

Decision of the European Ombudsman on complaint 1349/2003/JMA against the European Commission

Decision

Case 1349/2003/JMA - Opened on 24/07/2003 - Decision on 07/06/2004

Strasbourg, 7 June 2004

Dear Mr M.,

On 30 April 2003, you lodged a complaint with the European Ombudsman against the European Commission, on behalf of the environmental organisation "AGADEN Bahía". It concerned the Commission's decision of 17 January 2002 to close a formal complaint you had lodged with that institution (file number 99/4873), in which you complained that the Spanish "Centro Superior de Investigaciones Científicas" (CSIC) had refused your request for access to certain environmental information in breach of Directive 90/313/EC on the freedom of access to information on the environment.

On 12 March 2003, you had lodged a previous complaint with the Ombudsman (reference number 511/2003/VJ) regarding the same subject matter. It was considered inadmissible on 23 April 2003 since, from the information submitted, it appeared that no previous administrative approaches had been made.

On 24 July 2003, I forwarded the complaint to the President of the Commission. On 9 September 2003, the Commission sent its opinion, which I forwarded to you with an invitation to make observations. I received your observations on 17 November 2003.

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

THE COMPLAINT

In April 2003, the complainant lodged a complaint with the Ombudsman against the Commission. The facts of the case were, in summary, as follows:

On 20 January 1999, the complainant requested access to certain environmental information from the Spanish "Consejo Superior de Investigaciones Científicas" (CSIC), a public body under the supervision of the Spanish Ministry of Education. The information requested included the CSIC's research programmes in operation on the control and protection of a specific species:



the Iberian lynx. In particular, the complainant asked for the following information: length and scope of those programmes; means employed in the hunting of this species; controls applied, and nature of the risk assessment procedures carried out by the CSIC; current scientific data; results of any autopsies involving hunted lynxes; and final conclusions of any research programme. In its reply of 5 April 1999, the CSIC made a number of general remarks which, in the applicant's view, did not reply to his query.

As the complainant considered that the CSIC was under an obligation to grant access to the requested information on the basis of existing Community rules, namely Directive 90/313/EC on the freedom of access to information on the environment, he lodged a formal complaint with the Commission on 29 July 1999. Its services registered the complaint under file number 99/4873, and started an inquiry. On 20 December 2001, they concluded that there were no grounds to pursue the inquiry further, and decided to close the case. The complainant was informed of this decision by letter of 25 January 2002.

In his complaint to the Ombudsman, the complainant stated his view that the Commission's decision to close the formal complaint he had submitted against the Spanish authorities for their refusal to grant access to the requested environmental information had been taken without due account of the provisions of Directive 90/313/EC and furthermore, that the reasons given were inadequate.

In summary, the complainant alleged that the Commission's decision of 17 January 2002 closing the formal complaint he had lodged with that institution was not sufficiently reasoned, and that it failed to take properly into account the provisions of Directive 90/313/EEC.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first described the factual background of the case, in particular how the exchange of correspondence between the complainant, its services and the Spanish authorities had taken place.

It noted that, following the receipt of the complaint against the Spanish authorities, its services sent an acknowledgement of receipt to the complainant on 24 August 1999. On 21 October 1999, its services asked the complainant whether an application had been made to a national administration or court. By letter of 8 November 1999, the complainant explained that he had not contested the decision taken by the CSIC. On 3 July 2000, the Commission services wrote to the Spanish authorities, informing them of the complaint, and requesting their comments. By letter of 10 August 2000, the Spanish authorities furnished the requested information. On 26 October 2001, the Commission services informed the complainant of the content of the Spanish reply, and explained that they considered that the situation did not constitute a breach of EC law. In the light of these findings, the Commission services informed the complainant that they intended to suggest that the Commission close the case, and invited him to submit his observations. In the absence of any comments from the complainant, the Commission closed the case on 20 December 2001. The complainant was informed of this decision by letter of 17



January 2002.

As regards the specific allegations made in the complaint to the Ombudsman, the institution argued that the answers given by the Spanish authorities to its request of 29 March 1999 were satisfactory. It appears that all questions had been thoroughly replied to, even though those concerning methods, impact assessments, scientific data and report on autopsies were very general. In the Commission's view, it seems doubtful, whether the Spanish authorities could have given a more detailed information in those cases. As regards, for instance, the existence of written reports regarding autopsies, the Commission pointed out that most Member States do not have the necessary resources to have this information available.

The Commission pointed out that the complainant had not made any effort to pursue this matter with the Spanish authorities, but rather relied entirely on its services.

The Commission explained that in the exchanges with the complainant, its services made clear that Article 4 of Directive 90/313/EEC expressly provides that a person whose request for access to information has not been answered may have access to judicial or administrative remedies, in accordance with the provisions of national law. The institution noted that, in cases regarding the implementation by the Member States of Directive 90/313/EEC, it had sought to use its powers under Article 226 EC Treaty only when the complaint involves a problem of a horizontal nature.

In view of the above, the Commission took the view that its services had properly handled the complaint submitted by the complainant.

The complainant's observations

In his observations on the Commission's opinion, the complainant repeated the allegations made in his complaint. In his view, the reply given by the Spanish authorities to the Commission's request was inadequate, and therefore he considered that the institution should not have found it satisfactory.

The complainant argued that the Commission's position was unjustified since not every citizen has the means to start legal proceedings before a court. In his view, the provisions of Directive 90/313/EEC granted him a right which the Spanish authorities had not respected, and therefore, the Commission should have intervened.

THE DECISION

1 Grounds for the Commission's decision to close the complaint

1.1 The complainant alleges that the Commission's decision of 17 January 2002 closing the formal complaint he had lodged with that institution was not sufficiently reasoned, and that it failed to take properly into account the provisions of Directive 90/313/EEC.

In the complainant's view, the reply given by the Spanish authorities to the Commission was inadequate, and therefore the institution should not have found it satisfactory.



1.2 The Commission argues that all questions asked by its services in its request of 29 March 1999 concerning the subject matter of the formal complaint lodged by the complainant had received a thorough reply, and furthermore, that the answers given by the Spanish authorities were satisfactory.

1.3 As regards the reasoning offered by the Commission, the Ombudsman notes that the right to good administration as set out in Article 41 of the Charter of Fundamental Rights of the European Union imposes on the administration the obligation to give reasons for its decisions. As the Commission's own Code of good administrative behaviour recognises, the duty to justify decisions implies that a Commission decision has to clearly state the reasons on which it is based (1) .

1.4 The Ombudsman notes that, as part of the information made available in the course of his inquiry, the Commission submitted its letter of 26 October 2001 to the complainant informing him of the institution's intention to close the case. The Commission services summarised in the letter the factual and legal background of the complaint, and the contents of its request for information to the Spanish authorities dated 29 March 1999. The letter described in detail the reasons given by the Spanish authorities for partially refusing the complainant's request, namely that it included information about risk assessments and alternative solutions which could not be understood as information relating to the environment; that it referred to unfinished operations and past events; and that it was produced by a third party who owned property rights in its work.

Having considered these arguments, the Commission concluded that:

"As regards the object of this complaint, it appears that the Spanish authorities have replied to the Commission's request by furnishing ample information and data, and identifying additional sources of information. The Spanish authorities take the view that some of the exceptions provided for in Article 3 of Directive 90/313/EEC are applicable to the request made by the complainant, and therefore justified its refusal. The complainant has not made use of any administrative means of appeal to contest that decision.

In view of the above, and taking into account the information available to the Commission, there appears to be no violation of Community law in this case [...]"

1.5 In view of the above, the Ombudsman takes the view that the explanation given by the Commission, namely that, on the basis of the information available to the Commission, it considered that there was no infringement of Community law by the Spanish authorities, stated in a clear and unequivocal fashion the grounds for its decision, so as to make the complainant aware of the reasons for the decision and thereby enable him to defend his rights.

1.6 The Ombudsman notes that in its correspondence with the complainant, the Commission also informed him of the remedies available at the national level. The Ombudsman considers that it was appropriate and helpful for the Commission to volunteer this information and to do so in a way that clearly separated this point from its finding that there was no infringement of Community law by the Spanish authorities.



1.7 The Ombudsman therefore concludes that the Commission's reasoning does not appear to be insufficient.

1.8 As regards the substance of the decision, the Ombudsman notes that Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (2) aims at ensuring freedom of access to, and dissemination of, information on the environment held by public authorities. Accordingly, the public authorities of all the Member States are required to make available information relating to the environment to any natural or legal person at his request, without having to prove an interest. This type of information is limited to data on the state of water, air, soil, fauna, flora, land and natural sites, or on activities or measures likely to affect those elements. Public authorities, however, can refuse access to certain environmental information. Article 3 of the Directive establishes a number of exceptions based, among others, on the confidentiality of the proceedings, the existence of matters under enquiry, commercial and industrial confidentiality, personal data and material supplied by a third party.

1.9 Having considered both the relevant provisions of Directive 90/313/EEC and the documentary evidence made available to the Ombudsman by the parties in the course of his inquiry, the Ombudsman concludes that the Commission's finding that, on the basis of the information available to the Commission, there was no infringement of Community law by the Spanish authorities, appears reasonable.

The Ombudsman therefore finds no maladministration in this case.

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 Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Section 3, Annex, Commission Decision of 17 October 2000 amending its Rules of Procedure (OJ L 267, 20.10.2000, p. 63).

(2) OJ L 158 , 23/06/1990 p. 56.