

Decision of the European Ombudsman on complaint 736/2002/GG against the European Commission

Decision

Case 736/2002/GG - Opened on 29/04/2002 - Decision on 18/10/2002

Strasbourg, 18 October 2002

Dear Dr. K.,

On 15 April 2002, you made a complaint to the European Ombudsman concerning the European Commission's alleged failure to grant you access to its file.

On 29 April 2002, I forwarded the complaint to the President of the Commission.

On 26 June 2002, you sent me further information regarding your complaint.

The Commission sent its opinion on 25 July 2002. I forwarded it to you the same day with an invitation to make observations, which you sent on 30 August 2002.

On 22 and 23 September 2002, you sent me further information regarding your complaint.

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

THE COMPLAINT

Background

According to the information provided in the complaint, the complainant, a German NGO, lodged an application with the European Commission for financial assistance in 1990 that was first refused and then granted. Between 1992 and 1997, the complainant submitted six applications to the 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. It was only by a letter of 29 July 1996 that the Commission informed the complainant (at the latter's request) of the reasons for which the applications had been rejected. According to an internal note dated 15 July 1996 that was drawn up in this context by the Commission's case-handler, the latter had contacted a number of persons or bodies in Germany and used the information he had thus obtained for his examination of the applications.

In March 1998, the complainant submitted a complaint to the Ombudsman which concerned the



Commission's decisions to reject the first four applications and its failure to decide on the remaining applications (complaint 338/98/VK). In his decision, the Ombudsman *inter alia* made a critical remark in which he stressed that the time that had lapsed before the complainant was informed of the reasons for the Commission's decision had been excessive.

The complainant subsequently lodged two further complaints concerning the matter (1160/2000/GG and 1613/2000/GG). As a result of the Ombudsman's inquiry in these cases, the complainant was granted access to the Commission's file towards the end of 2001. In his decision on the first of these cases, the Ombudsman made two further critical remarks. In particular, he noted that the Commission had based its decisions rejecting the applications on information that did not appear to have been brought to the complainant's attention beforehand. In the Ombudsman's view, this constituted an infringement of the complainant's right to be heard.

In a further complaint (400/2002/GG), the complainant argued *inter alia* that the Commission had failed to provide 'serious evidence' to support the decisions it had taken. This complaint was rejected by the Ombudsman on the grounds that the Commission's decisions to reject the complainant's applications had already been considered by him on the occasion of his inquiry into the previous complaints and that he had made critical remarks or comments in respect of these decisions in his own decisions on these complaints (338/98, 1160/2000 and 1613/2000). The Ombudsman therefore took the view that there were no grounds to open a further inquiry.

The complainant also submitted three further complaints (192/2002/GG, 400/2002/GG and 547/2002/GG) in which it alleged that the Commission had failed to grant it proper access to its file. These complaints were rejected by the Ombudsman, the first because the complainant had not provided sufficient reasons and the last two since the complainant had not yet made the appropriate prior approaches to the Commission.

In a further complaint (563/2002/GG), the complainant alleged *inter alia* that none of the criteria that were mentioned in the letter of 15 July 1996 and on which the Commission claimed to have based its decisions had been established and that the Commission had deceived both the complainant and the Ombudsman. To that extent, the complaint was rejected by the Ombudsman on the basis of the argument that in the light of the results of his previous inquiries there were no grounds to open a new inquiry. In his reply to a further letter from the complainant in this matter, the Ombudsman pointed out that the reasons on which the Commission had relied when rejecting the first four applications in 1993 and 1995 were the same as those on which the Commission had based its decision to reject the last two applications. Given that the complainant had informed the Ombudsman that it had lodged an appeal to the Court of First Instance against the Commission's decision to reject the last two applications, the Court would have to consider these reasons, and it was thus not appropriate for the Ombudsman to open an inquiry in this respect.

