

Decision of the European Ombudsman on complaint 3353/2004/PB against the European Monitoring Centre on Racism and Xenophobia

Decision

Case 3353/2004/PB - Opened on 17/11/2004 - Decision on 13/12/2005

Strasbourg, 13 December 2005

Dear Mr R.,

On 1 June 2004, you made a complaint to the European Ombudsman concerning requests that you had sent by e-mail to the European Union Monitoring Centre on Racism and Xenophobia ("EUMC") on 19 April 2004.

On 17 November 2004, I forwarded the complaint to the Director of the EUMC. I also informed you on that date of my decision to open the inquiry. In my letter to you, I apologised for the delay in opening my inquiry, and I referred to the acknowledgement of receipt in which the cause of this delay had been stated.

The EUMC sent its opinion on 21 February 2005. I forwarded it to you with an invitation to make observations, which you sent on 30 March 2005.

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

I apologise for the length of time that it has taken to carry out these inquiries.

THE COMPLAINT

The complainant wrote to the EUMC on 19 April 2004, stating (1) that he could not find a link to a convention (*United Nations Convention on the Elimination of All Forms of Racial Discrimination*) referred to on the page of its website entitled "Wording of the Charter of the European Parties for a non-racist society" (1) and (2) that certain e-mail addresses on one page of the website (providing contact details) could not be copied and pasted without considerable corrections having to be done.

The complainant asked the EUMC to give him a link to the convention and to make it possible to copy and paste the e-mail addresses concerned. The complainant did not appear to have



received a reply.

In his complaint to the Ombudsman, the complainant made the following allegations:

1. The complainant alleged that the EUMC had failed to provide a link to the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* on its website.
2. The complainant alleged that the EUMC had failed to provide e-mail addresses on its website that could be copied and pasted (2) .

The complainant claimed that the EUMC should provide him with a link to a website containing the whole text of the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* and that the EUMC's website should contain e-mail addresses that can be copied and pasted.

THE INQUIRY

The EUMC's opinion

In its opinion, the EUMC made the following remarks:

1. With regard to the first allegation, the EUMC rejected the allegation. The EUMC maintained a link to the United Nations Committee on the Elimination of Racial Discrimination ("CERD"), which was the Treaty monitoring body of the convention referred to by the complainant. The link to the treaty monitoring body provided access to that convention. The immense value of the link to the CERD was that readers of the EUMC website were not only given access to the convention, but also to information on the status of its ratification, the monitoring of its implementation and information and supporting documentation on its sessions.
2. With regard to the second allegation, the EUMC had decided to provide its e-mail addresses in a picture format to counter attacks from programmes that seek out e-mail addresses on the EUMC website, and thus to prevent, or decrease the amount of, SPAM mail. The e-mail addresses were therefore visible, but could not be copied and pasted. The EUMC understood the inconvenience that this might cause to those who visited its website.

The complainant's observations

In his observations, the complainant made the following remarks:

On the page of the EUMC's website entitled "Wording of the Charter of the European Parties for a non-racist society" (3) , referred to in the complaint, the second preamble " *Having regard to Article 1 of this Convention ...* " did not mention that the convention in question was from the UN and not from any other organisation listed on the EUMC's website.

Since many users of the EUMC website were not familiar with the countless conventions produced by various world organisations, they therefore could not be expected to readily identify the organisation responsible for the Convention referred to on the above-mentioned page of the EUMC's website. So even if some users could go to the page referred to by the EUMC in its



opinion, they would not know that the said document was from the UN, as opposed to any of the other organisations listed on that page. The EUMC had therefore deviated from Article 12 [of the European Code of Good Administration Behaviour] ("courtesy"), which provided that the official shall be service-minded, correct, courteous and accessible. In fact, providing a link to the whole text of the Convention, so that users would only need to click the 'Convention' would not be difficult for the EUMC to arrange.

Regarding the e-mails that could not be copied and pasted, the EUMC had also, in this respect, violated Article 12 of the European Code of Good Administration Behaviour ("courtesy"). Other institutions had not felt the need to protect their e-mail addresses in the same way that the EUMC had.

The EUMC did not reply to the complainant's e-mail of 19 April 2004, and had therefore breached Article 14 of the European Code of Good Administration Behaviour ("acknowledgement of receipt and indication of the competent official"), and Article 17 ("reasonable time-limit for taking decisions"), and Article 12 ("courtesy"). It should apologise for this and "guarantee not to repeat such error to any user of the public".

