

Decision of the European Ombudsman on complaint 1025/98/IP against the European Commission

Decision

Case 1025/98/IP - Opened on 02/12/1998 - Decision on 13/10/1999

Strasbourg, 13 October 1999 Dear Mr R., On 7 September 1998, you made a complaint to the European Ombudsman against the European Commission, concerning the Commission's handling of your complaint of 27 October 1997. On 2 December 1998, I forwarded the complaint to the President of the European Commission. On 29 March 1999 the Commission sent its opinion on this matter, which I forwarded to you on 13 April 1999, with an invitation to make observations, if you so wished. On 12 May 1999, I received your observations on the Commission's opinion. Further actions were taken by the Ombudsman on 23 June 1999 to obtain additional information on the case. On 12 July 1999 I received another letter from you. I am writing now to let you know the result of the inquiries that have been made. It is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman. On the basis of these provisions, the Ombudsman's inquiries have therefore been directed towards examining whether there has been maladministration by the European Commission. **THE COMPLAINT** The complaint is related to a framework initiative on "Employment and Development of Human Resources" that the European Commission introduced on the basis of article 11 of the Council Regulation (EEC) No 2082/93 (1). The European Commission launched the "Horizon II Program" for the years 1995-1997 within project 95 H GAL Castro Navas in Galicia (Spain) to improve the employment prospects of the disabled and other disadvantaged groups. The beneficiary of the project, with whom the complainant stipulated an employment contract, was the Menela Foundation. The Foundation received a financial contribution from the European Social Fund. According to the complainant, he ended his collaboration with the Foundation on 31 October 1996 due to the Foundation's failure to pay his invoices and other irregularities that in his view had taken place during the implementation of the project. In July 1997 he sent a complaint to the European Commission in which he alleged irregularities and misuse of Community funds in the carrying out of the project by the Foundation. The complainant indicated that the institution replied on 30 July 1997 informing him that, following the usual procedure in similar cases, his letter had been forwarded to the Unit responsible for the Administration of the European Social Fund in



Spain that would deal with this issue. The complainant sent a further letter to Directorate General V of the Commission on 27 October 1997, which was not replied to by the Commission. The complainant therefore wrote to the European Ombudsman on 7 September 1998, concerning the alleged failure of the European Commission to properly monitor the disbursement of funds through the European Social Fund (ESF) by the Menela Foundation and the Commission's handling of his complaint lodged in 1997.

THE INQUIRY

The Commission's opinion In its opinion on the complaint, the Commission made the following comments: The Commission acknowledged receipt of the complainant's letter of July 1997. It underlined that the beneficiary of the financial contribution was the Menela Foundation in Spain which was therefore solely responsible for the payment of the invoices of the applicant. In support of this position, the Commission quoted the provisions of Article 21.1 of Regulation No. 2082/93 (2). The institution also informed that, following the usual procedure, it forwarded the complainant's letter to the Unit responsible for the Administration of the European Social Fund in the Spanish Ministry of Employment and Social Affairs on 30 July 1997 and asked the Spanish authorities to be kept informed of the outcome of the investigation. The Commission stressed that it received a reply from the Spanish authorities only a few days before sending its opinion on the complaint to the Ombudsman. According to this reply, the invoices from the complainant for a total of some ESP 3 millions were amongst the outstanding balance at the end of 1996. The payment of this amount was forwarded to the Galician Regional Government, responsible for the programme, for its subsequent payment to the project beneficiary, namely the Menela Foundation. As concerns the other invoices of the complainant, the authorities concerned explained that they were included in the outstanding balance for 1997 that was being processed. The Commission finally considered that the European Ombudsman might have found it useful to contact the national authorities directly, if he so wished.

The complainant's observations In his observations the complainant basically maintained his original complaint. Moreover, he criticised the Commission for its failure to act against the absence of reply by the responsible Unit for the Administration of the European Social Fund in Spain.

FURTHER INQUIRIES On 23 June 1999 the European Ombudsman contacted the Unit for the Administration of the European Social Fund in Spain by phone. On 25 June 1999 he received further information on the case. The Unit for the Administration of the European Social Fund informed the Ombudsman that on 15 December 1998, following a reminder of the European Commission, it sent a letter to the Galician Regional Government with a request for information on the stage of the inquiry. It also pointed out that, as for the documents sent by the Galician authorities, it appeared that the Menela Foundation, the beneficiary of the project, had received the Community Funds and that the complainant had also received payments for 1996. In view of these facts, it considered to close the case and informed the European Commission of this decision by letter dated 3 February 1999. On 12 July 1999 the Ombudsman received an additional communication from the complainant. He expressed gratitude to the Ombudsman for his interest in the case and informed him that on 16 June 1999, after negotiations with the Menela Foundation, he had accepted the sum of 1.700.000 Pts offered to him. In view of this agreement reached with the Menela Foundation, the complainant stated that no further inquiries should be carried out. The complainant, however, reaffirmed his dissatisfaction with the Commission's way of dealing with his complaint.

