

Decision of the European Ombudsman on complaint 2654/2006/PB against the European Commission

Decision

Case 2654/2006/PB - Opened on 20/09/2006 - Decision on 06/09/2007

Strasbourg, 6 September 2007

Dear Mr M.,

On 4 August 2006, you made a complaint to the European Ombudsman concerning initial and confirmatory applications that you had made to the European Commission under Regulation 1049/2001. On 14 September 2006, you sent me an additional letter in which you essentially confirmed your complaint.

On 20 September 2006, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 18 December 2006. I forwarded it to you with an invitation to make observations, which you sent on 26 January 2007.

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

THE COMPLAINT

On 6 June 2006, the complainant wrote to (i) the President of the European Commission and (ii) Commissioner Verheugen, applying for access, expressly under Regulation 1049/2001, to "*two reports from 2006, drafted by the experts Mr Jansen and Mr Schuster, concerning the fight against organised crime and the general state of the justice system in the applicant country Bulgaria*" (quote from the complaint letter).

Not having received a response to his application, the complainant subsequently made a confirmatory application, to which he had also not received a reply when submitting the present complaint.

The complainant made, in summary, the following allegations:

- The Commission had failed to handle his confirmatory application for access in accordance with Regulation 1049/2001 (1) .
- The Commission had specifically failed to respect a commitment that it made in response to his previous complaint 1798/2004/PB (2) .



THE INQUIRY

The Commission's opinion

The Commission made, in summary, the following comments in its opinion on the complaint:

Due to an administrative error, the services of the Directorate-General for Enlargement replied to the complainant's confirmatory application only on 15 September 2006. The Commission regrets this delay. The delay had been prepared on the basis of the erroneous assumption that the complainant had not lodged a valid initial and confirmatory application for access to documents. Unfortunately, this reply did not fulfil the competence requirements set out in Article 4 of Decision 2001/937 (3) , and consequently it did not amount to a confirmatory decision of the Commission within the meaning of the relevant provisions of Regulation 1049/2001. This administrative error has been rectified by the letter of the Commission's Secretary-General of 6 November 2006 (4) .

Thus, although the initial reply failed to respond to the complainant's request for access in an administratively proper manner, this was remedied by the above-mentioned letter of the Secretary-General, which provided the complainant with a comprehensive explanation for the Commission's refusal to grant him access to the requested documents. The Commission regrets the delay which occurred in the handling of the complainant's request.

The complainant's observations

In his observations on the Commission's opinion, the complainant noted that the Commission had basically admitted that his applications had not been properly dealt with. He added, however, that the administrative error referred to by the Commission had occurred on the part of a head of unit of the Commission, and not at a "lower administrative level". In his view, this made it appropriate to actually point out that an instance of maladministration had occurred.

The complainant furthermore contested the Commission's reasons for not granting access to the document concerned. His observations were therefore registered also as a separate new complaint (0349/2007/PB). The present inquiry only concerns the specific allegations, referred to above, initially taken up for examination by the Ombudsman.

THE DECISION

1 Alleged failure to handle access applications and to respect commitment

1.1 The complainant alleged that the Commission had failed to handle his confirmatory access application in accordance with Regulation 1049/2001 (5) . He also alleged that the Commission had specifically failed to respect a commitment that it made in response to his previous complaint 1798/2004/PB (6) .

1.2 As noted by the complainant in his observations, the Commission has essentially admitted that the complainant's allegations were well-founded. The Commission's opinion furthermore regretted the administrative error that had occurred, and referred to a letter that had been sent to the complainant during the course of the present inquiry by the Commission's



Secretary-General. In this letter, the Commission (a) explained the administrative error, (b) stated the name of the official who had been at the source of the error, (c) expressly apologised for the error, and (d) provided the complainant with a comprehensive explanation for the Commission's refusal to grant him access to the requested documents.

1.3 In light of the above, no further inquiry into, and consideration of, the complainant's allegations appear to be justified.

The Ombudsman trusts that the Commission has taken appropriate measures to avoid similar wrongdoings in the future.

2 Conclusion

For the reasons explained in point 1.2 of the present decision, the Ombudsman finds that no further inquiry into, and consideration of, the complainant's allegations are justified.

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 allegation taken up for inquiry was formulated as follows: "[t]he Commission has failed to handle his initial and confirmatory access applications, of respectively 6 June and 16 July 2006, in accordance with Regulation 1049/2001", of which the complainant was informed at the opening of the inquiry. However, the Commission's detailed account of the dates of the relevant correspondence (copies of which were not submitted in the complaint), which the complainant has not contested, is not exactly similar to the complainant's. In light of the information and comments obtained in the course of the present inquiry, the Ombudsman has deemed it appropriate to modify the allegation as above.

(2) In that case, the Ombudsman made the following further remark:

" The complainant asked the Ombudsman to draw the Commission's attention to Article 7 of Regulation 1049/2001 regarding public access to Parliament, Council and Commission documents, according to which the Commission is obliged to send acknowledgements of receipts and to inform applicants about expected delays in the handling of their applications for access.

The Ombudsman notes that the Commission is aware that these obligations were not respected in this case. The Ombudsman is confident that the Commission will make the necessary efforts to respect these obligations in the future. "

The Commission responded to this further remark on 3 June 2005. The Commission accepted



the further remark and stated that it would in the future ensure that when it is unclear whether correspondence contains request for information or an application for access to documents, an acknowledgement of receipt will always be sent to the person concerned.

(3) Article 4 of that Decision provides as follows:

" Treatment of confirmatory applications

In accordance with Article 14 of the Commission's Rules of Procedure, the power to take decisions on confirmatory applications is delegated to the Secretary-General. However, where the confirmatory application concerns documents concerning OLAF activities referred to in Article 2(1) and (2) of Decision 1999/352/EC, ECSC, Euratom, the decision making power is delegated to the Director of OLAF.

The Directorate-General or department shall assist the Secretariat-General in the preparation of the decision.

The decision shall be taken by the Secretary-General or by the Director of OLAF after agreement of the Legal Service.

The decision shall be notified to the applicant in writing, where appropriate by electronic means, and inform him of his right to bring an action before the Court of First Instance or to lodge a complaint with the European Ombudsman. "

(4) This letter replied to the complainant's confirmatory application under Regulation 1049/2001 (refusing access), explained the error also explained here in the Commission opinion, and stated that "[t] he present decision corrects this administrative error, for which we would like to apologise ". The letter specified that the administrative error was due to a named official's erroneous interpretation of the complainant's letter containing his applications for access.

(5) Cf. footnotes 1 above.

(6) See footnote 2 above.