Decision of the European Ombudsman on complaint 259/2005(PB)GG against the European Commission

In 2004, the Commission published a call for proposals in the framework of the “European Initiative for Democracy and Human Rights” (EIDHR), relating to the rehabilitation of victims of torture. The application guidelines provided that applications had to be submitted in English, French or Spanish. A German association that offers psychological treatment and social support to refugees and their families who are victims of torture intended to apply. However, it noted that, since all of the documents that it needed to attach to its application were only available in German, their translation would be very costly and time consuming. In its complaint to the Ombudsman, the association alleged that it had been discriminated against as a result of this language requirement and that the requirement was contrary to Community law. In particular, the complainant referred to Article 2 of Regulation 1/58 [1], which provides that documents which a Member State or a person sends to Community institutions may be drafted in any one of the official languages.

The Commission submitted that it had always shown a strong commitment to linguistic diversity in the Community. However, as the provision of external assistance had to be ensured in the context of limited resources for translation and tight procedural deadlines in the interest of the final beneficiaries, it had to restrict the languages to be used. In this regard, it was of paramount importance that all documents were understood in the recipient countries.

Following a thorough inquiry, the Ombudsman addressed a draft recommendation to the Commission, asking it to avoid, in future calls for proposals under the EIDHR, any unjustified restrictions on the official languages in which proposals could be submitted.

In its reply, the Commission set out in great detail the reasons which, in its view, militated in favour of limiting the number of languages to be used. The Ombudsman agreed that at least some of those arguments could constitute valid reasons for its practice. However, he also took the view that, since Article 2 of Regulation 1/58 was clearly a provision of general application, any exceptions for entire sectors would have to be decided on by the Community legislator.

The Ombudsman remained convinced that the Commission had not established that there were exceptional circumstances that would have made it impossible to deal with applications in other languages or that the Community legislator had authorised it to depart from the
relevant rule. In these circumstances, the Ombudsman closed the case with a critical remark.

[1] EEC Council: Regulation No. 1 determining the languages to be used by the European Economic Community, OJ 1958 OJ 17, p. 385, as amended.

Strasbourg, 30 April 2008
Dear Dr. V.,

On 18 January 2005, acting on behalf of your organisation, you made a complaint to the European Ombudsman concerning the language requirement set out in the guidelines for a call for proposals published by the European Commission.

On 23 February 2005, I forwarded the complaint to the President of the Commission. The Commission sent the German translation of its opinion on 3 June 2005. I forwarded it to you on 23 June 2005 with an invitation to make observations, which you sent on 13 July 2005.

On 23 September 2005, I asked the Commission to provide me, by 31 October 2005, with further information concerning this case. You were informed accordingly the same day.

On 19 October 2005, the Commission asked for an extension of time until 25 November 2005. I granted this request on 4 November 2005. You were informed accordingly the same day. On 10 November 2005, the Commission informed me that there would be some further delay.

The Commission sent the English original of its reply to my request for further information on 23 November 2005. The German translation followed on 6 December 2005. I forwarded it to you on 19 December 2005 with an invitation to make observations, which you sent on 21 January 2006.

On 22 March 2006, your case was assigned to another Legal Officer.

On 31 March 2006, I asked the Commission to provide me, by 31 May 2006, with further information concerning this case. You were informed accordingly the same day.

On 9 June 2006, the Commission informed me that its reply would regrettably be delayed.

On 22 June 2006, Mr Markus Ferber MEP wrote to me in order to ask me to deal with your case. In my reply of 13 July 2006 I informed Mr Ferber that an inquiry into your case was pending and that further information had been requested from the Commission. A copy of Mr Ferber’s letter and of my reply was forwarded to you on 13 July 2006.

On 11 July 2006, I addressed a reminder to the Commission.

On 27 July 2006, the Commission sent me the English original of its reply to my questions. The German translation was submitted to me on 9 August 2006.
On 9 August 2006, my Office contacted you in order to inform you that the Commission's reply had arrived.

Due to the holiday period, the Commission's reply could only be forwarded to you on 23 August 2006 with an invitation to make observations, if you so wished, by 30 September 2006. No observations were received from you by that date.

On 26 March 2007, I addressed a draft recommendation to the Commission concerning this case. The Commission was asked to submit its detailed opinion by 30 June 2007. You were informed accordingly the same day.

On 30 April 2007, the Commission asked for an extension of time until 31 July 2007. This request was granted by me on 22 May 2007. On 19 June 2007, the Commission asked for a further extension of time until 30 September 2007. On 28 September 2007, the Commission asked for yet another extension of time until 31 October 2007, which I granted on 5 October 2007. You were informed of these extensions.

On 6 November 2007, the Commission submitted the English original of its detailed opinion, a copy of which I forwarded to you for rapid information on 16 November 2007. The Commission presented a German translation of its detailed opinion on 17 December 2007. I forwarded this translation to you on 18 December 2007 with an invitation to make observations, if you so wished, by 31 January 2008. No observations were received from you by that date. However, in a telephone conversation with the Ombudsman's Office that took place on 10 March 2008, you stressed that you were not satisfied with the position adopted by the Commission.