The European Code of Good Administration Behaviour had not been published on the EUMC's website, and the EUMC had therefore breached Article 25 of the Code ("publicity for the Code"). The EUMC should do so forthwith.

THE DECISION

1 Introductory remarks

1.1 The complainant wrote to the EUMC on 19 April 2004, stating (1) that there was no link to a convention (*United Nations Convention on the Elimination of All Forms of Racial Discrimination*) referred to on the page of its website entitled "Wording of the Charter of the European Parties for a non-racist Society" (4) and (2) that certain e-mail addresses on one page of the website (providing contact details) could not be copied and pasted without considerable corrections having to be done. The complainant asked the EUMC to give him a link to the convention and to make it possible to copy and paste the e-mail addresses concerned. The complainant did not appear to have received a reply. In his complaint to the Ombudsman, the complainant made the following allegations: 1. The EUMC had failed to provide a link to the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* on its website <http://www.eumc.europa.eu> [Link], and 2. The EUMC had failed to provide e-mail addresses on its website that could be copied and pasted (5) . The complainant claimed that the EUMC should provide him with a link to a website containing the whole text of the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* and that the EUMC's website should contain e-mail addresses that can be copied and pasted.

1.2 In its opinion, the EUMC rejected the allegations (cf. points 2 and 3 below).

1.3 In his observations, the complainant maintained his above-mentioned allegations and claims.



1.4 In his observations, the complainant further made the following allegations and claims: (1) the EUMC had not replied to the complainant's e-mail of 19 April 2004, and had therefore breached Article 14 of the European Code of Good Administration Behaviour ("acknowledgement of receipt and indication of the competent official"), Article 17 ("reasonable time-limit for taking decisions"), and Article 12 ("courtesy"). The EUMC should apologise for this and "guarantee not to repeat such error to any user of the public", and (2) The European Code of Good Administration Behaviour had not been published on the EUMC's website, and the EUMC had therefore breached Article 25 of the Code ("publicity for the Code"). The EUMC should do so forthwith. The Ombudsman notes that these are *new* allegations and claims. When the Ombudsman opened the present complaint, the complainant was at the same time informed in writing of the precise allegations and claims on which the EUMC had been asked to submit an opinion. It does not appear that the complainant has made any appropriate prior administrative approaches to the EUMC regarding his new allegations and claims (6) , which are quite distinct from the complainant's initial allegations and claims. For these reasons, these new allegations and claims have not been taken up for inquiry. The complainant remains free, however, to submit a new complaint to the Ombudsman as regards these allegations and claims, following appropriate prior administrative approaches to the EUMC.

2 Allegation of failure to provide link to a convention

2.1 The complainant alleged that the EUMC had failed to provide a link to the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* on its website (7) .

2.2 In its opinion, the EUMC rejected the allegation. The EUMC stated that it maintained a link to the United Nations Committee on the Elimination of Racial Discrimination ("CERD"), which was the Treaty monitoring body of the convention referred to by the complainant. The link to the treaty monitoring body provides access to that convention. The immense value of the link to the CERD was that readers of the EUMC website were not only given access to the convention, but also to information on the status of its ratification, the monitoring of its implementation and information and supporting documentation on its sessions.

2.3 In his observations, the complainant referred to the page on the EUMC's website containing the "Wording of the Charter of European Parties for a non-racist Society" (as he had done in his e-mail of 19 April 2004 to the EUMC), the second preamble of which begins as follows: " *Having regard to Article 1 of this Convention ...* (8) ". The complainant pointed out that this page did not mention that this convention was from the United Nations, and stated that many users were not familiar with the countless conventions produced by various world organisations and could not therefore be expected to readily identify the source of the said Convention. So even if some users could go to the page provided by the EUMC in its opinion, they would not know that it was from the United Nations, and not from one of the other organisations listed on that page. The EUMC had therefore deviated from Article 12 [of the European Code of Good Administration Behaviour] ("courtesy").

2.4 The Ombudsman notes that the allegation here concerned was that the EUMC had failed to provide a link to the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* on its website (9) . However, the EUMC made clear in its opinion that its website



did contain, through a link to CERD's website, a link to the foregoing Convention. In his observations, the complainant did not contest the existence of this link, which may, indeed, be found on the EUMC's website.

