

Decision of the European Ombudsman on complaint 1619/2003/JMA against the European Commission

Decision

Case 1619/2003/JMA - Opened on 27/10/2003 - Decision on 02/06/2004

Strasbourg, 2 June 2004

Dear Ms H.,

On 20 August 2003, you lodged a complaint with the European Ombudsman against the European Commission on behalf of the DIK Association. Your complaint concerns the Commission's decision to request the reimbursement of part of the funds granted to the DIK Association for the implementation of a Leonardo da Vinci project (S 95/2/179/III.2.a).

On 27 October 2003, I forwarded the complaint to the President of the Commission. On 29 January 2004, I received the Commission's opinion, which I forwarded to you with an invitation to submit your observations. No observations appear to have been received from you.

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

THE COMPLAINT

According to the complainant, the facts of the case are, in summary, as follows:

The complainant is the President of the DIK Association, a small professional organisation and trade union for, among others, librarians, archivists and museum professionals. Her association was responsible for the development of a project financed by the European Commission through the Leonardo da Vinci programme (ref.: S95/2/179/III.2.a).

In 2001, the DIK Association received an invoice from the Commission, requesting the payment of EUR 50 000, without any further explanation. After several attempts to find the official responsible for the project, including a visit to the Commission, the complainant was informed of the institution's concerns about the project. They involved a number of irregularities such as the lack of signatures from some of the partners, the need for the association to cover its own costs, the excessive amount charged by one of the partners as travel expenses, and the length of time for which a partner had claimed expenses. The complainant explained that this state of affairs had come as a result of the fact that the draft report on the project initially prepared by the



project leaders, was not accepted by the participants, and that an external museum professional had to take charge of the final drafting of the report.

In view of the concerns raised by the Commission, the complainant made a number of corrections to the report on the project. It appears that, as a result of these changes, the Commission reconsidered some of its objections, and reduced its request for reimbursement to EUR 20 911.09. The complainant pointed out, however, that the project had been carried out successfully, and moreover, that the DIK Association's report on the project had been completed and published. She agreed that the implementation of the project could have partially deviated from the specifications set out in the contract, although she contested the amount being requested by the Commission.

After several exchanges and personal meetings with the responsible officials, the complainant proceeded to reimburse the requested amount of EUR 20 911.09. She expressed, however, her dissatisfaction with the Commission's decision, and noted that hers is a small organisation of, among others, librarians, archivists and museum professionals. The amount of money requested could not be covered by the association's budget, and therefore caused havoc to its members.

The complainant stressed that, although the DIK Association was unaware of some of the rules governing the project, and that their implementation cost much time and money, it had carried out the project according to the contract.

In summary, the complainant alleges in his complaint to the Ombudsman that the Commission did not handle the project properly, in particular as regards its request for the reimbursement of part of the funding, and failed to inform the DIK Association of some of the requirements of the contract.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission explained that the complainant worked as a contractor in a project funded through the Leonardo da Vinci programme (contract S.95.2.179.III.2.a; No 3854). The contract ran from 1 December 1995 to 30 January 1997.

The project had been the subject of numerous contacts between the so-called Technical Assistance Office (TAO) on behalf of the Commission, and the contractor, in order to solve the numerous problems arising from the evaluation of the progress and final reports. The Commission noted that its services had informed the complainant, both in writing and orally, of these problems.

The Commission pointed out that relations with the contractor were governed by a contract, to which an administrative and financial handbook was annexed. This handbook set out the eligibility criteria for project expenditure. The institution stressed that the contractor had therefore been informed all along of her contractual obligations.



The institution noted that the reimbursement order, which the complainant contested, was issued after its services completed the processing of her second version of the final report, submitted on 6 June 1999. The first final report had been received by the TAO on 19 February 1998. It had not been approved because the projected output had not been completed, thus making an evaluation impossible.

Due to the problems generated by the closure of the TAO and the sealing of its files by the Belgian judicial authorities, the second version of the final report was not processed by the Commission until the year 2000. On the basis of its evaluation, the Commission concluded that the report was incomplete, and its services, therefore, requested additional information from the contractor on 17 May and 18 August 2000.

In view of her failure to reply to these requests, the Commission decided to close the file on 12 December 2000, and to declare ineligible certain expenditure. In its letter to the complainant dated 12 December 2000, the Commission justified its position on the following grounds: only expenditure incurred during the contract period (1 December 1995-30 November 1997) could be taken into account; the progress reports and the final reports had not been signed by the same person who signed the contract; there were inconsistencies in the tables and absence of signature on some of them; the second version of the final report could not be taken into account because it was submitted later than 10 months after the end of the contract period; the complainant had failed to reply to the Commission's requests for information; and contracts with partners had not been provided. The file was therefore closed and a debit note, along with explanatory financial annexes, was sent to the contractor on 31 May 2001.

The DIK Association complained to the Commission on 21 June 2001. In view of the circumstances surrounding the closing of the TAO, the Commission assumed that the complainant had never received its request for additional information dated 17 May 2000, and therefore decided to re-open the file. Following the complainant's submissions in September 2001 of the additional information requested, and her letter of 15 October 2001, the Commission modified its evaluation and accepted part of the expenditure which had initially been declared ineligible. On the basis of this new evaluation, the Commission estimated the remaining ineligible costs at EUR 20 911.09 and submitted a proposal to that effect to the contractor.

By letter of 23 October 2001, the contractor formally accepted this proposal. She paid a sum of EUR 20 911.09 owed to the Commission in respect of the project on 13 August 2003. In the Commission's view, this payment confirmed the contractor's agreement with its final decision.

The complainant's observations

The Ombudsman has not received any observations from the complainant.

THE DECISION

1 Handling of the project by the Commission

1.1 The complaint concerns the Commission's decision to request the reimbursement of part of



the funds granted to the DIK Association for the implementation of a Leonardo da Vinci project. The complainant alleges that the Commission did not handle the project properly, in particular as regards its request for the reimbursement of part of the funding, and failed to inform the DIK Association of some of the contractual requirements. According to the complainant, although the DIK Association was unaware of some of the rules governing the project and their implementation cost much time and money, it had carried out the project according to the contract.

1.2 The Commission argues that its relations with the contractor were governed by a contract, to which an administrative and financial handbook was annexed. This handbook set out the eligibility criteria for project expenditure. The institution stressed that the contractor had therefore been informed all along of her contractual obligations.

As regards its handling of the contract, the Commission argues that it requested the reimbursement of certain expenses, having concluded that the final report sent by the complainant was incomplete.

Upon receipt of additional information sent by the complainant, the Commission accepted part of the expenditure initially declared ineligible. On the basis of this new evaluation, the Commission estimated the remaining ineligible costs at EUR 20 911.09 and submitted a proposal to that effect to the contractor, who formally accepted the proposal on 23 October 2001.

1.3 According to Article 195 of the EC Treaty, the European Ombudsman is empowered to receive complaints "concerning instances of maladministration in the activities of the Community institutions or bodies". The Ombudsman considers that maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it (1) . Maladministration may thus also be found when the fulfilment of obligations arising from contracts concluded by the institutions or bodies of the Communities is concerned.

1.4 However, the Ombudsman considers that the scope of the review that he can carry out in such cases is necessarily limited. The Ombudsman is of the view that he should not seek to determine whether there has been a breach of contract by either party, if the matter is in dispute. This question could be dealt with effectively only by a court of competent jurisdiction, which would have the possibility to hear the arguments of the parties concerning the relevant national law and to evaluate conflicting evidence on any disputed issues of fact.

1.5 The Ombudsman therefore takes the view that in cases concerning contractual disputes it is justified to limit his inquiry to examining whether the Community institution or body has provided him with a coherent and reasonable account of the legal basis for its actions and why it believes that its view of the contractual position is justified. If that is the case, the Ombudsman will conclude that his inquiry has not revealed an instance of maladministration.

This conclusion will not affect the right of the parties to have their contractual dispute examined and authoritatively settled by a court of competent jurisdiction.



1.6 On the basis of the evidence submitted in the course of the inquiry, it appears that the contract signed between the Commission and the complainant's association (S.95.2.179.III.2.a; No 3854) contained a number of annexes, including an administrative and financial handbook of the project. This document set out in detail the eligibility criteria for project expenditure. As the criteria defining the expenses to be paid for by the Commission constituted an integral part of the contract signed and agreed to by the complainant, the Ombudsman takes the view that the Commission furnished the complainant with sufficient information on the rights and obligations deriving from the contract.

1.7 As regards the Commission's handling of the contract, in particular the decision to request the reimbursement of part of its funding, it appears from the available evidence that the Commission justified its requests for the reimbursement of part of the assistance, on the grounds that some of the expenses incurred by the complainant were ineligible. The Ombudsman is mindful of the fact that the Commission has justified its position by referring to several contractual requirements which do not appear to have been contested by the complainant, such as, among others, that only expenditure incurred during the contract period (1 December 1995-30 November 1997) could be taken into account; that the progress and final reports did not appear to have been signed by the same person who signed the original contract; or that there were inconsistencies in the tables and absence of signature on some of them.

1.8 On the basis of the information supplied by the complainant and the Commission during the inquiry, the Ombudsman considers that the position taken by the Commission in relation to this issue does not appear to be unreasonable and that the Commission appears to have informed the complainant adequately of the reasons for its position.

In these circumstances, the Ombudsman concludes that the inquiry has not revealed an instance of maladministration.

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,

P. Nikiforos DIAMANDOUROS

(1) See the European Ombudsman's Annual Report 1997, p. 22.