

Decision of the European Ombudsman closing the inquiry into complaint 44/2013/ANA against the European Commission

Decision

Case 44/2013/ANA - Opened on 21/01/2013 - Decision on 19/02/2015 - Institutions concerned European Commission (No maladministration found) | European Commission (No further inquiries justified) |

The case concerned the Commission's handling of an official visit to Brussels by members of Turkish Cypriot NGOs. It was submitted by a former Cypriot MEP.

The complainant alleged that, because Turkish Cypriot NGO representatives flew to Brussels from Tymbou airport, which is located in the northern part of Cyprus, the Commission infringed EU and international law. Moreover, the complainant complained about the Commission's handling of (a) his requests for access to the flight arrangements in question, and (b) the correspondence on this issue.

The Ombudsman inquired into these issues and found that there was no maladministration as regards the Commission's handling of the request for access to documents nor as regards the making of travel arrangements to Brussels for the NGO members concerned. The Ombudsman found maladministration by the Commission as regards the manner in which it handled correspondence from the complainant; but this deficiency was subsequently remedied by way of the apology offered by the Commission.

However, the Ombudsman noted that, in stating that the Turkish Cypriots chose to fly from Tymbou airport, the Commission was not entirely frank. The Ombudsman made a further remark to the Commission in which she highlighted the importance of providing her with accurate information and invited the Commission to draw lessons for the future.

The background to the complaint

1. As a result of the intervention of the Turkish armed forces in 1974, the territory of Cyprus has been *de facto* partitioned into a zone where the authorities of the Republic of Cyprus continue fully to exercise their powers and a zone where they cannot in fact do so [1]. In 1983, the Security Council of the United Nations (UN) ruled that the declaration by the Turkish Cypriot



authorities purporting to create an independent State in northern Cyprus was invalid and called upon all states not to recognise any Cypriot State other than the Republic of Cyprus [2] . Given that when, in 2004, the Republic of Cyprus acceded to the EU, a comprehensive settlement to the Cyprus problem had not been reached, the Treaty on the Accession of Cyprus (Protocol No 10) provided that the application of the body of EU law (*acquis*) was suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control [3] . In order to prepare and facilitate the full application of the *acquis* in the northern part of Cyprus following a solution to the Cyprus problem, the EU has adopted measures to regulate the movement of goods and persons across the line dividing the island ('Green Line Regulation') [4] and to promote the economic development of the Turkish Cypriot community and economic integration of the island [5] .

2. It is against this background, that this complaint was submitted by a former Cypriot MEP. Specifically, this complaint, which originated in correspondence sent to the Commission by another Cypriot MEP (the complainant's predecessor), was about the Commission's handling of an official visit by members of Turkish Cypriot NGOs to Brussels, which took place on 20-21 February 2012, was financed by the Commission, and was organised by the Commission's representation in Cyprus.

3. The complainant's main grievance was that the Turkish Cypriot NGO representatives flew to Brussels from Tymbou airport, which is located in the northern part of Cyprus. The complainant alleged that this infringed international law, including the UN Security Council Resolutions, the rules of the International Civil Aviation Organisation (ICAO) and of EUROCONTROL, as well as the EU *acquis* in relation to Cyprus. In the correspondence sent to the Commission which led to this complaint, the complainant also complained about (a) the Commission's handling of his requests for access to documents concerning the flight arrangements for the Turkish Cypriot NGO representatives, and (b) the Commission's delay in responding to his and his predecessor's letters on this issue.

4. On 7 January 2013, the complainant lodged this complaint with the European Ombudsman.

The inquiry

5. The Ombudsman opened an inquiry into the complaint and identified the following allegations and claims:

1) By not granting the complainant access to the requested documents, the Commission infringed Regulation 1049/2001.

2) The Commission should grant the complainant access to the requested documents.

3) In handling the correspondence it received on the matter concerned, the Commission infringed the European Code of Good Administrative Behaviour.



4) The Commission should provide a timely reply to the letters it receives in accordance with the European Code of Good Administrative Behaviour.

5) By allowing Turkish Cypriot NGO representatives to travel to Brussels via Tymbou airport, the Commission condoned a violation of international and EU law.

6) The Commission should ensure that Larnaca airport is used by persons travelling from Cyprus to visit the Commission.

6. In the course of the inquiry, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's opinion. In addition, the Ombudsman made further inquiries asking the Commission to address a number of questions. The Ombudsman received the Commission's reply, on which the complainant did not submit any observations. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that the Commission failed to give access to the requested documents and the related claim

Arguments presented to the Ombudsman

7. On 18 October 2012, the complainant asked the Commission to grant him access to all documents relating to the flight arrangements for the Turkish Cypriot NGO representatives and to the handling of the matter by the Commission. When the complainant lodged this complaint on 7 January 2013, the Commission had neither granted access to the requested documents nor provided a written reply to justify its refusal.

8. In its opinion, the Commission stated that the complainant's request for access to documents was handled as a request for access to information. In its reply to the complainant of 8 November 2012, the Commission acknowledged the use of Tymbou airport and informed him that it did not intend to withhold any information. In any event, the Commission argued that, in the absence of a reply, the complainant ought to have made a confirmatory application. However, after reviewing the complaint, the Commission acknowledged that, in fact, the complainant intended to make a request for access to documents rather than a request for access to information. To respond to this, the Commission registered the complainant's request as a confirmatory application and promised to provide the complainant with a reply and inform the Ombudsman.

9. In his observations, the complainant disputed the Commission's argument that his request was misunderstood. He pointed out that both his predecessor's letter of 2 March 2012 to the Commission Representation in Cyprus and his own letter of 19 October 2012 to the President of the Commission clearly referred to Regulation 1049/2001 [6]. The complainant argued that the Commission chose to misunderstand the request for access to documents on purpose.



10. In her further inquiries, the Ombudsman drew the Commission's attention to the fact that, although the time limit for replying to the complainant's request had elapsed, the Commission appeared neither to have taken a decision on the complainant's request nor to have informed the Ombudsman about the decision. On this basis, the Ombudsman asked the Commission to provide her with information on how it had dealt with the matter and to forward her a copy of its decision on the complainant's confirmatory application.

11. In its reply to the Ombudsman's further inquiries, the Commission stated that, on 2 May 2013, it sent to the complainant its decision on the confirmatory application of which it enclosed a copy. In that decision, the Commission stated that it had identified 10 documents covered by the complainant's request. The Commission disclosed documents no. 1 and 7 in their entirety. Documents no. 2a, 3, 3a, 4, 5, 6 and 8 were disclosed after they had been redacted to remove reference to the names, e-mails and signatures of natural persons not working for the Commission. The Commission refused access to document no. 2, which is a compilation of eleven applications by Turkish Cypriots for the information visit in question together with CVs, covering letters and copies of passports/IDs. The Commission stated that the entirety of the information covered by document no. 2 constitutes personal data. Therefore, partial access to it could not be given either, given that the document was fully covered by the exception relating to the protection of personal data [7] .

The Ombudsman's assessment

12. After a careful review of the file, the Ombudsman confirms that it was clear all along that the complainant intended to make a request for public access to the documents concerning the flight arrangements of the Turkish Cypriot NGO representatives. It is clear from the file that the Commission initially failed to deal with it as a request for public access to documents and dealt with it as a request for information instead. The complainant questioned the Commission's motives for doing so. However, there is nothing to suggest that, as the complainant argued, the Commission " *chose to misunderstand the complainant's request on purpose* ". On the contrary, the Commission's insistence that it did not intend to withhold any information implies that the Commission perceived the complainant's request as a means of proving that the Turkish Cypriot NGO representatives had travelled to Brussels using Tymbou airport. The Ombudsman finds it more likely that the Commission initially failed to follow-up the complainant's request because it had already acknowledged that the Turkish Cypriot NGO representatives had used Tymbou airport for their trip to Brussels.

13. Furthermore, the Commission adopted a confirmatory decision in which, as mentioned above, it: (i) gave full access to documents no. 1 and 7; (ii) gave partial access to documents no. 2a, 3, 3a, 4, 5, 6 and 8, on the basis of the exception relating to the protection of personal data; and (iii) refused access to document no. 2 on the same ground. The Ombudsman considers this decision reasonable. She also notes in this respect that the complainant did not submit any additional observations to contest the correctness of the Commission's approach. The Ombudsman considers therefore that the Commission's initial failure to handle properly the



complainant's request has been remedied in the course of the inquiry. Therefore, there is no maladministration in relation to this allegation.

Allegation that in handling the correspondence it received on the matter concerned, the Commission infringed the European Code of Good Administrative Behaviour (ECGAB) and the related claim

Arguments presented to the Ombudsman

14. In his complaint, the complainant argued that the Commission failed to reply to the letters of 2, 27 and 28 March 2012 and that this constitutes an infringement of the ECGAB.

15. In its opinion, the Commission argued that the delay in answering was due to the increased workload of the Commission's Representation in Cyprus caused by the fact that Cyprus held the Presidency of the EU and because of the change of the Head of the Commission's Representation in Cyprus. However, on 16 October 2012, when the Head of Representation received the complainant's follow-up letter of the same day, he tried to contact the complainant by phone without success. On 18 October 2012, the Head of Representation wrote to the complainant.

