

Decision of the European Ombudsman on complaint 1160/2000/GG against the European Commission

Decision

Case 1160/2000/GG - Opened on 19/10/2000 - Decision on 30/11/2001

Strasbourg, 30 November 2001

Dear Mr W.,

On 25 July 2000, you lodged, on behalf of Internationaler Hilfsfonds e.V., a complaint with the European Ombudsman against the European Commission concerning the Commission's treatment of several applications for financial assistance made by the complainant.

On 19 October 2000, I forwarded the complaint to the Commission for its comments.

On 5 December 2000, you sent me further comments in relation to the complaint and lodged a further complaint (1613/2000/GG) that is being dealt with separately.

The Commission sent its opinion on your complaint on 6 February 2001, and I forwarded it to you on 8 February 2001, with an invitation to make observations, if you so wished. On 30 March 2001, you sent me your observations on the Commission's opinion.

On 7 May 2001, you sent me a copy of a letter that you had addressed to the Commission the same day.

On 23 May 2001, I wrote to the Commission in order to seek a friendly solution. In this letter, I proposed that the Commission should grant you proper access to its file.

On 10 August 2001, the Commission informed me that it proposed to allow you to inspect its file, and that it would write to you shortly in order to arrange a suitable date. I forwarded this letter to you on 30 August 2001 with an invitation to make observations, if you so wished, by 30 September 2001.

On 10 September 2001, you informed me that the Commission had not yet contacted you. I forwarded a copy of this letter to the Commission on 24 September 2001. On 1 and 22 October 2001, the Commission forwarded copies of two letters to me that it had addressed to you on 27 September and 18 October 2001.



On 14 November 2001, you sent me your observations on the access to its file that the Commission had granted you.

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

THE COMPLAINT

Background

The complainant is a non-governmental organisation (NGO) from Germany which is supporting refugees, war victims and handicapped persons. Between 1993 and 1997, the complainant applied six times to the European Commission for financial assistance with regard to projects in Africa. The Commission rejected the first four applications, three of them in 1993 and the fourth in 1995. The remaining two applications were still pending before the Commission when the complainant first turned to the Ombudsman in 1998.

In March 1998, the complainant submitted a complaint to the Ombudsman (complaint 338/98/VK). In its opinion on this complaint, the Commission claimed *inter alia* that it had provided the complainant with a list (dated 23 February 1998) of all the documents on its file in relation to the applications (apart from certain letters from the complainant itself).

In the course of the inquiry into complaint 338/98/VK, the Ombudsman's services inspected the Commission's file. It emerged that the file presented to the Ombudsman's services by the Commission contained *inter alia* an internal note dated 15 July 1996, a letter from a German body of 8 June 1993 (which referred to a previous discussion with the Commission on 4 June 1993) and a letter from Deutsches Zentralinstitut für soziale Fragen (DZI) dated 1 September 1993.

In its reply to a request for information made by the Ombudsman, the Commission pointed out that it had based its reasoning *inter alia* on information provided on a confidential basis by a body called "Plattform deutscher NRO" ('platform of German NGOs') according to which the complainant's operating costs had amounted to 37,7 %.

On 18 February 2000, the complainant's lawyer wrote to the Commission in order to ask for full access to the Commission's file. He stressed that the letter from the "Plattform deutscher NRO" was not mentioned in the list of documents that the Commission had provided to the complainant. No such access was granted at the time.

In his decision on complaint 338/98/VK of 11 July 2000, the Ombudsman considered that the Commission had based its assessment not only on the letter from DZI but had had "written and oral contact with several different sources other than the DZI". The Ombudsman took the view, however, that the Commission had provided the complainant with clear reasoning for its decisions only in a letter it had addressed to the complainant on 29 July 1996, that is to say three years after the first application had been made. A critical remark was made in that context and also with regard to the time it had taken the Commission to deal with the applications. The complainant's other allegations were rejected.



Complaint 1160/2000/GG

In its lawyer's letter of 25 July 2000, the complainant asked the Ombudsman to review his decision in so far as the allegations that had been rejected were concerned. This letter was registered as a new complaint (1160/2000/GG).

The Ombudsman considered that parts of this complaint that concerned the merits of his decision did not need to be re-examined. The complainant was informed accordingly on 19 October 2000.

The further following comments were made in the complaint:

The complainant had asked for access in proper and due form. The Commission had granted access but failed to give access to all the documents on its file. The rules on access to documents held by Community institutions were based on the principle that the public should have the widest possible access to such documents and that exceptions had to be construed and applied strictly. The Commission had omitted to give reasons why access had been restricted. The Commission and the Ombudsman had referred to certain documents and pieces of information the Commission had received through written and oral contacts. Those documents and sources had not been mentioned in the list of documents provided by the Commission. This list was therefore not comprehensive and misleading. The right to be heard was in any event violated since the Commission should have given the complainant the opportunity to be heard on those issues before taking its decision.

