

Decision of the European Ombudsman on complaint 1087/97/OV against the European Commission

Decision

Case 1087/97/OV - Opened on 01/12/1997 - Decision on 28/09/1998

Strasbourg, 28 September 1998 Dear Mr G., On 19 November 1997 you made a complaint to the European Ombudsman concerning the decision of 3 December 1996 by which DG VIII (Development) of the Commission rejected your funding application for the Project of admission/accommodation of Needy Angolan Children in families. On 1 December 1997, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 9 March 1998 and I forwarded it to you with an invitation to make observations, if you so wished. On 30 March 1998, I received your observations on the Commission's opinion. On 15 April I asked for additional comments from the Commission. Those were sent to you on 17 June 1998 with an invitation to make further observations. On 23 July 1998 I received your additional comments. 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 : Mr G., Director of Friedensdorf International, a non-governmental organisation offering medical care to seriously injured children from war and crisis areas, complained to the Ombudsman about the fact that his application for funding under budget heading B7-7020 (Promotion of human rights and democracy in the developing countries) had been rejected by DG VIII of the Commission. His application concerned the Project of admission/accommodation of Needy Angolan Children in families (ref. ANG/159/96). This project was intended to integrate homeless children temporarily or definitively into selected new families, given that orphan houses would not give them the structure of a family necessary for their emotional development. The project had been conceived by AAD (Angolan Action for Development, Luanda) and approved by the Ministry in charge. However, given the absence of adequate financial resources, the complainant made on 30 August 1996 an application to DG VIII for funding the project under the budget heading B7-7020. On 3 December 1996, the complainant was informed of the decision of DG VIII that his funding application had been rejected because of the limited resources of the budget line B7-7020 in relation to the numerous countries and fields of activities covered and because his project did not fit exactly into the criteria of the budget line. DG VIII equally informed the complainant that it doubted that the new families which already faced enormous daily problems



could be the ideal home for these vulnerable children. Finding the rejection decision unclear and not sufficiently motivated, the complainant wrote four times between December 1996 and September 1997 to the Commission asking for more explanations for the rejection of his application, in order to eventually re-work the concept of the project. However, no reply was received from the Commission. It is only in November 1997, further to a telephone request from the Ombudsman's office to reply to the complainant, that the Commission answered to his correspondence. However, the complainant was still unsatisfied with the reasoning of the rejection decision, which was contradictory, not objective and clear enough in his eyes, and he therefore complained to the Ombudsman alleging that the Commission 1) failed to furnish him with the reasons of the rejection decision, and 2) failed to reply during several months to his correspondence asking for more explanations.

THE INQUIRY

The Commission's opinion As regards the first allegation concerning the reasoning of the rejection decision, the Commission observed that, given the limited financial resources (ECU 17 million for use in around 100 countries), a strict selection procedure was necessary, and that the projects selected were those which were likely to have the maximum impact on strengthening democracy, the rule of law and respect for human rights in the country. The Commission further stated that the present project was dealt with under the same procedure and in the same objective manner as the others. The Commission also considered that the reasons given for the rejection decision were not contradictory, given that it first informed the complainant that the project did not fulfil the selection criteria for the budget heading and later informed him that the main obstacle was that only projects which contributed to the democratic development of the country could be funded. With regard to the failure to reply to the complainant's correspondence asking for explanations, the Commission stated that the periods for answering to the complainant (3 weeks for the letter of 8 April 1997 and 8 weeks for the letter of 12 November 1997) were reasonable considering the workload and the human resources available. **The complainant's observations** The complainant observed that the Commission ignored the approval of the project by the Angolan government. As regards more particularly the reasoning of the rejection decision, the complainant stated that the Commission never informed him of the exact selection criteria and why his project did not fulfil those criteria. Therefore the complainant asked the Ombudsman to continue his investigation. As regards the failure to reply, the complainant observed that the Commission's reply of 8 April 1997 was in fact an answer to the letter of 6 March 1997 which was already a reminder of the letter of 27 December 1996. Therefore the observation of the Commission that it replied within 3 weeks was not correct. **Further inquiries** After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary, more particularly in order to determine which selection criteria for the funding under budget heading B7-7020 had not been fulfilled by the complainant. **The Commission's additional comments** The Commission observed that the complainant had been informed of the selection criteria (impact on strengthening democracy, the rule of law and respect for human rights in the country), having received the general conditions governing the budget heading B7-7020 and having completed the standard form attached to them. The Commission stated however that, in view of the large



number of funding applications received (over 300 a year, only 20 % of which can be met), it is difficult to give a detailed explanation for each refusal. In the present case, the Commission stated that the project was primarily socially and medically orientated (psychological care of children), and therefore not covered by the direct priorities of the budget line. The rejection decision was thus rather based on the nature of the project. The complainant's additional observations The complainant admitted having received the general conditions governing the budget heading. However, he observed that those conditions were very extensive and subject to interpretation. He also stated that he was still missing a clear argumentation of why his project did not fit exactly into the selection criteria.

THE DECISION

1 The alleged failure to reply the complainant's correspondence 1.1 The complainant alleged that the Commission failed to reply to his four letters dated 27 December 1996, 6 March, 3 April and 3 September 1997, in which he asked for more explanations for the rejection of his application. The Commission observed that it replied to those letters respectively within 3 weeks (fax of 8 April 1997) and 8 weeks (reply of 12 November 1997), which it considered as reasonable periods, given the workload and the human resources available. 1.2 The principles of good administrative behaviour require that letters from complainants to the Commission administration receive a reply within a reasonable time limit. 1.3 In the present case it appears that, after having received the rejection decision of 3 December 1996, the complainant wrote four times to the Commission between December 1996 and September 1997. The Ombudsman notes that the short fax from DG VIII of 8 April 1997 was only a reply to the complainant's letter asking for the names of the Commission representatives in Angola, and did not furnish additional information as regards the reasoning itself of the rejection decision. It was only on 12 November 1997, after a telephone request by the Ombudsman's office, that DG VIII finally wrote a letter to the complainant in which it replied to his request for additional information. As the complainant rightly observed in his additional comments, this can not be considered as a reasonable time period for replying to his correspondence. Therefore, the fact that the Commission only replied on 12 November 1997 to the complainant's correspondence starting from December 1996 constitutes an instance of maladministration. *2 The alleged failure to state reasons for the rejection decision* 2.1 The complainant alleged that the decision of 3 December 1996 by which the Commission rejected his funding application was unclear and failed to state sufficient reasons. The Commission observed that it had informed the complainant about the selection criteria and that the main obstacle for not being selected was that only projects which contributed to the democratic development of the country could be funded. In its additional comments, the Commission stated that, in view of the large number of applications, it was difficult to give a detailed explanation for each refusal. 2.2 It is necessary to determine first which duty to state reasons is applicable to the Commission vis-à-vis applicants eliminated from the funding. Budget heading B7-7020 is called "Human Rights and democracy in the developing countries" (Council resolution of 28 November 1991 on human rights and democracy in the developing countries). As regards the duty to state reasons, no particular provision is foreseen in this field. Therefore the general duty to state reasons enshrined in Article 190 of the EC Treaty should apply. According to the case law of the Court of Justice, the reasoning followed by the authority which adopted the measure must be disclosed in a clear and unequivocal fashion so as, on the one hand, to make the persons concerned aware of the reasons for the



measure and thereby enable them to defend their rights, and, on the other, to enable the Court to exercise its supervisory jurisdiction (1) . 2.3 Accordingly, in order to determine if the Commission complied with its duty to state reasons, it is necessary to examine the decision letter of 3 December 1996 and the letter of 12 November 1997, in which the Commission replied to the complainant's request for a reasoned explanation. By the letter of 3 December 1996, the Commission rejected the application in the following terms : "*(...) After having examined your above-mentioned proposal together with our Delegation in Angola and with the geographical service responsible for Angola I regret to inform you that the Commission is not able to take your project into consideration. In fact, the limited resources of budget line B7-7020 in relation with the numerous countries and fields of activities covered, impose the setting up of priorities, in order to ensure a geographic and thematic balance in the allocation of subventions. Your project, although centred on a very opportune and important problem, does not fit exactly in the criteria of budget line B7-2070. Moreover, as far as the content of this project is concerned, we doubt that the "new families" which already face enormous daily problems could be the ideal home for these vulnerable children (...)*". In the letter of 12 November 1997, the Commission replied in the following terms : "*(...) As already mentioned before, I regret to confirm that the Commission is not able to take the funding of your project into consideration. First of all, I would like to inform you that the number of project proposals received here are such that a strict selection has to be operated in order to ensure a geographic and thematic balance in the allocation of our limited financial resources (17 MECU/year for about 100 countries). Your project proposal, together with the others we have received, has been examined by our geographical services, in Brussels and in Luanda, in the global framework of the priorities to be addressed by the EC in the present Angolan conditions. In adequacy with the criteria of our budget line, only the projects which could best foster democratic development of the country have been selected (...)*". 2.4 The Ombudsman first notes that, in his additional observations, the complainant admitted that he had been informed about the selection criteria (projects with the maximum impact on strengthening democracy, the rule of law and respect for human rights in the country). In this regard, it then appears from the above correspondence that the Commission did provide sufficient reasons for the rejection of the complainant's application, because he was informed that his project did not fulfill those selection criteria and that only projects which could best promote the democratic development of the country had been selected. Given that the complainant's project concerned mainly social and medical aid, the Commission's explanation appeared to be reasonable. 3 Conclusion On the basis of the European Ombudsman's inquiries into part 1 of this complaint, it appears necessary to make the following critical remark : The principles of good administrative behaviour require that letters from complainants to the Commission administration receive a reply within a reasonable time limit. Therefore, the fact that the Commission only replied on 12 November 1997 to the complainant's correspondence starting from December 1996 constitutes an instance of maladministration. Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob Söderman (1) Case T-166/94, *Koyo Seiko v Council* [1995] ECR II-2129, paragraph 103.