

Decision of the European Ombudsman on complaint 3737/2006/(BM)JMA against the European Commission

Decision

Case 3737/2006/(BM)JMA - Opened on 23/01/2007 - Decision on 03/03/2008

Strasbourg, 3 March 2008

Dear Mr I.,

On 12 December 2006, you submitted a complaint to the European Ombudsman against the European Commission concerning the manner in which the latter handled a complaint you had lodged with it on 3 August 2004 (reference number 2004/4843).

On 23 January 2007, I informed the President of the Commission of your complaint and asked him to submit an opinion on it by 30 April 2007. On the same date, I informed you of my initiative. On 31 January 2007, you wrote to my services requesting clarification regarding the terms of my letter to the Commission of 23 January 2007. My services replied to your query on the same date. You sent additional information to me on 26 January and 1 February 2007, which I forwarded to the Commission on 7 March 2007. On 20 April 2007, the Commission sent me its opinion in English. On 25 April 2007, the Commission sent me its opinion in Spanish, which was forwarded to you on 30 April 2007. On 7 May and 26 June 2007, you sent me your observations on the Commission's opinion.

On 26 September 2007, you wrote to my Secretariat requesting information on the state of your file. My Secretariat replied to your request on the same date. On 12 October 2007, I informed you that, for internal reasons, the legal officer in charge of your file had been changed. On 19 October 2007, you sent me additional information.

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

THE COMPLAINT

According to the complainant, the facts of the case are, in summary, as follows:

On 3 August 2004, the complainant lodged a complaint with the European Commission against the Spanish authorities. The complaint was registered by the Commission under reference number 2004/4843. The complainant alleged that the Spanish authorities were demanding fees



for the registration of capital increases in the Spanish Commercial Register. He considered the amount charged to be illegal. These fees had been calculated as a fixed percentage of the capital increases, whereas the complaint took the view that they should have been based on the effective cost of the service provided.

The complainant considered that, despite the importance of the case and the clear arguments he had made, the Commission had not handled the case as diligently as it should have done. The complainant pointed out that it was only in July 2006 that the Commission issued a reasoned opinion against Spain concerning this problem. In its reasoned opinion, the Commission requested that Spain amend its legislation on the fees for the registration of capital increases in the Commercial Register, because it considered that the legislation in question was contrary to Article 10(c) of the Capital Duty Directive (Directive 69/335/EEC) (1). The complainant further noted that the manifest illegality of the actions of the Spanish authorities had been recognised publicly by the Commissioner for Taxation and Customs Union, who had declared that both the case-law of the Court of Justice on registration fees and the Capital Duty Directive were indeed very clear on this point.

In his complaint to the European Ombudsman, the complainant argued that, even though his complaint revealed a obvious infringement of Community law, it took the Commission two years to issue a reasoned opinion against Spain. In the complainant's view, such a delay was excessive, and showed a lack of diligence on the part of the Commission, which was detrimental to those citizens who were affected by the situation. In support of his views, the complainant referred to the case-law of the Community Courts on the excessive length of the administrative proceedings and submitted a study he had carried out concerning the procedure for infringement proceedings under Article 226 EC.

On 2 August 2006, the complainant addressed a letter to the Commission in which he expressed his views on the delays of its services in carrying out infringement proceedings, and suggested that a legislative instrument such as a regulation should be enacted in order to lay down the criteria to be followed by the Commission, acting as the guardian of the Treaty, in order to handle infringement proceedings. The complainant referred to the long period of time it had taken the Commission to deal with his complaint as an example of the type of situation which should be avoided.

The Commission replied to the complainant on 17 October 2006. In its reply, the institution explained, in general terms, that it was analysing, within the framework of an action plan for the improvement of EU legislation, the different issues mentioned in the complainant's correspondence. The Commission did not provide the complainant with any further explanation regarding the alleged delay in the handling of his complaint, nor did it address, in its reply, the appropriateness of adopting a legal rule with a view to regulating Article 226 proceedings, as the complainant had requested.

In his complaint to the Ombudsman, the complainant alleged that the Commission had taken an unduly long period of time to deal with his complaint, and had not properly answered his letter of 2 August 2006, in which he had asked the Commission to take appropriate action to avoid



excessive delays in the handling of infringement proceedings under Article 226 EC. The complainant also claimed that the Commission should consider proposing the adoption of a Community legal act, such as a regulation, in order to lay the ground for the procedure under Article 226 EC.

