

## Decision of the European Ombudsman on complaint 669/98/JMA against the European Commission

Decision

**Case 669/98/JMA - Opened on 07/07/1998 - Decision on 21/06/1999**

Strasbourg, 21 June 1999 Dear Mr P., On 9 June 1998, Mr Xabier Markiegi, regional ombudsman of Pays Basque (Ararteko) transferred to me a complaint you had lodged, on behalf of the association AVAPSI, with that institution. The complaint concerned the allegedly unjustified refusal by the Commission to extend the time-scale for the completion of project 96/018("Intervención Psicoterapéutica con Víctimas de la Violencia de Origen Político-Ideológico"), funded by the Commission's services (DG IA/A). On 7 July 1998, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 22 October 1998, which I forwarded to you with an invitation to make observations. On 3 December 1998, I received your observations. I am writing now to let you know the result of the inquiries that have been made.

**THE COMPLAINT** The background to the complaint is in brief the following: In 1996, the Commission granted 50.000 ECUs to the association AVAPSI in San Sebastian, in order to pay for psychological assistance to victims of political violence in the Basque Region of Spain. This grant was to be funded for a period of 12 months, starting in September 1996, under the European Community's Human Rights and Democratization Programme. At the end of the agreed period, on 27 September 1997, the association submitted a report, and requested to have an extension granted for a period of six months. The request was also formally made by letter of 31 December 1997. In its reply of 13 January 1998, the Commission considered that the request was not in accordance with the basis of the Programme since it had been made only after the initial contract had expired, and therefore did not accept it. Moreover, the complainant informed the Commission that since the NGO was unaware of the exact date for the conclusion of the project, they have continued to carry out the established tasks (providing assistance to victims of terrorism). They have therefore spent an amount of 1.989.000 PTA. During that extra period, although they had still a part of the funding (1.238.765 PTA) available. The Commission therefore asked AVAPSI to return the unspent funding. Since the association found the decision unjustified, and without a proper consideration of the effects of the project on important groups of citizens in the Pays Basque, it lodged a complaint with the regional ombudsman. The Ararteko forwarded the case to the European Ombudsman on 15 June 1998.

### THE INQUIRY

**The Commission's opinion** In its opinion, the Commission first explained the background of



the case. It indicated that its negative decision was a result of the prevailing rules of financial management. The request to extend the period of project validity was received after the end of the contract, and could not be treated as a simple contract amendment, because it would have involved a retroactive approval of expenditure. In its opinion, the Commission informed the Ombudsman that subsequent to the lodging of this complaint, it had replied in detail to the complainant. The Commission had asked AVAPSI to submit financial reports covering the specific period of the original contract, so that the precise amount spent legitimately could be determined, and a request was made to return the unspent grant funds. The Commission considered this *"to be sound management of public funds pursuant to the applicable procedure"*. In March 1998, the Commission reviewed the file, taking into account the fact that its position would have implied seeking the reimbursement of a considerable sum which had been spent by the organization beyond the contractual period. Since the request for reimbursement could have imposed extreme conditions for the complainant, and moreover it had been spent in pursuit of the objectives originally specified in the project request, the Commission reconsidered its position. It decided to accept the position being proposed by the AVAPSI, and informed the association of its new position. In its reply, the Commission attached a form of dispute settlement agreement by which the other party should accept to spend the outstanding amount on further activities in conformity with the initially agreed conditions. The Commission's proposal to settle the matter was dated July 1998, and covered the period for which expenditure could be considered to 30 September 1998. **The complainant's**

**observations** The complainant's observations are, in summary, the following: The complainant first expressed, on behalf of his association, his gratitude for the Ombudsman's satisfactory resolution of the matter. The complainant also made some remarks on the following points: Since the beginning of their relations with the Commission, the association had difficulties in getting information concerning the grounds of examination of its project. However, it recognised their lack of experience with Community matters. It has always informed the Commission of its work. So, before the sending of its final report (September 1997), it sent an activities' report in February. The association also recognises that it has overestimated the work that could be done in the original period contract. It explained this wrong estimation in its final report. In view of the important objectives of the project being developed, the complainant also asked the Ombudsman to support the association's request for a new contract with the Commission. Since this aspect was not part of the original complaint, and as the institution had no opportunity therefore to comment on it, the Ombudsman does not deem it appropriate to consider this new aspect. Furthermore, the EC Treaty empowers the European Ombudsman to inquire only into possible instances of maladministration in the activities of Community institutions and bodies. It is therefore beyond the remit of the Ombudsman to mediate before a Community institution in order to support the application for financial assistance of a particular project. On 5 May 1999, the complainant wrote again to the Ombudsman stating that despite the Commission's assurances, the final payment of the grant had not been yet made. Having informally contacted the responsible Commission services, the Ombudsman was informed that the bank transfer to the complainant had taken place on 14 May 1999. A copy of this bank operation was forwarded to the complainant by letter of the Ombudsman dated 17 June 1999.

## THE DECISION

On the basis of the information provided by the complainant and the opinion submitted by the



European Commission, the Ombudsman concludes that the case has been settled by the European Commission to the complainant's full satisfaction. Against this background, the European Ombudsman decides to close the case. The President of the European Commission, as well as the Ararteko of Pays Basque will also be informed of this decision. Yours sincerely,  
Jacob SÖDERMAN