

Decision of the European Ombudsman on complaint 300/2001/IP against the European Commission

Decision

Case 300/2001/IP - Opened on 29/03/2001 - Decision on 06/06/2002

Strasbourg, 6 June 2002

Dear Mr M.,

On 19 February 2001, you lodged a complaint with the European Ombudsman, in your quality as Secretary General of SI.GE.MA (*Sindacato della gente di mare*). The complaint was related to the Commission's decision to reduce the amount of the financial contribution originally approved in favour of SI.GE.MA, in the framework of the Programme "Small Scale Coastal Fisheries Project 63".

On 29 March 2001, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 7 June 2001. I forwarded it to you on 11 June 2001 with an invitation to make observations, which you made on 18 June 2001. On 11 December 2001, you sent further information.

On 28 February 2002, I wrote to the Commission in order to propose a friendly solution. The Commission sent me its reply on 6 May 2002, and I forwarded it to you on 14 May 2002. On 15 May 2002, you sent me your observations on the Commission's reply.

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

THE COMPLAINT

According to the complainant, the facts are as follows:

On 1 October 1997, SI.GE.MA replied to the call for tenders launched by the Commission to carry out a pilot project to assist small-scale coastal fishing and women family members in small-scale coastal fishing communities (1) . On 31 March 1998, the Commission informed SI.GE.MA that its proposal was successful. The financial contribution from the Commission would be of a maximum amount of 125.901 €, corresponding to 75% of the total eligible costs as indicated in the proposal presented to the Commission.



On 22 October 1998, the complainant informed the services of DG Fishery that, due to personal reasons, two of the 16 designated technical experts had to refuse the appointment. They would be substituted by 15 additional experts which would give 200 of the total of 760 hours of lessons, without any repercussion on the costs of the project.

On 12 December 1998, SI.GE.MA sent the interim report to the Commission which paid the first advance at the beginning of March 1999.

The project was completed at the end of March 1999 and the final report was sent on 26 July 1999, followed by an addendum on 26 August 1999.

On 13 December 1999, the Commission informed the complainant that two representatives of DG fisheries would carry out an on-the-spot inspection at the beginning of the year 2000. This inspection was carried out on 17-18 January 2000.

On 6 March 2000, since the Commission considered that the salary received by the 14 teachers who were paid on monthly-based salary (935[¤] par month for 40 hours of lessons each and for six months) was extremely high, it asked the complainant to explain how it had been calculated.

By letter of 5 April 2000, the complainant pointed out that when calculating the salary for the teachers paid on monthly rate, it had considered not only the number of hours taught by each teacher, but also the time spent on preparatory work, namely 538 in total.

On 31 May 2000, the Commission informed the complainant about its conclusions after the final report and the on-the-spot inspection on 17-18 January 2000. The Commission stated the following:

" (...) Regarding the labour cost, we find it extremely high and we cannot accept it as such. The 14 teachers on monthly salary have only given lessons for 40 hours each during 6 months, which gives a salary of 140,25[¤]/hour. (...) We cannot take into consideration (...) that the work of the teachers on monthly salary should be considered as a whole including preparation and not per hour as there are no documents showing how many hours were spent on the preparation.

(...)

We will proceed with the final payment of 6.643[¤] within 30 days, if you do not send us any new information during this time."

By letter of 20 June 2000, the complainant underlined that the preparatory works had been necessary, namely for the preparation of the didactic strategy and for the material to be distributed to all the participants.

The complainant also pointed out that all the hours worked by any single teacher were duly proved and justified, since the teachers had to sign a register. Such a register was shown to the Commission's inspectors during their on-the-spot visit of 17-18 January 2000. Furthermore, he



underlined that the Commission did not react within 30 days from the receipt of the final report forwarded on 27 July 1999, as foreseen in Article 5.1.b) of the Annex 3 of the Declaration.

On 20 July 2000, the Commission sent to the complainant a compromise proposal to close the case. It stated that it was ready to accept to pay 50% of the hours of preparatory work, thus 269 hours at 62[¤]/hour.

The complainant did not accept the Commission's proposal and since it appeared that it was not possible to achieve a settlement of the case, the complainant lodged a complaint with the Ombudsman, in which he claimed the following:

SI.GE.MA has respected the relevant rules concerning the project and complied with the contents of the Declaration, as approved by the Commission. The institution should therefore reconsider its decision to reduce the total amount of the financial contribution approved in favor of SI.GE.MA.

The Commission's opinion

The complaint was forwarded to the Commission for an opinion. In its opinion, the Commission raised in summary the following points:

According to the proposed budget enclosed to the proposal presented by SI.GE.MA and approved by the Commission, the labour costs for all categories of experts was indicated on a monthly basis. For the 16 experts, an amount of 935[¤]/month/expert was foreseen during 6 months.

In March 1999, the Commission asked the beneficiary to explain the basis for calculating the salary of the experts paid on monthly rate, which appeared to be extremely high. The complainant, however, did not provide useful information.

Also during the on-the-spot inspection of 17-18 January 2000 carried out by two representatives of the DG fisheries, the complainant was unable to explain how the lump sum of 5 610 (935[¤] x 6 months) for each of the 14 experts paid on monthly rate had been calculated.

