

Decision of the European Ombudsman on complaint 1956/2007/(SAB)VIK against the European Commission

Decision

Case 1956/2007/(SAB)VIK - Opened on 04/10/2007 - Decision on 10/07/2008

Strasbourg, 10 July 2008

Dear Mr L.,

On 24 July 2007, you submitted a complaint to the European Ombudsman against the European Commission concerning the enforcement of the judgment of the Court of Justice of the European Communities in Case C-494/01.

On 4 October 2007, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 22 January 2008 and I forwarded it to you with an invitation to make observations, which you provided on 12 February 2008.

On 1 December 2007, 15 February 2008 and 13 May 2008 you sent further information concerning your complaint.

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

THE COMPLAINT

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

The complainant, an Irish national, submitted an infringement complaint to the European Commission concerning an allegedly illegal landfill in a protected area in Ireland (reference 2000/4145). The Commission initiated infringement proceedings against Ireland for failure to correctly implement Council Directive 75/442/EEC of 15 July 1975 on waste (1) ("Directive 75/442"), as amended by Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (2). The complainant's infringement complaint was one of many which were received by the Commission and which formed part of judicial proceedings before the Court of Justice (the "ECJ"). On 26 April 2005, the ECJ delivered its judgment in Case C-494/01 in which it found, in essence, that Ireland had failed to fulfil its obligations under Community law (3).



In his complaint to the Ombudsman, the complainant indicated that he had been in contact with the Commission since 1997, ever since the problem related to the illegal landfill was brought to the latter's attention. However, after the ECJ's judgment had been delivered, he had difficulties obtaining information from the Commission the way it proposed to enforce the judgment and the situation was worsening with time. In support of this allegation, the complainant provided copies of an e-mail he had sent to the Commission on 19 April 2007, in which he indicated that he had twice sent e-mails to the Commission (on 27 November 2006 and on 5 February 2007), but had not yet received a reply. He also attached the Commission's reply to that e-mail, which had apparently been provided after he wrote for the third time, that is, on 19 April 2007. According to the complainant, the Commission was not being proactive and it appeared that it was content merely to have won the case. Furthermore, he argued that the illegal landfill had remained in the protected area, that is, in Greenore, County Louth (Ireland). The complainant claimed that it should be removed immediately and that the restoration of the affected environment should be enforced.

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

- *The Commission failed to take, in a timely manner, appropriate action to ensure enforcement of the judgment of the ECJ in Case C-494/01 (Commission v. Ireland).*
- *The Commission has failed to keep him, as a complainant, properly informed of developments regarding the case.*

The complainant claimed that:

- *The Commission should enforce the judgment of the ECJ immediately.*
- *The Commission should keep him fully informed, and on a regular basis, of developments regarding this case.*

THE INQUIRY

The Commission's opinion

The Commission's opinion can be summarised as follows:

As regards the enforcement of the ECJ judgment in Case C-494/01:

The Commission explained that its practice following a judgment of the ECJ is to write to the Member States concerned requesting them to provide details of their compliance measures. The Commission then examines the measures concerned to determine whether or not they are satisfactory. Where necessary, the Commission makes use of its powers under Article 228 of the EC Treaty to challenge dilatory or incomplete compliance.

As for the present case, the Commission pointed out that the judgment of the ECJ in Case C-494/01 was not confined only to the landfill at Greenore. It was a very broad and wide-ranging judgment, referring to several provisions of Directive 75/442 and to several specific sites as well as to the general approach of the Irish authorities. As a consequence, the Commission had to examine extensive material provided by the Irish authorities, including measures of a general character and measures relevant to specific sites. Furthermore, in the case of certain specific sites, such as the one in question, the Commission considered it appropriate to carry out visits. The visit to Greenore took place on 11 July 2006. The complainant was informed and was



present when the site was visited. The Irish authorities indicated that an interested company also wished to have an opportunity to explain its position, but because of a misunderstanding it was unable to be present during the site visit. Therefore, on 3 October 2006, the company, accompanied by the Irish authorities, made a presentation to the Commission. This presentation was followed by further correspondence between the Commission and the Irish authorities.

On 29 June 2007, after reviewing all the relevant material provided by the Irish authorities, including the material concerning Greenore, the Commission addressed a letter of formal notice to Ireland under Article 228 of the EC Treaty. The Commission took the view that Ireland appeared to have taken insufficient measures to comply with the ECJ's judgment. This letter of formal notice covered *inter alia* the waste site at Greenore. The Commission asked the Irish authorities to respond within two months. Ireland requested and was given a two-month extension for its reply. The reply of the Irish authorities had been delivered on 19 November 2007 and was currently being examined by the Commission.

Following from the above, the Commission did not accept that it was taking too long to enforce the decision of the ECJ in Case C-494/01.

As regards communication with the complainant:

On 3 May 2005, the Commission sent a letter to the complainant and informed him of the ECJ's judgment in question. Subsequently, the Commission also informed the complainant of the site visit and its officials met him in Ireland when the visit was carried out on 11 July 2006. The Commission therefore did not accept the accusation that it did not keep the complainant informed of developments during this time. However, the Commission accepted that the complainant had not been kept fully up-to-date during 2007 with respect to developments concerning the case. The Commission had hoped to have the response of the Irish authorities to the letter of formal notice before communicating further with the complainant. However, given that the response did not arrive by the expected deadline of 29 October 2007, the Commission wrote to the complainant on 7 November 2007 to update him on the steps taken. In this letter, the complainant was informed that the Irish authorities had argued that it would be inappropriate to remove all of the infill material and to reinstate the original costal profile, as this would expose the area to erosion. Furthermore, the infill was now part of the functional area of the port, which was important for the port's safety and security. The Irish authorities consequently accepted that " *off-set measures* " should be provided and outlined a number of options that were under examination. In the letter of formal notice, the Commission had pointed out that " *appropriate offset measures had not yet been confirmed in relation to the deposition at Greenore Point* ".

On 1 December 2007, the complainant replied to the Commission's letter of 7 November 2007. He commented on the arguments provided by the Irish authorities as to why it would be inappropriate to remove the illegal landfill. In essence, he strongly disagreed with the reasoning behind this idea and expressed his disappointment that the Commission was considering accepting the approach envisaged by the Irish authorities. He indicated that the plans of the company concerned were to fill in more acres of foreshore at Greenore in order to build a second port. The complainant also pointed out that, on the day of the Commission's site visit, he had indicated that the dumping was still taking place. He further argued that, for many years, no one had been held accountable for the development of the illegal landfill in this environmentally



sensitive and protected area. The complainant therefore appealed to the Commission to ensure that the landfill would be removed and that the affected environment would be duly restored. The complainant finally requested that, prior to the Commission's final decision on the matter, he be given an opportunity to meet with its officials in Brussels. He also attached a letter of 27 November 2006 which he had sent to a number of interested parties concerning the subject-matter of his complaint.

On 17 December 2007, the Commission informed the complainant that the further submissions he had provided on 1 December 2007 would be examined and taken into account in its ongoing handling of the case.

The complainant's observations

In his observations, which were provided on 12 February 2008, the complainant noted that further unlawful deposition of material had begun on the Greenore landfill on 14 January 2008. The complainant pointed out that he had written to the Commission on 16, 18 and 21 January 2008 but he had not received an acknowledgement of receipt. He noted that, while the Commission's last letter to him was dated 17 December 2007 and posted on 20 December 2007, he had received it almost one month later, namely, on 14 January 2008. He also noted that he made these comments in support of his allegation and claim that the information flow with the Commission was difficult.

As regards the substance of his complaint, the complainant submitted that the judgment in Case C-494/01 was very clear with regard to Greenore. He further noted that, on 25 April 2008, three years would have passed since the ECJ had delivered its decision. During that time, the Commission had extended deadlines and watched them expire. It was now for the Commission to enforce the ruling. The owners of the landfill should remove it and restore the habitat they had destroyed. The complainant concluded that this case was one of the first brought to the ECJ and it therefore set a precedent for future similar situations. He noted that it was important for the EU citizen to ensure that they do not need to spend 18 years " *chasing tails on environmental issues* ".

Together with his observations, the complainant provided (a) a document listing the developments of the case at the national level between 1990 and 2000, which he had apparently also sent to the Commission when he filed his infringement complaint in 2000, (b) a document enumerating actions taken from 1990 until August 2001 and (c) copies of the e-mails he sent to the Commission on 16 and 21 January 2008. In these e-mails, the complainant asked whether the Commission was aware of the works that were going on at the site. The complainant also asked for an acknowledgment of receipt.

On 15 February 2008, the complainant copied to the Ombudsman an e-mail which he addressed to the Commission and in which he informed the latter that unauthorized works continued on the environmentally protected site and asked whether the Commission had sanctioned the illegal landfill. He noted further that he had not received replies to his e-mails sent in January 2008.

On 13 May 2008, the complainant informed the Ombudsman that he had asked the



Commission why his e-mails were left unanswered and that it had informed him that the e-mail address he had been using was discontinued " *sometime last year* ". According to the complainant, this was surely an unsatisfactory reply on the part of a European institution. He further noted that the substantive question remained unanswered, given that the illegal dump remained in the protected area and nobody had yet been held accountable for its creation. The complainant added that an e-mail he had addressed to the Commission on 18 March 2008 still remained unanswered. In this e-mail, the complainant asked whether the Commission considered that Ireland had complied with the ECJ's judgment as regards the site at Greenore.

THE DECISION

1 As regards the complainant's first allegation and the related first claim

1.1 The complainant, an Irish national, complained to the European Commission concerning an allegedly illegal landfill in a protected area in Greenore, County Louth (Ireland). The Commission had initiated infringement proceedings against Ireland before the European Court of Justice ("ECJ"), which also concerned the site to which the complainant's infringement complaint had referred. On 26 April 2005 the Court found that Ireland had indeed failed to fulfil its obligations under Community law (Case C-494/01). In his subsequent correspondence with the Commission, the complainant pointed out that the illegal landfill had remained in the protected area in Greenore. The complainant consequently alleged that the Commission had failed to take, in a timely manner, appropriate action to ensure enforcement of the judgement and claimed that the latter should enforce it immediately.

1.2 In its opinion, the Commission pointed out that the judgment of the ECJ in this case was not only confined to the landfill in Greenore. It was a very broad and wide-ranging judgment referring to several specific sites and to the general approach of the Irish authorities. As a consequence, the Commission had to examine extensive material on measures of a general character and on measures relevant to specific sites. Furthermore, in the case of specific sites, such as the one in question, the Commission decided to carry out site visits. The visit to Greenore took place on 11 July 2006 in the presence of the complainant. However, due to a misunderstanding the interested company could not be present when the site was visited. The Commission, therefore, met with its representatives and the representatives of the Irish authorities in Brussels on 3 October 2006. Following these events, the Commission and the Irish authorities exchanged further correspondence regarding the matter. On 29 June 2007, after reviewing all the relevant material provided by the Irish authorities, including the one concerning Greenore, the Commission addressed a letter of formal notice to Ireland under Article 228 of the EC Treaty. The Commission took the view that Ireland appeared to have taken insufficient measures to comply with the judgment. The Commission's letter of formal notice covered *inter alia* the waste site at Greenore. The reply of the Irish authorities to the Commission's letter of formal notice was provided on 19 November 2007 and the Commission was in the process of examining the position taken by Ireland, together with the further material provided by the complainant on 1 December 2007.

1.3 In his observations, the complainant maintained his complaint. He submitted that the judgment in Case C-494/01 was very clear with regard to Greenore. He further noted that, on 25



April 2008, three years would have passed since the ECJ had delivered its decision. During that time, the Commission had extended deadlines and watched them expire. It was now for the Commission to enforce the ruling.

1.4 The Ombudsman notes that two years and two months had elapsed between the date of the delivery of the judgment by the ECJ (26 April 2005) and the letter of formal notice sent by the Commission to the Irish authorities (29 June 2007). This is a considerable period of time. However, the Ombudsman also notes that the complainant's complaint was one of 12 infringement complaints that had been taken up by the Commission and the substance of which was considered by the ECJ in its judgment in Case C-494/01. The Commission has pointed out that because of the broad and wide-ranging scope of the judgment it had to analyse an extensive amount of material both as regards the specific sites and as regards the general approach adopted by the Irish authorities. The Ombudsman further notes that the Commission also decided to carry out visits to certain sites and that it engaged in further meetings and follow-up correspondence with the Irish authorities. In view of the above, the Ombudsman considers that the time taken by the Commission to issue the letter of formal notice in this case does not seem to be unreasonable.

1.5 As regards the complainant's observations that the illegal dump remained in the protected area in 2008 and that the Commission did not appear to be taking actions in that regard, the Ombudsman notes that the Commission's examination of the response of the Irish authorities to its letter of formal notice appears to be ongoing. It should be noted that this response was only submitted to the Commission on 19 November 2007. The Ombudsman further notes that the Commission has informed the complainant that the further material provided by him on 1 December 2007 would be examined. The Ombudsman also notes that in his e-mails sent to the Commission in 2008, the complainant furthermore argued that unauthorized deposition of material continued to take place at the illegal landfill. The Ombudsman trusts that the Commission will also take into account these submissions provided by the complainant when dealing with the case.

1.6 The Ombudsman therefore does not find any instance of maladministration as regards the complainant's first allegation. The complainant's related claim cannot therefore be sustained.