The Ombudsman carefully examined the arguments put forward by the complainant in the said letter and came to the conclusion that the following allegations needed to be examined further:

- (1) The Commission had failed to grant the complainant proper access to its file
- (2) The list of documents that the Commission had provided to the complainant on 23 February 1998 was incomplete and misleading
- (3) The Commission had infringed the complainant's right to be heard by basing its decisions on information from third parties without giving the complainant the opportunity to make observations on this evidence

Complaint 1613/2000/GG

On 5 December 2000, the complainant lodged such a further complaint (1613/2000/GG) in which it alleged that the Commission (1) had failed to award its applications a fair and objective consideration and (2) had failed to decide on its applications that had been pending since December 1996 and September 1997 respectively.

This complaint will be dealt with separately. However, the results of the present inquiry will be taken into account when dealing with complaint 1613/2000/GG.

THE INQUIRY



The opinion of the Commission

In its opinion, the Commission referred to the contents of its letter dated 30 July 1999 concerning complaint 338/98/VK and made inter alia the following further comments:

The Commission had allowed access to the file within the limits imposed by the need to comply with the rules governing confidentiality. Full access had been granted, with the exception of information provided by a third party, the Zimbabwean Embassy, and of four internal Commission notes.

The content of the opinions to which the complainant was not given formal access was communicated to the complainant by the Commission in the course of a large number of telephone calls. Moreover, a reading of the accessible documents gave the complainant a very clear understanding for the reasons of its ineligibility.

The Ombudsman had been able to inspect the dossier in full, thereby satisfying himself that the Commission had complied with the rules governing transparency and confidentiality.

The Commission had arrived at its decision not only on the basis of information provided by DZI but also by comparing and matching information from the complainant and DZI, and various information sources: the complainant itself, DZI, the "Platform of German NGOs" and BENG0/BMZ (German Ministry for Economic Co-operation and Development).

The complainant's observations

In its observations, the complainant maintained its complaint and made inter alia the following comments:

On the basis of the Commission's comments and the information set out in the Ombudsman's decision of 11 July 2000, it was clear that the Commission's file contained documents that had not been mentioned in the list of 23 February 1998 and that had not been made available to the complainant.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

The Ombudsman's analysis of the issues in dispute

After careful consideration of the opinion and observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's claims.

The Ombudsman's provisional conclusion was that the list of documents that had been provided by the Commission to the complainant was incomplete and that this could be an instance of maladministration.

In so far as access to the Commission's file was concerned, the Ombudsman's provisional conclusion was that the Commission had failed to grant the complainant proper access to its file and that this could be a further instance of maladministration.



Finally, the Ombudsman took the view that in the light of the above-mentioned provisional conclusions there was at present no need to examine the complainant's allegation according to which its right to be heard had been infringed.

The possibility of a friendly solution

On 23 May 2001, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman suggested that the Commission should grant the complainant proper access to its file in relation to the complainant's applications for financial assistance.

In its reply of 10 August 2001, the Commission informed the Ombudsman that it proposed to allow the complainant to inspect its file, and that it would write to the complainant shortly in order to arrange a suitable date.

On 10 September 2001, however, the complainant informed the Ombudsman that it had not yet been contacted by the Commission. The complainant's letter was forwarded to the Commission. On 22 October 2001, the Commission submitted to the Ombudsman a copy of a letter that it had addressed to the complainant on 18 October 2001. In this letter, the Commission confirmed that access would be granted on 26 October 2001.

In its letter of 14 November 2001, the complainant pointed out that the Commission had originally agreed that access to the file was to be granted on the Commission's premises in Brussels on 17 October 2001. According to the complainant, however, its representatives (including a legal advisor from Paris) who went to inspect the file that day were told that access could not be granted since no member of the Commission's Legal Service was available. The complainant stressed that considerable and unnecessary costs were caused by the Commission's behaviour. Access to the file was finally granted on 26 October 2001. However, the complainant claimed that the file had been in a catastrophic state, that there had been no structure in the file and that parts of the file had been missing. According to the complainant, it had furthermore only been allowed to make copies of parts of the file. The complainant added that the Commission had promised to send it a complete copy of the file. However, this had not been done yet. According to the complainant, the Commission had further informed it that access to specific documents could only be granted once the authorisation of third parties that were concerned had been obtained. The Commission had promised to try and obtain this authorisation shortly. According to the complainant, however, the Commission had not contacted it again so far.

