

Decision of the European Ombudsman on complaint 163/99/IP against the European Commission

Decision

Case 163/99/IP - Opened on 08/03/1999 - Decision on 19/10/2000

Strasbourg, 19 October 2000 Dear Mr G., On 8 February 1999 you lodged a complaint with the Ombudsman, on behalf of the "*Associação dos Espoliados de Angola*" (hereinafter AEANG), against the European Commission. The complaint concerned the alleged failure of the European Commission to respect certain legal obligations derived from the IV Lomé Convention (hereinafter, the Convention), and the lack of reply to your correspondence. On 8 March 1999, I forwarded the complaint to the President of the European Commission. The Commission sent the translation into Portuguese of its opinion on 31 May 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 15 July 1999, I received your observations on the Commission's opinion. In order to clarify certain aspects of the complaint, I asked you for further information on 28 February 2000. You sent me the information requested on 16 March 2000. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

AEANG is an association in defence of the interests of Portuguese citizens which, during the independence process, have been forced to leave the former Portuguese colony of Angola and which have therefore been deprived of their own property in that country. The complainant stressed that the Portuguese government has made some agreements with the Angolan government in order to give compensation to citizens who suffered financial losses. Nevertheless, it appears that the Angolan authorities did not respect these agreements and all relations were therefore interrupted. Against this background, the complainant lodged a complaint with the European Commission of Human Rights against the Portuguese government claiming that it did not protect the interest of the members of AEANG. Since the European Commission on Human Rights declared the case as not admissible because it did not fulfil the requisites of admissibility, the complainant wrote to the European Commission on the same subject-matter on March 1998, asking the institution to take actions against Portugal. On 16 June 1998, the Commission's services acknowledged receipt of the complainant's letter and informed him that, due to the complexity of the case, a certain time should be necessary to deal with it. In this letter, the Commission stated that the complainant could contact the official responsible to deal with his case for any complementary clarifications. On 8 February 1999, the complainant lodged a complaint with the European Ombudsman against the European Commission. In his letter, he alleged that the Commission failed to comply with its legal obligations derived from the Convention, and did not reply to his correspondence.



THE INQUIRY

The Commission's opinion The comments from the European Commission on the complaint are in summary the following: Regarding the alleged failure to fulfil its obligations under the Convention, the Commission pointed out that the events related by the complainant referred back to 1975, and that is before Angola became bound by the Lomé Convention. The possibility of using Article 5 of the Fourth Lomé Convention (which provides for the general respect for human rights) by the Community, is possible under certain conditions in accordance with Article 366a of the Convention. However this possibility does not exist for events dating back to 1975, when Angola was still not part and when this clause still did not exist. Furthermore, the Commission noted that the expropriation of property belonging to foreign citizens and the compensation for it is a matter primarily governed by national Angolan law. Thus, nationals of a country, whose property in another country is expropriated, should therefore ask for compensation in that country. It is only once all legal remedies at national level have been exhausted that they can ask for the diplomatic intervention by their own country. As for the lack of reply to the complainant's correspondence, the Commission pointed out that a letter was addressed to Commissioner Pinheiro on 18 March 1998 and that a reply was given on 16 June 1998. In this letter, the Commission explained that due to its complexity, the case was still under consideration and invited the complainant to forward to the Commission any further relevant information. The institution stated that, as there was no follow-up made to the invitation, it had not been considered necessary to maintain any further correspondence. **The complainant's observations** The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. As regards the lack of answer of the Commission to his letters, the complainant alleged that there were various letters addressed to different commissioners, including the President of the European Commission. No answer was given to these letters. The one received and mentioned by the Commission in its opinion was understood by the complainant as a simple acknowledgement of receipt, in which he was informed of the name of the responsible official dealing with his case. Regarding the alleged failure of the European Commission to fulfil its obligations under the Convention, the complainant pointed out that the expropriation took place in 1976 and not in 1975, and in any case has been carried on during several years, when the Convention was already in force. Furthermore, he pointed out that the argument of the Commission concerning the need to exhaust all the national legal remedies before asking for diplomatic intervention of the own country was not admissible since in Angola the legal remedies referred to were not accessible. The complainant finally stressed that he could not understand why the European Commission refused any responsibility in this matter, if the European Parliament declared admissible a petition (pet. N° 328/98) he made on the same subject matter in 1998.

