

Decision of the European Ombudsman on complaint 1120/97/JMA against the European Commission

Decision

Case 1120/97/jma - Opened on 29/01/1998 - Decision on 18/11/1999

Strasbourg, 18 November 1999 Dear Mr I., On 25 November 1997 you lodged a complaint, on behalf of the *"Fondo Euro Mediterraneo per lo Sviluppo Socio-Culturale"* (hereinafter FEM), with the European Ombudsman. The complaint concerned the alleged failure of the European Commission to fulfil its commitments towards the FEM to finance the organisation of two film festivals in 1995 and 1996. On 29 January 1998, I forwarded the complaint to the President of the European Commission, with a request for comments by the end of April, 1998. The Commission requested an extension of this deadline, on the grounds that its services had encountered some administrative difficulties in examining the file. The Commission sent its opinion on 28 May 1998, which I forwarded to you on 9 June with an invitation to make observations, if you so wished. On 21 July 1998, I received your observations on the Commission's opinion. In order to clarify some of the points made by the institution in the course of the inquiry, I asked the Commission for further information on 12 March 1999. The institution replied to this request by letter of 21 May 1999, which I passed it on to you on 27 May 1999. I received your additional observations on 9 June 1999. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

The complainant, on behalf of FEM, had requested Community funding from the European Commission with a view to organising diverse film festivals (MED Film Festivals) in 1995, 1996 and 1997. His applications were made in the framework of the Community programme for the support of the European audio-visual industry (1). Successful projects were to be selected after a call for proposals and through a selection process carried out by an independent jury of experts. The complainant's funding requests for the 1995, 1996 and 1997 editions of the MED Film Festival were forwarded to the Commission. Only the 1997 MED film festival was chosen for assistance. Even though the Commission seemingly led the complainant to believe that his proposals for 1995 and 1996 would receive some EC funding, the moneys have not been forthcoming. As regards the first funding request for the 1995 MED Festival, the complainant submitted his proposal on 28 November 1994. Not having received any communication on the outcome of the selection procedure, FEM sent in September 1995 a report of the Festival first edition to the Commission. By letter of 25 November 1995, the complainant was informed that the Commission was ready to participate in the costs of the event, within the limit of available resources, and once its financial controller had agreed. According to the complainant, the



Commission formally adopt a decision to financially support the 1995 Festival, on 15 December 1995. This Decision was mentioned in a document entitled "Declaration of Beneficiary" that the complainant received and signed on 6 January 1996, in the course of a meeting in the Commission's premises in Brussels, with the commission services responsible for this programme. The payment of the amount referred to in the Declaration (35.000 ECU's) had never been made. On 10 November 1995 FEM submitted a funding request for its 1996 MED Film Festival. By fax of 17 June 1996, the Commission requested some detailed financial information to the complainant concerning the organisation of the event, which was duly replied to on 19 June 1996. Despite the tone of this letter which might have indicated that the Commission intended to finance FEM's proposal, the institution explained in a letter to the complainant of 20 November 1996 that it could not provide any assistance to the second edition of the Festival. Since the complainant considered that the Commission had not properly handled his requests, he asked to have access to all Commission documents related to the case. After a first negative reply by Mr Pappas, Director-General in DG X, the Commission's Secretary-General, Mr Trojan, reversed that decision and accepted the complainant's request on 11 August 1997. The complainant claimed, however, that the commission had not respected the terms of that letter, by not giving him access to all the relevant documents. The complainant stressed the fact that the Commission's Decision of 15 December 1997 was not among the documents included in the file he had access to. The complainant wrote two additional letters to the Commission on this point, on 26 September and 3 October 1997 respectively, but no reply had been given by the institution. The complainant also mentioned in his letter that having applied for funding for the 1997 MED Festival, the Commission granted it on 4 April 1997. In summary the complainant claimed that the Commission had failed to: (1) Implement a Decision apparently adopted on 15 December 1995 whereby the complainant's association would be granted 35.000 ECU's for the organisation of the 1995 MED Film Festival; (2) Include this Decision among the documents related to this file which the complainant was allowed to inspect on the basis of the commission Decision 94/90 on access to documents; (3) Reply to the letters sent by the complainant to the institution on 26 September 1997 and 3 October 1997. On the basis of these claims the complainant considered that the Commission had not acted properly in the way it handled his different requests for financial assistance.