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

THE COMPLAINT

In 2004, the Commission published a call for proposals within the framework of the programme "European Initiative for Democracy and Human Rights" (EIDHR). The call for proposals concerned "Rehabilitation of victims of torture". It was foreseen that the activities to be supported by the Commission could also take place in the EU.

Point 2.2.1 of the "Guidelines for grant applicants responding to the call for proposals for 2004" (the "Guidelines") provided as follows: "Applicants must apply in English, French or in Spanish." It further provided that the applications had to be accompanied by (i) the statutes or articles of association of the applicant organisation, (ii) the applicant's most recent annual activity report and accounts, (iii) an external audit report (in case the grant requested exceeded EUR 300 000) and (iv) the legal entity sheet (a form supplied by the Commission) duly filled in. Points 2.2.1 of the Guidelines directed that originals of these documents needed to be submitted and that where these documents were drafted in a language other than the ones mentioned above, "a faithful translation into one of the latter must be attached".
The complainant, a German association that offers psychological treatment and social support to refugees and their families who are victims of torture, intended to submit an application in response to this call for proposals.

In an e-mail sent on 17 September 2004, the complainant explained that all the relevant documents that it needed to provide were only available in German and that a translation would be very costly and time-consuming. The complainant therefore asked whether the original versions would be acceptable and, if not, whether partial translations would be.

In its reply of 13 October 2004, the Commission pointed out that “you can send a partial translation, provided that the interesting part [sic] are translated: those referring to the status as ngo, and type of activities the organisation can undertake,…”.

On 26 October 2004, the complainant informed the Commission that it needed time to produce these translations and therefore asked for an extension of time. According to the complainant, however, no reply was received from the Commission.

In its complaint to the Ombudsman, the complainant alleged that it had been clearly discriminated against compared to other competitors as a result of the Commission’s requirement that applications should be submitted in English, French or Spanish. According to the complainant, this condition was also contrary to the EC Treaty and to Regulation No 1 determining the languages to be used by the European Community (1) ("Regulation 1/58").

Article 2 of Regulation 1/58 is worded as follows:

"Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language."

The complainant further alleged that the Commission’s failure to reply to its request for an extension of the deadline for the submission of applications constituted a lack of courtesy and thus a breach of the Commission’s Code of Conduct.

The complainant claimed that all official languages of the EU should be accepted in future calls for proposals.

THE INQUIRY

The Commission’s opinion

In its opinion, the Commission submitted that it had always shown a strong commitment to linguistic diversity in the Community.

In so far as the translation of application forms was concerned, the Commission pointed out that this issue had already been addressed by its then President Prodi in his reply of 29 January 2002 to written question E-1479/01. This reply is worded as follows: (2)
"The Commission reaffirms its commitment to maintaining linguistic diversity in the Community as exemplified by the projects undertaken during the European Year of Languages in 2001.

(...)"

In the case of the often lengthy invitations to tender and related documents for cooperation projects with third countries, it is not feasible — in view of the high cost in terms of financial and human resources and the extra time involved in providing external assistance — to work systematically in the national languages both of all the beneficiary countries and the Member States of the European Union. (...) Needless to say, the selections are made without any discrimination on grounds of nationality.

The Commission endeavours to take a pragmatic approach both in the interests of rapid and efficient action on its part and to ensure transparency and the widest possible access for the operators in question. It uses the Community languages which are current in international trade and in the countries in receipt of Community aid. For practical reasons, the Commission accepts that some annexes to the tenders be drafted in a language other than the Community language used in the invitations to tender and the reply form. And Commission staff are available to clarify any aspect of the procedure to be followed to the operators concerned.

(...)"

As regards the second allegation, the Commission stressed that the deadline had been fixed and that it had been impossible to grant exceptions. It also pointed out that the request for an extension had been rejected by e-mail sent the very same day, a copy of which it provided.

In view of the above, the Commission concluded that no maladministration had occurred.

The complainant's observations
In its observations, the complainant accepted that the Commission had shown that it had replied to its e-mail of 26 October 2004. The complainant added that it had not received this reply at the time, presumably due to technical reasons.

As regards the main part of its complaint, the complainant submitted that the Commission's opinion had confirmed that its complaint was justified.

Further inquiries
After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman addressed two requests for further information to the Commission. The Commission duly replied to the Ombudsman's questions, and the complainant was given the possibility to make observations on these replies.

THE OMBUDSMAN'S DRAFT RECOMMENDATION
The draft recommendation

On 26 March 2007, the Ombudsman addressed the following draft recommendation (3) to the Commission, in accordance with Article 3(6) of his Statute:

The Commission should avoid, in future calls for proposals under the European Initiative for Democracy and Human Rights, any unjustified restrictions on the official languages in which proposals may be submitted.

This draft recommendation was based on the following considerations:
(i) General considerations
1 The Ombudsman noted that the present case concerned the question whether the Commission is entitled to require applicants responding to a call for proposals to use a specific language or to choose from one of the languages determined by the Commission. The present case thus did not concern the issue as to whether the Commission is obliged to make the documents concerning a given call for proposals available in a specific language.

2 The relevant linguistic requirement concerned the application in its entirety, i.e., the application as such and any supporting documents that need to be submitted. In its reply to the Ombudsman's second request for further information, the Commission explained that supporting documents may now be submitted in any Community language. The Ombudsman considered that this change was certainly an improvement on the old rules. He noted, however, that the new rules provided that where supporting documents were drafted in an official EU language other than the language(s) foreseen by the call for proposals, "it is strongly recommended, in order to facilitate the evaluation, to provide a translation of the relevant parts of the documents (...) into the one of the language(s) of the call for proposals" (4). In view of this wording, it was not clear whether the new rules would in practice really result in a relaxation of the relevant linguistic requirement. In any event, it was clear that the changes only concerned the supporting documents and that the Commission still required applicants to submit their applications in the language(s) foreseen by the call for proposals.

3 The present complaint arose from a dispute concerning a call for proposals under the EIDHR. Given that the complainant's allegation concerned a specific call for proposals under the EIDHR, the Ombudsman considered that the complainant's claim must also be understood as relating to future calls for proposals under the EIDHR.

4 The issue to be examined here was whether the Commission is entitled to require applicants responding to a call for proposals in the relevant field to use a specific language or to choose from one of the specific languages determined by the Commission. In the Ombudsman's view, this question is dealt with by Regulation 1/58. According to Article 2 of this Regulation, "documents which (...) a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender." The (now 23) official Community languages are set out in Article 314 of the EC Treaty.

The complainant was a legal person set up in Germany and thus subject to the jurisdiction of
this Member State. Since Article 2 of Regulation 1/58 was clearly applicable to legal persons, the complainant would thus have been entitled to submit its application in German or any other of the official EU languages. The current practice of the Commission concerning calls for proposals under the EIDHR was thus not in conformity with Community law, unless (1) Article 2 of Regulation 1/58 did not apply to the sector concerned or (2) there were valid reasons justifying a derogation from this rule.

(ii) Does Article 2 of Regulation 1/58 apply to calls for proposals under the EIDHR?
5 The Commission argued that the submission of documents in reply to a call for proposals by a Community institution takes place in the very specific context of this call for proposals and that Article 2 of Regulation 1/58 does not apply in this context. The Ombudsman noted, however, that Regulation 1/58 sets out the general rules concerning the use of languages by or towards the institutions of the Community. Any limitation of the scope of application of this provision would thus have to be established by the institution invoking such a limitation. The Ombudsman noted, however, that the Commission had not referred to any other provision from which it could be deduced that Article 2 of Regulation 1/58 was not applicable to the replies to be given to a call for proposals under the EIDHR.

(iii) Are there valid reasons justifying a derogation from Article 2 of Regulation 1/58?
6 The Commission put forward a number of arguments to support its position, which could be summarised as follows: (i) applicants should be able to master the languages required by the Commission; (ii) it is necessary to ensure that projects are understood in recipient countries; (iii) the organisation of such calls for proposals involves a margin of discretion; (iv) the decision to require applicants to use the Community languages which are current in international trade and in the countries in receipt of Community aid is reasonable; (v) the linguistic requirements have not made it impossible for applicants to respond to such calls for proposals; (vi) working in all Community languages would be impracticable in the field of external assistance.

7 The Ombudsman pointed out that through Article 2 of Regulation 1/58, the Community legislator had given persons subject to the law of a Member State the right to decide which of the official languages of the EU they wish to use when addressing themselves to the institutions of the Community. In light of this decision adapted by the Community legislator, the Ombudsman took the view that any limitations of this right must be based on valid reasons, necessary for the attainment of the legitimate aim pursued and proportionate.

8 Having carefully examined all the information provided to him, the Ombudsman concluded that the first five arguments put forward by the Commission were unconvincing (5).

9 The argument to which the Commission visibly attached most importance concerned the practical consequences of admitting applications in all official EU languages. The Ombudsman noted that the Commission had expressed the fear that its mission (in the field of development cooperation) would come to a "grinding halt" if it were to work systematically in the national languages both of all beneficiary countries and the EU Member States.

10 To begin with, the Ombudsman considered it useful to point out that this vision was based on an incorrect premise, given that the issue was whether applicants should be able to
address themselves to the Commission in any of the official languages of the EU, not in those of any third country. The Ombudsman also noted that the Commission's prediction was not backed up by any concrete, tangible evidence. In view of this, the Ombudsman was not convinced that the dramatic scenario outlined by the Commission was realistic.

11 Notwithstanding the above, the Ombudsman stressed that he was of course conscious of the fact that the need to deal with applications in all official EU languages was likely to put a serious strain on the Commission's financial and staff resources. He further acknowledged that cost considerations might constitute a serious, even compelling reason to limit the number of languages in calls for proposals. However, given that the right to use any Community language was granted by Article 2 of Regulation 1/58, any limitation of this right would in the Ombudsman's view necessitate a legislative act.

12 To the extent that the Commission invoked internal problems and reasons of expediency in order to support its position, the Ombudsman took the view that such considerations could not suffice to entitle the Commission to disregard its legal obligations under Article 2 of Regulation 1/58, unless the internal problems were indeed insurmountable. In the Ombudsman's view, it had not been shown that this was the case.

13 The Ombudsman further noted that the Commission also invoked the need to ensure a reliable, timely and high quality implementation of Community aid. In the Ombudsman's view, the interests of the beneficiaries of the projects under the EIDHR obviously played an important role in this context. It could not be excluded that there might be cases where it was important to ensure that projects under the EIDHR are carried out as rapidly as possible and where this urgency might entitle the Commission to require applicants to use a particular language for their proposals, The Ombudsman noted, however, that the Commission had not argued that there was any such urgency in the present case. He further took the view that it could not seriously be argued that all calls for proposals under the EIDHR were so urgent that it would be imperative to limit the right given to applicants by Article 2 of Regulation 1/58 to use a Community language of their choice.

14 It appeared that certain calls for proposals under the EIDHR envisaged action that focuses on a specific country. The Ombudsman acknowledged that in such cases, there would be a certain logic in asking applicants to use the language that would have to be used for the implementation of their projects already when submitting their proposals, at least in so far as the description of the project (as opposed to supporting documents) is concerned. However, it emerged from the submissions submitted by the Commission that the latter limited the number of languages that could be used by applicants in all calls for proposals under the EIDHR, i.e., irrespective of any examination as to whether there was a compelling reason for doing so in a given case. In any event, the Ombudsman took the view that since Article 2 of Regulation 1/58 gave applicants the right to use any Community language when addressing Community institutions, a general limitation of the languages that could be used when submitting proposals for projects under the EIDHR would require a decision to that effect to be taken by the Community legislator.

15 The EIDHR was based on two Regulations adopted by the Council in 1999. These
Regulations had been amended in 2004, following proposals made by the Commission. The Ombudsman pointed out that if the Commission were to consider that there were compelling reasons for limiting, on a general basis, the number of languages that could be used when submitting proposals under the EIDHR, it would thus have the possibility to submit a proposal to that effect to the Community legislator.

16 In view of the above, the Ombudsman arrived at the conclusion that the Commission's insistence that English, French or Spanish be used for applications under the call for proposals concerning "Rehabilitation of victims of torture" constituted an instance of maladministration.

17 The Ombudsman further concluded that the Commission had not been able to show that it would be justified to restrict, on a general basis, the number of languages that can be used as regards replies to calls for proposals under the EIDHR. Subject to any valid reasons that could justify such a restriction in individual cases, and as long as the Community legislator had not decided otherwise, applicants should therefore be free to use any Community language they choose, as foreseen by Article 2 of Regulation 1/58.

The Commission's detailed opinion
In its detailed opinion, the Commission made the following comments:

The EIDHR had been replaced by the "European Instrument for Democracy and Human Rights" (6). The Commission therefore assumed that the Ombudsman had this instrument in mind when making his draft recommendation.

The Ombudsman did not exclude that language restrictions may be justified in specific cases, such as when the action is carried out in a situation of urgency or in a specific country. Any such limitation would have to be justified by compelling reasons and explained on the basis of the individual circumstances of a given call for proposals. The Ombudsman also agreed that other considerations might be relevant.

Responding to a call for proposals by submitting a proposal was not covered by Article 2 of Regulation No 1. This provision only applied where the communication was initiated by the sender, whereas in calls for proposals the institution invited candidates to submit proposals. In the latter case, the Commission acted as a contracting authority and disposed of a certain margin of discretion as regards the modalities to be followed.

If the Commission were to work systematically in all official EU languages, the delays in the procedures for the delivery of external assistance would be so substantial that it would render the effective attainment of the objectives of Article 177 of the EC Treaty unfeasible.

Calls for proposals in the field of development co-operation and external aid were also addressed to applicants from the EU's partner countries. However, accepting all EU languages would lead to a new discrimination against the languages of the EU's partner countries, such as Thai, Swahili, Arabic or Russian.

Although the Ombudsman had limited the scope of his draft recommendation to the EIDHR,
it could easily be invoked as a precedent for calls for proposals under other instruments of external aid. This raised serious questions as to the actual impact of the draft recommendation.

The Ombudsman's draft recommendation would indeed lead to insurmountable problems. An analysis of its direct and indirect impact had been carried out, the results of which were as follows:

- The Commission's efforts at simplifying procedures had led to a considerable increase in participation in calls for proposals in external aid actions. For instance, under one specific NGO co-financing programme the number of applications had gone up from 980 in 2006 to 1854 in 2007, an increase of almost 100%. Experience also showed that it took some time before the number of applicants from new Member States reached its maximum.
- It was only once all proposals under a call for proposals had been received that the translation requirements would be known. It was therefore extremely difficult to take preparatory measures in terms of translation workload. Obviously, the pace of evaluation would depend on the 'last in the queue', delaying the entire procedure.
- Restricting proposals to one or more EU languages was not only a prerequisite from the viewpoint of final beneficiaries, but also with a view to facilitating the work of the evaluation committees. Whereas it was difficult to envisage that at the Commission's headquarters there were enough multilingual experts available to cover all official languages and all fields of expertise, this appeared impossible for the Commission's Delegations that had very limited staff available. However, the members of most evaluation committees were recruited among members of the Delegations.
- The choice of French, English and Spanish guaranteed the best rational use of scarce resources, while taking into account the linguistic capacities of the evaluation committees and acknowledging the EU institutions' responsibility towards the European taxpayer.
- The draft recommendation would imply that all proposals would have to be translated into one of the Commission's main working languages in the field of external aid in order to ensure a fair and impartial assessment. Consequently, safeguarding the highest standards of quality of translations would be essential. This would be unfeasible without a major increase in funds and in staff. The necessity to translate proposals on a systematic basis would add several months to the evaluation and selection process of each call for proposals. In addition, there would be a greater risk that the legally stipulated time limits expire before contracting is done.
- As regards the direct impact of the draft recommendation, its application to calls for proposals under the EIDHR would entail the translation of approximately 50,000 pages from 20 additional languages per year, adding 2 to 5 months to the evaluation and selection process of each call for proposals, which currently takes on average 6 to 9 months. A delay of this dimension would be prohibitive. In 2006, the average cost of translating one page was about EUR 188.
- While the draft recommendation was limited to EIDHR calls for proposals, other areas of the Commission's activity were so similar that it could not be excluded that the Ombudsman might extend his draft recommendation to these areas in the future. A possible extension to calls for proposals for awareness raising and development education ("ED"), which were based on an EU regulation, would have the consequence of an even higher increase of delays and costs. The overall objective for this type of action was to raise European public
awareness about development problems and to mobilise support in Europe for actions in support of developing countries. Since ED actions might also be eligible for financing under the EIDHR, any such calls for proposals should be included in the analysis of the indirect impact of the Ombudsman's draft recommendation. Based on the figures for 2006, the estimated total number of proposals submitted by applicants using Community languages other than those currently admissible would be close to 500 per year, representing a minimum of 25,000 pages to be translated. The application of the Ombudsman's draft recommendation would thus cost a minimum of EUR 4.7 million.

- The draft recommendation could also have implications for the contractual phase of grants. It could encourage requests that grant agreements and their numerous annexes should also be formulated in the language of the proposal. This would amount to an additional workload of around 3,000 translation pages and a significant increase in administrative costs which was difficult to predict.

- There could also be a long-term impact on EC financing instruments in the field of external co-operation in general, on public procurement in this field and on calls for proposals managed by other Commission services.

- In conclusion, allowing applicants freely to choose in which language to submit their proposals, to sign contracts and to communicate would have considerable negative impact in terms of increases in costs, duration and bureaucracy of grant and public procurement management of EC external co-operation. From a practical and operational point of view, the draft recommendation would negate the Commission's efforts to improve, speed up and simplify these management procedures. Without a substantial increase of the administrative budget, the implementation of the draft recommendation would in the long run be impossible.

- There were also important efficiency considerations that compel the Commission to restrict the use of languages in calls for proposals under the EIDHR. Applicants need to be able to work in the official language of the recipient country or the Community language that is most current in this country. Requiring applicants to submit their applications in this language represents therefore an effective selection criterion. The persons and institutions involved in the recipient country also need to be able to understand and evaluate the proposals submitted. The 'European Consensus' on development, jointly declared by the Council, the Parliament and the Commission, stresses the principles of ownership and partnership. Accepting languages other than English, French, Spanish or Portuguese would be in contradiction to these principles.

- As regards the present case, there was a high probability that the action would be carried out in third countries where English, French or Spanish were commonly spoken or understood. In addition, there was a high probability that the majority of the final beneficiaries, i.e., the victims of torture, would speak and understand these languages rather than German or other Community languages.

- As regards the example used by the Ombudsman, a proposal for an action in Latin America that was to be carried out in Spanish would not have been eligible if it had been submitted by an applicant in English. In such cases, proposals must be submitted in Spanish.

- The problem at the origin of the complaint had in the meantime been solved, as the Commission now accepted supporting documents in all official EU languages.

- The financing of rehabilitation centres for victims of torture constituted only a minor part of EIDHR actions and was foreseen to be phased out and taken over by Member States.
The Commission concluded by saying that it had correctly applied the relevant rules and that it was ready to explain the reasons for limiting the number of Community languages to be used in the grant guidelines for future calls for proposals under the EIDHR.

**The complainant's observations**
The complainant did not submit written observations. However, in a telephone conversation with the Ombudsman's Office the complainant stressed that it was not satisfied with the position adopted by the Commission.

**THE DECISION**

1 The relevant facts

1.1 In 2004, the European Commission published a call for proposals within the framework of the programme "European Initiative for Democracy and Human Rights". The call for proposals concerned "Rehabilitation of victims of torture". It was foreseen that the activities to be supported by the Commission could take place in any country (with the exception of certain non-EU countries). The call for proposals (in the form it was given after a corrigendum had been issued) further provided as follows: "If the activities take place inside the EU, the rehabilitation activities need to be targeted on the victims coming from outside the EU or towards torture prevention in countries outside the EU."

1.2 According to the "Guidelines for grant applicants responding to the call for proposals for 2004" (the "Guidelines"), the procedure was to comprise two stages, namely, (i) the submission of preliminary proposals and (ii) the submission of completed applications for a number of preselected applications. Preliminary proposals had to be submitted by 27 October 2004 at the latest. These applications were then to be checked by the Commission. Only the applicants that had submitted the best preliminary proposals were then to be invited to submit completed applications.

