

## **Decision of the European Ombudsman on complaint 274/2004/JMA against the European Commission**

Decision

**Case 274/2004/JMA - Opened on 15/03/2004 - Decision on 07/04/2005**

The complaint concerned the Commission's failure to inform the complainant of its handling of a complaint lodged with that institution. On 28 July 2003, the complainant had lodged a complaint with the Commission, concerning the decision of the regional authorities of Madrid (Spain) to reduce the amount of a grant awarded to the complainant for the organisation of training courses for employees, which was financed through the EU's European Social Funds. The reduction of part of the funding was based on the fact that some participants in the training courses were not Spanish nationals. Since this decision was based on grounds of nationality, the complainant considered it discriminatory. On 26 January 2004, the complainant lodged a complaint with the Ombudsman, alleging that, several months after having complained to the Commission, this institution had failed to furnish him with any information on the handling of his case.

In its opinion, the Commission regretted that its first assessment of the case had not been forwarded to the complainant. In a second and more detailed assessment the Commission came to the conclusion that, even though the decision of the regional authorities of Madrid appeared to be justified because of the existence of irregularities in the organization of the courses, part of that reduction was based on the fact that two students were not Spanish nationals. Thus the Commission made a recommendation to the responsible Spanish authorities whereby the complainant be reimbursed for the corresponding amount of the grant and that future programmes exclude any reference to nationality.

Taking into account that, as a result of the Ombudsman's inquiry, the Commission agreed to furnish the information requested by the complainant and that it acknowledged its failure to contact the complainant earlier, having apologized for it, the Ombudsman did not consider it justified to pursue any further inquiries into this complaint and, therefore, closed the case.

Since the Commission had not mentioned any criteria setting out the procedure which its services ought to follow to deal with complaints concerning the use of EU financial assistance, the Ombudsman considered it useful to make a further remark. The Ombudsman noted that, with a view to improving the efficiency and transparency of its relationship with citizens, the Commission could consider establishing and publicising procedures for receiving and handling complaints concerning the use of EU financial assistance, analogous to those applicable in its



Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law.

Strasbourg, 7 April 2005

Dear Mr Q.,

On 26 January 2004, I received a letter from the Eurojus service of the Representation of the European Commission in Spain dated 20 January 2004, which included an undated complaint from you against the Commission on behalf of the "Asociación Era para la Integración". Your complaint concerned the Commission's failure to inform you about its handling of a complaint which you had lodged with that institution.

On 15 March 2004, I forwarded your complaint to the President of the Commission with a request for comments. I received the Commission's opinion on 22 June 2004, which I forwarded to you with an invitation to make observations. On 27 July 2004, the Eurojus service of the Representation of the European Commission in Spain sent me your undated observations on the Commission's opinion. On 23 December 2004, the Commission forwarded me a copy of the letter which its services had sent to you on 14 December 2004.

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

## THE COMPLAINT

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

On 28 July 2003, the complainant lodged a complaint with the Commission concerning the decision taken by the regional government of Madrid, in Spain, to reduce the amount of a grant awarded to him. The grant had been financed through the EU's European Social Fund (ESF), and was aimed at the organisation of a number of training courses for active employees. On 7 August 2003, the Commission's Secretary General sent an acknowledgement of receipt to the complainant.

The complainant did not receive any further information. Despite his numerous attempts to contact the official responsible for the file, his efforts were unsuccessful. He therefore sent a complaint to the Ombudsman through the Eurojus service of the Representation of the European Commission in Spain, in which he complained that no information had been sent to him regarding the handling of his complaint by the Commission services.

In the light of the information submitted in the complaint, the Ombudsman opened an inquiry against the Commission. The allegation on which the Ombudsman asked the Commission to submit an opinion was the following:

The complainant alleges that, several months after he lodged a complaint with the Commission, its services had not furnished him with any information on the handling of the case.



## THE INQUIRY

### **The Commission's opinion**

In its opinion, the Commission first provided a brief background to the case. It explained that the complainant had been awarded a grant of EUR 18 062 50 by the regional government of Madrid, Spain, for the organisation of five Spanish language courses addressed to employees.

The complainant had sent a complaint to the Commission about the decision of the regional government of Madrid to reduce the amount of the grant on the grounds that two of the participants were not Spanish citizens, even though they were EU nationals. Upon receipt of the complaint, the responsible Commission services carried out an analysis of the information enclosed with the complaint. On the basis of that information, it was unclear whether the grant awarded to the complainant had been financed through the ESF. The Commission indicated that, even if that were not the case and the grant was part of a ESF's initiative, decisions on the reduction of the amount granted fall within the management responsibilities of the national authorities. The institution added that the complainant's file contained no clear evidence that any discrimination on the basis of nationality had occurred.

On the basis of its inquiries, the Commission carried out an assessment of the case, which showed that the regional government of Madrid took its decision to partially withdraw the grant for the following reasons: the complainant only organised three of the five courses initially foreseen and he only justified expenses for EUR 2 006 68. The Commission regretted that its assessment appears not to have been sent to the complainant.

As regards the alleged discrimination based on the nationality of the participants, the Commission explained that it had written to the Spanish authority managing the ESF (UAFSE), and asked it to verify with the regional authorities of Madrid whether these allegations had any foundation.

The Commission undertook to prepare a more detailed response to the complainant as soon as the UAFSE had forwarded the necessary information.

### **The complainant's observations**

The complainant forwarded his undated observations on the Commission's opinion to the Eurojus service of the Representation of the European Commission in Spain, which forwarded them to the Ombudsman on 27 July 2004.

In his observations, the complainant disagreed with the Commission's assessment of the situation. He noted that it was clear from the information enclosed with his original complaint that the grant awarded to his organisation was part of an ESF funding programme. With his observations, the complainant enclosed a number of documents bearing the ESF logo. He added that the Commission had rushed to judgement by stating that any reduction should be the responsibility of the national authorities, without first having reviewed all available information.



The complainant also contested his alleged failure to justify all the expenses incurred in the organisation of the training. In his view, all funds had properly been accounted for. In addition, he referred to a number of documents which showed that part of the funding had been reduced as a result of the fact that two of the participants in the training courses did not have Spanish nationality.

The complainant concluded by underlining the Commission's failure to monitor the use of monies from the ESF and requesting that OLAF review the case.

## **FURTHER INFORMATION FROM THE COMMISSION**

On 23 December 2004, the Commission forwarded a copy of the letter which its services had sent to the complainant on 14 December 2004. In the letter, the Commission described both, its requests to the responsible Spanish authorities, and the reply given. The institution noted that, as a result of an inspection in the Employment Unit of the regional government of Madrid, it transpired that the grounds for the reduction in the amount of the grant awarded to the complainant were the existence of irregularities in the manner in which the different tasks had been co-ordinated, the inclusion of identical students in a number of courses, the conclusion of some of the courses despite the fact that less than 75% of the foreseen students attended the training, and the participation in the programme of redundant workers whereas the courses were exclusively designed for active employees.

In its letter, the Commission acknowledged that the grant had been partly reduced as a result of the fact that two of the participants were EU citizens who did not have Spanish nationality. The Commission considered that this decision was incorrect, and drew the attention of the responsible Spanish authorities to this fact. As a result, a recommendation was made to the Employment Unit of the regional government of Madrid to the effect that the complainant should be reimbursed for the amount of the grant corresponding to these two students and that future programmes should not include references to nationality.

As regards the other reasons for the reduction of the grant, the Commission took the view that the responsible Spanish authorities had properly justified them, and therefore that these authorities appeared to have acted correctly. It noted that should the complainant have any disagreement with that assessment, he could make use of the means of redress afforded to him by the Spanish legal system.

## **THE DECISION**

### **1 The Commission's alleged failure to provide information**

1.1 The complainant alleges that, several months after he lodged a complaint with the Commission, its services had not furnished him with any information on the handling of the case.

His complaint to the Commission, dated 28 July 2003, concerned the decision of the



government of the region of Madrid (Spain) to reduce the amount of a grant financed through the EU's European Social Fund (ESF) for the organisation of a number of training courses for employees. According to the complainant, the only communication he received from the Commission thereafter was an acknowledgement of receipt dated 7 August 2003.

1.2 The Commission argues that, having carried out an assessment of the case, it came to the conclusion that the regional government of Madrid based its decision to partially withdraw the grant on the following reasons: the complainant only organised three of the five courses initially foreseen and he only justified expenses for EUR 2 006 68. The institution regrets that its services did not inform the complainant of this assessment.

In a further letter sent to the complainant, a copy of which was sent to the Ombudsman, the institution notes that, following an inquiry with the responsible Spanish authorities, it concluded that there were a number of reasons which may have justified the reduction in the amount of the grant, and mentioned irregularities in the co-ordination of tasks, as well as the quality and number of students. The institution also acknowledged that the grant had been partly reduced as a result of the fact that two of the participants were EU citizens who did not have Spanish nationality. The Commission considered that this decision was incorrect, and drew the attention of the responsible Spanish authorities to this fact. As a result, a recommendation was made to the Employment Unit of the regional government of Madrid to the effect that the complainant should be reimbursed for the amount of the grant corresponding to these two students and that future programmes should not include references to nationality.

