

Decision of the European Ombudsman on complaint 38/2000/(XD)LBD against the European Commission

Decision

Case 38/2000/LBD - Opened on 04/02/2000 - Decision on 06/06/2001

Strasbourg, 6 June 2001

Dear Mr K.,

On 20 December 1999, the Staff Mediator of the European Commission, Mrs Hedwig EBERT, transmitted your complaint to the European Ombudsman. The complaint, lodged on behalf of the Alsatian association "Elsässer Zükunft", concerned the refund of a subvention of 3600^{fr}.

On 4 February 2000, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 15 May 2000 and I sent it to you with an invitation to make observations, if you so wished. I received your observations on 27 June 2000.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant is the President of an Alsatian association (Elsässer Zükunft) which promotes the Alsatian language. In the framework of project 95-06-MLC-0097-00, the Commission granted to this association a subvention of 4500^{fr} for the launching of a municipal centre of Alsatian culture. A contract was signed for that purpose between the Commission and the association. Upon receipt of the signed contract by the association, the Commission made an advance payment of 80% of the subvention and thus paid 3600^{fr} to the association.

However, in December 1997, the Commission decided to proceed to the recovery of the 3600^{fr} which it had already paid. By letter of 26 November 1999, the Commission informed the complainant that it had launched the procedure for the recovery. It also asked the association if it was ready to reimburse the subvention at a definite date.

In this context, the complainant lodged a complaint with Mrs Hedwig EBERT, the Staff Mediator of the European Commission, on 16 December 1999. Mrs EBERT transmitted the complaint to the European Ombudsman on 20 December 1999.



In his complaint, the complainant complained that the Commission asked for the refund of the subvention only because it was used later than initially foreseen by the association. He nevertheless underlined that this subvention had been used in an efficient way by the association. He also claimed that only a part of the subvention could be reimbursed to the Commission, given that the association had financial difficulties.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made the following comments:

The Commission first recalled that a subvention was granted to the association in September 1995, for the launching of a municipal centre of Alsatian culture from September 1995 to November 1995. Upon receipt of the signed contract, 80% of the subvention was paid, which represented 36000 FF.

Furthermore, the Commission explained that according to Article 3 of the contract concluded between the association and the Commission for the realization of the project, the beneficiary had to forward to the Commission before 29 January 1996, a financial report on the expenses incurred for the project and a detailed account. The beneficiary also had to " *notify to the Commission in due time, of any delay in the execution of the action.* "

The Commission pointed out that the financial report and the detailed account were only forwarded by the association in July 1997. This report stated expenses amounting to 60 000 FF and a total income of 100 000 FF. Subventions other than the ones given by the Commission amounted to 70 000 FF and therefore covered all the costs for the project. The Commission put forward that the complainant has been contacted many times by the financial Unit of DG XXII in order to ask him to provide a financial report only for the period covered by the contract. But the further information provided by the complainant always showed a profit, and, as it was mentioned in the Commission's letter granting the subvention, " *the subvention could not in any case lead to a profit* ". The Commission also underlined that the expenses had occurred only after the period covered by the contract, a certain number of which in 1997.

As regards the financial difficulties of the association, the Commission recalled that it granted the association the possibility to reimburse the subvention in monthly payments, in view of its financial problems. The Commission also emphasized that following other financial difficulties of the association at the end of the year 1999, the latter was granted a preferential treatment insofar as the Commission accepted to postpone the payment to the year 2000.

In its opinion, the Commission concluded that the granted subvention has indeed been used for the municipal centre of Alsatian culture. However, the contract concluded between the association and the Commission was directed at the project mentioned in the subvention form, which had to be performed from September to November 1995 and which only concerned the launching of the centre. The association changed the realization of the project in its extent and duration without informing the Commission and thus, did not respect the contract it concluded



with the Commission.

The complainant's observations

The complainant made in summary the following observations:

He underlined that the association was "*paralyzed*" by the reimbursement of the subvention as its remaining funds have been used to reimburse two thirds of the subvention. The complainant also explained that for almost one year, the association has had no more activity, which is all the more regrettable in view of its good results, especially in the area where it is located and which is composed of many bilingual sites.

The complainant pointed out furthermore, that the budget projections of the association were always over estimated because they contained subvention amounts it hoped to obtain, and which, unfortunately, it could not obtain any more since 1998.

THE DECISION

1. Reimbursement of the subvention

1.1 The complainant alleged that the Commission asked for the refund of the subvention only because it was used later than initially foreseen by the association. He nevertheless underlined that this subvention was used in an efficient way by the association. He also put forward that only a part of the subvention could be reimbursed to the Commission due to financial difficulties of the association.

1.2 The Commission replied that the subvention has indeed been used for the project concerning the municipal centre of Alsatian culture. However it argued that the contract concluded between the Commission and the association for the realization of the municipal centre has not been respected by the association, because the latter changed the realization of the project in its extent and duration without informing the Commission. Furthermore, as regards the financial difficulties of the association, the Commission recalled that it granted the association the possibility to reimburse the subvention in monthly payments and that it accepted to postpone the payment to the year 2000.

1.3 The Ombudsman first notes that the subvention was granted for the launching of the project for the period from September 1995 to November 1995. He also points out that according to the contract concluded between the Commission and the association for the launching of the municipal centre, the expenses for this project had to be incurred within the period related to the contract, and that the association had to forward to the Commission in due time (before 29 January 1996) a financial report and a detailed account relating to the realization of the project. He notes furthermore that the letter granting the subvention and signed by the association laid down that "*the subvention could not in any case lead to a profit*".

1.4 The association did not provide to the Commission in due time, a financial report for the expenses related to the project. It only forwarded to the Commission the financial report and the detailed account in July 1997, well after the date mentioned in the contract. Furthermore, the financial report forwarded by the association included expenses incurred after the period related



to the contract, a certain number of which occurred in 1997. It also included subventions (amounting to 70 000FF) other than the ones granted by the Commission and which could have covered all the costs of the project. This resulted in a profit, which was contrary to the first paragraph of the letter granting the subvention, signed by the association, and which mentioned that the *"subvention could not in any case lead to a profit"* .

1.5 As regards the financial difficulties of the association, the Ombudsman underlines that the Commission twice granted a preferential treatment to the association for the reimbursement of the subvention. First, by allowing monthly payments and then by accepting to postpone the payment to the year 2000.

1.6 On the basis of the above findings, it appears that the Commission acted in accordance with the commitments it had made with the association before the launching of the project. There appears therefore to have been no maladministration by the Commission.

2. Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN