Европейски омбудсман

# Решение по случай 1195/2010/OV - Отказ да се предостави достъп до наръчник по управление

Решение
**Случай** 1195/2010/OV - **Открит на** 28/06/2010 - **Решение от** 20/12/2010 - **Засегната институция** Европейска комисия ( Уредени от институцията ) |

През февруари 2010 г. жалбоподателят поисква въз основа на Регламент (ЕО) № 1049/2001 достъп до наръчника на Комисията за управление на извършвания от нея преглед на израстването в кариерата. Комисията отказа достъп до този наръчник с твърдението, че той съдържа становища за вътрешно ползване и че неговото оповестяване ще засегне сериозно процеса на вземане на решения от институцията (член 4, параграф 3 от регламента), както и защитата на правни становища (член 4, параграф 2, второ тире от регламента).

През април 2010 г. жалбоподателят е подал повторно искане за достъп. Комисията първо е удължила срока за отговора си с 15 работни дни. След това тя уведомява жалбоподателя, че не е приключила още своя анализ, но полага максимални усилия да изпрати окончателния си отговор във възможно най-кратък срок.

В своята жалба до омбудсмана жалбоподателят твърди, че Комисията неправилно е отказала достъп до наръчника и че тя трябва да му предостави достъп до него.

В становището си Комисията обясни, че исканият наръчник е много обемист документ. Ето защо тя трябва да извърши внимателен анализ на искания документ и на рисковете, свързани с неговото оповестяване. След като приключи своя анализ, Комисията реши да предостави на жалбоподателя пълен достъп до искания документ. Тя се извини, че не е отговорила в сроковете, предписани от регламента.

Жалбоподателят уведоми омбудсмана, че е удовлетворен от резултата по случая, макар да е жалко, че Комисията е забавила толкова време отговора си. Омбудсманът отбеляза, че решението на Комисията е било взето около шест седмици след изтичането на удължения срок, предвиден от регламента. Комисията обаче се е извинила за това закъснение. Омбудсманът следователно счита, че Комисията е уредила спора във връзка с твърдението и искането на жалбоподателя.

## The background to the complaint

**1.** On 3 February 2010, the complainant, a Belgian citizen, requested access to the Commission's manual for the management of its career development review (CDR), citing Regulation 1049/2001/EC [1] [Връзка] (the 'Regulation') as the basis for his request. The manual had been produced by the Commission's Directorate-General for Human Resources and Security (DG HR) and distributed to the institution's various human resource departments.

**2.** On 24 February 2010, the Commission sent a holding reply, on the basis of Article 7(3) of the Regulation, extending the prescribed deadline for its reply by 15 working days.

**3.** By letter dated 16 March 2010, the Commission refused access to the manual. It argued that the document contained opinions for internal use in deliberations and preliminary consultations within the Commission. Its release would thus seriously undermine the institution's decision-making process (Article 4(3) of the Regulation), as well as the protection of legal advice (Article 4(2), second indent, of the Regulation). It also explained that the document in question was intended solely for the staff working in the different HR departments and aimed to guarantee a uniform application and interpretation of the existing legal provisions. The Commission further pointed out that the manual contained internal legal advice on how to deal with unclear situations which have not yet been interpreted by the Court of Justice. Granting access to this document would seriously undermine the protection of the institution's internal legal advice. Finally, the Commission noted that the complainant's request did not identify any overriding public interest that would justify the document's disclosure.

**4.** On 6 April 2010, the complainant made a confirmatory application for access. With respect to the Commission's reference to Article 4(3) of the Regulation, the complainant pointed out that the Commission had not explained how disclosure of the document would affect its decision-making process. He also pointed out that the manual contained general instructions laying down uniform rules for ensuring the consistent application of the law. If the content of the document were to become public, this would not affect the Commission's decisions to promote specific candidates. As regards the exception relating to the protection of legal advice, the complainant pointed out that the document in question did not have the characteristics of legal advice, was not drafted by the Legal Service and was not drawn up in preparation for any procedure before the court either. As regards the presence of an overriding public interest, the complainant pointed out that there were two public interests. First, the interest of taxpayers and the lawmakers representing them, since promotions of officials should ensure the efficient use of public money. Second, the interest of Commission officials to be treated fairly and justly, since refusing access to the document to certain officials might result in unequal treatment. The complainant finally pointed out that it was not clear from the Commission's refusal whether it had considered granting partial access.

**5.** By letter dated 27 April 2010, the Commission, acting on the basis of Article 8(2) of the Regulation, extended the deadline for its reply to the confirmatory application by 15 working days.

**6.** By letter dated 20 May 2010, the Commission informed the complainant that it had not yet completed its analysis, but that it was doing its utmost to send a final reply as soon as possible. It expressed its regret for the delay and apologised for the inconvenience.

## The subject matter of the inquiry

**7.** On 26 May 2010, the complainant submitted the present complaint to the Ombudsman. He alleged that the Commission had incorrectly refused access to the manual and claimed that the Commission should grant him access to it.

**8.** In telephone conversations with the Ombudsman's Office on 31 May and 16 June 2010, the complainant pointed out that he had still not received a reply to his confirmatory application and underlined the urgency of the matter.

## The inquiry

**9.** The complaint was forwarded to the Commission for an opinion. The Commission sent its opinion on 9 August 2010. The opinion was forwarded to the complainant with an invitation to submit observations by 31 October 2010. However, in a telephone conversation on 25 October 2010, the complainant informed the Ombudsman's Office that he would not submit observations on the Commission's opinion and that he would confirm this by letter so that the Ombudsman could close the inquiry. In a further telephone conversation of 9 November 2010, the complainant indicated that he was satisfied with the Commission's response to his complaint.

## The Ombudsman's analysis and conclusions

# A. Alleged refusal to grant access to the manual and related claim

### Arguments presented to the Ombudsman

**10.** The complainant alleged that the Commission incorrectly refused access to the manual and claimed that he should be granted access to it.

**11.** In its opinion, the Commission explained that, as indicated in its initial reply and in its letters dated 27 April and 20 May 2010, the requested manual is a particularly long document containing opinions for internal use and legal advice on personnel evaluation issues that are often subject to appeals for internal administrative review and legal disputes before the Union Courts. Therefore, the Commission needed to carry out a careful analysis of the complainant's request, the documentation in question and the risks associated with its disclosure. After

completing its analysis, the Commission decided to grant the complainant full access to the requested document on 7 July 2010. It apologised for not replying within the deadlines prescribed by the Regulation. The Commission enclosed with its opinion a copy of the Secretary-General's letter to the complainant dated 7 July 2010, granting him access to the relevant document.

**12.** In a telephone conversation with the Ombudsman's office on 9 November 2010, the complainant indicated that he was satisfied with the outcome of the case. He stated, however, that it was regrettable that it had taken the Commission so much time to react.

## The Ombudsman's assessment

**13.** It appears that the Commission has granted full access to the manual requested by the complainant. The Commission's decision was taken some six weeks after the extended deadline foreseen by the Regulation had expired. The Ombudsman notes, however, that the Commission has apologised for this delay. He therefore considers that the complainant's allegation and claim have been settled by the Commission.

# B. Conclusion

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

**The Commission has settled the case to the complainant's satisfaction.**

The complainant and the Commission will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 20 December 2010

[1] [Връзка] Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.