

## **Decision of the European Ombudsman on complaint 1226/99/ME against the European Commission**

Decision

**Case 1226/99/ME - Opened on 22/10/1999 - Decision on 26/04/2001**

Strasbourg, 26 April 2001

Dear Mr H., Dear Mr H.,

On 4 October 1999, you lodged a complaint with the European Ombudsman concerning alleged discrimination relating to agricultural aid granted in Finland.

On 22 October 1999, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 31 January 2000. I forwarded it to you with an invitation to make observations, which you sent on 27 March 2000. On 29 August 2000, I asked the Commission for further information. The Commission sent its further opinion on 23 October 2000 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you. On 2 February 2001, the Commission informed me of a further letter it had sent to you on 23 January 2001.

I am writing now to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

In October 1999, the European Ombudsman received a complaint concerning agricultural aid granted in Finland.

The complainants are two farmers from the northern part of Finland who have been carrying on agriculture since before Finland entered the European Union in 1995. The complainants alleged that the aid paid by the Finnish authorities was discriminating because in northern Finland, aid is paid only for 90 male bovine animals per year while in the south of Finland farmers receive aid for all their male bovine animals. The Finnish authorities referred to Commission Decision 95/196/EC as the base for the paid aid. The principle established in Article 142 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (hereafter Act of Accession) stating that Nordic aid shall maintain existing and traditional production as well as improve agricultural structures, had consequently not been respected. The complainants further alleged that Article 138 of the Act of Accession



had been violated. The Article prescribes that reductions in the received aid higher than 10%, compared to the situation before Finland became a Member of the European Union, shall be compensated.

The complainants stated that their financial situation got worse after Finland entered the European Union. From 1995 to 1999, the complainants had not received aid for, on average, 76 male bovine animals per year. Neither Nordic aid nor CAP aid were granted for more than 90 animals. From 1995 to 1998, they lost in total 600 000 Finnish marks as a result of the non-payment of aid. The complainants thus had difficulties in continuing their farming activity.

The complainants claimed that (1) the Decision 95/196/EC should be altered so that all the production existing before 1995 receives aid; and (2) the Commission should allow Finland to retroactively pay the aid that had not been forthcoming during the years 1995-99.

## THE INQUIRY

### **The Commission's opinion**

In its opinion, the Commission initially summarised the allegations and claims put forward in the complaint. The Commission then referred to the relevant Articles of the Act of Accession, namely Articles 138 and 142. Article 138 foresees, during the transitional period (1995-99), the possibility of granting transitional and degressive national aids to producers of basic agricultural products subject to the common agricultural policy. The grant may be authorised where the factors introduced by a Member State show a significant difference between the level of support granted before accession and that which may be granted under the common agricultural policy. Differences of less than 10% shall not be deemed as significant. Article 138 was originally implemented by Commission Decision 95/33/EC and has been amended a number of times. Article 142 allows the Commission to authorise Finland (and Sweden) to, under certain conditions, grant long-term national aids with a view to ensuring that agricultural activity is maintained in specific regions. Article 142 on Nordic aid was implemented by Commission Decision 95/196/EC.

As regards the allegation of discrimination, the Commission explained that Article 3(2) of Commission Decision 95/196/EC on Nordic aid lays down certain limitations. Point (e) of the said Article limits the Nordic aid for male bovine animals to 90 heads per holding and per age bracket pursuant to Article 4b (1) of Regulation (EEC) No 805/68. The Commission pointed out that Commission Decision 95/196/EC only applies to the granting of Nordic aid, meaning the northern regions of Finland. On the other hand, Commission Decision 95/33/EC on transitional and degressive aid, implementing Article 138 of the Act of Accession, applies to all of Finland. Article 2(1) of Commission Decision 95/33/EC lays down certain limits for various forms of aid. The fifth indent of Article 2(1) states that aid for male bovine animals shall be limited to 90 heads per holding. The complainants' allegation therefore appeared to be unfounded as the 90 head limitation applies to Finland as a whole.

The Commission stated that it would nevertheless request information from the Finnish authorities to verify that the 90 head limit was in fact adhered to as regards the aid provided for



in Article 138 of the Act of Accession and Commission Decision 95/33/EC on transitional and degressive aid. It would keep the complainants informed of the result of this inquiry.

Regarding the principle established in Article 142 of the Act of Accession stating that Nordic aid shall maintain existing and traditional production as well as improve agricultural structures, the Commission furthermore stated that this Article only obliges the Commission to authorise Finland (and Sweden) to grant long-term national aids with a view to ensuring that agricultural activity is maintained in *specific regions*. The obligation as regards maintenance of agricultural activity should thus be seen in regional terms rather than in terms of the individual farms. Article 142 states that the historical production patterns of each farm *may* be taken into account in determining the Nordic aid; this is however not a binding obligation on the Commission.

As to the complainants' allegations that reductions in the aid higher than 10% shall be compensated, the Commission put forward that Article 138 does not lay down any such principle. Instead Article 138 requires, as a condition for eligibility for the aids, that significant differences exist between the level of support granted before the accession compared to the level granted under the common agricultural policy. Differences less than 10% shall not be deemed significant. Therefore, the 10% threshold constitutes a minimum condition which must be fulfilled in order for transitional or degressive aid to be granted under Article 138 and not as a condition giving rise to an automatic right to compensation.