1.3 Point 2.2.1 of the Guidelines provided as follows: "Applicants must apply in English, French or in Spanish." It further provided that the applications had to be accompanied by (i) the statutes or articles of association of the applicant organisation, (ii) the applicant’s most recent annual activity report and accounts, (iii) an external audit report (in case the grant requested exceeded EUR 300 000) and (iv) the legal entity sheet (a form supplied by the Commission) duly filled in. Points 2.2.1 of the Guidelines directed that originals of these documents needed to be submitted and that where these documents were drafted in a language other than the ones mentioned above, "a faithful translation into one of the latter must be attached".

The Guidelines further provided that questions could be sent to the Commission no later than 21 days before the deadline for the receipt of preliminary proposals and that a reply would be given no later than 11 days before that deadline.

1.4 The complainant, a German association that offers psychological treatment and social support to refugees and their families who are victims of torture, intended to submit an application in response to this call for proposals.
1.5 In an e-mail sent on 17 September 2004, the complainant explained that all the relevant documents that it needed to provide were only available in German and that a translation would be very costly and time-consuming. The complainant therefore asked whether the original versions would be acceptable and, if not, whether partial translations would be. In its reply of 13 October 2004, the Commission pointed out that "you can send a partial translation, provided that the interesting part [sic] are translated: those referring to the status as ngo, and type of activities the organisation can undertake,...".

1.6 On 26 October 2004, the complainant informed the Commission that it needed time to produce these translations and therefore asked for an extension of time.

2 Introductory remarks

2.1 In its complaint to the Ombudsman, the complainant alleged that (1) it had been discriminated against as a result of the Commission's demand that applications should be submitted in English, French or Spanish and that this condition was also contrary to Community law. The complainant further alleged (2) that the Commission's failure to reply to its request for an extension of the deadline for the submission of applications constituted a lack of courtesy and thus a breach of the Commission's Code of Conduct.

The complainant claimed that all official languages of the EU should be accepted in future calls for proposals.

2.2 In its opinion on the complaint, the Commission stressed, as regards the second allegation, that the deadline for the submission of applications had been fixed and that it had been impossible to grant exceptions. The Commission also pointed out that the complainant's request for an extension had been rejected by e-mail sent on the very same day, a copy of which it submitted to the Ombudsman.

2.3 In its observations, the complainant accepted that the Commission had shown that it had replied to its e-mail of 26 October 2004. The complainant added that it had not received this reply at the time, presumably due to technical reasons.

2.4 In view of the above, the Ombudsman considers that the complainant has thus effectively dropped the second allegation. Only the first allegation and the claim thus need to be examined here.

2.5 The first allegation comprises two parts, given that the complainant alleges (i) that it has been discriminated against and (ii) that the Commission's behaviour was unlawful. However, the Ombudsman notes that the complainant has essentially limited itself to contesting the legality of the Commission's behaviour and has not put forward any concrete arguments to establish the alleged discrimination. In effect, the complainant appears to argue that there has been discrimination since the Commission insisted that applications had to be submitted in one of three specific Community languages and could not be drafted in German. Given that the allegation of discrimination is thus closely linked to, and based on, the allegation of unlawful behaviour, the Ombudsman considers it appropriate to focus on the latter.
2.6 In its observations on the Commission's reply to the first request for further information, the complainant observed that the Commission had sent its reply only on 5 December 2005, although the Ombudsman had asked it to do so by 31 October 2005. The complainant expressed the view that this "delaying tactic" might have the aim of making EU citizens forego their right to complain to the Ombudsman.

2.7 It should be noted that on 19 October 2005, and thus before the expiry of the relevant deadline, the Commission had asked the Ombudsman for an extension of time until 25 November 2005. This request was granted by the Ombudsman on 4 November 2005, and the complainant was informed accordingly the same day. On 10 November 2005, the Commission informed the Ombudsman that there would be some further delay. As it turned out, the English original of the Commission's reply to the first request for further information was sent on 23 November 2005, and thus within the extended deadline. In these circumstances, the complainant's suspicion that the Commission might be pursuing a delaying tactic would appear to be unfounded.

3 Allegedly unlawful limitation of admissible languages

3.1 The complainant alleged that the Commission's demand that applications should be submitted in English, French or Spanish was contrary to the EC Treaty and to Regulation No 1 determining the languages to be used by the European Economic Community (7) ("Regulation 1/58"). It claimed that all official languages of the EU should be accepted in future calls for proposals.

Article 21(3) of the EC Treaty provides as follows:

"Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 7 in one of the languages mentioned in Article 314 and have an answer in the same language."

Article 314 of the EC Treaty mentions the 23 official languages of the EU.

Article 2 of Regulation 1/58 is worded as follows:

"Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language."

3.2 In its opinion, the Commission submitted that it had always shown a strong commitment to linguistic diversity in the Community.