The Commission therefore sent two further letters on 6 and of 23 March 2000 to the complainant, who answered on 20 June 2000. He explained that when foreseeing the salary for the 14 experts paid on monthly rate, he also considered the time spent for preparatory work, which resulted in 538 hours.

On the basis of all the information received by the complainant and of those in possession of the Commission, the institution tried to find a compromise and proposed to pay 50% of the preparatory work, namely 269 hours at the hourly rate of 62[¤].

The complainant's observations

In his observations on the Commission's opinion, the complainant basically maintained his original complaint.

On 11 December 2001, the complainant forwarded to the Ombudsman a further document as



supporting evidence to his complaint. This document consisted of a copy of the register filled in by each teacher with the date, his/her own name, his/her signature, the period of the activity and a short description of the activity carried out in the framework of preparatory work.

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 claim.

The Ombudsman welcomed the Commission's efforts to solve the case and its proposal to pay 50% of the preparatory work, namely 269 hours at the hourly rate of 62[¤]. In his view, this showed that the Commission had accepted the principle that 14 teachers had spent time on preparatory work. However, it was unclear why the Commission was not ready to pay the full amount originally approved, since it appeared that the complainant provided evidences for the 538 hours of work.

The Ombudsman considered that the refusal by the Commission to pay the totality of hours spent on preparatory work might establish an instance of maladministration.

The possibility of a friendly solution

On 28 February 2002, the Ombudsman submitted a proposal for a friendly solution to the Commission. In his letter, the Ombudsman invited the Commission to reconsider its position by accepting also to pay the remaining preparatory hours, thus 269 working hours.

In its reply of 6 May 2002, the Commission pointed out that it encountered several problems concerning the quality of the information provided by the complainant and the difficulties to obtain them during the whole procedure. The Commission underlined that, from the beginning, its objective has been to apply sound financial management and to ensure the protection of the Community's financial interests.

Furthermore, the Commission pointed out that it had already made a proposal to solve the case the complainant. However, it declared to be ready to go further, as proposed by the Ombudsman, in order to close the case. Before proceeding to such a proposed payment, the institution requires an assurance that all the employees of the project have been paid.

On 15 May 2002, the complainant accepted the Commission's proposal. He also sent to the Ombudsman some documents which in his view are relevant to give the Commission's the assurances requested and asked the Ombudsman to forward them to the Commission. The Ombudsman will send the documents with this decision to the Commission.

THE DECISION

1 The Commission's decision to reduce the financial contribution

1.1 SI.GE.MA, of which the complainant is the Secretary general, replied to the call for tenders



launched by the Commission to carry out a pilot project to assist small-scale coastal fishing and women family members in small-scale coastal fishing communities (2) . The Project was successful and would be granted with a financial contribution by the Commission of a maximum of 125.901 €, corresponding to 75 % of the total eligible costs as indicated in the proposal presented to the institution. The project was carried out according to the time schedule and was concluded at the end of March 1999. On 31 May 2000, the Commission communicated the complainant its decision to reduce the financial contribution originally foreseen. The total eligible costs for the project would amount to 141.789 € of which the Commission's part is 75 %, corresponding to 106.341 €.

In his complaint to the Ombudsman, the complainant pointed out that SI.GE.MA has respected the relevant rules concerning the project and complied with the contents of the Declaration, as approved by the Commission. He claimed that the institution should therefore reconsider its decision to reduce the total amount of the financial contribution approved in favor of SI.GE.MA.

1.2 In its opinion, the Commission stressed that its decision to reduce the original amount foreseen was fully justified. The labour cost for the experts appeared to be extremely high and the complainant was unable to explain how the lump sum of 5 610 € (935 € x 6 months) for the 14 experts paid on monthly rate had been calculated.

1.3 On the basis of all the information received by the complainant and of those in possession of the Commission, the institution tried to find a compromise and proposed to pay 50 % of the preparatory work, namely 269 hours at the hourly rate of 62 €.

1.4 The Ombudsman welcomed the Commission's efforts to solve the case and its proposal to pay 50 % of the preparatory work, namely 269 hours at the hourly rate of 62 €. In his view, this showed that the Commission had accepted the principle that 14 teachers had spent time on preparatory work. However, it was unclear why the Commission was not ready to pay the full amount originally approved, since it appeared that the complainant provided evidences for the 538 hours of work.

The Ombudsman considered that the refusal by the Commission to pay the totality of hours spent on preparatory work might establish an instance of maladministration.

1.5 The Ombudsman therefore submitted a proposal for a friendly solution to the Commission. He invited the Commission to reconsider its position by accepting also to pay the remaining preparatory hours, thus 269 working hours.

1.6 The Commission has accepted the Ombudsman's proposal and the complainant expressed his satisfaction for the outcome of the inquiry.

Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the European Commission and the complainant. The Ombudsman therefore closes the case.



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

Yours sincerely,

Jacob SÖDERMAN

(1) OJ C-97 216/09 and C-97 216/10 of 17.07.1997

(2) OJ C-97 216/09 and C-97 216/10 of 17.07.1997