The present complaint

In its present complaint, the complainant, after having made the appropriate administrative approaches, renewed its allegation that the Commission had failed to grant it access to its file regarding the applications for grants lodged by the complainant with the Commission since 1



January 1991 and in so far as the years 1991 until 1993 were concerned.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission took the view that the complainant had been given access to all the documents in the possession of the Commission. In this context, the Commission referred to a letter that the Director-General of the Commission's EuropeAid Co-operation Office had addressed to the complainant on 23 April 2002. This letter includes the following sentences: "On 9 March 2002, you requested access to the 'complete' file, in particular, as regards documents from the years 1991, 1992 and 1993. My services replied to you by letter dated 27 March 2002, explaining that they held no documents other than the ones that were sent to you."

The complainant's observations

In its observations, the complainant referred to the fact that in a letter of 12 June 1996, the Commission had noted that its decision to reject the complainant's applications "was based on the information in our possession" ("beruht auf den uns vorliegenden Informationen"). In the complainant's view, there was however no such information in the Commission's file. Nor was there any trace as to the possible sources of such information. The complainant thus queried whether this was due to the fact that the information had been removed from the file and hidden from the complainant or whether the Commission was lying when it claimed that there was such information in its possession.

According to the complainant, it was manifest that the Commission was still hiding documents in its file from it.

The complainant took the view that it had been with a view deliberately to deceive that the Commission had put together the criteria on the basis of which it had, according to the letter of 29 July 1996, rejected its applications.

THE DECISION

1 Failure to grant access to complete file

1.1 The complainant, a German NGO, submitted applications for financial assistance for certain projects to the Commission. Four of these applications were rejected in 1993 and 1995. The complainant alleges that the Commission failed to give it access to its file regarding the applications lodged by the complainant with the Commission since 1 January 1991 and in so far as the years 1991 until 1993 were concerned.

1.2 The Commission replies that the complainant was given access to all the documents in the possession of the Commission and that the Commission holds no documents other than the ones that were sent to the complainant.

1.3 The complainant points out that in a letter of 12 June 1996, the Commission noted that its decision to reject the complainant's applications "was based on the information in our possession" ("beruht auf den uns vorliegenden Informationen"). In the complainant's view, there



is however no such information in the Commission's file. The complainant thus considers it manifest that the Commission is still hiding documents in its file from it or that it lied when it claimed that there was such information in its possession.

1.4 The Ombudsman notes that the complainant has not identified any specific documents to which the Commission would have refused it access in the present case. In its submissions, the complainant refers to a first application for financial assistance that it claims to have lodged in 1990, and that the Commission allegedly accepted in 1991. However, the complainant has neither specified the dates when this application was made and when it was accepted nor indicated the subject-matter and reference of this application. The Ombudsman therefore considers that if the complainant should wish to have access to the Commission's file on that application, it should submit a more precise request to that effect to the Commission.

1.5 In its observations, the complainant essentially takes the view that there are no documents in the Commission's file that would support the rejection of its applications by the Commission in 1993 and 1995. The complainant considers that this means that the Commission is either hiding certain documents or that it lied when it relied on information it claimed to possess. The Ombudsman, whose services inspected the Commission's file in the course of the inquiry into complaint 338/98/VK, takes the view that there is no evidence to prove that the Commission has removed certain documents from its file. The complainant's assumption according to which the Commission did not give correct information when it relied on such information concerns the merits of the Commission's decisions to reject the complainant's applications and not the issue of access to the file. As the Ombudsman has already held on a number of occasions, he considers that there are no grounds for him to open an inquiry into the merits of the said decisions. The question as to whether the Commission's position regarding the complainant's applications for financial assistance was well-founded in law has, as the Ombudsman already noted in his reply to the complainant's further letter in case 563/2002/GG, in effect been submitted to the Court of First Instance by the complainant.

1.6 The Ombudsman thus concludes that the complainant has not established its allegation according to which the Commission has failed to grant it access to its file.

2 Conclusion

On the basis of the 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