

## Decision of the European Ombudsman closing his inquiry into complaint 2062/2010/(ANK)JF against the European Commission

Decision

**Case 2062/2010/JF - Opened on 17/03/2011 - Decision on 17/03/2011 - Institution concerned** European Commission ( No maladministration found ) |

The complainant is an Irish citizen who lives in the Netherlands. In August 2006, he was diagnosed with a degenerative disease and prescribed palliative medical products containing cannabis. He made several attempts to gain permission to make a short visit to his family in Ireland. However, the Irish authorities stated that he would be arrested upon entry for possession of illegal drugs.

As a result, the complainant submitted an infringement complaint to the European Commission. After an inquiry, the Commission found no infringement of EU law on the part of Ireland. The complainant thus turned to the Ombudsman. The Ombudsman opened an inquiry into the Commission's handling of the complaint by instructing his services to inspect the Commission's file on the matter.

After thoroughly analysing the information gathered, the Ombudsman found no maladministration by the Commission. The complainant's case concerned provisions of the Schengen *acquis* that were not yet binding on Ireland. Ireland was therefore legally entitled to continue to apply its drugs legislation without regard to that *acquis* .

Notwithstanding these findings, the Ombudsman was deeply touched by the complainant's case. Although the law and institutions of the European Union were unable to provide a solution, the Ombudsman was not aware of anything that would prevent the Irish authorities from exercising discretion, on humanitarian grounds, to allow the complainant to visit his family in Ireland, whilst continuing to take the palliative medicine prescribed for him in the Netherlands.

In light of the above, the Ombudsman decided to inform both the Irish Ombudsman and the President of the Irish Human Rights Commission of the complainant's case and invite them to take any action that they consider useful.

Strasbourg, 17 March 2011



Dear Mr M.,

On 2 February 2011, I informed you that I had opened an inquiry into your complaint against the European Commission concerning its handling of your complaint dated 13 June 2008. In this regard, I pointed out that my inquiry would concern only your first allegation and your first and second claims, which are outlined below.

## First Allegation:

The Commission failed properly to handle your complaint of 13 June 2008 relating to the free movement of persons and goods in the EU.

## Claims:

The Commission should:

- (1) explain why its then Directorate-General for Justice, Freedom and Security handled your complaint relating to the free movement of persons and goods in the EU; and
- (2) guarantee that Ireland respects EU law by, notably, recognising your right freely to enter that Member State.

As a first step in my inquiry, I considered it useful to inspect the Commission's file on the matter. To that end, I requested the Commission to allow my services to inspect the file before 28 February 2011.

The inspection of the Commission's file took place on 23 February 2011. Please find a copy of the inspection report enclosed, for information.

I have concluded that there was no evidence of maladministration in the Commission's handling of your complaint because my inspection of the relevant documents confirms that, as the Commission explained to you in its letters dated 21 October and 18 December 2008, Ireland has not yet requested the necessary evaluation, in accordance with Council Decision 2002/192/EC [1], in order to make certain provisions of the Schengen *acquis* binding upon it. In the absence of such a request (which, it seems the Irish authorities are not obliged to make) and a subsequent positive evaluation, the Council cannot adopt a unanimous decision to make the aforementioned provisions of the Schengen *acquis* binding on Ireland. It appears, therefore, that, at present, Ireland is legally entitled to continue to apply its Misuse of Drugs Act 1977 without regard to the Schengen *acquis*.

In light of the above, I consider that no further measures of inquiry are justified as regards your allegation and claims.



Notwithstanding these findings, I have been deeply touched by your case. Although the law and institutions of the European Union are unable to provide a solution, I am not aware of anything that would prevent the Irish authorities from exercising discretion, on humanitarian grounds, to allow you to visit your family in Ireland, whilst continuing to take palliative prescribed for you in the Netherlands.

In light of the above, and because you have given your approval for your complaint to be transferred to another authority in the event that the European Ombudsman does not have the power to deal with it, I have decided to inform both the Irish Ombudsman and the President of the Irish Human Rights Commission of your case and invite them to take any action that they may consider useful. Please find enclosed a copy of my letters in this regard, for your information.

Please note that it is for the Irish Ombudsman and the Irish Human Rights Commission to decide whether to take action in this matter.

Yours sincerely,

P. Nikiforos Diamandouros

[1] OJ 2002 L 64, p. 20.