2.5 The complainant had further pointed to the lack of a hyperlink reference to the above Convention on a specific page of the EUMC's website. The complainant had argued that it was not clear that the Convention referred to in the text on this page was a United Nations document, and that many users were not familiar with the countless conventions produced by various world organisations and could not therefore be expected to readily identify the source of the said Convention. So even if some users could go to the page provided by the EUMC in its opinion, they would not know that it was from the United Nations.

2.6 The text referred to by the complainant was part of the preamble of a document, reading, in the relevant part, as follows (emphasis added):

WE, THE DEMOCRATIC POLITICAL PARTIES OF EUROPE,

Having regard to the international human rights instruments signed and ratified by our European Union Member States, in particular to the United Nations Convention on the Elimination of All Forms of Racial Discrimination,

Having regard to article 1 of this Convention , which defines racial discrimination as "... any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise on an equal footing of human rights and fundamental freedoms in the political, economic, social, cultural of any other field of public life ...",

2.7 In light of this wording of the document, the Ombudsman cannot accept the complainant's argument that it was not clear that the Convention referred to was a United Nations document.

2.8 In light of the foregoing, the Ombudsman can find no maladministration regarding this aspect of the complaint.

2.9 It follows from the above, that the complainant's first claim, regarding the provision of a link to a website containing the whole text of the *United Nations Convention on the Elimination of All Forms of Racial Discrimination* , cannot be considered as well-founded.

3 Alleged failure to provide e-mail addresses that could be copied and pasted

3.1 The complainant alleged that the EUMC had failed to provide e-mail addresses on its website that could be copied and pasted (10) .

3.2 In its opinion, the EUMC stated that it had decided to provide its e-mail addresses in a picture format to counter attacks from programmes that seek out e-mail addresses on the EUMC website, and thus to prevent, or decrease the amount of, SPAM mail. The e-mail addresses were therefore visible, but could not be copied and pasted.



3.3 In his observations, the complainant argued that the EUMC had, in this respect, violated Article 12 of the European Code of Good Administration Behaviour ("courtesy"), and he pointed out that other institutions have not felt the need to protect their e-mail addresses in the same way that the EUMC had.

3.4 The Ombudsman furthermore notes that the EUMC has given an adequate and reasonable explanation for why it is not possible to copy and paste e-mail addresses indicated on its website. More specifically, it has stated that it provides its e-mail addresses in a picture format to counter attacks from programmes that seek out e-mail addresses on the EUMC website, and thus to prevent, or decrease the amount of, SPAM mail. Moreover, the fact alleged by the complainant that other institutions have not felt the need to protect their e-mail addresses in the same way that the EUMC does, is not, in itself, sufficient to call into question the adequacy or reasonableness of the above explanation, or the propriety of the EUMC's relevant policy, in view of the wide margin of discretion the Community institutions and bodies enjoy in such matters.

3.5 In light of the foregoing, the Ombudsman, can find no maladministration regarding this aspect of the complaint.

3.6 It follows from the above that the Ombudsman cannot accept the complainant's second claim that the EUMC's website should contain e-mail addresses that can be copied and pasted.

Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the EUMC. The Ombudsman therefore closes the case.

The Director of the EUMC will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) See <http://www.eumc.europa.eu> [Link] under Activities/ Charter.

(2) See <http://www.eumc.europa.eu> [Link] under About Us/ Organisation/ Contact.

(3) See <http://www.eumc.europa.eu> [Link] under Activities/ Charter.

(4) See <http://www.eumc.europa.eu> [Link] under Activities/ Charter.

(5) See <http://www.eumc.europa.eu> [Link] under About Us/ Organisation/ Contact.

(6) Article 2.4 Statute of the European Ombudsman provides that "[t]he complaint (...) must be preceded by the appropriate administrative approaches to the institutions and bodies concerned."



- (7) See <http://www.eumc.europa.eu> [Link] under Activities/ Charter.
- (8) See EUMC's website, cited above.
- (9) See <http://www.eumc.europa.eu> [Link] under Activities/ Charter.
- (10) See <http://www.eumc.europa.eu> [Link] under About Us/ Organisation/ Contact.