1.7 The complainant remains free to submit a new complaint to the Ombudsman in the event that the Commission fails to proceed with its examination within a reasonable period of time or in the event that the complainant considers that the result of this examination is not satisfactory.

2 As regards the complainant's second allegation and the related second claim

2.1 The complainant alleged that, following the judgment of the ECJ in Case C-494/01, the Commission had failed to keep him properly informed of developments regarding the case. He claimed that the Commission should, on a regular basis, keep him fully informed of the developments concerning this matter. The complainant argued in this context that he had difficulties obtaining information from the Commission concerning the enforcement of the above judgment and that the situation was worsening with time.

2.2 In its opinion, the Commission stated that on 3 May 2005, it sent a letter to the complainant



and informed him of the ECJ's judgment in question. Subsequently, the Commission also informed the complainant of the site visit and its officials met him in Ireland when the visit to Greenore was carried out. The Commission therefore did not accept the accusation that it did not keep the complainant informed of the developments during this time. However, the Commission accepted that during 2007 the complainant had not been kept fully up-to-date with respect to the developments of the case. The Commission had hoped to have the response of the Irish authorities to the letter of formal notice before communicating further with the complainant. However, given that the response did not arrive by the expected deadline of 29 October 2007, the Commission wrote to the complainant on 7 November 2007 and updated him with respect to the steps it had taken concerning the site at Greenore.

2.3 In his observations and further material provided on 15 February 2008 and 13 May 2008, the complainant informed the Ombudsman that he had sent further e-mails to the Commission in January, February and March 2008, in which he drew the latter's attention to the continued use of the dump in Greenore. According to the complainant, these e-mails remained unanswered, because the e-mail address he had been using was discontinued " *sometime last year* ". The complainant submitted that this constituted an unsatisfactory reply on the part of a European institution.

2.4 The Ombudsman notes that the Commission has accepted that it did not keep the complainant fully informed about the events that took place in 2007. However, in the course of the present inquiry, the relevant information appears to have been provided in the Commission's letter to the complainant of 7 November 2007 and in the Commission's opinion on the complaint of 22 January 2008. The Ombudsman therefore takes the view that there are no grounds for further inquiries as regards the complainant's second allegation, to the extent that it related to information concerning the state of the procedure at that time.

2.5 Concerning the complainant's submission that certain e-mails that he sent to the Commission in 2008 remained without a reply, as the Commission appeared to have changed its e-mail address, the Ombudsman notes that it is not quite clear whether the complainant thus wished to put forward a new allegation. In the Ombudsman's view, it would seem that these comments were only made to illustrate what the complainant considered to be the Commission's ongoing failure to keep him properly informed with respect to this matter. In any event, the complainant has not provided the Ombudsman with all the evidence that the latter would need in order to examine the relevant issues, notably a copy of the e-mail in which the Commission appears to have informed the complainant that the e-mail address he had used was no longer valid. In these circumstances, the Ombudsman is not in a position to evaluate whether the facts to which the complainant referred in his observations and further letters constitute an instance of maladministration. The complainant is free, however, to renew this aspect of his complaint after having provided all the relevant supporting evidence.

2.6 As regards the complainant's claim that the Commission should, on a regular basis, keep him fully informed of developments regarding this case, the Ombudsman notes that the Commission has not provided in its opinion any specific comments concerning this part of the complaint. However, regard should be had to the fact that Section 7 of the Commission's



Communication on relations with the complainant in respect of infringements of Community law (4) provides that " *the Commission departments will contact complainants and inform them in writing, after each Commission decision (formal notice, reasoned opinion, referral to the Court or closure of the case), of the steps taken in response to their complaint* ". The Commission is thus, in any event, obliged to inform the complainant once it has decided to issue a reasoned opinion or to close the case. There is nothing to suggest that the Commission may fail to comply with this duty. In these circumstances, the Ombudsman takes the view that there is no need for further inquiries into the complainant's second claim.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission in so far as the complainant's first allegation and his related first claim are concerned. As regards the complainant's second allegation and his second claim, the Ombudsman takes the view that further inquiries are not justified.

The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 1975 L 194, p. 39.

(2) OJ 1991 L 78, p. 32.

(3) In its judgment in Case C-494/01 the ECJ declared that " *by failing to take all the measures necessary to ensure a correct implementation of the provisions of Articles 4,5,8,9,10,12,13 and 14 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, Ireland has failed to comply with its obligations under those provisions* ".

(4) COM(2002) 141 final.