In this context, the Commission referred to the reply of 29 January 2002 that its then President Prodi had given to written question E-1479/01. This reply contains inter alia the following statements:

"In the case of the often lengthy invitations to tender and related documents for cooperation projects with third countries, it is not feasible — in view of the high cost in terms of financial and human resources and the extra time involved in providing external assistance — to work
systematically in the national languages both of all the beneficiary countries and the Member States of the European Union. (...).

The Commission endeavours to take a pragmatic approach both in the interests of rapid and efficient action on its part and to ensure transparency and the widest possible access for the operators in question. It uses the Community languages which are current in international trade and in the countries in receipt of Community aid. For practical reasons, the Commission accepts that some annexes to the tenders be drafted in a language other than the Community language used in the invitations to tender and the reply form. And Commission staff are available to clarify any aspect of the procedure to be followed to the operators concerned.

3.3 In its observations, the complainant submitted that the Commission's opinion had confirmed that its complaint was justified. The complainant took the view that the Commission had failed to comply with the commitment to which it had referred in its opinion. It further stressed that the Commission had not proceeded in the way Mr Prodi had announced, given that it had not accepted annexes in other languages.

3.4 On 23 September 2005, the Ombudsman asked the Commission to comment on the compatibility of the relevant language requirement with Article 21 of the EC Treaty and Regulation 1/58.

3.5 In its reply, the Commission submitted the following arguments: (1) The provision of external assistance was a policy central to the EU's role in the world and had to be ensured in the context of limited financial and human resources for translation and tight procedural deadlines in the interest of final beneficiaries. If the Commission were to work systematically in the national languages both of all the beneficiary countries and the Member States of the EU, its mission would come to a grinding halt, given the constraints on financial and human resources. (2) It was of paramount importance that all documents be understandable in the recipient countries by both private and public partners there. It was for this reason that the Commission used, as Mr Prodi had said, the Community languages which are current in international trade and in the countries in receipt of Community aid. (3) As a corollary, the Commission based itself on the principle that European operators who submit applications should be able to communicate in the Community language or languages commonly used in the third country or countries where their project is implemented. (4) Its statements, including that by Mr Prodi referred to above, had been made in full appreciation of the relevant legal background. However, these statements had taken into account the need to apply "a pragmatic rule of reason in the domain of external aid in order to find an adequate balance between the above legal requirements and the Commission's obligation to ensure a reliable, timely and high quality implementation of Community aid". The present practice was balanced since it seeks to guarantee the reasonable use of scarce translation resources in acknowledgement of the European institutions' responsibility towards the European taxpayer, without however compromising the transparency of the Commission's actions or the rights of the European citizens to adequate information.

3.6 In its observations, the complainant submitted that the present case had nothing to do with external assistance or projects in third countries and that the Commission's comments
3.7 On 31 March 206, the Ombudsman asked the Commission to reply to a number of specific questions. In particular, the Ombudsman asked the Commission clearly to state whether it considered, having regard to Regulation 1/58 and Article 21 of the EC Treaty in general and Article 2 of Regulation 1/58 in particular, that Community law entitles an applicant to use any official language in an application sent in reply to a call for proposals published by a Community institution.

3.8 In its reply, the Commission submitted the following arguments: (1) The submission of documents in reply to a call for proposals by a Community institution takes place in the very specific context of the call for proposals. Neither Article 21 of the EC Treaty nor Article 2 of Regulation 1/58 concern specifically the rights of applicants in the context of such calls for proposals. In the context of a call for proposals, the Commission is inviting legal persons to enter into a contractual relationship with it for the implementation of actions. As a contractor, it enjoys a margin of discretion as to the procedure to be followed and the subject-matter of the call. In this case, the Commission's decision to request the submission of applications in one of three languages fell within its discretion and was justified for objective reasons. (2) If the Commission were to work systematically in all official languages of the EU in this area, the prolongation of the procedure for the delivery of external assistance would be so substantial that it would render impossible the effective attainment of the objectives mentioned in Articles 177 of the EC Treaty. The choice of French, English and Spanish for the purposes of the given call was rational since it sought to guarantee the rational use of scarce translation resources, taking account of the linguistic capacities of the human resources involved. (3) The Commission did authorise the complainant, in accordance with its request, to present its supporting documents in German, accompanied by partial translations into English, Spanish or French. However, the complainant did not submit any proposal for this call. (4) The translation of supporting documents into one of the two or three languages used in the context of a call for proposals might be perceived as a burden by some NGOs. However, it should be noted that this had not prevented organisations from all eligible countries to participate in calls for proposals. (5) The statement made by Mr Prodi left the acceptance of such enclosures to the discretion of the Commission. It could not be interpreted as a derogation of the requirement to translate supporting documents as foreseen in the context of the present call for proposals. (6) The rationale of the rule requiring translation of supporting documents into one of the languages of the call for proposals was primarily to facilitate the work of the members of the Evaluation Committees who have to pronounce themselves on the quality of the proposals, their eligibility and their administrative compliance. (7) In any event, the revised Practical Guide to contract procedures for EC external actions, which became applicable as of 1 February 2006, had in effect introduced changes in the relevant area. According to the new rules, applicants who have been provisionally selected or listed on a reserve list have to supply the necessary supporting documents, and have the option of submitting them in any of the EU's official languages.