In light of these arguments, the Ombudsman asked the Commission to provide an opinion on the following allegations made by the complainant:

The complainant alleges, in summary, that the Commission:

- has taken an excessively long time to deal with his complaint; and;
- has not properly answered his letter of 2 August 2006 in which he asked it to take appropriate action to avoid excessive delays in the handling of infringement proceedings under Article 226 EC.

The Ombudsman's inquiry did not however pursue the claim made by the complainant in his original complaint. The Ombudsman considered that the complainant's request, that the potential adoption of a Community legal act, such as a regulation, be considered, with a view to rationalising Article 226 proceedings, did not concern potential maladministration by an EU institution in accordance to Article 2(2) of his Statute, but rather a legislative matter. As such, it fell outside his mandate. Accordingly, the complainant was advised to lodge a petition with the European Parliament regarding the subject-matter of his claim.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first gave some background information. It explained that, on 3 August 2004, the complainant submitted a complaint alleging that the Spanish legislation governing value added tax ("VAT") and fees due on the occasion of the registration of capital increases were in breach of the relevant Community Directives. The Commission registered the complainant's letter as a complaint on 27 August 2004.

As regards the first issue concerning the VAT charged on the occasion of the registration of capital increases, the Commission informed the complainant on 20 September 2004 that it did not consider the relevant Spanish legislation to be contrary to Community law.

In connection with the fees charged by the Spanish authorities on the occasion of the registration of capital increases, the Commission wrote to the complainant on 24 February 2005 and explained to him that the Spanish authorities had been asked to provide information on this matter. On 12 October 2005, after having reviewed these explanations, the Commission decided to open infringement proceedings against Spain. On 18 October 2005, the institution sent a letter of formal notice to the Spanish authorities, asking them to reply within a two-month time-limit. On 23 January 2006, the Commission informed the complainant of its initiative.

The Commission explained that it tries to take a decision on a complaint within a year from the date of its registration. In this case, however, the Commission acknowledged that the time-limit



had been exceeded. The Commission noted that, according to the applicable rules, in the event that the time-limit for the handling of complaints has been exceeded and the complainant has enquired about the action taken on his complaint, the responsible services must inform the complainant of the reasons for the delay. However, at that time, the complainant had not made any such enquiry.

The Commission argued that the decision to open an infringement procedure was taken at the first possible occasion considering that, as a general rule, the Commission reviews infringements only every six months according to a pre-planned timetable (suspected infringements in March and October; established infringements in June and December).

In the absence of any reply to its letter of formal notice, on 4 July 2006, the Commission decided to send a reasoned opinion to the Spanish authorities. On 6 July 2006, the Commission sent its reasoned opinion and, by letter of 18 July 2006, it informed the complainant of the situation.

The Spanish authorities replied to the Commission's letter of formal notice and to its reasoned opinion on 18 September and 8 November 2006, respectively. In view of the arguments put forward by the Spanish authorities, the Commission services decided to propose that the Commission should close the case at the beginning of 2007. The complainant was informed of this decision by letter of 18 January 2007, in which it invited him to submit observations. On 1 February 2007, the complainant sent his observations. In its reply of 14 February 2007, the Commission pointed out that the information provided by the complainant had already been considered by its services in their assessment of the situation. It then confirmed its decision to close the case.

In its opinion, the Commission considered that its decisions on the case had always been taken at the earliest possible occasion in accordance with the applicable rules and procedures. It concluded that the complaint had been properly dealt with.

As regards the Commission's reply to the complainant's correspondence, the Commission stated that the complainant had sent two letters to the President of the Commission dated 2 and 16 August 2006, to which the Commission replied on 17 October 2006. In its replies, the Commission argued that its services were examining the various aspects mentioned in the complainant's correspondence within the framework of the Action Plan on Better Regulation (2). It went on to explain that the implementation of Community law by the Member States is one of its strategic objectives, and that it had committed itself to examining the various aspects of monitoring the application of Community law. In that context, its own working procedures and the systems of resolving cases of incorrect application of Community law were in the process of being assessed. The Commission underlined that the infringement procedure is a legal instrument which requires impartial and sound management. Accordingly, the Commission is obliged to take into account the arguments and the comments made by the relevant Member State even when they are transmitted outside the established deadline. The Commission concluded by stating that the procedure was being examined with a view to making its conclusions public, in the near future.



The Commission recalled the need to ensure the proper implementation and application of Community law, as laid down in its communication of 14 November 2006 entitled "A strategic review of Better Regulation in the European Union" (3) . It added that these initiatives should be detailed in an upcoming communication on the application of Community law.

The Commission therefore considered that it had correctly answered the complainant's letters.

The complainant's observations

In his observations, the complainant repeated the allegations made in his complaint, as well as his arguments in favour of a legislative initiative governing the procedure to be followed by the Commission in the handling of infringement proceedings under Article 226 EC.

In reply to the Commission's argument that it could only review infringements every six months because of the existing pre-planned timetable, the complainant stated that there appeared to be no substantive reasons for the Commission not to have these files reviewed more often in order to accelerate the procedure.

THE DECISION

1 The Commission's alleged failure to deal with the complaint with due diligence

1.1 The complainant alleges that the Commission took an excessively long time to deal with his complaint (reference number 2004/4843), concerning the fees changed by the Spanish authorities when registering capital increases.

The complainant notes that his complaint was submitted on 3 August 2004, and that it was only in July 2006 that the Commission issued a reasoned opinion against Spain. He argues that, even though his complaint revealed a manifest infringement of Community law, it took the Commission two years to advance its infringement proceedings on the case and to issue a reasoned opinion against Spain.

1.2 The Commission argues that its decisions on this case were always taken at the earliest possible occasion, that was in accordance with the applicable rules and procedures, and therefore it considers that the complaint was properly dealt with.

The Commission explains that the complaint was registered on 27 August 2004. The complainant was informed of the Commission's contacts with the Spanish authorities on 24 February 2005. As a result of the information obtained in the course of these contacts, on 12 October 2005, the Commission decided to open infringement proceedings. On 18 October 2005, it sent a letter of formal notice to the Spanish authorities and, on 23 January 2006, it informed the complainant of this development. The Commission notes that, in this case, the one-year time-limit to take a decision on a complaint had been exceeded. However, it adopted such a decision at the first possible occasion considering that, as a general rule, infringements are only reviewed every six months according to a pre-planned timetable.

As regards the information provided to the complainant concerning this delay, the Commission



explains that its services did not inform the complainant of the reasons for the delay because he did not submit a request to that effect.

In the absence of a reply from the Spanish authorities, on 6 July 2006, the Commission sent a reasoned opinion to them and, on 18 July 2006, it informed the complainant of this step.

In view of the replies of the Spanish authorities of 18 September and 8 November 2006, the Commission services decided, at the beginning of 2007, to propose to the Commission that the case be closed. It informed the complainant on 18 January 2007. Having reviewed the complainant's observations of 1 February 2007, on 14 February 2007, the Commission confirmed to him its intention to close the case.

The Commission explained that the implementation of Community law by the Member States is one of its strategic objectives, and that it had committed itself to examining the various aspects of monitoring the application of Community law. In that context, the working procedures of the Commission and the systems of resolving cases of incorrect application of Community law were in the process of being assessed. The Commission underlined that the infringement procedure is a legal instrument which requires impartial and sound management. Accordingly, the Commission is obliged to take into account the arguments and the comments made by the relevant Member State, even when they are transmitted outside the established deadline. The Commission concluded by stating that the procedure was being examined with a view to making its conclusions public, in the near future. The Commission announced an upcoming communication on the application of Community law which would set out its initiatives.

1.3 In his observations, the complainant noted that there appeared to be no substantive reason for the Commission not to review more often its decisions on complaints and infringement proceedings in order to accelerate the procedure.

Obligations pertaining to the administrative stage of the complaint-handling procedure

1.4 In order to assess whether the Commission dealt with complaint 2004/4843 within a proper time frame, the Ombudsman recalls that the Commission's Communication on the relations with complainants in infringement cases ("the Communication") (4), imposes a number of obligations on the institution concerning the time-limit for the adoption of a formal decision on the file and for the relevant information to be furnished to the complainant.

These obligations only apply however to the administrative stage of the complaint-handling procedure, and concern therefore the investigation of complaints before a formal decision has been adopted, either to close the file or to open infringement proceedings. Accordingly, the Communication provides as follows:

" As a general rule, Commission departments will investigate complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year from the date of registration of the complaint by the Secretariat-General. " (5)

1.5 In view of the available information, it appears that the Commission registered the complaint on 27 August 2004, and yet only decided to open infringement proceedings in the case on 12



October 2005, that is, 14 months later.

The Ombudsman notes that the Commission has sought to justify the failure to respect the one-year time-limit on the grounds that it was unable to take a decision on the complaint before, owing to the fact that, in accordance with a pre-planned timetable, it can only review infringements every six months.

The Ombudsman takes the view that, in its Communication, the Commission undertook, as a general rule, to comply with a self-imposed deadline for the handling of complaints. While it can be envisaged that the Commission can depart from this general rule in exceptional circumstances, provided of course that, such exceptional circumstances are explained to complainants, principles of good administration require that it cannot *systematically* depart from this self-imposed obligation, on the grounds of a pre-planned timetable. The Ombudsman notes that the Commission has put forward no reason why it could not adapt its timetables for the review of complaints and infringements in order to meet its self-imposed obligation towards citizens in general, and, more particularly, towards the complainant in this case.

The Ombudsman is however mindful of the fact that, in its recent Communication "A Europe of Results - Applying Community Law", (6) the Commission agreed to " *introduce more frequent decision-taking for most procedural steps to allow for quicker progress* " (7) . The Ombudsman is confident that the Commission will take prompt action to implement its commitment, thereby contributing to a timely application of Community law which, as the Commission itself has acknowledged, is essential in order to maintain a strong foundation for the European Union for the benefit of citizens (8) .

Taking into consideration the factual circumstances of the case and being mindful of the fact that, for the future, the Commission has undertaken to adapt its timetable for the review of complaints and infringements in order to meet its self-imposed obligation towards citizens, the Ombudsman does not consider it appropriate to pursue further inquiries as regards this aspect of the case.

1.6 The Ombudsman also underlines the fact that the Communication requires the Commission to inform the complainant in writing when the one-year time-limit for the adoption of a decision on a complaint has been exceeded (9) . It has to be pointed out that, in the context of the Ombudsman's own-initiative inquiry 303/97/PD into the Commission's administrative procedures in relation to citizens' complaints about national authorities (10) , the Commission had also agreed to explain, as part of that inquiry, the reasons why the deadline had been exceeded.

1.7 The Ombudsman notes that the Commission has acknowledged that its services failed to inform the complainant of the reasons which justified its delay on the grounds that the latter had not made any such request.

1.8 Having carefully reviewed the relevant provisions of the Communication and the Commission's undertaking in his own-initiative inquiry 303/97/PD, the Ombudsman reiterates the view he has already stated in previous cases, namely, that the obligation to inform the



complainant of the reasons why the one-year time-limit has not been respected is not contingent on any prior request on the part of the complainant, but appears to be unconditional and thus must be given in all cases once that time-limit has been exceeded (11) .

The Ombudsman has therefore concluded that the Commission's failure to inform the complainant of the reasons why the one-year time-limit for issuing a letter of formal notice in connection with his complaint (reference 2004/4843) had been exceeded constitutes an instance of maladministration.

The Ombudsman will address below a critical remark to the Commission as regards this aspect of the case.

Time obligations applicable to infringement proceedings

1.9 Beyond the one-year time-limit that the Commission has for handling the administrative stage of complaints, the Ombudsman notes that the Communication does not specify any time-limit for the investigation of complaints *following* the issuance of a letter of formal notice, or the information to be given to complainants in the period *after* the sending of such a letter.

Yet, as the Ombudsman has pointed out in a number of cases (12) , the Commission should respect the principles of good administration, as enshrined in Article 41(1) of the Charter of Fundamental Rights of the European Union (13) , when dealing with citizens' complaints lodged with it in the period following the sending of a letter of formal notice.

1.10 It appears that the Commission did not receive a reply from the Spanish authorities to its letter of formal notice of 18 October 2005. In the absence of a reply, the Commission decided to wait and only issued its reasoned opinion on 6 July 2006. In view of the content of the replies furnished by the Spanish authorities on 18 September 2006 and 8 November 2006, the Commission services decided, at the beginning of 2007, to propose that the case be closed, and informed the complainant accordingly.

1.11 The Ombudsman takes note of (a) the chronology of events in this case; (b) the relatively short period of time that elapsed between the different actions undertaken by the Commission; and (c) the reasonable explanations given as regards the delays which took place, in particular between the sending of the letter of formal notice and the reasoned opinion (failure of the Spanish authorities to reply). In view of the above, the Ombudsman finds that the Commission appears to have handled these infringement proceedings within a reasonable time, and therefore with due respect for the principles of good administration.

The Ombudsman has therefore concluded that there appears to be no maladministration on the part of the Commission as regards this aspect of the case.

1.12 In order to avoid unrealistic expectations on the part of citizens lodging complaints with the Commission, which are often the cause of dissatisfaction with the work of the Commission and may lead to potential complaints against that institution, the Ombudsman believes that it could be advantageous for the Commission to consider adopting the following approach: it could inform citizens of the standards of good administration to be followed by its services in pursuing



infringement proceedings. Such standards could include estimates of the time needed for the investigation of complaints following the issuance of a letter of formal notice, or the information to be given to complainants after such a letter has been sent.

A further remark to this effect will be made below.

2 The Commission's reply to the complainant's letter of 4 August 2006

2.1 The complainant argues that the Commission did not answer properly his letter of 2 August 2006, in which he asked the institution to take action in order to avoid excessive delays in the handling of infringement proceedings under Article 226 EC. In his letter, the complainant also suggested that a Community rule, namely a regulation, should be adopted to establish the criteria which the Commission should follow when pursuing infringement proceedings. The complainant also considers that the Commission's response of 17 October 2006, failed to reply to his request concerning the handling of his complaint (reference 2004/4843).

2.2 In its opinion, the Commission argues that, on 17 October 2006, it correctly answered the complainant's letters to the President of the Commission dated 2 August 2006 and 16 August 2006. In its reply, the Commission argued that its services were examining the various aspects mentioned in the complainant's correspondence, within the context of the monitoring of the Action Plan on Better Regulation (14) . The Commission explained that the procedure followed under Article 226 EC was being examined and that the conclusions issued from such an examination would be made public in the near future. In this connection, the Commission recalled the need to ensure a proper implementation and application of Community law, as laid down in its communication of 14 November 2006 entitled "A strategic review of Better Regulation in the European Union" (15) .

2.3 The Ombudsman has carefully examined the terms of the complainant's letters to the Commission President, dated 2 August 2006 and 16 August 2006, as well as the institution's reply dated 17 October 2006.

The Ombudsman notes that, in his first letter of 2 August 2006, the complainant recalled the obligations which the Commission should, pursuant to Article 226 EC, respect, in its role of guardian of the Treaty. Subsequently, the complainant argued that the procedure laid down in that provision had only been developed by a number of internal Commission rules whilst, in his view, a proper implementation of that provision should have been carried out through Community law by means of a regulation. The complainant considered that such a regulation could include the principles laid down by the Ombudsman in this field. He referred to the excessive length of time it took the Commission to deal with the complaint he had lodged on 3 August 2004 (reference 2004/4843).

As regards the second letter of 16 August 2006, the Ombudsman notes that the complainant expounded on some of the issues raised in his correspondence of 2 August 2006, which he included in an annex. The complainant stated that any regulation designed to implement Article 226 EC should outline the time-limits applicable to the different stages of infringement proceedings.



The Ombudsman further notes that, in its reply of 17 October 2007, the Commission explained that its services had examined the issues raised by the complainant in his letters, within the overall context of monitoring the Action Plan "Better Regulation". In this connection, the Commission recalled that the transposition of Community law is one of its strategic objectives, and that it has committed itself to examining all aspects pertaining to the monitoring of the application of Community law. Accordingly, its work procedures and the systems of resolution of cases regarding the incorrect application of Community law were being evaluated at the same time. The Commission also noted that different aspects of the infringement procedure, such as the time it takes for replies from the Member States to be provided, or the information to be transmitted by complainants, were being examined by the Commission with a view to making its conclusions and recommended measures public in the near future.

2.4 The Ombudsman considers that, although the Commission's reply did not refer specifically to the complainant's suggestion that a regulation to govern the procedure foreseen in Article 226 EC should be enacted, it nevertheless addressed the underlying problems which such a Community rule would be designed to prevent. The Commission's reply mentioned, among others, the need to review its internal procedures, the role of the Member States, or the different methods for resolving cases of incorrect application of Community law.

The Ombudsman is mindful of the fact that the Commission's reply did not make any reference to its handling of the complaint lodged by the complainant (reference 2004/4843). The Ombudsman notes however that, as a result of his inquiry, the Commission has, in its opinion, explained the situation concerning the actions taken in the above complaint. In so doing, it has therefore replied to the complainant's queries.

