

Decision of the European Ombudsman on complaint 1470/99/IP against the European Commission

Decision

Case 1470/99/IP - Opened on 31/01/2000 - Decision on 16/01/2001

Strasbourg, 16 January 2001 Dear Mr M., On 26 November 1999, you sent a complaint to the European Ombudsman against the European Commission. The complaint concerned the Commission's handling of a request by S., the fleet you work for. On 31 January 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion in Italian on 4 May 2000, which I forwarded to you with an invitation to make observations, if you so wished. On 27 June 2000, I received your observations on the Commission's opinion. On 3 July 2000, MEP Antonio DI PIETRO sent me, for information, a copy of the written Parliamentary question he had made on 30 June 2000 on the same matter. In order to clarify some of the points made by the institution in the course of the inquiry, on 25 July 2000 I asked the Commission to provide with further information before the end of September 2000. On 3 October 2000, the Commission asked for an extension of the deadline until the end of October 2000, that the Ombudsman accepted by letter of 16 October 2000. The institution sent its further opinion on 23 October 2000. I forwarded it to you on 26 October 2000 with an invitation to make observations, if you so wished, by 30 November 2000. On 12 December 2000, I received your observations. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

The complainant works for S., a Somali fishery company. Until 30 June 1998, imports from this company to the Community took place under bilateral arrangements made with certain Member States. However, since the harmonisation of import conditions for fishery products from 1 July 1998, the import of fishery products into the Community by third countries was only authorised from those countries listed in the Annex to the Commission Decision 97/296. Since Somalia was not included in that list, S. could not import fishery products to the Community from that date anymore. On 5 February 1998, S. requested an authorisation for its 5 vessels to continue to export fishery products from their vessels within the framework of article 11.6 of the Council directive 91/493/EEC (1), that provides that: *"To deal with specific situations and in accordance with the procedure laid down in Article 15, imports may be authorised direct from an establishment or factory vessel of a third country where the latter is unable to provide the guarantees laid down in paragraph (3), provided that the establishment or factory vessel in question has received special approval following an inspection carried out in accordance with paragraph (2). The authorisation decision shall fix the specific import conditions to be followed*



for products coming from the establishment or factory vessels". On 18 November 1998, an inspection of the 5 vessels was carried out by Mr Poudelet and Mr Buccellati from the Food and Veterinary Office. With a letter dated 9 December 1998, Mr Reichenbach from the Commission informed S. that, in view of the final mission report proving the positive result of the inspection, he would recommend to the Directorate General of Agriculture *"to propose to the next standing Veterinary Committee a draft Commission decision authorising the import of S. fishery products"*. Since after the letter of 9 December 1998, he has received no more information by the Commission services concerning the progress of the requested authorisation, the complainant lodged a complaint with the Ombudsman. The complainant alleged the failure of information by the Commission during more than one year and stressed the urgency of the authorization, since the inactivity of the S. vessels were resulting in important financial losses.

THE INQUIRY

The Commission's opinion In its opinion on the complaint, the Commission recalled the background of the case. By 1 July 1988, the company's exports of fishery products to the Community, that until 30 June 1998, took place under bilateral arrangements made by the company with Member States, was only authorised from third countries listed in the Annex to the Commission Decision 97/296. Since Somalia was not included in this list, and has not applied to be included, the import of fishery products by S. were not authorised from 1 July 1998. The Commission recalled that Directive 91/493/EEC establishes that, to deal with specific situations, Community legislation foresees, as an exception, that imports may be allowed directly from an establishment or factory vessel of a third country where that third country is unable to provide the guarantees of health conditions during production and the compliance with community standards. On 18 November 1998, following a request by S., its 5 vessels have been inspected, with a positive result, by a team of 2 inspectors of the Food and Veterinary Office of Directorate General XXIV (Consumer Policy and Consumer Health Protection). In view of this result, on 15 December 1998, a proposal for a Commission Decision authorising the import from S. to the Community was presented to the Standing Veterinary Committee. Despite the favourable final report, the Commission stated that Member States questioned the proposal because the exception in the legislation is only foreseen for establishments or factory vessels. In fact, the Food and Veterinary Office's report clearly stated that the vessels concerned were freezer and not factory vessels. Moreover, the Commission pointed out that, due to a large number of telephone contacts and requests for information by the complainant, on 18 January 2000, a meeting between the responsible services of the Commission and the complainant took place in the Commission's premises in Brussels. The Commission stressed that, during the meeting, it understood the difficult situation that S. was facing at that time. The Commission's services therefore made several possible suggestions in order to find a solution for the complainant's fleet. The possible solutions identified by the Commission were the following: - Modify the Community legislation to extend the exception to also cover freezer vessels. Regarding this possibility, it was pointed out that it would require several years due to the necessary co-decision procedure. - The Commission considered that since S. usually operated from Yemen, and Yemen is an authorised third country to export fishery products to the Community, a possible solution could be to change the flag of the vessels. - Change the activity of S., adapting the vessels as factory vessels. By doing so, it would be possible to apply the exception provided for by Community legislation. - S. should



consider the possibility to change ownership of its vessels. Since the vessels were purchased with Italian funds and donated to Somalia, if S. were granted registration in Italy, its vessels would become Community vessels and therefore be allowed to have access to the Community.

The complainant's observations In his opinion, the complainant maintained his allegations. Furthermore, he underlined that in S.'s request for authorisation of 5 February 1998, it was clearly indicated that such an authorisation was asked for 5 factory vessels. S. never mentioned freezer vessels. It was the committee of experts that in its final report mentioned 5 freezer vessels. The complainant also stressed that the description of the vessels made by the experts was clearly a description of factory vessels. Moreover, the complainant could not understand why, if the experts considered the S. vessels as freezer vessels, they forwarded a positive final report to the Commission. In the complainant's view, the experts should have known that the exception in Community legislation was only foreseen for factory vessels and furthermore S. should not have been asked to make expensive modifications on the vessels.