THE INQUIRY

The Commission's opinion The European Commission's comments on the complaint are in summary the following: The Commission explained that the complainant's requests for funding were made within the framework of the implementation of the Community audiovisual policy, in particular on the basis of the 1995 and 1996 European Commission support programmes for festivals and meetings in the audiovisual area (2). The proposals submitted by the complainant were not among the successful projects selected by a jury of independent experts, on the basis of pre-established criteria. The complainant was informed of the jury's decisions by letters signed by DG X's Director in charge of Cultural Action and Audiovisual Politics, dated 18 April 1995 and 22 April 1996. The Commission regretted that the letters had not apparently reached the complainant. However, it assured that the letters had been duly sent by regular mail, since for financial and technical reasons, registered mail is not employed for these types of letters. Despite its initial rejection, and because the interest of the projects, the Commission pointed out that it had sought to support the complainant's projects, within the limits of available budgetary



resources. As a result of these efforts, the 1997 MED film festival has received a Community assistance of 35.000 ECU's. As regards the 1995 MED Film Festival, the Commission recognised that its letter to the complainant of 21 November 1995 regarding the request for funding from the complainant could have been misleading, in particular its commitment to support the 1995 MED-Film-Festival. However, it added that such undertaking had been made dependant of the approval by the Commission's financial controller. Some of the documents included in the complaint were, in view of the Commission, copies of the file submitted by the responsible technical unit to the financial controller in order to seek Commission funding for the FEM project. However, due to budgetary constraints at the end of 1995, no financial means were available for the support of the year's edition of the MED-Film-Festival. The complainant was informed of this outcome by letter of 10 January 1996. As for the request for funding for the 1996 MED Festival, the Commission explained that despite the initial non-selection of the project, its services have explored the possibilities to give some funding to the event, as stated in its letter of 20 November 1996. The Commission regretted that, once again, the tone of the letter might have created some misunderstanding. However, it also stressed that the letter had made clear that any potential Community funding was dependent upon the prior approval of the financial control. The Commission clarified, in its opinion, some of the expressions used in the its letter to the complainant of 4 February 1997, in particular its use of the term "concrétisation" of the EC assistance. Following the Commission's interpretation, the word should have been understood as the decision to grant, as illustrated by the use of similar expression in the institution letter to the complainant of 10 January 1996. However, in the light of the potential misunderstanding that the use of the term could have led to, the Commission pointed out that DG X had taken the necessary measures to avoid similar situations in future. With regards to the claim relating to the failure of the Commission to give access to all documents, in particular, the alleged Commission Decision of 15 December 1995, the institution pointed out that the complainant had been given access to all the documents concerning the FEM request for financial assistance in 1995. The Commission regretted that its services had not replied to some ensuing letters from the complainant, which referred to this matter. **The complainant's observations** In his observation on the Commission's opinion, the complainant insisted on the claims already made in the original complaint. He stressed that FEM had never been formally informed of the refusal of the Commission to fund the 1995 and 1996 MED Film Festivals. According to the complainant, FEM only received copy of the letters from the commission of 18 April 1995 and 22 April 1996 as annexes of some subsequent correspondence. The complainant focused also part of his observations on the Community contribution for his 1997 project, and referred to several problems that his association had encountered to receive the payment of that money. Due to the fact that this aspect was beyond the original inquiry by the Ombudsman, and that it is not directly related to subject matter of the complaint, the Ombudsman did not deem it justified to consider this new allegation.

FURTHER INQUIRIES

In order to clarify some of the arguments put forward by the Commission in its opinion, the Ombudsman requested, by letter of 12 March, 1999, some further clarification as regards the level of commitment of the institution to financially support the organisation of the 1995 MED-Film-Festival. Although the Commission had clearly stated that no formal granting of assistance had taken place, this position appeared to be contrary to the terms of Commission



