

Decision of the European Ombudsman on complaint 701/2003/IP against the European Commission

Decision

Case 701/2003/IP - Opened on 30/06/2003 - Decision on 09/06/2004

Strasbourg, 9 June 2004

Dear Mr V.,

On 22 April 2003, you made a complaint to the European Ombudsman in relation to the European Commission's handling of the complaint that you had lodged with it on 14 February 2001.

On 30 June 2003, I forwarded the complaint to the President of the European Commission. On 7 November 2003, the institution sent its opinion which I forwarded it to you with an invitation to make observations. On 5 January 2004, I received your observations.

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 the present complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

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

I apologise for the length of time it has taken to deal with your complaint.

THE COMPLAINT

According to the complainant, the relevant facts are as follows:

On 14 February 2001, the complainant made a complaint to the European Commission alleging that the system concerning access to the profession of lawyer in Italy (1) is contrary to the



competition rules as foreseen by the Treaty of the European Union. On 20 March 2001, the complainant received a letter from the Commission's services, by which he was informed that his complaint had been transferred to DG Competition (DG COMP).

According to the complainant, the sole communication he had received in the meantime from the Commission was a holding reply sent to him on 10 May 2001.

On 7 February 2003, the complainant therefore wrote a further letter to the Commission and asked to be informed about the situation of his case. On 31 March 2003, the Commission replied to the complainant. In its reply, the institution referred to the letter of 10 May 2001 and stated that the issue raised by the complainant concerned matters which were within the national authorities' remit and that an intervention by the Commission was not possible.

In his complaint to the Ombudsman, the complainant alleged that the Commission failed to carry out an in-depth examination of his complaint and claimed that the institution should reconsider his complaint.

THE INQUIRY

The European Commission's opinion

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

On 14 February 2001, the complainant complained to the Commission about the difficulties that people wishing to pass the examination in order to have access to the profession of lawyer in Italy had to face. According to the complainant, these difficulties appeared to be the consequence of the fact that licensed lawyers have an interest in limiting access to the profession by new colleagues and do so by imposing very hard tests. Furthermore, and still according to the complainant, the chances to pass the examination vary greatly, depending on the place in which the examination is held.

In its letter of 10 May 2001, the Commission informed the complainant that the issue he had raised in his letter of 14 February 2001 was, in principle, not covered by the competition rules.

As regards the Italian situation, access to the profession of lawyer is regulated by law and, as a general principle, does not concern the rules of competition. Following the complainant's further letter of 7 February 2003, by which he had asked to be informed about the situation of his case, the Commission replied on 31 March 2003 and confirmed what it had stated in the previous letter of 10 May 2001, that is to say that an intervention on the part of the institution was not possible. The Commission had always replied to the complainant's letters. It did not consider it necessary, however, to send a formal rejection of his letter.

As regards the substance of the case, the issue raised by the complainant was well known by the Commission. More specifically, it had been the object of two petitions which had been dealt with and had already been closed by the Committee on Petitions of the European Parliament (2) and of a formal complaint, registered under reference COMP 37713, which had been closed in



November 2002. Furthermore, the Court of Justice of the European Communities was dealing with a request for a preliminary ruling concerning a related subject-matter.

The complainant's observations

In his observations, the complainant stressed that only thanks to the Ombudsman's intervention did he become aware of the fact that by its letter of 10 May 2001, the Commission had intended to inform him that it was closing his case. However, he reaffirmed his point of view that the tone of the letter was at least misleading. Furthermore, it was only in its opinion to the Ombudsman that the Commission had given an explanation of its behaviour. The complainant took the view that the Commission had had the possibility to give all the relevant information directly to him and had failed to do so.

As regards the substance of the case, the complainant maintained his complaint and claimed that the Ombudsman should order the Commission to reconsider his case.

THE DECISION

1 Introductory remarks

1.1 In his complaint submitted to the Commission on 14 February 2001, the complainant alleged that legislation on access to the profession of lawyer in Italy was contrary to the competition rules of Community law. The complainant also referred to the alleged infringement of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (3) , of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (4) and of Articles 3, 10, 12, 44 (c) and 49 of the EC Treaty.

1.2 It emerges from the documents submitted to the Ombudsman that the Commission understood this complaint as concerning only the competition rules of Community law. It further appears that the complainant did not object to this interpretation of his complaint.

In these circumstances, the Ombudsman takes the view that it is neither necessary nor appropriate to extend his inquiries so as to examine whether the Commission should also have considered other provisions of Community law mentioned by the complainant in his complaint when dealing with this complaint. However, this does not prevent the complainant to ask the Commission to deal with the other points raised in his complaint of 14 February 2001, if he so wishes.

1.3 In his observations, the complainant claimed that the Ombudsman should order the Commission to reconsider his case.

1.4 In order to avoid any possible misunderstanding, it should be pointed out that the Ombudsman does not have the power to issue instructions to the institutions.

2 The European Commission's handling of the complainant's complaint

2.1 The complainant alleged that the Commission had failed to carry out an in-depth



examination of the complaint which he had made on 14 February 2001.

2.2 In its opinion, the Commission put forward that all the letters sent by the complainant had been replied to promptly and that it had not considered it necessary to send the complainant a formal rejection of his complaint.