FURTHER INQUIRIES

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary. On 25 July 2000, the Ombudsman asked the Commission for a second opinion on the complaint, in order to clarify some aspects of the case. The purpose of this letter was to give the European Commission the opportunity to comment on the complainant's grievance that in S.'s request for authorisation made on 5 February 2000, it was indicated that such authorisation was asked for 5 factory vessels. It was in fact the group of experts that mentioned in its final report that the inspection was carried out on 5 freezer vessels. In his observations the complainant also stressed that the description of the vessels made by the experts corresponded to a description of factory vessels. Moreover, the Commission was invited to explain the reasons why it did not inform the complainant, during almost one year, on the status of his request. The Ombudsman had already asked the Commission to comment on this point in its opinion, but the institution did not deal with the request. **The Commission's second opinion** In its reply of 26 October 2000, the Commission pointed out that when S. requested an authorisation to import fishery products to the Community, the company referred to its vessels as factory-vessels. Moreover, it underlined that, according to Article 2 of Directive 91/493/EEC, "factory-vessels" means *any vessel on which fishery products undergo one or more of the following operations followed by packaging: filleting, slicing, skinning, mincing, freezing or processing. However, fishing vessels on board which only freezing is carried out are not deemed to be factory-vessels*. The Commission explained that from the inspection report, it appeared that some evisceration, heading and cutting activities were carried out on S. vessels, all operations usually carried out on freezer-vessels. However, none of the other activities covered by Article 2 were identified on the vessels. On this basis, the experts considered that S. vessels were freezer-vessels and not factory-vessels. They concluded in their report that the five S. vessels could be considered as meeting the requirements of Council Directive 92/48/EEC (2). According to the institution, it therefore cannot be accepted that the description of the vessels made by the experts corresponds to a description of factory vessels. Concerning its role in this case, the Commission underlined that its services have, on several occasions, tried to identify possible solutions to solve the problems that S. was facing. An example was the Commission's recommendation to the Standing Veterinary Committee, although it knew that this proposal was based on a broad interpretation of the legislation, namely Directive 91/493/EEC and 92/48/EEC.



Since this proposal was not accepted by the Member states, other solutions have been envisaged and proposed by the Commission during meetings with S. representatives. According to the Commission, it is for the company to determine whether there is an option that could allow it to export fishery products from their vessels to the Community. The Commission pointed out that its services have kept a close contact with the S. representatives during all the proceedings, including informal telephone discussions, e-mails and meetings, and that no official letter by the complainant had remained unanswered. **The complainant's further observations** On 12 December 2000, the complainant sent a fax to the Ombudsman in which he put forward some comments on the outcome of his case. The complainant recalled that during almost two years from the request made to the Commission by S. to be authorised to export fishery products from their vessels to the Community, the Commission did not take any action, despite several letters and phone calls. However, he pointed out that since the Ombudsman has opened the inquiry into the matter, the Commission's attitude has completely changed. He was contacted by the institution's competent services and invited to go to Brussels for a meeting where possible solutions to solve the problem have been envisaged by the Commission's responsible officials. The complainant pointed out that, thanks to the advice given by the Commission's officials, a solution has been found in order to allow S. to continue its activity. The complainant also stressed that the present Commission is not responsible for all the difficulties that S. has faced in the last two years. On the contrary, he recognised the effort made by the institution to solve the case. Furthermore, he thanked the Ombudsman for the professionalism and the dedication demonstrated during the inquiry.

THE DECISION

1 The Commission's handling of the complainant's request 1.1 On 5 February 1998, S., the company the complainant works for, requested from the Commission an authorisation for its 5 vessels to continue to export fishery products from their vessels to the Community, within the framework of article 11.6 of the Council directive 91/493/EEC. 1.2 Following this request, on 18 November 1998, an inspection of the 5 vessels was carried out by a group of experts from the Food and Veterinary Office. In view of the positive report made by the experts, on 9 December 1999, the Directorate General of Agriculture was invited *"to propose to the next standing Veterinary Committee a draft Commission decision authorising the import of S. fishery products"*. 1.3 The complainant alleged that after more than one year the Commission had not yet decided on S.'s request. 1.4 In its two opinions forwarded to the Ombudsman, the Commission basically pointed out that, in view of the results of the inspection carried out on the S. vessels, a proposal for a Commission Decision authorising the export from S. vessels to the Community was presented to the Standing Veterinary Committee. Despite the favourable final report, the Commission stated that Member States questioned the proposal because the exception in the legislation is only foreseen for establishments or factory vessels. 1.5 Moreover, the Commission pointed out that it always tried to keep the complainant duly informed on his case and that, at the occasion of a meeting in the institution's premises in Brussels, the Commission's services made several suggestions to find a solution for the complainant's fleet. 1.6 The complainant stressed in his observations that he was satisfied with the outcome of the inquiry. He considered the measures taken by the Commission to allow S. to continue its activity to be satisfactory and thanked the Ombudsman and his staff for their effort to solve the case. **2 Conclusion**

It appears from the Commission's comments and the complainant's observations



that the European Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision. Yours sincerely, Jacob SÖDERMAN

(1) Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products, O.J. L 268 of 24.09.1991 p. 0015-0034

(2) Council Directive 92/48/EEC laying down the minimum hygiene rules applicable to fishery products caught on board certain vessels in accordance with Article 3(1) (a) (i) of Directive 91/493/EEC, O.J. L 87, 07/07/1992, p. 0041-0044