

## Decision of the European Ombudsman on complaint 606/97/VK/OV against the European Parliament

Decision

**Case 606/97/OV - Opened on 11/09/1997 - Decision on 29/07/1998**

Strasbourg, 29 July 1998 Dear Mr Z., On 27 June 1997 you made a complaint to the European Ombudsman concerning the language of the contract documents of a call for tenders (PE MOB 97/2) by the European Parliament. On 11 September 1997, I forwarded the complaint to the President of the European Parliament. The Parliament sent its opinion on 30 January 1998 and I forwarded it to you with an invitation to make observations, if you so wished. No written observations have been received from you. I am writing now to let you know the results of the inquiries that have been made.

### THE COMPLAINT

According to the complainant, the relevant facts were as follows: The complainant wrote on behalf of "Timmer en Aannemingsbedrijf Correct", a Dutch carpentry firm, and complained about the language of the contract documents he received further to a call for tenders by the European Parliament concerning furniture for conference rooms of the Leopold building in Brussels (PE MOB 97/2) published in the Official Journal CE 97. S 100 of 27 May 1997. The complainant, who read the official notice of the call for tenders in a Dutch newspaper, sent on 2 June 1997 a fax to the competent service of the Parliament asking for the contract documents. Given that the contract documents were sent to him in French and not in Dutch, he contacted the Parliament's services which confirmed that the contract documents were only sent in the French language. For those reasons he complained to the Ombudsman alleging that, in order to guarantee equality between them, the different tenderers should receive the contract documents in their own language.

### THE INQUIRY

**The Parliament's opinion** In its comments, the Parliament first observed that the call for tenders (PE MOB 97/2) had been published in the Official Journal of 27 May 1997 as well as in national newspapers amongst which a Dutch newspaper. As regards the linguistic requirements of the notices of the call for tenders, the Parliament referred to article 9 of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (1). This article provides that the tender notice by which a contracting authority wishes to award a public supply contract shall be published in full in the Official Journal of the European Communities in its original language, and a summary of the important elements of each notice shall be published in all the official languages of the Communities, the text in the



original language alone being authentic. The Parliament concluded therefore that the tender notice in the present case, which had been published in all the official languages of the Union, had respected those requirements. As regards the contract documents, the Parliament observed that the national contracting authorities have not any obligation under Community law to translate them, and that, as regards public procurement by the Community institutions where the contract documents are often voluminous, the current practice of the Parliament and of other institutions had also been not to translate the contract documents. Therefore the contract documents in the present case were only available in French. The Parliament however observed that it was aware that this pragmatic approach did not allow the Community institutions to respect the principle of equality of treatment between the Community languages. For this reason, the Advisory Committee on Purchases and Tenders adopted on 27 November 1997 a Recommendation (CCAM nE 4 - 1997) on the use of the official languages for its own tenders. The Parliament concluded that, in conformity with this recommendation, it will take all the necessary measures in order to ensure that, in future, the essential parts of the contract documents will be available in all the official languages of the Union. It finally observed that the tenderers can always submit their tenders in the language of their choice. **The complainant's observations** No written observations have been received from the complainant. However, he informed the office of the Ombudsman in a telephone conversation that, given that the contract documents were not available in Dutch, he had not been able to submit a tender. He nevertheless observed that his complaint had led to a positive result, given that the Parliament announced to change its practice for the future.

## THE DECISION

### 1. The alleged failure of the Parliament to provide the complainant with contract

**documents in the Dutch language** 1.1 The allegation of the complainant consists in the fact that, further to his request for the contract documents of the tender, the Parliament sent them in French and could not provide him with the contract documents in Dutch. Therefore, the complainant was not able to submit his tender. He also observed that, in order to guarantee the principle of equality of treatment between them, the contract documents should be sent to the tenderers in their own language. 1.2 The Ombudsman notes that, in the field of tenders by Community institutions, the general principle of non-discrimination on basis of nationality set out in article 6 of the EC Treaty has been repeated in article 62 of the Financial Regulation, which provides that *"in respect of contracts entered into by the Communities, there shall be no discrimination between nationals of Member States on grounds of nationality"*. 1.3 As regards the principle of non-discrimination, the Ombudsman notes that the Parliament expressed its awareness of the fact that its current practice not to translate the contract documents did not allow it to respect this principle. Therefore the Ombudsman welcomes the initiative of the Parliament which led on 27 November 1997 to the adoption by the Advisory Committee on Purchases and Tenders of the Recommendation (CCAM nE 4 -1997) on the use of the official languages for its own tenders. For the European citizens, it contains the valuable recommendation that the contract documents sent by the institution to a person or company subject to the jurisdiction of a Member State shall in principle be drafted in the language of that State, or in the language used in the request. 1.4 It was regrettable that the complainant could not take part in the tender because he did not get the contract documents in his own language, which might constitute an infringement of the principle of non-discrimination on basis of



nationality. However, it appears from the above that the Parliament has reacted positively and promptly to this complaint and will change its practice as regards the contract documents. This will enable the complainant like other tenderers to participate in equal conditions to tenders organized in the future by the Parliament. No further remark by the Ombudsman therefore seems necessary. **2. Conclusion** 2.1 The Ombudsman notes that the Parliament has reacted positively and promptly to this complaint. He particularly welcomes the initiative of the Parliament which led on 27 November 1997 to the adoption by the Advisory Committee on Purchases and Tenders of the Recommendation (CCAM nE 4 -1997) on the use of the official languages for its own tenders. For the European citizens, it contains the valuable recommendation that the contract documents sent by the institution to a person or company subject to the jurisdiction of a Member State shall in principle be drafted in the language of that State, or in the language used in the request. It was regrettable that the complainant could not take part in the tender because he did not get the contract documents in his own language. However, given that the Parliament has now announced to change its practice, the complainant like other tenderers will be able to participate in equal conditions to tenders organized in the future by the Parliament. Therefore, it appears from the European Parliament's comments and the complainant's observations that the Parliament has taken steps to settle the matter. The Ombudsman has therefore decided to close the case. Yours sincerely Jacob Söderman Copy: Mr José Maria Gil-Robles Gil-Delgado, President of the European Parliament Mr Julian Priestley, Secretary General of the European Parliament (1) OJ 1993 L 199/1.