

Decision of the European Ombudsman on complaint 801/2000/PB against the European Commission

Decision

Case 801/2000/(ME)PB - Opened on 13/07/2000 - Decision on 08/06/2001

Strasbourg, 8 June 2001

Dear Mr H.,

By letters of 20 and 27 June, you made a complaint to the European Ombudsman concerning the Commission's alleged failure to deal with your infringement complaint.

On 13 July 2000, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 14 November 2000. I concluded that it was necessary to immediately request a second opinion from the Commission, which I informed you about in my letter dated 27 November 2000. The Commission sent its second opinion on 5 February 2001. On 28 February 2001, I sent you the Commission's first and second opinions, with an invitation to make observations, which you sent on 15 March 2001. On 27 March 2001, I asked the Commission for a more precise deadline for its resolution on the matter that you have brought to its attention. I informed you of my request, which you replied to by letter of 4 May 2001.

I also acknowledge receipt of your letters or faxes dated: 16 October 2000, 15 November 2000, 7 December 2000, 9 January 2001, 2 February 2001 and 26 March 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



In June 2000, the complainant wrote to the Ombudsman, stating that the European Commission had dealt inadequately with his infringement complaint against Denmark.

According to the complainant, he had for more than ten years tried to make the European Commission take action against the Danish authorities for their breach of Community law. His grievance against the Danish authorities was, in summary, that their taxation of second hand cars imported from other EU Member States is contrary to the EC rules on free movement. The complainant was a second hand car dealer.

On 21 January 1998, the complainant wrote to the Commission Representation in Denmark to inquire about his infringement complaint against Denmark. The Head of the Representation, Mr Peter Stub Jørgensen, replied on 29 January 1998. In his letter, Mr Jørgensen regretted the delay in the handling of the infringement complaint, and stated that the infringement complaint had been given a new reference number by the Commission's General Secretariat in Brussels. The infringement complaint would then be forwarded to the relevant Directorate General of the Commission.

On 21 April 1999, G. Berardis, Head of Division of the Commission's Directorate-General XXI for Taxation and Customs Union, wrote to the complainant to inform him about the Commission's inquiries into the infringement complaint. G. Berardis first informed the complainant that the previous infringement complaint that he had referred to in his letter to Jørgensen on 21 January 1998 (above) had been closed on 15 October 1997. The Commission had concluded that the complaint was unfounded. G. Berardis also stated that the translation of the complainant's letters made it possible "to see more plainly certain points that you refer to and to consider them new in relation to the above-mentioned classified file." The remainder of G. Berardis' letter informed the complainant about the fact that the Commission's services had taken contact with the Danish authorities in order to be able to elucidate specific points raised in the infringement complaint.

The allegation submitted to the Ombudsman by the complainant was that the Commission had failed to inform him about the outcome of the Commission's contact with the Danish authorities to elucidate the points raised by the complainant in his letters to the Commission. The points here referred to were the points outlined for inquiry in G. Berardis' letter, referred to above.

THE INQUIRY

The Commission's opinion

The complaint was forwarded to the Commission for opinion. The Ombudsman concluded that it was necessary to immediately request a second opinion from the Commission, which the Commission provided.

The comments made in the Commission's opinions were, in summary, the following.

In regard to the substance of the infringement complaint, the Commission referred to cases



before the Court of Justice which concerned the issues raised by the complainant (1) . The Commission had decided to await the outcome of these court cases before taking a final stance on the issue. It explained that the questions raised by the complainant were very complex and demanding technical inquiries. The taxation of vehicles is an area which has not yet been fully harmonised in the EU, and therefore numerous problems arise in connection with the registration of vehicles, or in connection with the purchasing of vehicles in other Member States. Thus, the case law of the Court of Justice is the only reliable source of interpretation of EC free movement rules in this area. The Commission expected that the Court's decisions on the matter would allow the Commission to develop a global approach to the problem of car taxation, an approach which the Commission considered preferable to a case-by-case resolution of individual infringement complaints. The complainant would naturally be informed in due course of the Commission's position and actions on the matter.

In regard to the Commission's handling of the infringement complaint, the Commission emphasised that the administrative delays had partly been due to a lack of staff in its service dealing with taxation. The Commission receives many infringement complaints about taxation on vehicles, and in particular the need for translation slows down the handling of these complaints. The resource limitations have furthermore forced the Commission to prioritise between the infringement complaints, depending on the seriousness of the complainant's situation. However, following the present complaint to the Ombudsman, the Commission had employed a new official in the service responsible, a measure which should significantly speed up the procedure.

The complainant's observations

The Commission's opinions were forwarded to the complainant for observation. In his observations, the complainant maintained his allegations. In particular, he claimed that existing Community law was sufficiently clear for the Commission to take action against Denmark. As for the administrative delays, he rejected the Commission's explanations concerning lack of resources.

Further inquiries

Noting that the Court of Justice had given judgement in one of the cases referred to by the Commission, C-393/98, *Gomes Valente v Fazenda Pública* , judgement made on 22 February 2001, the Ombudsman asked the Commission if it could provide a more precise date for a substantive response to the complainant's infringement complaint.

The Commission replied that it anticipated to take a decision on the complainant's infringement complaint in October 2001. The complainant and the Ombudsman would be duly informed about the decision.

THE DECISION

1 The alleged failure to inform the complainant

1.1 The complainant alleged that the Commission had failed to inform him about the outcome of the Commission's contact with the Danish authorities to elucidate the points raised by the complainant in his infringement complaint to the Commission. The Commission has pointed out two main aspects of its inquiry into the infringement complaint. First, it has considered it prudent



to await the outcome of pending cases before the Court of Justice before producing a final reply to the complainant. Following judicial developments succeeding the lodging of the present complaint, the Commission has informed the Ombudsman that it will take a decision on the complainant's infringement complaint in October 2001, of which the complainant will be informed. Second, lack of resources caused the administrative delays in the Commission's handling of the infringement complaint.

1.2 In regard to the Commission's decision to await the outcome of pending cases before the Court of Justice, the Ombudsman refers to his conclusion in a previous decision concerning a similar argument:

"It should be recalled that the ultimate measure that the Commission can take in respect of suspected infringements of Community law by Member States is to initiate infringement proceedings before the Court of Justice. If the Court is already dealing with a case that might clarify the matter in question, it seems reasonable of the Commission to await the outcome of that case before taking a final stance on the infringement issue in question." (2)

1.3 The Ombudsman consider that this conclusion applies to the present case also, and therefore accepts the Commission's stance on this point. The Ombudsman also notes that the Commission has undertaken to take a decision on the complainant's infringement complaint in October 2001, of which the complainant will be informed.

1.4 In regard to the Commission's explanation concerning lack of resources, the Ombudsman draws attention to the decision just referred to, in which a similar argument was not accepted (3). Subsequent to that decision, the Commission has employed extra staff to ensure a more speedy treatment of the type of infringement complaints here concerned. The Ombudsman welcomes that measure, and considers it unnecessary to address the matter further in the present inquiry.

1.5 On the basis of the above findings, the Ombudsman concludes that there is no maladministration by 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

(1) C-393/98, *Gomes Valente v Fazenda Pública*, C-101/00 Antti Siilin, and C-451/99, *Cura Anlagengesellschaft*. The judgement in *Gomes Valente* was subsequently made on 22 February



2001 (see www.curia.europa.eu [Link]).

(2) 1427/99/PB, decision of 18 December 2000, paragraph 1.7.

(3) 1427/99/PB, decision of 18 December 2000, paragraph 1.