2.3 Principles of good administration require that an institution act consistently. One of the fundamental tasks of the Commission in its role as "Guardian of the Treaty" under Article 211 of the EC Treaty is to ensure that Community law is correctly applied in all the Member States. In carrying out its duty, the Commission investigates possible infringements of Community law which come to its attention largely as a result of citizens' complaints.

As regards the procedural rules to be followed by the Commission in its handling of citizens' formal complaints, the relevant criteria were set out by the institution in its reply submitted to the Ombudsman on 22 August 1997 in the framework of the Ombudsman's own-initiative inquiry 303/97/PD (5) on administrative procedures for dealing with complaints concerning Member States' infringements of Community law, as well as in the explanatory note attached to its standard complaint form (6) .

In its reply to the Ombudsman's own-initiative inquiry, the Commission pointed out that:

"[...] complaints from individuals [...] enjoy procedural safeguards which the Commission has constantly developed and improved [...].

[...]All complaints which reach the Commission are registered and no exceptions are made to this rule. Once the Commission receives a complaint, it acknowledges receipt by letter to the complainant with an annex attached, explaining the details of the infringement proceedings".

The explanatory note attached to the Commission's complaint form explains in detail the procedural safeguards, which result from the registration of a letter as a complaint:

"(a) Once it has been registered with the Commission's Secretariat-General, any complaint found admissible will be assigned an official reference number. An acknowledgement bearing the reference number, which should be quoted in any correspondence, will immediately be sent to the complainant [...].

(b) Where the Commission's services make representations to the authorities of the Member States against which the complaint has been made, they will abide by the choice made by the complainant in Section 15 of this form [confidentiality].

(c)The Commission will endeavour to take a decision on the substance [...] within twelve months of registration of the complaint [...].

(d)The complainant will be notified in advance by the relevant department if it plants to propose that the Commission close the case. [...]"



2.4 Furthermore, the Ombudsman notes that in its reply of 20 March 2001, the Commission referred to the complainant's letter as a "complaint". In the present case, the Commission nevertheless failed to register the complainant's letter of 14 February 2001 as a complaint, although the complainant had made it clear in his letter that he wished to make a complaint.

2.5 By not registering the letter sent by the complainant as a complaint, the Commission failed to comply with the procedural safeguards which the institution itself had set up to secure a proper procedure. This failure by the Commission's services constituted an instance of maladministration.

The Ombudsman therefore makes a critical remark below.

3 The complainant's claim

3.1 The complainant claimed that the Commission should reconsider his complaint.

3.2 In its opinion, the Commission put forward that access to the exercise of the profession of lawyer in Italy is regulated by law and, as a general principle, is not covered by the competition rules.

3.3 As consistently held by the Court of Justice, Articles 81 and 82 (former Articles 85 and 86) of the Treaty as such are concerned only with the conduct of undertakings and not with the behaviour of Member States. However, Articles 81 and 82 of the Treaty, in conjunction with Article 10 (former Article 5), require Member States not to introduce or maintain in force measures, even of a legislative nature, which may render ineffective the competition rules applicable to undertakings. As the Court has held, this would be the case if a Member State were to require or favour the adoption of agreements, decisions or concerted practices contrary to Article 81 or to reinforce their effects, or to deprive its own legislation of its official character by delegating to private traders responsibility for taking decisions affecting the economic sphere (7) .

3.4 The Ombudsman considers that no evidence to show that these conditions are fulfilled has been submitted by the complainant to the Commission so far. The Commission's position therefore appears to be reasonable. The complainant has however the possibility to lodge a new complaint with the Commission, if he so wishes.

4 Conclusion

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

By not registering the letter sent by the complainant as a complaint, the Commission failed to comply with the procedural safeguards which the institution itself had set up to secure a proper procedure. This failure by the Commission's services constituted an instance of maladministration.

In view of the above findings (see point 3), the Ombudsman considers that 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,

P. Nikiforos DIAMANDOUROS

(1) The provisions relating to the taking up and pursuing the profession of lawyer in Italy are contained in the Royal Decree-Law no 1578 on the organisation of the professions of avvocato and procuratore of 27 November 1933, as converted into Law no 36 of 22 January 1934, as amended. According to the relevant provisions, for the admission to the profession of lawyer in Italy, any person who successfully completes the academic study of law has to complete a period of two years' traineeship and has to pass an examination.

(2) Petition n° 606/99 made by Ms Giustina Angelillo and Petition n°797/99 made by Mr Michele Parravicini.

(3) Official Journal L 19 of 24 January 1989, pp. 16-23.

(4) Official Journal L 77 of 14 March 1998, pp. 36-43.

(5) The Ombudsman's decision regarding the own initiative inquiry can be found on the Internet under the following address: <http://www.ombudsman.europa.eu/decision/en/970303.htm> [Link]

(6) OJ C 119 of 30 April 1999, p.5.

(7) See case C-267/86, *Pascal Van Eycke v ASPA NV* [1988] ECR, p. 4769; judgement of 9 September 2003 in case C-198/01, *Consorzio Industrie Fiammiferi (CIF) v. Autorità Garante della Concorrenza e del Mercato* .