The complainant stressed that it considered that the process of granting it access to the Commission's file could not be considered as having been completed yet. It therefore asked the Ombudsman to urge the Commission to grant access as promised and to comply with the undertakings it had given on 26 October 2001.

In these circumstances, the Ombudsman considers that a friendly solution has not been achieved.



THE DECISION

1 Providing incomplete and misleading list of documents

1.1 The complainant claims that the list of documents provided by the Commission on 23 February 1998 was incomplete and misleading.

1.2 The Commission makes no specific comments regarding this allegation.

1.3 The Ombudsman notes that his inspection of the Commission's file on the occasion of his inquiry in complaint 338/98/VK has shown that the latter contains at least two documents - an internal note dated 15 July 1996 and a letter from a German body of 8 June 1993 - that were not mentioned in the list of documents forwarded to the complainant by the Commission on 23 February 1998. There may be other documents that are missing from this list, for example the information that the Commission claims to have received from the body called BENGÖ.

1.4 The Ombudsman considers that it is good administrative practice that an administration should, when providing a list of the documents on its file, ensure that this list comprises all the documents on the relevant file.

1.5 The Ombudsman's conclusion is that the list of documents provided by the Commission was incomplete and that this represents an instance of maladministration. A critical remark will be made in this respect.

2 Failure to grant proper access to the file

2.1 The complainant claims that the Commission failed to give it proper access to its file.

2.2 The Commission takes the view that it allowed the complainant access to the file within the limits imposed by the need to comply with the rules governing confidentiality.

2.3 It follows from the Ombudsman's findings in relation to the first allegation that the Commission failed to grant the complainant access to several documents that were on the file but that were not mentioned in the list of documents provided by the Commission. Nor did the Commission provide any reasons why these documents should not be accessible to the complainant.

2.4 It is true that one of the documents on the Commission's file of whose existence the complainant was not informed is an internal note prepared by the Commission's services. However, regard must be had to the contents of each individual document. In the present case, it appears that the Commission also used information that it had obtained orally, over the telephone or otherwise. For example, the letter from a German body dated 8 June 1993 that is on the Commission's file refers to a previous discussion with the Commission on 4 June 1993. To the extent that a document drawn up by the Commission merely records information gathered by using such means, the Ombudsman fails to see any reasons that would entitle the Commission to withhold such a note (or the relevant parts of such a note) from the complainant merely because it is technically an 'internal' note.

2.5 The Commission's failure to grant the complainant proper access to its file thus constitutes a



further instance of maladministration. However, the Commission has agreed, further to the Ombudsman proposal to do so, to grant the complainant access to its file and to make available copies of the accessible documents. The Ombudsman therefore considers that there are no grounds to pursue his inquiry into this aspect of the complaint.

3 Infringement of the right to be heard

3.1 The complainant claims that the Commission has infringed its right to be heard by basing its decisions on information from third parties without giving the complainant the opportunity to make observations on this evidence.

3.2 The Commission appears to argue that the complainant had been informed by telephone of the contents of the documents used by the Commission that it had not been shown and that in any event the documents accessible to the complainant had given the complainant a very clear understanding for the reasons of its ineligibility.

3.3 It is good administrative practice to give a person who has submitted an application the opportunity to express his views on the relevance and accuracy of evidence on the basis of which the administration intends to reject the application.

3.4 The Ombudsman considers that in the light of the above-mentioned findings it is clear that the Commission, when deciding to reject the relevant applications lodged by the complainant, based itself on information that had not been formally brought to the complainant's attention beforehand. The Commission's claim that the complainant was nevertheless informed by telephone is not supported by any substantive evidence. The complainant thus has not had the possibility to submit its views on the relevance and accuracy of this information.

3.5 The Ombudsman's conclusion, therefore, is that the Commission infringed the complainant's right to be heard and that this constitutes a further instance of maladministration. A critical remark will therefore be made in this respect.

4 Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, it is necessary to make the following critical remarks:

It is good administrative practice that an administration should, when providing a list of the documents on its file, ensure that this list comprises all the documents on the relevant file. In the present case, the list provided by the Commission was incomplete. This represents an instance of maladministration.

It is good administrative practice to give a person who has submitted an application the opportunity to express his views on the relevance and accuracy of evidence on the basis of which the administration intends to reject his application. In the present case, the Commission based its decisions rejecting the applications on information that does not appear to have been brought to the complainant's attention beforehand. This infringement of the complainant's right to be heard thus constitutes a further instance of maladministration.

Given that these aspects of the case concern procedures relating to specific events in the past,



it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN