Decision in case 1105/2019/PL on the European Commission’s refusal to disclose documents concerning an infringement procedure against Spain on its railway safety

Decision
Case 1105/2019/PL - Opened on 20/06/2019 - Decision on 14/10/2019 - Institution concerned European Commission (No maladministration found)

The case concerned the refusal of the European Commission to grant the complainant public access to documents in an ongoing infringement procedure against Spain on its railway safety. The Commission argued that the procedure was still ongoing and thus, disclosing the documents would undermine the protection of the purpose of inspections, investigations and audits.

Following an inspection of the documents, the Ombudsman confirmed that the infringement procedure was still ongoing and that the Commission's refusal was legally justified.

The Ombudsman fully acknowledges both the scale of the tragedy at the heart of this complaint and the wish for the fullest possible accountability for railway safety in Spain. However, at this early stage in the process, she finds that the public interest is better served by allowing the procedure to continue without public disclosure of the requested documents. Disclosure in response to a further request may be appropriate at later stage, at the completion of the procedure or following a relevant change of circumstances.

Background to the complaint
1. In January 2019, the European Commission initiated an infringement procedure against Spain considering that its safety processes do not meet the requirements of the EU Railway Safety Directive [1]. On 25 January 2019, it sent a letter of formal notice to the Spanish authorities.

2. The complainant in this case represents the association of victims of a tragic railway accident that occurred in Santiago de Compostela in July 2013, in which 80 people lost their lives and many more were injured. On 31 January 2019, the complainant asked the Commission to grant it public access to the documents related to the infringement procedure.

3. The Commission identified two documents: i) the letter of formal notice, and ii) a report prepared by the European Railway Agency. On 6 March 2019, the Commission refused access to these documents on the grounds that disclosure would undermine the protection of the
purpose of inspections, investigations and audits.

4. On 22 March 2019, the complainant asked the Commission to review its refusal to grant public access to the documents (filing a so-called “confirmatory application”).

5. On 17 May 2019, the Commission confirmed its refusal to grant access to the documents. The complainant turned to the Ombudsman on 14 June 2019.

The inquiry

6. The Ombudsman opened an inquiry into the Commission’s refusal to grant access to the requested documents.

7. In the course of the inquiry, the Ombudsman inspected and obtained copies of the relevant documents.

Arguments presented to the Ombudsman

The complainant’s arguments

8. The complainant considered that there is an overriding public interest in the release of these documents. He argued that the safety of rail passengers and the principle of transparency justified their disclosure.

The European Commission’s arguments

9. The Commission said that the documents are part of the administrative file pertaining to an ongoing infringement procedure. It argued that EU law recognises a ‘general presumption’ of non-disclosure of documents in ongoing infringement procedures, as disclosure would undermine the protection of the purpose of inspections, investigations and audits. Public disclosure of the requested documents could negatively affect the climate of cooperation and mutual trust between the European Commission and Spain.

10. The Commission considered that there was no overriding public interest in disclosing the documents. Directive 2004/49/EC is intended to ensure the safety of rail passengers, and the public interest was better served by protecting the purpose of the ongoing investigation into whether Spain is in compliance with the requirements of that Directive.

The Ombudsman’s assessment

11. An infringement procedure consists of two stages, an administrative pre-litigation stage and a judicial stage before the Court of Justice. In the pre-litigation state the Member State concerned has the chance to resolve an alleged infringement amicably. If it does, the Commission will close the case. This outcome, achieving the proper application of EU law without having to bring the issue to court (which would be time-consuming and costly for all parties), is in the public interest.
12. To achieve such amicable settlements, it is necessary to foster and maintain a degree of mutual trust between the Commission and the Member State. Releasing documents related to ongoing infringement procedures at the pre-litigation stage, may undermine the procedure and this necessary ‘climate of mutual trust’. [3]

13. Even if a general presumption applies, documents could still be disclosed if there were a public interest greater than the reasons justifying the refusal to disclose. However, only particular circumstances that make the principle of transparency especially pressing can constitute an overriding public interest. [4]

14. In this case, the Ombudsman confirmed through an inspection that the documents requested relate to an infringement procedure that is still ongoing. The Ombudsman did not find exceptional or pressing circumstances that would justify overriding the general presumption of non-disclosure at the present time. She considers that, at this early stage of the procedure, the public interest is better served by allowing the infringement procedure to be completed and that the disclosure of the documents, at this stage, would undermine that process.

15. The Ombudsman, while acknowledging the significant public interest in accountability for railway safety in Spain and the immense suffering of those directly affected by the tragic accident in July 2013, thus concludes that the Commission was justified in refusing access to the requested documents. She notes that the complainant can make a new access to documents request once the infringement procedure in question is closed, when the balance of the public interest might lead to a different outcome.

Conclusion
Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There was no maladministration by the European Commission in refusing public access to the requested documents.

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

Emily O'Reilly

European Ombudsman Strasbourg, 14/10/2019


