

Decision of the European Ombudsman on complaint 493/2000/ME against the European Commission

Decision

Case 493/2000/ME - Opened on 29/05/2000 - Decision on 24/08/2001

Strasbourg, 24 August 2001

Dear Ms G.,

On 3 April 2000, you made a complaint to the European Ombudsman on behalf of "Västkustbanans Framtid" concerning the Environmental Impact Assessment made for the Swedish train connection "Västkustbanan", and the classification of the "Skälderviken" area in Sweden under the so-called Habitats Directive.

On 29 May 2000, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 5 October 2000. I forwarded it to you with an invitation to make observations, which you sent on 29 November 2000. On 25 January 2001, I asked the Commission for further information. The Commission sent its second opinion on 7 March 2001. I forwarded it to you with an invitation to make observations, which you sent on 30 May 2001.

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

To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

THE COMPLAINT

The complainant, the President of the association "Västkustbanans Framtid", complained to the Ombudsman in April 2000. The complainant had addressed a complaint to the European Commission concerning Sweden's compliance with Directive 85/337/EEC (1) and Directive



92/43/EEC (2) on the conservation of natural habitats and of wild fauna and flora. Her complaint to the Ombudsman concerned the Commission's handling of her complaint.

On 2 June 1997, the complainant addressed a complaint to the Commission concerning an Environmental Impact Assessment (EIA) carried out for the train connection Väst kustbanan in the south of Sweden. Two EIAs had been carried out for the connection, (i) Väst kustbanan Förslöv-Ängelholm, Miljökonsekvensbeskrivning för sträckan Förslöv-Norra delen av Skälderviken, dated 10 February 1995, and (ii) Väst kustbanan Förslöv-Ängelholm, Miljökonsekvensbeskrivning för sträckan Lingvallen-Ängelholms stationsområde, dated 21 May 1996. The complaint related mainly to the second EIA. The complaint was registered by the Commission as complaint P-97/4837. By letters of 19 January and 9 February 1998, the complainant further complained about the classification of the Skälderviken area, also in the south of Sweden, under the so-called Habitats Directive. This complaint was dealt with by the Commission together with that of 2 June 1997. From March to June 1998, the complainant sent further information to the Commission.

In a letter of 10 August 1998, the Commission concluded that there was no infringement of Community environmental legislation and proposed to close the matter within one month unless the complainant submitted fresh information.

In April 2000, the complainant lodged a complaint with the Ombudsman. In her complaint to the Ombudsman, she stated that the EIA made for the train connection Väst kustbanan, section Lingvallen-Ängelholms stationsområde, was inadequate as the assessment did not cover all relevant factors. Thus, Sweden was in breach of Directive 85/337/EEC. Further, the EIA for the section Lingvallen-Ängelholms stationsområde, appeared to have been handed in too late by the Swedish authorities. The complainant alleged that the Commission should therefore not have accepted the EIA.

The complainant moreover claimed that the Commission should ensure the designation of the Skälderviken area as a Natura-site under Directive 92/43/EEC.

The complaint contained detailed descriptions of the environment and surroundings of the areas concerned.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission stated that the complaint submitted to it on 2 June 1997 had been acknowledged on 25 November 1997. The complainant had further been informed about the Commission's investigations and actions by letters of 9 and 23 February, 10 August, 3 and 10 September 1998, 15 February and 8 June 1999. The Commission also pointed out that whether or not to launch an infringement procedure against a Member State lies within the discretionary powers of the Commission and the complainant had been informed thereof. The Commission understood the complaint not to concern the handling of the complaint submitted to it, but rather the assessment made by the Commission.



As far as the EIAs carried out by the Swedish authorities, dated 10 February 1995 and 21 May 1996, were concerned, the Commission considered these to fulfil the requirements of Directive 85/337/EEC concerning the railway project in question. Moreover, subsequent submissions made by the complainant did not demonstrate that the assessments were inadequate. The Commission stated that, when examining the EIAs, it paid particular attention to the questions concerning the procedures, as Directive 85/337/EEC rather regulates the procedure than the substance or quality of the assessment.

As regards the classification of the Skälderviken area under Directive 92/43/EEC, the Commission considered that the information provided by the complainant did not constitute evidence of any infringement of the Directive.

