



Decision of the European Ombudsman on complaint 343/2003/IP against the European Commission

Decision

Case 343/2003/IP - Opened on 04/03/2003 - Decision on 26/10/2004

Strasbourg, 26 October 2004

Dear Mr C.,

On 8 February 2003, you made a complaint to the European Ombudsman concerning the Commission's handling of complaint n° 1998/4802 lodged on 10 August 1998.

On 4 March 2003, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 15 April 2003. I forwarded it to you with an invitation to make observations, which you sent on 9 and 27 May 2003 and on 2 August 2003.

In the light of these observations, it appeared that it was necessary to conduct further inquiries. On 14 April 2004, I therefore wrote to the Commission, asking the institution to comment on your observations. On 25 May 2004, I received the Commission's reply which I forwarded to you with an invitation to make observations. I received your observations on 28 June 2004.

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

THE COMPLAINT

The inquiry into the present case concerned the European Commission's handling of the infringement complaint made by the complainant on 10 August 1998 against Italy (case reference 4802/1998). In this complaint, the complainant alleged that hazardous waste had been disposed of by the Italian authorities in an uncontrolled way within the chemical plant Enichem in the area of Manfredonia (Italy), and that municipal waste had been disposed of in three urban waste landfills in the territory of Manfredonia.

In his complaint to the Ombudsman, which concerned the Commission's handling of his case, the complainant claimed that the Commission should take a final decision on the case, after almost five years of investigations.

THE INQUIRY **The European Commission's opinion**

In its opinion, submitted in April 2003, the Commission made in summary the following points:

The complainant's complaint, which had been registered under reference n° 1998/4802, raised complex technical issues.



In the context of the complaint-related procedure, the Italian authorities were requested to provide information on 29 January 1999. The case was discussed during a so-called "package meeting" held in Rome in April 1999, in the presence of the Commission and of the Italian authorities. By letter of 27 September 1999, the Commission asked the latter to provide further information. The Italian authorities replied on 26 October, 29 November, 15 and 16 December 1999. The Commission assessed the information received and concluded that there were grounds for opening an infringement procedure against Italy. On 24 November 2000, the Commission therefore sent a letter of formal notice for incorrect application of Directive 75/442/EEC. On 28 November 2000, the Commission informed the complainant of these developments of the case.

The Italian authorities answered to the letter of formal notice on 9 July 2001. In view of the complexity of the case, the appraisal of the reply required an in-depth examination of all the legal and technical issues raised in it.

On 27 June 2002, the Commission sent a reasoned opinion to Italy and informed the complainant on 21 August 2002. The Italian authorities replied on 25 October 2002. On the basis of the results which would be reached after concluding assessment of this reply, the Commission would decide whether to pursue the case by applying to the Court of Justice. As the infringement procedure progressed, the complainant had constantly been informed on the development of the procedure and he had received clarification on the issues he had raised.

When dealing with complaints addressed to it, the Commission had to act within the limits conferred upon it by the Treaty. The Commission considered that the complainant appeared to have expectations which went beyond the powers of the institution to the extent that he expected it to intervene directly in the area of Manfredonia.

The Commission also referred to the fact that the Ombudsman had already dealt with a complaint lodged by the complainant in 1999 (complaint 396/99/IP) and that he had concluded that there had been no maladministration by the Commission.

The complainant's observations

In his observations, the complainant expressed his surprise at the fact that the Commission's opinion had not been signed. He also stated that, contrary to the Commission's statement, he had never asked the institution to intervene directly in the area of Manfredonia.

Furthermore, the complainant took the view that the Commission's reference to the fact that in 1999 the European Ombudsman had already dealt with another complaint that he had lodged with the institution against Italy and that the Ombudsman concluded that there had been no maladministration by the Commission had no relevance for the present case.

As regards the substance of the case, he basically maintained his complaint. Concerning the Commission's point that the reply received by the Italian authorities on 25 October 2002 was still being assessed by the Commission's services, the complainant expressed the view that the Commission had all the relevant elements to finalise its assessment shortly.

Further inquiries *Request for further information*

After careful consideration of the Commission's opinion and the complainant's observations,



it appeared that further inquiries were necessary. On 14 April 2004, the Ombudsman therefore wrote to the Commission, asking the institution to inform him whether in the meantime it had finalised its examination of the case and, in case of a negative reply, which actions it intended to take regarding the case. A copy of the complainant's observations was forwarded to the Commission.

The Commission's reply

In its reply, the Commission referred to the point made by the complainant as regards the fact that its opinion was not signed. The Commission observed that communications from the Commission are normally addressed by the Secretary General to the Ombudsman by means of a signed transmission letter.

As regards the Commission's handling of complaint n° 1998/4802 lodged on 10 August 1998, the institution pointed out that the reason why the reply from the Italian authorities of 25 October 2002 was still under investigation in March 2003 was the complexity of the issues raised in it, which required a thorough technical and legal analysis. On 9 July 2003, the Commission had finally decided to bring the case before the Court of Justice (case reference C-447/03). By letter of 23 July 2003, the complainant had been informed accordingly. The Commission concluded that it considered to have performed its role as Guardian of the Treaty in a timely and effective way.

The complainant's further observations

In his observations on the Commission's reply to the Ombudsman's letter of 14 April 2004, the complainant maintained his view that the period of time taken by the Commission to complete the examination of his case had been excessively long. The complainant also expressed his concerns about the effectiveness of bringing the case before the Court of Justice only years after the construction of three urban waste landfills in the territory of Manfredonia, when the negative effects for the environment had already occurred.

The complainant also took the view that the fact that the Commission's communications were normally addressed to the recipients by means of a signed transmission letter, which was the only signed sheet of the whole document, did not satisfy the principle of transparency which should be the inspiring principle of all public administration.

THE DECISION 1 Preliminary remarks

1.1 The Ombudsman notes that in his observations on the Commission's first opinion, the complainant expressed his surprise at the fact that the Commission's opinion had not been signed. The Commission dealt with this point in its reply to the Ombudsman's request for further information, and explained that communications from the Commission are normally addressed by the Secretary General to the Ombudsman by means of a signed transmission letter.

1.2 As correctly stated by the Commission, all communications forwarded by the Commission to the Ombudsman in the framework of an inquiry are transmitted by the Secretary General by means of a signed transmission letter to the Ombudsman who then forwards the relevant documents to the complainant. When forwarding the Commission's opinion to the complainant for possible observations, the Ombudsman does normally not forward also the transmission letter. Copies of the letters by which the Commission forwarded its opinions to the Ombudsman in the present case are enclosed with this



decision.

1.3 The Ombudsman notes that in his observations on the Commission's reply to the Ombudsman's letter of 14 April 2004, the complainant expressed the view that the Commission's practice to forward communications which were not signed did not satisfy the principle of transparency which should be the inspiring principle of all public administration.

1.4 The Ombudsman considers that, as regards the documents transmitted by the institution to him in the framework of an inquiry, there are no grounds to open an inquiry into this point, in view of the explanation given in point 1.2 of this decision.

1.5 If on the other hand the complainant had intended to make a general point concerning all the documents transmitted by the Commission, this would constitute a new allegation. However, given that the present case is ready for decision and that the complaint was already lodged in 2003, the Ombudsman does not consider it appropriate to deal with this allegation in the present decision. The complainant is free to lodge a new complaint regarding this point, if he so wishes, after having made the appropriate prior administrative approaches to the Commission.

2 The complainant's claim

2.1 In his complaint concerning the European Commission's handling of complaint n° 1998/4802 made by him on 10 August 1998 against Italy, the complainant claimed that the Commission should take a final decision on the case, after more than four years of investigations.

2.2 In its opinion, the Commission gave a detailed explanation of the actions it had taken in relation to complaint n° 1998/4802.

According to the opinion, the Commission sent a reasoned opinion to Italy on 27 June 2002, and informed the complainant on 21 August 2002. The Italian authorities replied on 25 October 2002. When the complainant lodged his complaint to the Ombudsman, the Commission's services were assessing the content of this reply, in order to decide whether to pursue the case by applying to the Court of Justice.

2.3 On 14 April 2004, the Ombudsman wrote to the Commission in order to ascertain whether in the meantime it had finalised its examination of the case and, in case of a negative reply, which actions it intended to take regarding the case.

2.4 In its reply, the Commission informed the Ombudsman that on 9 July 2003, following an in-depth examination of all the elements in its possession, it had decided to bring the case before the Court of Justice, and that the complainant had been informed accordingly.

2.5 The Ombudsman notes that the Commission has thus taken a final decision on the complainant's case, in accordance with what the complainant had claimed his complaint.

2.6 The Ombudsman notes, however, that in his observations on the Commission's opinion, the complainant took the view that the length of time taken by the Commission to investigate



the present case had been excessively long and that he also expressed his concerns about the effectiveness of bringing the case before the European Court of Justice only years after the construction of three urban waste landfills in the territory of Manfredonia, when the negative effects for the environment had already materially occurred.

For the reasons set out above (see point 1.5), the Ombudsman does not consider it appropriate to deal with this additional allegation in the present decision. The complainant is however free to lodge a new complaint on this point, if he so wishes.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it appears that there is no need to pursue further inquiries as regards the present case. The Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS