

Decision of the European Ombudsman on complaint 1536/2001/(BB)OV against the European Commission

Decision

Case 1536/2001/OV - Opened on 07/12/2001 - Decision on 24/07/2002

Strasbourg, 24 July 2002

Dear Ms M.,

On 26 October 2001, you made a complaint to the European Ombudsman on behalf of the Association RVDAGE/VL concerning the rejection of your proposal further to a tender procedure organised by the Commission.

On 7 December 2001, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 5 March 2002. I forwarded it to you with an invitation to make observations, which you sent on 29 April 2002

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

THE COMPLAINT

According to the complainant, the relevant facts were as follows:

The complainant, a Brussels based association, made a proposal further to a tender procedure organised by the Commission services concerning discrimination against ethnic minorities. The complainant's proposal was called "Réseau européen pour l'égalité sociale et la participation citoyenne des minorités ethniques". Its proposal was rejected. After having studied the three grounds for rejection and the further explanations provided by the Commission, the complainant is of the opinion that its file was dealt with in a discriminatory way.

After a first confusing reply from the Commission in its letter of 12 July 2001, the Commission set out the following three rejection grounds in its letter of 2 August 2001:

- 1) The Commission observed that the complainant is doing national work, whereas the complainant indicated in its proposal that it works in a trans-national framework.
- 2) The Commission stated that the complainant established a budget for phase II, whereas it



should only give its opinion on the budget of phase I.

3) The Commission observed that the budgetary line VP/2001/012 to which the complainant responded was not the correct one, and that the complainant should have responded to budget line VP/2001/013. The complainant is of the opinion that the latter budget line does not correspond to its proposal and that budget line VP/2001/012 was the correct one.

The complainant observed that the Commission's arguments were in contradiction with the Commission's own texts.

On 26 October 2001, the complainant thus wrote to the Ombudsman, alleging that, on the basis of the three grounds for the rejection of its proposal VP/2001/012, there appeared to have been discrimination in the handling of its proposal.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first described the framework of the case. On 27 December 2000, the Council adopted Decision 2000/750/EC establishing the Community programme on the fight against discrimination. The programme runs from 2001 to 2006 and has a total budget of 100 million €. The support for activities to fight against discrimination is subdivided in two subsections. The first concerns trans-national activities. The second concerns the functioning costs of NGO's operating on a European level to represent and defend the rights victims of discrimination. The trans-national actions were organised in various phases:

Phase I was the submission to the Commission of a first trans-national action identifying a partner in another Member State, and pre-selection of certain organisations which obtain a Community co-financing of 50.000 € in order to prepare with their partner a definitive and more detailed trans-national project.

The pre-selected organisations had 6 months from 1 October 2001 to submit, their subvention proposal for the operational Phase (II). From the 71 pre-selected proposals, between 25 and 30 proposals will finally be selected, after approval of the Committee of the Member States, for the second phase which should start on 1 September 2002 and last for two years.

Further to the publication of the call for proposals VP/2001/012, the Commission received 129 applications including the complainant's. In conformity with the vade-mecum on the management of subventions, a selection committee was established consisting of persons belonging to four different units from the DG Employment and Social Affairs. This committee set up a list of 71 pre-selected beneficiaries which was submitted for approval to the Committee in its meeting of 10 July 2001.

The complainant was informed on 12 July 2001 that it was not pre-selected because "it did not present a proposal which complied with all the selection criteria specifically established for this financial support". On 25 July 2001, the complainant sent a letter to the Commission asking for



the detailed reasons why its proposal was rejected. On 2 August 2001, the Commission sent a reply in which it explained the reasons.

As regards the reasoning of the rejection decision, the Commission recalled that the objective of the call for proposals was *"the transfer of information, lessons learned and good practice and will include a comparison of the effectiveness of processes, methods and tools related to the chosen themes, the mutual transfer and application of good practice, exchanges of personnel, the joint development of products, processes, strategy and methodology, the adaptation to different contexts of the methods, tools and processes identified as good practices"* (page 3 of the Guidelines of the call for proposals).

However, the complainant's application *"European network for the social equality and the participation of citizens of ethnic minorities"*, was meant to "create the beginning of the representative council of ethnic minorities, which would little by little be represented in all Member States". This possibility was explicitly excluded by the Guidelines which stated that *"applications for funding of ordinary running costs"* will not be considered for funding.

The Commission reasoned its position by reference to the provisional budget of Phase II which was annexed to the application. The Commission observed that "the position of the committee was confirmed by the analysis of the provisional budget". This analysis did not constitute the determinant reason for the rejection. However, together with various other indications, the fact that it was a "functioning" budget has reinforced the Commission's position to reject the application. In fact, the division of the costs over different budgetary posts was indicative of a "functioning" budget.

Nowhere in the correspondence between the Commission and the complainant was the trans-national character contested. In its reply of 20 September 2001 to the complainant's letter, the Commission observed that *"contrary to what you state in your letter, the Committee has not contested the trans-national character of your proposal, but its object the aim of which was the creation of this structure"*.

The Commission pointed out to the complainant that the objective of another part of the funding was to support the "functioning costs of European organisations representing the possible victims of discrimination". However, this was the subject of a different call for proposals (VP/2001/013), to which the Commission drew the complainant's attention.

The Commission concluded that it did not deal with the complainant's proposal in a discriminatory manner. The proposal could not be accepted because its objectives did not correspond to the terms of the call for proposals. The Commission's reasoning given in the various replies to the complainant has never changed.

The complainant's observations

The complainant observed that the Commission, once again, did not bring any supplementary explanation for its position and failed to reply in substance to the complainant's letter of 30 August 2001. The complainant stated that the Commission reduced its proposal to a creation of a structure whereas in reality, as appears from the file, it concerns an exchange network of



reflections and common actions, at a European level. The object of the proposal is therefore in conformity with budget line VP/2001/012.

According to the complainant, a correct evaluation of its proposal could not have led to the conclusion that it asked for a "functioning budget". The complainant observed that the creation of a representative council was merely put as the final objective, after two years of activities of exchange of information and practices. A detailed description of the actions of Phases I and II shows that they only concern a comparative study of experiences, the centralisation of conclusions and the common elaboration of preventive discrimination strategies. The budget requested was only meant for the realisation of these actions. The complainant had foreseen the hiring of seminar rooms in various countries, as well as the travelling and accommodation costs.

An analysis of the budget shows that it cannot be considered as a "functioning budget" since the general costs only amount to 10 % of the total.. The complainant moreover points out that the call for proposals did not contain a model budget nor criteria to determine what is a "functioning budget". The Commission's evaluation is therefore purely subjective.

The organisation of a permanent structure was for the complainant merely a way to continue the results which it would have achieved thanks to the European funding after Phases I and II. The Commission's refusal was therefore erroneous.

The complainant never asked for financial support for a representation structure, knowing very well that the Commission does not finance this kind of action in the present framework. Moreover, as the complainant did not have a representative structure, it was impossible to ask for financial support for it.

On basis of the above, the complainant maintained that the Commission's financial analysis had been superficial, erroneous and discriminatory.

THE DECISION

1 The alleged discrimination in the evaluation of the complainant's proposal

1.1 The complainant alleged that, on the basis of the three grounds for the rejection of its proposal VP/2001/012, there appeared to have been discrimination in the handling of its proposal. The Commission argued that it did not deal with the complainant's proposal in a discriminatory manner. The proposal could not be accepted because its objectives did not correspond to the terms of the call for proposals. The Commission's reasoning given in the various replies to the complainant has never changed.

1.2 From the Ombudsman's analysis of the file it appears that, further to the publication of the call for proposals VP/2001/012, the Commission received 129 applications, 71 of which were pre-selected. On 12 July 2001, the Commission informed the complainant with a standard letter that its proposal had not been retained. In a letter dated 24 July 2001 the complainant asked for complementary information on the rejection of its proposal. The Commission replied on 2



August 2001 providing the complainant with a detailed reasoning. On 30 August 2001, the complainant wrote another letter asking for its proposal to be re-examined. The Commission replied in detail to this letter on 20 September 2001, confirming the rejection and its previous evaluation. Finally, in a third letter of 17 October 2001, the complainant alleged that the rejection of its proposal was arbitrary and discriminatory. The Commission replied on 25 October 2001, referring to its previous letters and rejecting the complainant's allegation that its proposal had been arbitrarily excluded.

1.3 The Ombudsman notes that, in a selection procedure with limited funds available, the Commission has a discretionary power to decide which proposals to accept. However, the Commission's decision should always stay within the limits of its legal authority, namely respect for the provisions of the call for proposals in question, as well as the fundamental principles of Community law, including the principle of non-discrimination, which the complainant alleges the Commission violated.

1.4 In the present case, the Commission explained to the complainant that its proposal was not accepted mainly because, according to the wording itself of the proposal, its primary objective was the creation of a structure, namely "the creation of a representative council of ethnic minorities which would little by little be represented in all Member States". The creation of such a structure and its costs are not covered by the call for proposals in question. The complainant contests the Commission's evaluation and argues that the creation of a representative council was merely a final objective and that its proposal concerns an exchange network of reflections and common actions.

1.5 The Ombudsman notes that on page 17 of the complainant's proposal the primary objective at the end of Phase II is indeed "the creation of the beginning of a representative council of ethnic minorities, , which would little by little be represented in all Member States. This council would be composed of competent members of the established European network". The second, third and fourth objectives described the role and tasks of this council.

1.6 In view of the above, the Ombudsman considers that the Commission's reasoning of its rejection of the complainant's proposal discloses no manifest error of appraisal.

1.7 According to the case-law of the Community courts, the principle of non-discrimination requires that similar situations are not treated differently and different situations not treated alike unless such treatment is objectively justified (1) .

1.8 The complainant did not indicate or provide proof of any similar situations that have been dealt with differently or different situations that have been treated alike in the framework of the call for proposals. On basis of the above, no infringement of the principle of non-discrimination could be established by the Ombudsman. No instance of maladministration was therefore found.

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 Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) see, to that effect Case C-292/97 Karlsson and Others [2000] ECR I-2737, paragraph 39.