3.9 The Commission's reply was forwarded to the complainant. No observations were received from the complainant.
3.10 On 26 March 2007, the Ombudsman addressed a draft recommendation (8) to the Commission, in accordance with Article 3(6) of his Statute. In this draft recommendation, the Ombudsman took the view that the Commission should avoid, in future calls for proposals under the European Initiative for Democracy and Human Rights, any unjustified restrictions on the official languages in which proposals may be submitted.

3.11 In its detailed opinion, the Commission informed the Ombudsman of the reasons why it felt unable to accept this draft recommendation.

3.12 The complainant did not submit written observations. However, in a telephone conversation with the Ombudsman's Office the complainant stressed that it was not satisfied with the position adopted by the Commission.

3.13 The Ombudsman very much appreciates the fact that the Commission has set out in great detail the reasons that, in its view, militate in favour of limiting the number of languages to be used by applicants in reply to a call for proposals under the EIDHR.

3.14 The Ombudsman considers that certain of the arguments fielded by the Commission are not convincing. In particular, the Ombudsman is unable to understand the Commission's argument that accepting all EU languages would lead to a new discrimination against the languages, such as Thai, Swahili, Arabic or Russian, used in the EU’s partner countries. It should further be noted that the relevant call for proposals stipulated that applications had to be submitted "in English, French or in Spanish". The Ombudsman is therefore unable to see how the Commission could have rejected a proposal for an action in Latin America that was to be carried out in Spanish purely on the grounds that the relevant proposal was submitted in English (or French).

3.15 However, the Ombudsman considers that there is no need for a detailed examination of the Commission’s arguments. The Ombudsman agrees that at least some of the arguments put forward by the Commission could constitute valid reasons that could justify a limitation of the number of languages to be used by applicants responding to a call for proposals under the EIDHR. However, it should be recalled that the Ombudsman’s finding of maladministration in this case was not only based on what the Ombudsman considered to be the absence of such valid reasons, but also on the absence of a legislative act laying down such a limitation. It is worthwhile repeating what was stated in point 3.32 of the draft recommendation in this respect: "The Ombudsman takes the view that since Article 2 of Regulation 1/58 gives applicants the right to use any Community language when addressing Community institutions, a general limitation of the languages that can be used when submitting proposals for projects under the EIDHR, such as the Commission appears to practice it, would require a decision to that effect to be taken by the Community legislator."

3.16 The Ombudsman considers that this statement remains valid. In his view, the arguments used by the Commission in order to show why Article 2 of Regulation No 1 should be considered as not applicable to cases where applicants reply to a call for proposals published by the Commission remain unconvincing. Article 2 of Regulation No 1 is clearly a
provision of general application, and any exceptions for entire sectors would therefore have to be decided on by the Community legislator.

3.17 In view of the above, the Ombudsman considers that the finding of maladministration at which he arrived in his draft recommendation remains valid.

4 Conclusion

4.1 On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

Article 2 of Regulation No 1 determining the languages to be used by the European Community ("Regulation 1/58") gives non-governmental organisations the right to use any of the Community languages when sending documents to the institutions of the Community. However, in a call for proposals published in 2004 within the framework of the programme "European Initiative for Democracy and Human Rights", the Commission informed applicants that they had to apply in English, French or in Spanish. The Commission has not established that there were exceptional circumstances that would have made it impossible to deal with applications in other Community languages, for instance in view of the urgency of the matter. Nor has the Commission shown that the Community legislator had authorised it to depart from the above-mentioned rule. In these circumstances, the Ombudsman concludes that the Commission has failed to comply with Article 2 of Regulation 1/58 in this case. This constitutes an instance of maladministration.

4.2 Article 3(7) of the Statute of the European Ombudsman provides that after having made a draft recommendation and after having received the detailed opinion of the institution or body concerned, the Ombudsman shall send a report to the European Parliament and to the institution or body concerned.

4.3 In his Annual Report for 1998, the Ombudsman pointed out that the possibility for him to present a special report to the European Parliament was of inestimable value for his work. He added that special reports should therefore not be presented too frequently, but only in relation to important matters where the Parliament was able to take action in order to assist the Ombudsman (9) . The Annual Report for 1998 was submitted to and approved by the European Parliament.

4.4 The Ombudsman takes the view that the present case touches upon an important issue of principle. However, regard should be had to the fact that the complainant in the present case in the end chose not to submit an application to the Commission. It should also be noted that the Commission's position in the area concerned has already undergone a certain modification and evolution, although the extent of this change remains unclear and appears to be limited so far. In these circumstances, the Ombudsman considers that it is not yet necessary to submit a special report to Parliament on this issue.

4.5 The Ombudsman will therefore send a copy of this decision to the Commission and include a short summary in the annual report for 2008 that will be submitted to the European Parliament. The Ombudsman thus closes the case.
4.6 The President of the European Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS


(2) Official Journal 2002 C 147 E, p. 3-4.

(3) The text of the draft recommendation is available on the Ombudsman's website (http://www.ombudsman.europa.eu).

(4) Point 2.4 of the revised "Guidelines".

(5) See points 3.21-3.25 of the draft recommendation.