THE DECISION On the basis of



the information provided by the complainant and the observations submitted by the European Commission, the Ombudsman has reached the following conclusions: **1. Alleged failure of the European Commission to properly monitor the disbursement of Community funds.** 1.1 The complainant claimed that the Commission had not properly monitored the disbursement of Community funds by the Menela Foundation. He mentioned in particular that the Foundation failed to pay some of his invoices related to the period in which he had participated in the project. 1.2. The Commission explained in its opinion that the beneficiary of the financial contribution was the Menela Foundation in Spain which was solely responsible for the payment of the invoices of the applicant. Following the usual procedure, the European Commission forwarded the complainant's letter to the Unit responsible for the Administration of the European Social Fund in Spain. 1.3. One of the basic principles of the Community policy for economic and social cohesion is the so-called "partnership" among the different actors involved in the process. As laid out in the rules governing the activities of EC Structural Funds, Community operations are to be carried out through close consultations between the Commission, the Member State concerned, and its competent authorities and bodies, at national, regional or local level. This partnership must be conducted in full compliance with the respective institutional, legal and financial powers of each of the partners (3) . 1.4 As regards the payment of ESF funds, the relevant regulations set out a clear division of responsibilities among the different actors, in application of the partnership principle. The Commission is responsible for the payments to the national, regional or local authorities referred to in the application for aid submitted by the Member State (4) . However, the responsibility for the payment to the final beneficiaries rests with the Member States which "*shall ensure that the beneficiaries receive the advances and payments as soon as possible*" (5) . 1.5 In the light of the previous rules, the Ombudsman considers that the Commission did not fail to act towards the final recipients of its financial assistance, since this was a power laying with the Member State. In due respect of the partnership principle, the institution does not have the authority to take the place or substitute the responsible national authorities by channelling its contributions directly to the final beneficiaries. The Ombudsman considers therefore that there is no maladministration as regards this aspect of the case. **2. The alleged lack of action of the Commission** 2.1 In July 1997, the complainant sent a formal complaint to the Commission, alleging irregularities and misuse of Community funds by the Spanish "Menela Foundation", beneficiary of project 95 H GAL Castro Navas in Galicia that was financed by the Union. The complainant claimed that he had an outstanding balance with this Foundation and asked the Commission to inquire into the matter. 2.2 The Commission pointed out that, following the usual procedure in similar cases, it forwarded the file to the competent national authorities in Spain with the request to be kept informed of the outcome of the investigation. 2.3 The complainant claimed that the Commission had not taken any action against the Spanish authorities, despite their failure to reply to the institution' s request for almost a year and half. The Commission services had only taken further actions against the Spanish authorities following the European Ombudsman's inquiry. 2.4 However, the Ombudsman notes that in a letter received on 12 July 1999, the complainant informed him that on 16 June 1999 he had reached an agreement with the "Menela Foundation". The complainant stressed that in view of this agreement, no further inquiries should be carry out. He also expressed gratitude to the Ombudsman for his



interest in the case. The Ombudsman therefore considers that in view of the above factual findings, especially the agreement reached between the complainant and the Foundation to the satisfaction of the complainant, there are no grounds to pursue further inquiries into this aspect of the case. **3. Conclusion** On the basis of the information provided by the complainant and the observations submitted by the European Commission, there appears to have been no maladministration by the European Commission as concerns the first aspect of the case. As concerns the second aspect, the Ombudsman considers that the institution has taken steps to settle the matter and has thereby satisfied the complainant. Against this background, the European Ombudsman decides therefore to close the case.

The President of the European Commission as well as the Regional Ombudsman of Andalusia will also be informed of this decision. Yours sincerely, Jacob SÖDERMAN

(1) Council Regulation (EEC) No 2082/93 of 20 July 1993 amending Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments; OJ L 193, 31.07.1993.

(2) Art. 21, par. 1 of Council Regulation (EEC) No 2082/93: *"payment of financial assistance shall be made [...] to the national, regional or local authority or body designated for the purpose in the application submitted by the Member State concerned as a general rule within two months from receipt of an acceptable application"*.

(3) Council Regulation (EEC) No 2081/93 amending Regulation (EEC) No 2052/88 on the tasks of the Structural Funds and their effectiveness and coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments, OJ L 193, 31.7.1993, p.5; Art. 4.

(4) See supra, Council Regulation (EEC) No 2082/93, Art. 21, par. 1.

(5) See supra, Council Regulation (EEC) No 2082/93, Art. 21, par. 5.