FURTHER INQUIRIES

In order to complete the information of the file, the Ombudsman asked the complainant to send him a copy of all the letters he alleged to have sent to the Commission and for which it appears that no reply was given by the institution. The complainant forwarded the requested information to the Ombudsman on 16 March 2000.

THE DECISION



Preliminary remarks To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman. On the basis of these provisions, the Ombudsman's inquiries have therefore only been directed towards examining whether there has been maladministration by the European Commission. The complainant's allegations against the Portuguese authorities will therefore not be dealt with by the Ombudsman.

1 Responsibility of the Commission

1.1 The complainant alleged that the Commission failed to comply with its legal obligations derived from the Fourth Lomé Convention. 1.2 The Commission pointed out that the events described by the complainant referred back to 1975, and that is before Angola became bound by the Convention. The possibility of using Article 5 of the Fourth Lomé Convention by the Community is possible under certain conditions in accordance with Article 366a of the Convention. However this possibility does not exist for events dating back to 1975, when Angola was still not part and when this clause still did not exist. 1.3 It appeared during the inquiry that the complainant had lodged a petition with the Committee on Petitions of the European Parliament on the same subject-matter, in 1998. The Committee on Petitions examined the concerned petition during a meeting on 2 October 1998. The petition was declared admissible and forwarded to the competent body within the European Parliament, thus the committee of Development and Cooperation and the Committee on Foreign Affairs, Security and Defence Policy. 1.4 Article 195 of the Treaty establishing the European Community provides that "*In accordance with his duties, the European Ombudsman shall conduct inquiries for which he finds grounds (...)*". Since the Committee on Petitions has dealt with the case, the Ombudsman considers it not necessary to pursue any inquiry into this aspect of the case.

2 Failure to reply to the complainant's correspondence

2.1 The complainant alleges that the European Commission had not reply to his correspondence. 2.2 On 16 June 1998, the Commission's services acknowledged receipt of the complainant's letter and informed him that, due to the complexity of the case, a certain time should be necessary to deal with it. In this letter, the Commission indicated the name of the official responsible to deal with the case and stated that the complainant could contact him for any complementary clarifications. 2.3 In its opinion, the Commission pointed out that the complainant's letter addressed to Commissioner Pinheiro on 18 March 1998, was answered on 16 June 1998. In this letter, the Commission explained that due to its complexity, the case was still under consideration and invited the complainant to forward to the Commission any further relevant information. The institution stated that, as there was no follow-up made to the invitation, it had not been considered necessary to maintain any further correspondence with the complainant. 2.4 Principles of good administrative behaviour require the administration to properly reply to the queries of citizens and inform them on the follow-up given to their complaints. In the complaint form published by the Commission in the Community Official Journal in 1989 ("*Complaint to the Commission of the European Commission for Failure to comply with Community provisions*") (1), reference is made to a number of administrative safeguards which the institution undertakes to respect for the complainant's benefit. These safeguards include: "*- an acknowledgement of receipt will be sent to the complainant as soon as the complaint is registered. - the complainant will be informed of the action taken in response to his complaint, including representations made to the national authorities Community bodies or undertakings concerned. - the complainant will be informed of*



any infringement proceedings that the Commission intends to institute against a Member State as a result of the complaint [...]" . On the basis of the information in possession of the Ombudsman, the Commission acknowledged receipt of the complainant's letter on 16 June 1998. However, it appears that the institution, despite the content of its reply, did not keep the complainant informed of the outcome of his case. The Ombudsman considers, therefore, that such failure of the Commission constitutes an instance of maladministration. **3 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark: On the basis of the information in possession of the Ombudsman, the Commission acknowledged receipt of the complainant's letter on 16 June 1998. However, it appears that the institution, despite the content of its reply, did not keep the complainant informed of the outcome of his case. The Ombudsman considers, therefore, that such failure of the Commission 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 therefore decides to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob SÖDERMAN

(1) OJ C 26, 1.02.1989, p. 7