The Commission did not specifically comment on the two claims put forward by the complainants, however, from its opinion it seemed obvious that both claims were rejected.

#### **The complainants' observations**

In their observations, the complainants pointed out that Regulation (EEC) No 805/68 as referred to by the Commission had been repealed and replaced by Regulation (EC) No 1254/1999. Regulation 1254/1999 does not entail any restriction of 90 male bovine animals per holding.

As regards the principle established in Article 142 of the Act of Accession on Nordic aid, the complainants stated that large holdings had to close down because of the cut in support which had effect on the structure. Moreover, in the whole region, beef production had gone down and the structure has not been able to develop since both smaller and larger holdings closed down and no new investments had been possible under the new support scheme.

Finland reported on a yearly basis to the Commission on the production of different regions. The complainants therefore found it remarkable that the Commission refuted the complaint by stating that it is the regional structure that should be taken into account, when the production results available to the Commission show that the regional structure and production has deteriorated since Finland entered the European Union.

#### **Further inquiries**

After careful consideration of the Commission's opinion and the complainants' observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked the Commission to comment on two aspects. (1) In its opinion the Commission mentioned that it would contact the Finnish authorities to verify the observance of the 90 head limitation for male bovine animals and communicate the result to the complainants. The Ombudsman therefore



asked the Commission to inform him of any such contacts and the outcome thereof. (2) The Ombudsman also asked the Commission to comment on the fact that the complainants stated that the region as a whole had suffered from reduced production and that the structure had deteriorated.

#### **The Commission's second opinion**

In its second opinion, the Commission stated that it had sent a letter to the Permanent Representation of Finland in February 2000, requesting it to submit the relevant Finnish provisions indicating that aid could be granted for only 90 male bovine animals per holding. In March 2000, the Finnish authorities submitted extracts of the national legislation and in June 2000 certain ministerial instructions. After examination of these replies, the Commission deemed it necessary to request additional information concerning the interpretation given by Finland of the legislation, the way it had been enforced, as well as the texts of other legal instruments which were not submitted by the Finnish authorities but which had been found in the public Finnish legal data base. The request was sent in July 2000 and a reply was received in August 2000. The reply required translation and was currently examined by the Commission.

The complainants had been informed in July 2000 that the inquiry was still ongoing and that they would receive more information as soon as it would be available.

As regards the second request from the Ombudsman, the Commission did not put forward any specific comments. The Commission instead underlined that it reserved any other comments on the general issue raised by the complainants and by the Ombudsman until the outcome of the examination of the answers received by the Finnish authorities.

#### **The complainants' second opinion**

The Commission's second opinion was forwarded to the complainants for comments. No such comments appear to have been received by the Ombudsman.

#### **Further information from the Commission**

In February 2001, the Commission informed the Ombudsman of a letter it had sent to the complainants in January 2001 informing them that the inquiry against the Finnish authorities was still ongoing and that the result was not yet available. The Commission assured the complainants that they would be informed of the outcome of the inquiries in accordance with the Commission's commitment.

## **THE DECISION**

### **1 Community rules on agriculture in Finland**

1.1 The complainants alleged that there was discriminating because in northern Finland aid was granted up to a 90 head limitation for male bovine animals but in the southern Finland no such limit was set. Article 142 of the Act of Accession had consequently not been respected and furthermore Article 138 of the Act of Accession had been violated. The complainants claimed that Decision 95/196/EC should be altered so that all the production existing before 1995 receive aid and that the Commission should allow Finland to pay retroactively the aid that had not been forthcoming during the years 1995-99. In their observations, the complainants stated that the structure of the whole region had been affected.



1.2 The Commission explained that in southern Finland there was also a 90 head limitation. The Commission undertook to contact the Finnish authorities to verify that the 90 head limit was in fact adhered to and to keep the complainants informed of the result of that inquiry. Both Article 142 and 138 of the Act of Accession had been respected. As regards whether the structure of the whole region had been affected, the Commission reserved any further comments until the outcome of the ongoing inquiry against the Finnish authorities. The Commission did not specifically comment on the two claims put forward by the complainants but from its opinion, it seemed obvious that both claims were rejected.

1.3 The Ombudsman notes that, after the allegation of discrimination, the Commission initiated an inquiry to investigate if the 90 head limit, contained in Commission Decision 95/196/EC, Commission Decision 95/33/EC and Regulation (EC) No 1254/1999, is adhered to in Finland. The Commission has undertaken to keep the complainants informed of the outcome of the inquiry. As regards the question of whether the northern region as a whole had suffered from reduced production and deteriorated structure, which could make it eligible for Nordic aid, the Commission reserved its comments until the outcome of its inquiry against the Finnish authorities, which appears reasonable.

1.4 As regards the complainants' claims, it appeared from the Commission's opinion as if these were rejected. Against the background of the findings in point 1.3, the Ombudsman finds that the complainants' claims could not be satisfied.

1.5 The Ombudsman concludes that there was no indication that the Commission failed to respect any provisions relevant to the complaint and the Commission has initiated an inquiry in order to verify that Finland complies with Community legislation. This inquiry is still ongoing and the Commission has undertaken to inform the complainants of the outcome. The Ombudsman therefore finds that there was no maladministration on behalf of the Commission.

## **2 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission. The Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN