



Decision of the European Ombudsman closing his inquiry into complaint 2794/2009/KM against the European Commission

Decision

Case 2794/2009/KM - Opened on 30/11/2009 - Decision on 20/12/2010

The background to the complaint

- 1.** The complainant, who lives in Spain, takes an active interest in the implementation of European environmental law. Thus, on 11 June 2009, she sent an e-mail to the European Commission's Directorate-General for the Environment (DG Environment) to ask for statistics concerning the number of complaints relating to alleged infringements of EU environmental law by Spain registered per year. She also wanted to know how many of these complaints were accepted and how many were rejected.
- 2.** By e-mail of the same day, DG Environment replied that this information was not available. However, it referred the complainant to statistics on infringements concerning the environment that were published on its website. It also advised the complainant to consult the Annual Reports on the implementation of EU law by Member States, which are published by the Commission's Secretariat-General. The DG Environment statistics provided information on the number of infringement cases pursued by DG Environment per year, as well as a break down of the number of open infringement cases per Member State. The Annual Report indicated the total amount of cases handled, as well as the percentage of infringement cases closed before the first formal step. The statistical annex contained information about the 'newly detected cases' per Member State and, in a different table, per policy sector.
- 3.** The complainant was not satisfied with this reply and thus complained to the Director-General of DG Environment by e-mail of the same day. Two days later, she repeated her request to a DG Environment official at the Representation of the Commission in Madrid. The latter responded on 14 June 2009, regretting that he could do nothing but transmit the message to Brussels.
- 4.** Not having received a reply to her complaint, the complainant contacted the Commission again on 12 October 2009, stating that the information received was not what she had asked for. She therefore reiterated her request.
- 5.** On 12 November 2009, the complainant had still not received a reply. She therefore submitted the present complaint.



6. The Ombudsman's services contacted the Commission in order to ascertain whether the case could be solved informally. The Commission thereupon provided the Ombudsman with a copy of a letter it addressed to the complainant on 2 December 2009. In this letter, it explained that no document exists which contains the information requested by the complainant. Therefore, her request did not fall under Regulation 1049/2001 [1] because this only relates to access to existing documents and does not require an institution to draw up a document in order to fulfil the request. In this regard, the information requested would have to be extracted from a number of different databases and this would require a high investment in terms of staff and working time. In the Commission's view, this would be disproportionate. However, it referred the complainant to a number of publicly available sources of information and statistics on the number of infringement complaints received and opened. It also stated that it would soon publish a report on EU Pilot, a new mechanism designed to deal with infringement complaints. This report would contain data on the complaints against the participating Member States handled from April 2008 onwards.

7. Having examined the contents of this letter, and following further contacts made by his services, the Ombudsman concluded that it did not appear possible to find an informal solution in this case.

The subject matter of the inquiry

8. The complainant alleged that the Commission wrongly failed to reply to her question regarding how many infringement complaints against Spain relating to environmental matters were registered per year, how many of these were rejected and how many were accepted.

9. She claimed that the Commission should provide the above-mentioned statistical information.

The inquiry

10. On 17 December 2009, the Ombudsman opened an inquiry and asked the Commission for an opinion.

11. The Commission sent its opinion on 26 March 2010 and provided the German translation on 12 April 2010. On 16 April 2010, these documents were forwarded to the complainant for observations. The complainant submitted her observations on 21 June 2010. The Ombudsman's analysis and conclusions

A. Allegation of failure to provide the statistical information requested and related claim

Arguments presented to the Ombudsman

12. The complainant maintained that the Commission failed to reply to her question, namely, where to find statistics concerning infringement complaints lodged against Spain in relation to the environment, and how many of those were rejected and accepted.

13. The Commission pointed out that Regulation 1049/2001 on public access to documents



only concerns access to existing documents. However, the information which the complainant requested was not contained in any existing document. Furthermore, Directive 2003/4 on public access to information [2], which does not apply to EU institutions, only requires Member State authorities to provide citizens with 'available' information.

14. As a result, the Commission provided the complainant with the information it had available and which was as closely related to her request as possible. In its letter dated 2 December 2010, it also informed the complainant that the effort required to compile the data she requested would be disproportionate to the benefit expected. However, some relevant information was publicly available. In this context, it referred the complainant to the EU Pilot report, which was about to be published.

15. On 15 February 2010, the Commission sent another letter to the complainant to point out that it had just updated the information concerning the enforcement of EU environmental law on its website. The site now contained information up to 2009 and set out the number of complaints registered by DG Environment (against all Member States) in 2007, 2008 and 2009. The Commission also included information on the number of open infringement cases and other investigations concerning Spain. Furthermore, it provided statistics on the number of complaints and inquiries relating to alleged infringements of EU environmental law by Spain, which had been registered in NIF (the Commission's infringements database), EU Pilot (a platform for solving complaints where input is required from the Member State concerned) and CHAP ('Complaints Handling - Accueil des Plaignants', a new database for registering complaints and enquiries) in the past three years.

16. The Commission underlined that, in order to compile these data, information had to be selected and processed manually from various databases. It also recalled that, already in its initial response and the letter dated 2 December 2009, it had referred the complainant to the Annual Reports on the application of EU legislation. These contained information relevant to the complainant's request, such as infringements per sector or per Member State. To conclude, although it regretted the time it took it to reply to the complainant's request dated 12 October 2009, the Commission considered that, by providing the complainant with the information contained in its letter, it had done more than it would normally be required to do under its Code of Good Administrative Behaviour.

17. In her observations, the complainant did not comment on the information provided to her by the Commission, apart from regretting that it had taken the Commission so much effort to reply to her request. The complainant noted that she had submitted the same request to the Committee on Petitions of the European Parliament, which sent her a very informative reply. According to the complainant, this indicated that the Commission's register has room for improvement.

The Ombudsman's assessment

18. In its opinion, the Commission referred to Directive 2003/4, which relates to access to environmental information held by the authorities of the Member States. As the Commission



itself noted, however, this Directive is addressed to Member States, and is thus not directly relevant to the present case. The Commission also referred to Regulation 1049/2001, which concerns access to documents. However, given that the complainant submitted a request for information, this Regulation is not relevant for the present case either.

19. The complainant requested statistics concerning the number of infringement complaints registered per year relating to environmental matters in Spain. She also wanted to know how many of these complaints were accepted and how many were rejected.

20. Initially, the Commission referred her to publicly available sources of information and provided general statistics concerning the number of cases closed before the first formal step in the proceedings. Following the Ombudsman's attempt to settle the matter informally, the Commission explained that no document exists which contains the information requested by the complainant. Compiling this information in order fully to reply to the complainant's request would entail a disproportionate effort.

21. In its letter dated 15 February 2010, which was sent after the present inquiry was opened, the Commission provided further information on how many complaints against Spain and relating to environmental law have been registered. It also gave the complainant an indication of how many complaints have been rejected.

22. In her observations, the complainant did not comment on the information provided to her by the Commission, apart from regretting that it had taken the Commission so much effort to reply to her request.

23. The Ombudsman therefore considers that there are no grounds for further inquiries in this case.

24. The Ombudsman notes that, in her observations, the complainant stated that the Commission's register appears to be less efficient than that of the Committee on Petitions and that there is therefore room for improvement in this regard. The Ombudsman understands, however, that the complainant did not intend to raise a new allegation when making this remark. In any event, the Ombudsman notes that the complainant does not appear to have raised this matter with the Commission so far. He would therefore be unable to deal with this issue at present. However, the complainant is of course free to submit a new complaint on the matter, after having made appropriate prior approaches to the Commission.

25. The Ombudsman thus concludes that there are no grounds for him to continue his inquiry into the present complaint.

C. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:



There are no grounds for further inquiries.

The complainant and the Commission will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 20 December 2010

[1] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[2] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ 2003 L 41, p. 26.