1.3 The Ombudsman notes at the outset that, in its role of "Guardian of the Treaty" under Article 211 of the EC Treaty, the Commission has to ensure that Community law is applied. In the framework of Community assistance, the Commission has to exercise this role in line with the so-called "partnership" principle. Accordingly, and as laid out in the rules governing the activities of EU Structural Funds, Community operations are to be carried out through close consultations between the Commission, the Member State concerned, and its competent authorities and bodies, at national, regional or local levels. This partnership must be conducted in full compliance with the respective institutional, legal and financial powers of each of the partners (1) .

In application of the partnership principle, a clear division of responsibilities is established among the different actors as regards the distribution of ESF funds and their eventual reimbursement. Thus, the Member States shall, in the first instance, bear responsibility for investigating irregularities, acting upon evidence of any major change affecting the nature or conditions for the implementation or supervision of assistance, and making the financial corrections required. Nevertheless, the Commission may intervene if, after completing the necessary verifications, it concludes that a Member State has not complied with its obligations. In those cases, the Commission may carry out any necessary correction, if appropriate (2) .

1.4 In monitoring the use of EU financial assistance, the Commission may be called to verify a particular operation financed with ESF funds, either at its own initiative or at the request of a third party. The Ombudsman acknowledges that in these cases, the potentially concerned



citizens should have the right to have their affairs handled within a reasonable time, as enshrined in Art. 41 (1) of the Charter of Fundamental Rights of the European Union (3) , and Art. 17 (1) of the European Code of Good Administrative Behaviour (4) .

1.5 From the available information, it appears that, on 28 July 2003, the complainant informed the Commission of a number of irregularities regarding the distribution of ESF funds by the regional authorities of Madrid. Having acknowledged receipt of this information on 7 August 2003, the institution did not contact the complainant directly until 14 December 2004, and only following the Ombudsman's inquiry.

Even though the Commission has stated that it carried out a first assessment of the problem, it appears that this information was never forwarded to the complainant.

1.6 The Ombudsman notes, however, that, as a result of his inquiry, the Commission furnished some of the information requested by the complainant in its opinion of 22 June 2004. The Ombudsman is also mindful of the fact that the Commission has acknowledged, and expressed regret for the fact, that it did not contact the complainant earlier to provide him with its first assessment.

In view of the above, the Ombudsman does not consider it justified to pursue any further inquiries as regards this case.

1.7 The Ombudsman notes that the Commission has not mentioned any criteria setting out the procedure which its services ought to follow in situations concerning complaints from citizens regarding the use of EU financial assistance. The Ombudsman suggests that, with a view to improving the efficiency and transparency of its relationship with citizens, the Commission could consider establishing and publicising procedures for receiving and handling complaints concerning the use of EU financial assistance, analogous to those applicable in its Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (5) .

The Ombudsman will address a further remark to the Commission to this effect below.

1.8 In his observations on the Commission's opinion, the complainant has raised a number of issues regarding some of the Commission's arguments in support of the decision taken by the responsible Spanish authorities. The complainant's criticism of the Commission's reasoning constitutes, in effect, a new allegation. Since this allegation was not part of the original complaint, the Ombudsman cannot deal with it in the framework of the present inquiry, which only concerns the alleged failure on the part of the institution to inform the complainant. Should the complainant consider that the Commission's reasoning is inadequate, he is free to submit a new complaint to the Ombudsman, after having made the appropriate prior approaches to the institution concerned.

## **2 Conclusion**

In view of the results of his investigation, the Ombudsman considers that no further inquiries into this complaint are justified. He therefore closes the case.



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

## FURTHER REMARK

The Ombudsman notes that the Commission has not mentioned any criteria setting out the procedure which its services ought to follow in situations concerning complaints from citizens regarding the use of EU financial assistance. The Ombudsman suggests that, with a view to improving the efficiency and transparency of its relationship with citizens, the Commission could consider establishing and publicising procedures for receiving and handling complaints concerning the use of EU financial assistance, analogous to those applicable in its Communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) See Article 8, Council Regulation (EEC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds; OJ L 161, 26.6.1999, p. 1; Regulation (EC) No 1784/1999 of the European Parliament and of the Council of 12 July 1999 on the European Social Fund; OJ L 213, 13.8.1999, p.5.

(2) Article 39, Council Regulation (EEC) No. 1260/1999.

(3) *"Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union" .*

(4) *"1. The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. [...]*

*2. If a request or a complaint to the Institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified" .*

(5) OJ 2002, C 244, p. 5.