

Decision of the European Ombudsman on complaint 1633/2000/ADB against the European Commission

Decision

Case 1633/2000/ADB - Opened on 19/01/2001 - Decision on 23/10/2001

Strasbourg, 23 October 2001

Dear Ms G.,

On 11 December 2000, you made a complaint to the European Ombudsman, on behalf of the "*Association contre l'Heure d'Eté double*", concerning the circumstances of the proposal of the 9th summer-time directive.

On 19 January 2001, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 22 March 2001. I forwarded it to you with an invitation to make observations, which you sent on 28 May 2001.

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

THE COMPLAINT

The complainant is the president of the "*Association contre l'Heure d'Eté double*" (ACHE) and a recognised expert on summer-time matters. She first lodged a complaint with the European Ombudsman about the 9th Directive on summer-time arrangements. It had been closed because it did not concern maladministration. She then decided to complain about delays in the proposal of this Directive. According to the 8th Directive on summer-time arrangements, the Commission should have presented a proposal for the 9th Directive before 1 January 2000. Instead it was only made on 20 June 2000. On 11 December 2000, she therefore lodged a complaint with the European Ombudsman and made following allegations:

1. The Commission's proposal for the 9th summer-time directive was 6 months late according to the timetable set by the 8th summer-time directive.
2. This delay could have been avoided if the Commission had accepted the complainant's expertise when preparing the proposal.

The complainant claimed that the summer-time arrangements applicable after 1 January 2000 should lose their permanent character and be limited in time. She would also like



that this important matter to be considered more seriously and calls for a real dialogue with the interested groups.

THE INQUIRY The European Commission's opinion

The opinion of the European Commission on the complaint was in summary the following:

1. Concerning the allegation of late submission of the proposal to the European Parliament and the Council, the Commission held that its services submitted the final draft once all the necessary information was available. Delays in the procedure occurred because of consultations. Furthermore, the delay in submitting the proposal was compensated by a close follow-up of the procedure. It led to a minor delay in the final adoption, given that the 9th directive was adopted on 19 January 2001, while the deadline set by the 8th directive was 1 January 2001.

2. Since 1993, the complainant used several opportunities to outline her views on summer-time arrangements during hearings and meetings, or in letters she sent to Commission officials. From the beginning, the complainant had been closely involved in the contested study. The consultant "Research voor Beleid" hired by the Commission, was among others communicated the documents prepared by ACHE on the issue. The consultant even met the complainant personally.

In July 1999, the draft final report was disseminated among the European Institutions, the Member States and the Organisations concerned, including ACHE. After its publication, the complainant sent several letters contesting elements and conclusions of the report. The consultant made some corrections to the report without however considering it necessary to change its general conclusions. The Commission had replied to the complainant's letters on several occasions.

Finally, it appears that the report only gave rise to two negative reactions; the first one from ACHE, and the second one from a Belgian association which delivered exactly the same comments. The proposal of Directive was largely approved by the European Institutions.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In her reply, the complainant stated the following:

The Commission services have only taken into account her comments in a very superficial way. The few changes taken up in the report further to ACHE's comments cannot justify a 6-month delay. The Commission avoided considering ACHE's essential comments which differed too much from the consultant's conclusions. It is more likely that it took the Commission much more time to make up a seemingly reasonable justification for its refusal to take into consideration ACHE's comments.

Because of the delay in finalising the proposal to be submitted to the European Parliament and the Council, the dialogue between organisations and both institutions became impossible before the final adoption. The Commission should have foreseen the time



necessary to take into account comments of interested organisations.

The dialogue between the Commission and the complainant was particularly limited when preparing the proposal for the 9th Directive. The institution refused to organise a hearing during this period of time, although the last one took place in 1995 and ACHE made important researches since then. The complainant was refused an interview with the Commission's services in Brussels. The meeting with the consultant "Research voor Beleid" invoked by the Commission as an instance of dialogue, occurred before the Commission's proposal, for which the complainant does not allege any delay.

THE DECISION 1 Delay in submitting a proposal for the 9 th summer-time directive

1.1 The complainant alleged that the Commission's proposal for the 9 th summer-time directive (COM (2000) 302) was 6 months late according to the timetable set by the 8 th summer-time directive.

1.2 The Commission considered that the delay occurred because of the consultation which had taken place. However it pointed out that the directive itself (2000/84/EC) was adopted only 19 days after the deadline.

1.3 In using its powers, the Commission must respect relevant Community rules. The An instance of maladministration occurs when a Community institution or body fails to act in accordance with the Treaties and with the Community acts that are binding upon it. In the present case, the Ombudsman notes that the 8 th summer-time directive (1) clearly imposed a precise deadline to the Commission. According to article 4 of this directive:

The arrangements to apply from 2002 onwards shall be adopted by 1 January 2001 on a proposal from the Commission to be submitted before 1 January 2000.

1.4 The Commission's proposal for the 9 th summer-time directive was actually proposed on 20 June 2000. The reasons given by the Commission do not appear to originate in any exceptional circumstances which might have justified the six-month delay that occurred. By failing to act in accordance with an obligation binding upon it, the Commission did not follow principles of good administration.

2 Failure to take into account the complainant's expertise

2.1 The complainant alleged that the delay in proposal could have been avoided if the Commission had accepted the complainant's expertise when preparing the proposal.

2.2 The Commission held that since 1993, the complainant had been regularly given the opportunity to outline its position.

2.3 The Ombudsman notes that the Commission does not appear to have any legal obligations as to the scope of the consultations it had to carry out prior to its proposal for the 9 th summer-time directive. Furthermore, there is no indication that the Commission had to follow all the complainant's suggestions for the proposed directive. The Court of Justice has consistently held, that in cases which involve the assessment of a complex scientific and economic situation, the Commission enjoys a wide measure of discretion (2) .



The Ombudsman's conclusion therefore is that there is no evidence of maladministration as regards this aspect of the case.

3 Conclusion

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

The Commission's proposal for the 9th summer-time directive was actually proposed on 20 June 2000. The reasons given by the Commission do not appear to originate in any exceptional circumstances which might have justified the six-month delay that occurred. By failing to act in accordance with an obligation binding upon it, the Commission did not follow principles of good administration.

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 Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) Eighth Directive 97/44/EC of the European Parliament and of the Council of 22 July 1997 on summer-time arrangements, OJ L 206 , 01/08/1997 P. 0062 - 0063

(2) See, among others, Case 55/75, Balkan-Import Export [1976] ECR 19; Case 29/77 Roquettes Frères [1977] ECR 1853; and Case 138/79