letter of 4 February 1997. Furthermore, the complainant's claim that his financial request had been granted and supported by the fact that the document entitled "Declaration of the beneficiary of a Financial Contribution" signed by him on 6 January 1996 referred to such undertaking by the Commission Decision of 15 December 1995. Since it could appear from the available information, that the Commission had given some kind of commitment to fund the 1995 MED Film Festival, the Ombudsman asked for the Commission opinion in this matter, as well as its possible suggestions for a solution. In its reply of 12 May 1999 to this letter, the Commission explained that the effort of its services to support the MED festivals in 1995 and 1996 were due to the repeated requests of the complainant in view of their financial difficulties to carry out the event. As regards the fact that the complainant had been given a document entitled "Declaration of the beneficiary of a Financial Contribution", the Commission explained that this document only constituted a part of the file, which the responsible Commission services were to transmit for approval to the financial controller. However, because of the exhaustion of available financial resources by the end of 1995 this aim was never carried out. Furthermore, the institution explained that its services had not subscribed to the terms of that document. As regards the other correspondence mentioned in the Ombudsman's letter, the Commission explained that it related to the effort of its services to obtain some financial assistance for the organisation of the MED Festival in 1996. In reply to these additional comments, the complainant sent some further observations on 9 July 1999. This letter insisted on the fact that the Commission services had handed a Declaration of the Beneficiary to him in which it was stated that a positive funding decision had been taken on 15 December 1995. It also referred to the terms of the Commission's letter of 4 February 1997 which seemingly confirmed the granting of EC support for the 1995 Film Festival. The complainant explained the financial difficulties which had resulted from the organisation of that event, since his organisation, FEM, had relied on the funding assurances given by the Commission.

THE DECISION

1 Commission's failure to implement an alleged Decision of 15 December 1995 1.1. The complainant claimed that the responsible Commission services led him to believe that the institution had agreed to financially support the organisation of the 1995 MED Film Festival. He relied on the fact that the Commission's contractual document to formalise the transfer of assistance (*Declaration of the Beneficiary*) referred to a Commission Decision of 15 December 1995 granting funding for the complainant's project. In view of the complainant, the Commission has failed to properly implement this Decision. 1.2. The Commission has denied adopting a formal decision granting financial assistance for the complainant's proposal in 1995. In its view, the document mentioned in the complainant's letter was only a copy of internal documents submitted by its responsible technical unit to the financial controller in order to seek funding for the project. At that stage of the process, its services had not subscribed to any binding document. Because of budgetary constraints at the end of 1995, no financial resources became available for the support of the 1995 MED-Film-Festival, and therefore the Commission was unable to enter into any commitment with the complainant. 1.3. The Ombudsman notes that the document which is relied upon by the complainant to assert his claim (*Declaration of the Beneficiary*), constitutes a financing agreement which stipulates how the Community contribution is to be paid, the rules to be respected by the beneficiary in the use of these moneys, and possible institutional checks. As indicated in the Call for proposals-1995 related to



films and audiovisual festivals published in the Official Journal (3) , the signing of the financial agreement between the institution and the beneficiary appears as a requisite for the payment of the Community contribution. However, any such financial commitment must be preceded by the selection of the project by the Commission, and the ensuing communication of this positive outcome to the beneficiary (4) . 1.4. In this case, the only written communication to the complainant concerning a formal decision from the Commission, was the institution letter of 18 April 1995 which explained that his 1995 project had not been selected. There is no evidence that the Commission had taken a decision granting assistance for the 1995 MED Film Festival, except for the Declaration produced by the complainant. This document, on the other hand, bears no institutional sign which could serve to identify its origin, either in itself or by an accompanying letter. In the absence of clear evidence, the Ombudsman cannot conclude that the Commission had formally decided to fund the 1995 complainant's proposal. The Ombudsman considers therefore that there appears to be no maladministration as regards this aspect of the case. **2 Public access to all the documents in the file** 2.1. Having requested and obtained access to the Commission's documents relating to this matter, the complainant claimed that there was no trace in the relevant file of the above mentioned Commission Decision of 15 December 1995. Accordingly, the complainant considers that the institution has not complied with the terms of the letter of Mr Trojan dated 11 August 1997 which granted the complainant access to all documents related to the FEM request for financial assistance in 1995. 2.2. The institution pointed out that the complainant had been given access to all the documents in possession of its services concerning FEM's request for financial assistance in 1995, in full compliance with Commission Decision 94/90. 2.3. In order to consider whether the Commission has failed to give access to a particular document, it must first be established that the document at stake actually existed. As mentioned in paragraph 1.4. above, in the absence of more clear evidence, the Ombudsman cannot conclude that the Commission had formally decided to fund the complainant's 1995 proposal, and thus that a document containing this decision had been produced. The Ombudsman has therefore concluded that there appears to be no maladministration with regards to this aspect of the case. **3 Reply to the letters of the complainant** 3.1. The complainant claimed that the Commission had failed to reply to several of his letters to the institution dated 26 September 1997 and 3 October 1997. These letters made reference to the alleged failure on the part of the Commission to give access to all the documents related to the FEM financial request for 1995. The Commission has recognized that these letters from the complainant were left unanswered, and explained that the responsible unit had an important workload at the time. 3.2. As the European Ombudsman has stated in similar cases, the Commission as a public administration has a duty to properly reply to the queries of citizens. By not doing so in the present case, the Commission has not abided by good administrative principles. 3.3. The European Ombudsman notes, however, that the Commission has recognised this failure and apologised to the complainant. No further remarks by the Ombudsman therefore appear to be necessary. **4 Handling of the requests for financial assistance by the Commission** 4.1. The complainant has expressed dissatisfaction by the way in which the Commission has handled his different requests for financial assistance. The terms used by the Commission in its related correspondence with the complainant could give the impression that the institution intended to assist the 1995 and 1996 editions of the MED festival. Thus, as regards the 1995 festival, the Commission wrote to the complainant on 21 November 1995 and 4 February 1997 giving him assurances that some financial support was



