

Decision of the European Ombudsman on complaint 1312/99/XD against the European Commission

Decision

Case 1312/99/XD - Opened on 29/11/1999 - Decision on 15/11/2000

Strasbourg, 15 November 2000 Dear Mr D., On 29 October 1999, you lodged a complaint with the European Ombudsman on behalf of the Company "CAD Productions" concerning a loan which was granted to CAD Productions in the framework of the MEDIA 1 Programme and for which the European Commission is now requesting to be refunded. On 29 November 1999, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 3 March 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 2 May 1999, I received your observations on the Commission's opinion. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

On 20 September 1994, the French Company "CAD Productions" signed a contract with the Company "MAP TV", which acted on behalf of the European Commission, in the framework of the MEDIA 1 Programme (1991-1995). CAD Productions received two instalments amounting to a total of € 17,020 from MAP TV to produce a TV documentary entitled "Mission in Canada in 1927", the grant having to be repaid at the latest two years after each instalment. Further to an unpredictable change within the French TV channel "France 3", CAD Productions has not been able to produce the documentary and the project has been abandoned. In November 1998, MAP TV stopped its activities and the Commission took back the "Media 1" file. The Commission asked the complainant to refund the total amount of the grant which, according to the institution, should have taken place in January 1998. The complainant informed the Commission that it could not refund the total amount of the grant because the company would otherwise go bankrupt. It asked the Commission to apply the provisions laid down in the Media 2 Programme (1996-2000) which specify: *"If the recipient of the grant is unable to realise the project 2 years after the signature of the convention and if there is no fault of this recipient, only 25% of the grant shall be repaid."* In the complainant's view, the Commission should apply the more favourable rules of the Media 2 Programme as a matter of equity. In a letter dated 19 July 1999, the Commission informed the complainant that *"neither the legal rules, nor the financial regulation of the European Commission allow a confusion between two different programmes and contracts."* The complainant then lodged a complaint with the European Ombudsman alleging maladministration by the European Commission. It claims that the Commission should apply the more favourable refunding conditions laid down in the Media 2 Programme instead of the ones foreseen in the Media 1 Programme.



THE INQUIRY

The Commission's opinion The European Commission stated that the Media 2 provisions could not be applied to the present case, neither on the basis of law nor equity. As regards the legal aspect, the complainant subscribed to a grant in the framework of the Media 1 Programme, which is unconditionally refundable. The Commission mentioned that the complainant had not respected his refunding commitments for more than two years. The Media 2 Programme foresees more favourable provisions in case the project is abandoned. However, the complainant is not part of this programme. The legal principle of the relative effect of the conventions does not make the confusion between the Media 1 and Media 2 programmes possible. As regards the equity aspect put forward by the complainant, the Commission pointed out that equity needs to be considered vis-à-vis the other beneficiaries of the Media 1 Programme. The Commission noted that most of them refunded their debts or negotiated a refunding plan with the Commission. The Commission added that the complainant already had the benefit of equity given that he had a period of two years to refund the grant and that interests on late payments have not been claimed by the Commission. Furthermore, the complainant had never given effect to a proposal made by the Commission to spread out the refunding. The Commission also indicated that the complainant is not of good faith. On the one hand, the complainant only refunded 10% of the grant two years after the deadline mentioned in the contract and on the other hand, the 1997 accounts of the company demonstrate that the complainant had the possibility to refund the full grant. **The complainant's observations** In his observations, the complainant maintained his complaint. According to the complainant, the statements of *mala fide* put forward by the Commission are not relevant. The Commission should have considered the 1998 and 1999 accounts which show the company's more precarious situation.

THE DECISION

1. The complainant is a company that subscribed a grant in 1994 to carry out a TV documentary in the framework of the Media 1 Programme (1991-1995) set up by the European Commission. It could not carry out the project as laid down in the contract and the Commission required to be refunded of the full grant as laid down in the contract. The company states that it cannot afford this financial charge. 2. The complainant asks the Commission to apply the conditions of the Media 2 Programme (1996-2000) which foresee that only one fourth of the grant could be refunded in case the project is not carried out. The Commission denies the complainant the possibility to have the Media 2 provisions applied to its case. It stresses that a confusion between the Media 1 and Media 2 programmes is not possible from a legal point of view. 3. The European Ombudsman notes that a contract was signed on 20 September 1994 between the complainant and the Company Map TV, which acted on behalf of the European Commission, in the framework of the Media 1 Programme. Article 8 of the contract lays down that *"the contracting party commits itself to refunding the whole amount of the help to MAP-TV ..."*, article 9 authorising a further period of a year on payment of 5% of interest on the amounts to be repaid. The Ombudsman concludes from these provisions that the European Commission is entitled to claim the whole repayment of the grant from the complainant. 4. The complainant also claims that the European Commission should apply the more favourable conditions of the Media 2 programme on the basis of equity. The Commission replies that the complainant had



already the benefit of equity. It points out that the complainant had taken advantage of a period of two years to refund the grant, without any interests on late payment claimed by the Commission. The Commission also says that a refunding plan was proposed to the complainant but was not followed. 5. It appears from the documents at the Ombudsman's disposal that the Commission has not claimed interests on late payment from the complainant although it was entitled to do so on the basis of article 9 of the contract. It also appears from the correspondence sent by the Commission to the complainant that the institution was ready to accept a repayment plan, which would be proposed by the complainant. On the basis of these findings, the Ombudsman considers that the Commission has acted reasonably in this case. 6

Conclusion On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob SÖDERMAN