTINGS et al

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Mark S. Milosch brings this action for declaratory and injunctive relief against Defendants Alcee Hastings and the Commission on Security and Cooperation in Europe for violating Plaintiff's rights under the Fifth Amendment to the United States Constitution. As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff is a U.S. citizen and a resident of the State of Maryland. Plaintiff resides at 213 Baden Street, Silver Spring, MD 20901.

4. Defendant Alcee Hastings is the Chairman of the Commission on Security and Cooperation in Europe. Defendant Hastings also is a member of the U.S. House of Representatives and has his principal place of business at 2353 Rayburn House Office Building, Washington, DC 20515. Defendant Hastings is being sued in his official capacity as Chairman of the Commission on Security and Cooperation in Europe.

5. Defendant Commission on Security and Cooperation in Europe (“CSCE”) is an independent agency of the United States Government. Defendant CSCE has its principal place of business at 234 Ford House Office Building, Washington, DC 20515.

STATEMENT OF FACTS

6. Defendant CSCE, also known as the “Helsinki Commission,” was established by Public Law No. 94-304, 90 Stat. 661 (codified as amended at 22 U.S.C. § 3001-3009) for the purpose of monitoring and encouraging compliance with the Final Act of the Conference on Security and Cooperation in Europe, an international accord signed by participating nations in 1975 in Helsinki, Finland. Defendant CSCE has no direct legislative purpose or function.

7. By statute, Defendant CSCE is composed of twenty-one members, including nine members of the U.S. House of Representatives, nine members of the U.S. Senate, and one member each of the U.S. Department of State, the U.S. Department of Defense, and the U.S. Department of Commerce. Also by statute, the Chairman and Cochairman of Defendant CSCE are chosen at the beginning of each new Congress by the President of the Senate, on the

recommendation of the majority leader, or by the Speaker of the House of Representatives. For even-numbered Congresses, the Chairman is selected by the Speaker of the House of Representatives and the Cochairman is selected by the President of the Senate, on the recommendation of the majority leader. In odd-numbered years, the selection process is reversed.

8. The statute establishing Defendant CSCE also establishes both a commission staff and a personnel and administration committee composed of the Chairman, Cochairman, and the ranking commission member from the minority party in both the House of Representatives and the Senate. By law, “[a]ll decisions pertaining to the hiring, *firing*, and fixing of pay of Commission staff personnel shall be by a majority vote of the personnel and administration committee” 22 U.S.C. § 3008(b) (emphasis added).

9. By longstanding practice, the personnel and administration committee has made employment decisions amicably, through a “notification and right to object” process. When an employment action is proposed, other members are afforded a reasonable opportunity to object. If no objection is made, the proposed employment action proceeds.

10. In addition, Defendant CSCE has a long history of continuity of staff regardless of which party controls one or both houses of Congress. This non-partisan continuity of staff has been recognized and valued by Defendant CSCE’s members.

11. On information and belief, no member of Defendant CSCE’s staff has ever been fired without benefit of the statutory procedures defined in 22 U.S.C. § 3008(b). On one occasion in 1995, shortly after control of the U.S. House of Representatives changed hands, a proposed staff firing was abandoned in light of an objection raised by just one of the two

minority party members of the personnel and administration committee, even though by law two objections are required to block a firing.

12. Plaintiff holds a Bachelor of Arts in International Relations from Michigan State University, a Juris Doctorate from the University of Michigan Law School, a Certificate of Study from the Bologna Center of the John Hopkins University Paul H. Nitze School of Advanced International Studies, and a Doctorate of Philosophy in European History from the University of Iowa, among other academic achievements. Prior to 2006, Plaintiff served for three years as a Special Advisor to the Congressional-Executive Commission on China, where he focused on issues of religious freedom and population planning in China. He also has worked as an Instructor of History at the University of Iowa and as an attorney in private practice. In addition to his impressive academic and research credentials and extensive expertise, Plaintiff is a member of the State Bar of Michigan, a published author, and speaks multiple languages, including German, Italian, French, and Romanian.

13. On approximately November 30, 2006, Plaintiff was hired to serve as counsel to Defendant CSCE. Plaintiff's employment was effectuated through the "notice and right to object" process of longstanding use at Defendant CSCE. As counsel, Plaintiff's duties and responsibilities included monitoring rule of law issues and "country responsibility" for Romania, Germany, and France.

14. At all relevant times, Plaintiff carried out his duties and responsibilities at Defendant CSCE competently and professionally. Also at all relevant times, Plaintiff was aware of the majority-vote requirement for all decisions of the personnel and administration committee pertaining to hiring, firing, and fixing of pay of Defendant CSCE staff, the longstanding notice

and right to object practice of the personnel and administration regarding such decisions, and Defendant CSCE's history of non-partisan continuity of staff.

15. In January 2007, control of the U.S. House of Representatives changed hands. Because the new Congress was an even-numbered Congress, the new Speaker, Nancy Pelosi, gained the authority to designate the new Chairman of Defendant CSCE. Speaker Pelosi designated Defendant Hastings to serve as Chairman of Defendant CSCE.

16. As of January 2007, Defendant CSCE had a professional staff of approximately eighteen professional staff members, including Plaintiff.

17. In late January, 2007, shortly after assuming the chairmanship of Defendant CSCE, Defendant Hastings began efforts to terminate the employment of at least four members of Defendant CSCE's professional staff, including Plaintiff.

18. On February 2, 2007, the two incoming ranking members of the personnel and administration committee, Senator Sam Brownback and Representative Christopher H. Smith, sent a letter to Chairman Hastings objecting to the dismissal of Plaintiff and the other professional staff members. One of the professional staff members apparently agreed to resign.

19. Nonetheless, Defendant Hastings has ignored the objections of Senator Brownback and Representative Smith and proceeded with the termination of the other three professional staff members, including Plaintiff.

20. On March 20, 2007, Defendant Hastings' Chief of Staff verbally notified Plaintiff that Plaintiff had been fired. Plaintiff's congressional identification pass has not been renewed, and Plaintiff has been prevented from accessing his computer and the Internet, effectively precluding him from carrying out his duties and responsibilities. In addition, Plaintiff also has

been informed that the paperwork for removing him from the federal payroll has been submitted and is being processed.

COUNT 1

(Deprivation of Property Without Due Process of Law -- Violation
of the Fifth Amendment to the U.S. Constitution)

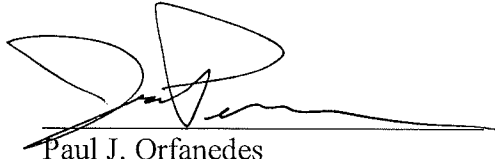
21. Plaintiff realleges paragraphs 1 through 20 as if fully stated herein.
22. Plaintiff enjoys a property right in his continued employment at Defendant CSCE.
23. Defendants have deprived Plaintiff of this property right without due process of law in violation of the Fifth Amendment to the U.S. Constitution. Specifically, Defendants have caused Plaintiff to be fired without a majority vote by the personnel and administration committee and over the objection of the two minority party members of the committee.
24. Plaintiff has been irreparably harmed by reason of Defendants' violation of his constitutional rights.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendants' termination of Plaintiff's employment to be unlawful; (2) enjoin Defendants to restore Plaintiff to his pre-termination employment; (3) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action; and (4) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 28, 2007

Respectfully submitted,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read 'Paul J. Orfanedes', is written over a horizontal line.

Paul J. Orfanedes

D.C. Bar No. 429716

James F. Peterson

D.C. Bar No. 450171

Meredith L. Di Liberto

D.C. Bar No. 487733

Suite 500

501 School Street, S.W.

Washington, DC 20024

(202) 646-5172

Attorneys for Plaintiff