imminent. As for the 1996 festival, the Commission had requested by fax of 17 June 1996 some very detailed information on the complainant's association, almost as if a money transfer were soon to be made. 4.2. In view of the Commission, its negative opinion to the funding of the 1995 and 1996 festivals had been made clear in its letters to the complainant of 18 April 1995 and 22 April 1996, respectively. However, because of the financial difficulties of the complainant and his repeated requests, the Commission services had sought to obtain some type of alternative funding for his projects. The letters mentioned by the complainant are examples of some of the Commission services' efforts to achieve that objective. 4.3. The procedure for the selection of projects to be funded under the 1995 and 1996 Commission programme for the support of festivals and meetings in the audiovisual area had been set out in detail in notices regarding Call for Proposals which were published in the Official Journal (5) . Both notices indicated that projects had to be selected at the beginning of 1995 and 1996, respectively, on the basis of the opinion of a panel of independent experts. No appeal was to be possible against the Commission's decision. The procedure for the examination of applications included: (1) receipt, registration and acknowledgement of proposals by the Commission; (2) examination by Commission staff; (3) examination and selection proposal by a jury of independent experts; and (4) final decision and communication of the outcome (in the first quarter of 1995/1996). 4.4. From the information submitted to the Ombudsman, this procedure was properly followed by the Commission in order to select the successful projects to be funded. However, the Commission appears to have gone out of its way to seek support for some initiatives, which had not been retained by the jury of independent experts. The Ombudsman notes that this departure from the rules governing the programme has been justified by the Commission not as means to pursue the aims of the programme, but rather as a response to the insistent requests from the complainant. Furthermore, the Commission services did not seem to convey in its extensive correspondences with the complainant, the means whereby they could obtain this alternative funding, and the procedure to be followed. The Ombudsman believes that this failure on the part of the Commission to properly inform the complainant could have been the cause of many misunderstandings between both sides. 4.5. The Ombudsman notes, however, that the Commission, in the light of this case, has indicated that its services (DG X) have taken all necessary measures to avoid any similar cases in the future. There is therefore no need for any further remark as regards this aspect of the case. **5 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. 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) See, "Commission support for film and audio-visual programme festival and for meeting of professionals in the audio-visual industry", OJ 1994 C 258/08; and "European Commission support for festivals and meetings in the audio-visual industry", OJ 1995 C 197/06.

(2) See supra note 1.

(3) Commission support for film and audiovisual programme, festivals and for meetings of professionals in the audiovisual industry; Call for proposals-1995; OJ 94/C 258/08.

(4) See supra, footnote 1, Section VI, Examination of applications.



(5) Call for proposals-1995 (94/C 258/08, OJ C 258 of 15.09.94), and Call for proposals-1996 (95/C 197/06; OJ C 197 of 1.08.95).