

Decision of the European Ombudsman on complaint 223/2000/BB against the European Commission

Decision

Case 223/2000/BB - Opened on 28/03/2000 - Decision on 19/10/2000

Strasbourg, 19 October 2000 Dear Mr T., On 8 February 2000, you made a complaint to the European Ombudsman concerning the reasoning of the decision of the European Commission in complaint N° 97/4410. On 28 March 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 4 July 2000 and I forwarded it to you with an invitation to make observations, which you sent on 15 September 2000. On 6 June 2000, you made a further submission to the European Ombudsman, a copy of which you also sent to the European Commission. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

According to the complainant, the European Commission has reasoned its negative decision on complaint N°97/4410 by stating that the list of hazardous waste in Decision 94/904/EC does not include timber preservation chemicals. The complainant alleges that the Commission has either made an administrative error or a translation error, on grounds that the complainant in his complaint only referred to heavy metals such as arsenic (As), copper (Cu) and chrome (Cr), wood preservatives and other poisons and not to timber preservation chemicals.

THE INQUIRY

The Commission's opinion In its opinion, the Commission stated that the complainant complained about the misconduct of the Finnish authorities concerning contamination caused by a wood impregnation plant in Raisio, Finland. In the course of a detailed correspondence, the Commission examined complaint N°97/4410, notified its position to the complainant and gave him a possibility to comment on the Commission's position before closing the file. The Commission understood that the complainant's complaint to the Ombudsman did not concern the handling of the complaint but rather the contents of the replies given by the Commission. In fact, the present complaint concerned only the following two sentences under point 2 of the Commission's reply of 28 September 1998: « *According to your complaint soil contaminated by timber preservation chemicals was taken to a municipal landfill. This is however not hazardous waste under Community rules because it is not included in the list of hazardous waste under Commission Decision 94/904/EC.* » The complainant alleged that the Commission made an administrative error (or a translation error), because in his complaint, instead of timber preservation chemicals, he only spoke about heavy metals, such as arsenic (As), copper (Cu),



chromium (Cr), as well as wood preservatives and other poisons. The Commission can only observe that the legal assessment made by the passage cited above is clear and correct. Contaminated soil is not included in the hazardous waste list under Commission Decision 94/904/EC. The expression soil contaminated by timber preservation chemicals is used in the reply as meaning the same as wood preservatives covering the substances mentioned by the complainant (arsenic, copper, chromium). The complainant also attached new test results to his complaint to the Ombudsman. The Commission stated that it would analyse these test results in order to see whether they will change the Commission's earlier conclusions, reply to the complainant as appropriate and open a new case if necessary. **The complainant's observations** In his observations, the complainant maintained his complaint. The complainant argued that both the handling of his complaint and the contents of the replies of the Commission were wrong. The complainant was of the view that the Commission should have applied the term "wood preservatives". He requested the European Ombudsman to make a comparative study of the test results he has presented in his letter of 6 June 2000 and of the Finnish standards for hazardous waste as well as a comparative study of the test results and the Community law provisions on hazardous waste. Furthermore, the complainant requested the Ombudsman to look into the allegations the complainant had made against the Turku Impregnation Establishment Ltd. (*Turku Kyllästyslaitos Oy*). Finally, he asked for a copy of the reply sent by the Environment Centre of South West Finland (*Lounais-Suomen ympäristökeskus*) to the European Commission.

THE DECISION

1 Preliminary remarks 1.1 As regards the complainant's allegations about maladministration by the Turku Impregnation Establishment Ltd. (*Turku Kyllästyslaitos Oy*), those fall outside the mandate of the European Ombudsman under Article 2.1 of the Statute of the European Ombudsman. The complainant has, of course, the possibility to present his allegations to the Finnish Ministry for the Environment at the following address: Ministry for the Environment, Kasarminkatu 25, PL 380, 00131 Helsinki, tel. (09) 19911, fax. (09) 1991 9545. 1.2 As to the complainant's request for a copy of the reply of the Environment Centre of South West Finland (*Lounais-Suomen ympäristökeskus*) to the European Commission, the complainant should request the above-mentioned copy directly from the Centre concerned. **2 Alleged administrative error or translation error** 2.1 According to the complainant, the European Commission has reasoned its negative decision on complaint N°97/4410 by stating that the list of hazardous waste in Decision 94/904/EC does not include timber preservation chemicals. The complainant alleges that the European Commission has either made an administrative error or translation error, on grounds that the complainant in his complaint to the Commission N°97/4410 only referred to heavy metals such as arsenic (As), copper (Cu) and chrome (Cr), wood preservatives and other poisons and not to timber preservation chemicals. 2.2 The European Ombudsman appreciates that in its opinion the Commission has indicated that it will analyse the new test results presented by the complainant in order to see whether they will change the Commission's earlier conclusions, reply to the complainant as appropriate and open a new case if necessary. Therefore, the issue of comparative studies by the European Ombudsman does not arise in this particular case. 2.3 The Ombudsman observes that the Commission has stated that contaminated soil is not included in the hazardous waste list under Commission Decision 94/904/EC. The expression soil contaminated by timber preservation



chemicals is used in the Commission's reply as meaning the same as wood preservatives covering the substances mentioned by the complainant (arsenic, copper, chromium). 2.4 On the basis of information available to the Ombudsman it appears that there are no elements at hand to the effect that the Commission would have made a manifest error in the reasoning of its negative decision on complaint N°97/4410. It should be recalled, however, that the Court of Justice is the highest authority in questions of application and interpretation of Community law.

3 Conclusion On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision. Yours sincerely, Jacob SÖDERMAN