In view of the above findings, the Ombudsman does not consider it appropriate to pursue further inquiries as regards this aspect of the case.

3 Conclusion

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

The Ombudsman underlines the fact that the Commission's Communication on relations with complainants in infringement cases (COM(2002) 141 final) requires that the institution inform the complainant in writing when the one-year time-limit for the adoption of a decision on a complaint has been exceeded. It has to be pointed out that, in the context of the Ombudsman's own-initiative inquiry 303/97/PD into the Commission's administrative procedures relating to citizens' complaints about national authorities, the Commission also agreed to explain, as part of that response, the reasons why the deadline had been exceeded.

Having carefully reviewed the relevant provisions of the Communication and the Commission's undertaking in his own-initiative inquiry 303/97/PD, the Ombudsman takes the view that the obligation to inform the complainant of the reasons why the one-year time-limit has not been respected is not contingent on any prior request on the complainant's part, but, on the contrary, appears to be unconditional and must therefore be given in all cases once that time-limit has been exceeded.



The Ombudsman has therefore concluded that the Commission's failure to inform the complainant of the reasons why the one-year time-limit to issue a letter of formal notice in connection with his complaint (reference 2004/4843) had been exceeded constitutes an instance of maladministration.

Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

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

FURTHER REMARK

In order to avoid unrealistic expectations on the part of citizens lodging complaints with the Commission, which are often the cause of dissatisfaction with the work of the Commission and may lead to potential complaints against the institution, the Ombudsman believes that it could be advantageous for the Commission to consider adopting the following approach: it could inform citizens of the standards of good administration to be followed by its services in pursuing infringement proceedings. Such standards could include estimates of the time needed for the investigation of complaints following the issuance of a letter of formal notice, or the information to be given to complainants after such a letter has been sent.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ 1969 L 249, p. 25).

(2) See Communication from the Commission to the Council and the European Parliament on "Better Regulation for Growth and Jobs in the European Union", COM(2005)0097 final; Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "Implementing the Community Lisbon programme: A strategy for the simplification of the regulatory environment", COM(2005)0535 final.

(3) COM(2006)689 final.

(4) Commission communication to the European Parliament and the European Ombudsman on relations with the complainant in respect of infringements of Community law (COM(2002) 141 final), (OJ 2002 C 244, p. 5).



- (5) Supra note 5, at point 8 ("Time limit for investigating complaints") of the Annex.
- (6) COM/2007/502 final.
- (7) Supra note 7 at page 5 (Section on "Seeking a more efficient management of infringements").
- (8) Supra, note 7 at page 6 (" *Conclusion* ").
- (9) " *Where this time limit is exceeded, the Commission department responsible for the case will inform the complainant in writing* "; see supra note 5, at point 8 ("Time limit for investigating complaints") of the Annex.
- (10) The Ombudsman's decision of 13 October 1997 in own-initiative inquiry 303/97/PB is available on his website (<http://www.ombudsman.europa.eu/decision/en/970303.htm> [Link]).
- (11) See cases 289/2005/(WP)GG and 880/2005/TN. The Ombudsman notes that, in the context of case 880/2005/TN, the Commission has pointed out that, as a result of a linguistic discrepancy, some versions of the Communication, such as those in English and Swedish, do not make the obligation to inform the complainant of the reasons for the non-respect of the one-year time-limit contingent on any prior request by the complainant, whereas the other versions, in particular the French one, in which the Communication was originally drafted, includes such a requirement. The Ombudsman has held that, in order to preserve the *effet utile* of point 8, second paragraph, of the Annex to the Communication, the relevant information has to be provided on the Commission's own initiative and without any need for a request to that effect being made by the complainant. The Ombudsman has also taken the view that the English-language version of the second paragraph of Point 8 properly reflects what the Commission committed itself to do in this field in the framework of his own initiative inquiry 303/97/PD. The Ombudsman further notes that the Commission itself had accepted his interpretation in the context of case 289/2005/(WP)GG.
- (12) See further remark in the Ombudsman's decision of 10 January 2006 in case 3369/2004/JMA (<http://www.ombudsman.europa.eu/decision/en/043369.htm> [Link]); and point 1.7 of the Ombudsman's decision of 12 April 2006 in case 2748/2004/(JMA)BM (<http://www.ombudsman.europa.eu/decision/en/042748.htm#Target5> [Link]).
- (13) " *Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union* ".
- (14) See supra note 3.
- (15) See supra note 4.