On 10 August 1998, the Commission notified the complainant of its position in relation to both Directive 85/337/EEC and Directive 92/43/EEC and gave her the opportunity to submit new information before the closure of the case. In August, September and October 1998, the complainant sent further information to the Commission. On 15 February 1999, the Commission again notified the complainant of its position that there was no breach of Community law and invited the complainant to submit further evidence within one month. A subsequent letter from the complainant dated 12 March 1999 did not contain any new evidence and on 8 June 1999, the Commission informed the complainant that it had closed the case.

The Commission therefore considered that it had fulfilled its duties with regard to informing the complainant.

The Commission finally referred to information contained in the complaint to the Ombudsman concerning certain background facts and descriptions of how the matter had been pursued before national authorities. The Commission stated that it would examine the additional information and inform the complainant if it revealed any elements that would alter the Commission's earlier conclusion.

The complainant's observations

In her observations, the complainant maintained her complaint and described in detail the environment of the area and identified to what extent Directive 85/337/EEC and Directive 92/43/EEC had not been respected by the Swedish authorities. The complainant stated that the identified infringements must have been detectable by the Commission through the answers it received from the Swedish authorities following its letter to these authorities on 9 February 1998.

The complainant underlined the fact that the EIA carried out for the train connection Väst kustbanan, section Lingvallen-Ängelholms stationsområde, was completed on 21 May 1996, whilst the decision to approve the construction of that connection was taken already on 15 May 1995 by the Swedish authorities. This alone constituted an infringement. If the authorities had respected Community legislation, the association Väst kustbanans Framtid and others concerned, would have had the possibility to submit comments on the EIA carried out.



The complainant moreover stated that the Commission should have identified the legal basis on which it supported its view that there was no infringement.

Further inquiries

After careful consideration of the Commission's opinion and the complainant's observations, it appeared that further inquiries were necessary.

The Ombudsman therefore asked the Commission to comment firstly on the fact that the decision to approve the construction of the train connection Väst kustbanan was taken by the Swedish authorities on 15 May 1995, whereas the EIA for the section Lingvallen-Ängelholms stationsområde was completed only on 21 May 1996. The complainant alleged that this was a breach of Community law (Directive 85/337/EEC). The Ombudsman asked the Commission to comment on this and to explain its conclusion that there had been no infringement. Secondly, as regards the allegations in connection with the classification of the Skälderviken area under Directive 92/43/EEC, the Ombudsman asked the Commission to inform him of any examinations carried out so far, as mentioned by the Commission in its opinion.

The Ombudsman also asked the Commission for a copy of the EIA performed for the section Lingvallen-Ängelholms stationsområde, and sent a copy of the complainant's observations to the Commission for possible comments.

The Commission's second opinion

As regards the fact that the decision to approve the construction of the train connection Väst kustbanan was taken by the Swedish authorities on 15 May 1995 and that the EIA for the section Lingvallen-Ängelholms stationsområde was completed on 21 May 1996, the Commission stated that it had informed the complainant of its discretionary powers to initiate infringement procedures. After having received the relevant assessments from Sweden and examined them, the Commission informed the complainant on 10 August 1998 and 15 February 1999, that no evidence had been submitted to show that the assessments performed did not fulfil the requirements of Directive 85/337/EEC.

As far as the classification of Skälderviken was concerned, the Commission stated that after having examined the information submitted via the complaint to the Ombudsman, as well as a specific complaint addressed to the Commission on 31 October 2000, the Commission had opened a new complaint file, Reference P-00/5160/Sweden. The new complaint concerned several issues, including the classification of the Skälderviken area as a Natura 2000-site under Directive 92/43/EEC. On 6 December 2000, the complainant submitted extensive new information and by letters of 29 November and 12 December 2000, the Commission informed the complainant about its examination of her submissions and that it had not yet finalised its assessment concerning the allegations put forward. The Commission stressed that after the information had been fully examined, it would inform the complainant of the action to be taken.

Moreover, as regards the general evaluation of the Swedish proposal for a list of Natura 2000-sites under the Habitat Directive, the Commission decided on 22 December 2000 to bring Sweden's failure to propose a complete list before the Court of Justice. The Commission had since received information that Sweden is currently preparing a new site designation and proposal of the Skälderviken area.



Copies of the two EIAs referred to in the complaint were enclosed to the opinion.

The complainant's second observations

In her second observations, the complainant again put forward detailed information as to what extent the assessments fell short of the requirements of Directive 85/377/EEC, and moreover described some procedural contacts with the Swedish authorities as far as the classification of the Skälderviken area under the Habitat Directive was concerned.

THE DECISION

1 The Commission's conclusion that there was no infringement of Directive 85/337/EEC¹

1.1 The complainant stated that the EIA made for the train connection Väst kustbanan, section Lingvallen-Ängelholms stationsområde, was inadequate as the assessment did not cover all relevant factors. Thus, Sweden was in breach of Directive 85/337/EEC. Further, the EIA appeared to have been handed in too late by the Swedish authorities. The complainant alleged that the Commission should therefore not have accepted the EIA.

1.2 The Commission stated that as far as the two EIAs carried out by the Swedish authorities were concerned, the Commission considered these to fulfil the requirements of Directive 85/337/EEC concerning the railway project in question. According to the Commission, no evidence had been submitted to show the opposite. When the complainant pointed out that the decision to approve the construction of the train was taken by the Swedish authorities on 15 May 1995 and the EIA for the section Lingvallen-Ängelholms stationsområde was completed only on 21 May 1996, the Commission replied by informing the complainant of its discretionary powers to initiate infringement procedures.

1.3 As regards the complainant's arguments concerning the adequacy of the EIA, the Ombudsman notes that Directive 85/337/EEC requires an exercise of judgement by the Member State as to what information is to be provided. In the present case, the Ombudsman's inquiry has not revealed evidence to show that the Commission was not entitled to take the view that the Member State had complied with its obligation under Directive 85/337/EEC as regards the adequacy of the information provided in the EIA.

1.4 As regards the complainant's arguments concerning the date on which the EIA was prepared, the Ombudsman notes that the Commission referred to its discretionary powers to initiate infringement procedures. If the meaning was that the Commission had made a discretionary decision to close the case, despite evidence that an infringement had occurred, then the Commission should have said so in clear words. If on the other hand, the Commission considered that there was no infringement, no issue of discretion arises. It must be concluded that the reasons as to why the Commission closed the case were unclear.

1.5 It is good administrative behaviour to state the reasons for a decision. The reasons given should be adequate, clear and sufficient. In the present case, the Ombudsman finds that the Commission failed to state the reasons for its decision. The Ombudsman will therefore issue a critical remark to the Commission.



2 The classification of the Skälderviken area under Directive 92/43/EEC

2.1 The complainant claimed that the Commission should ensure that the Skälderviken area is designated as a Natura-site under Directive 92/43/EEC.

2.2 At first, the Commission explained that the information provided by the complainant did not constitute evidence of any infringement of Directive 92/43/EEC. However, on the basis of the information submitted via the complaint to the Ombudsman, as well as subsequent submissions, the Commission had opened a new complaint file concerning the classification of the Skälderviken area as a Natura 2000-site under Directive 92/43/EEC. The Commission had not yet finalised its assessment, but stressed that after the information had been fully examined, it would inform the complainant of the action to be taken.

2.3 The Ombudsman notes that this part of the complaint is still being assessed by the Commission on the basis of further information submitted by the complainant. The Commission has undertaken to inform the complainant of the outcome. There is therefore no maladministration as regards this part of the complaint.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

As regards the complainant's arguments concerning the date on which the EIA was prepared, the Ombudsman notes that the Commission referred to its discretionary powers to initiate infringement procedures. If the meaning was that the Commission had made a discretionary decision to close the case, despite evidence that an infringement had occurred, then the Commission should have said so in clear words. If on the other hand, the Commission considered that there was no infringement, no issue of discretion arises. It must be concluded that the reasons as to why the Commission closed the case were unclear.

It is good administrative behaviour to state the reasons for a decision. The reasons given should be adequate, clear and sufficient. In the present case, the Ombudsman finds that the Commission failed to state the reasons for its decision.

Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. 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 85/337/EEC of 27 June 1985 on the assessment of the effects of certain



public and private projects on the environment, OJ 1985 L 175/40.

(2) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206/7.