



Decision in case 729/2019/MMO on how the European Commission handled an infringement complaint concerning an alleged violation of the Habitats Directive in the Republic of Cyprus

Decision

Case 729/2019/MMO - Opened on 18/07/2019 - Decision on 18/07/2019 - Institution concerned European Commission (No maladministration found) |

Background to the case

1. The complainant (the Complainant) is an association active in the area of environmental sustainability, established in Cyprus. It is complaining about the European Commission's decision of 24 January 2019 to close an infringement procedure [1] it had initiated against the Republic of Cyprus for breach of the Habitats Directive [2]. The alleged violation of EU law concerned the impact of the construction project "Limni Bay Resort" on the integrity of the Natura 2000 Site of Community importance/Special Area of Conservation [3] Periochi Polis-Giala and the priority species 1224 *Caretta caretta* (sea turtle).
2. The Complainant contends that the closure of the infringement procedure in question amounts to maladministration as the Commission failed to act in accordance with the law [4] and the principle of good administration.
The Commission's infringement procedure
3. The Complainant wrote to the Commission on the matter in December 2015 and then in June and July 2017. It provided relevant documents and information and requested a meeting. The Commission replied in July 2017, it referred to its ongoing an infringement procedure on that issue and agreed to arrange a meeting.
4. The Commission had initiated an infringement procedure against Cyprus in 2014 for incorrect implementation of Article 6 of the Habitats Directive. The Commission had sent to that state a letter of formal notice on 10 July 2014 and a Reasoned Opinion [5] on 29 April 2015. In the course of the infringement procedure, the Commission had contacts and exchanges with the Cypriot authorities with a view to addressing the shortcomings identified and modifying the project so that it can be designed and implemented respecting EU environmental standards and requirements.
5. According to the Commission, due to those common efforts, the effects of the construction project were reassessed and additional specific mitigation measures were identified and incorporated in the environmental terms of the project.
6. Thus, the Commission closed the infringement procedure on 24 January 2019, without



initiating court proceedings against Cyprus, stating that “[t]aking into consideration that some measures on controlling the access to the beach and preventing the disturbance of sea turtle nesting activity are necessary for the overall protection and management of the Special Area of Conservation Periochi Polis-Gialia [...], these should be included in the forthcoming ministerial decree regarding the establishment of conservation measures for this site, according to Article 6, paragraph 1, of the Habitats Directive”.

7. Not satisfied with the above development, the complainant turned to the Ombudsman. The European Ombudsman's findings

8. The Commission has wide discretion in dealing with complaints alleging a violation of EU law (“infringement complaints”). The Ombudsman’s review in such cases can extend to examining whether the Commission has communicated its position to the complainant, given to the latter the opportunity to present its views on that position, and carefully considered those views. As regards the substance of an infringement complaint, the Ombudsman’s examination of the Commission’s analysis is focused on establishing whether a manifest error of assessment may have been committed. If the Commission complies with its procedural obligations and commits no manifest errors of assessment, the Ombudsman will normally conclude that no maladministration has taken place.

9. The Commission was in contact with the Complainant on the matter despite the fact that he was not among the complainants in the infringement case. On all occasions it explained its position and the stage of the ongoing infringement procedure. The Commission’s replies to the Complainant were reasonable and appropriate.

10. Moreover, the information the Complainant submitted does not show that there were procedural irregularities in the way the Commission handled the infringement complaint.

11. On 13 January 2019, the Commission sent a pre-closure letter to all complainants in the infringement case stating that the Cypriot authorities conducted and communicated to the Commission new studies, which identified pertinent mitigation measures to address the impacts on the site. [6] On 24 January 2019, the Commission closed the infringement case. It also replied to a letter signed by several associations/NGOs and it explained that the mitigation measures entailed strict control of the visitation of the beach and the prevention of light pollution.

12. In view of the above, the Ombudsman finds that the Commission explained the reasons it had decided to close the infringement case in an appropriate and convincing manner.

13. Finally, the Ombudsman points out that the Complainant may consider it useful to contact the Cypriot Ombudsman [7], who might be well placed to take action in order to follow-up on whether the Cypriot authorities complied with the mitigation measures they committed vis-à-vis the Commission to take at national level.

14. Based on the information provided by the complainant, the Ombudsman finds no maladministration in this case. [8]



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Strasbourg, 18/07/2019

[1] Infringement case No 2014/4091

[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

[<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>]

[3] More information on Natura 2000 Sites under the Habitats Directive are available here: http://ec.europa.eu/environment/nature/natura2000/sites_hab/index_en.htm

[4] The Complainant claims that the Commission failed to observe articles 17, 191 para. 2 and 3, and 258 of the TFEU as well as article 6, para. 3[4] of the Habitats Directive[4]. In the Complainant's view, the Commission also disregarded its obligation to apply the precautionary principle, as set out in its *European Commission's Communication on the Precautionary Principle* (COM/2000/0001 final)

[<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000DC0001&from=EN>], since it did not take into account, the available scientific data and the reasonable scientific doubt about the overall impact of the project.

[5] The Commission took issue, *first*, with the failure of the competent authorities to assess in an appropriate manner the significant increase of human presence and the pressure caused by the construction project "Limni Bay Resort", and *second*, the failure of the competent authorities to examine any key alternative solutions, and in particular the establishment of a no-building zone between the proposed development and the sea turtle nesting beach, covering a distance of at least 475m from the sea (275m from the Natura 2000 site).

[6] The Commission explained that "*[t]he key issues regarding the control of human pressure on the beach, the limitation of the impact of lighting and sky glow, and the effectiveness of the buffer zone between the development and the beach, are now addressed through relevant mitigation measures integrated in the permits. This means that a project that was fundamental flawed at the beginning has been significantly improved*".

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[8] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the Decision of the European Ombudsman adopting Implementing Provisions