16. In his observations, the complainant pointed out that the Commission Representation has no relationship to the Cypriot Presidency of the Council of the EU. The Commission's argument to this effect should be rejected. Moreover, the complainant argued that the Head of Representation's reply to his letter did not address the substance of the issues he had raised.

17. In her further inquiries, the Ombudsman noted that the reasons put forward by the Commission for the unsatisfactory handling of the complainant's correspondence were not convincing. The Ombudsman suggested that it would be both appropriate and constructive for the Commission to offer the complainant an apology for that delay.

18. In its reply to the Ombudsman's further inquiries, the Commission stated that the Head of Representation in Cyprus " *apologised unreservedly* " for not replying to the letter of 27 March 2012 and acknowledged that the reply to this letter was " *unfortunately not sent due to a failure in the handling of correspondence by the Representation* ". The Commission went on to state that subsequently the Head of Representation acted promptly by informing the Commission Headquarters and by giving instructions to prepare " *a thorough reply* " to the complainant's request. The Commission stated that, if the Ombudsman wishes the apology on the grounds stated above to be repeated, the Head of Representation would be willing to do so.

The Ombudsman's assessment



19. In the course of her inquiry, the Ombudsman advised the Commission that the reasons given for the unsatisfactory handling of the correspondence it had received from the complainant and his predecessor were not convincing. To remedy this finding of maladministration the Ombudsman suggested that the Commission could consider offering the complainant an apology. In response to the Ombudsman's suggestion, the Commission enclosed a letter from the Head of the Commission's Representation in Cyprus in which he acknowledged the mistake that had been made and apologised unreservedly for it. The Ombudsman considers that the tone and content of the Head of Representation's apology suffice to remedy the Commission's maladministration arising from its failure to uphold the ECGAB in this instance.

Allegation that, by allowing Turkish Cypriot NGO representatives to travel to Brussels via Tymbou airport instead of Larnaca airport, the Commission condoned a violation of international and EU law and the related claim

Arguments presented to the Ombudsman

20. In support of this allegation, the complainant argued that the use of Tymbou airport by the Turkish Cypriot NGO representatives for an official visit organised by the Commission infringed international law, including the UN Security Council Resolutions, the rules of ICAO and EUROCONTROL, as well as the EU *acquis* in relation to Cyprus. This is so because it meant that the Commission indirectly recognised the "*pseudostate*" in the northern part of Cyprus and, consequently, encroached upon the sovereignty of the Republic of Cyprus.

21. In its opinion, the Commission argued that, while it encourages "*bi-communal*" activities, it leaves Turkish Cypriots who participate in meetings to choose the airport which is more convenient for them to use. The Commission acknowledged the sensitivity of the question related to the use of Tymbou airport, and expressed its worry that no settlement of the Cyprus question had been reached, as well as its readiness to continue providing political support and technical advice to the Turkish Cypriot community on issues within the EU's competence.

22. In his observations, the complainant acknowledged the Commission's role in the "*bi-communal*" activities but argued that its comments did not reply to his concerns. The complainant insisted that, in promoting these activities, the Commission should comply with the applicable international rules. Moreover, the complainant argued that the Commission's argument that it is up to the Turkish Cypriots to decide how to travel to Brussels does not reflect reality. The complainant argued that the Commission itself announced to the Turkish Cypriot NGO representatives the details of their flights. In any event, when visits to Brussels take place at the Commission's expense, the Commission should ensure that all applicable international rules are complied with.



23. In her further inquiries, the Ombudsman asked the Commission to address the complainant's argument that the Commission made the travel arrangements for the Turkish Cypriot NGO representatives.

24. In its reply to the Ombudsman's further inquiries, the Commission stated that, while it understands the sensitivity of the question, it has a long standing practice according to which Greek Cypriot participants use Larnaca airport. It is left to " *the Turkish Cypriot participants to decide on the basis of the convenience which airport they will use for their travel. This has led ten Turkish Cypriot participants of the above-mentioned information visit to travel to Brussels from the Tymbou airport* ".

25. The Commission enclosed two letters it had sent to the Permanent Representative of the Republic of Cyprus to the EU in 2006 in which it explained that, taking into account the 'Green Line Regulation' [8] concerning the crossing by EU citizens of the line from and to the areas not controlled by the Republic of Cyprus, as interpreted by the Supreme Court of the Republic of Cyprus, travel undertaken via Tymbou airport does not establish an infringement of the applicable rules. In addition, the Commission enclosed a copy of its policy regarding the procedures for travel tickets. According to that policy, the Commission's Visitors' Centre is responsible for purchasing travel tickets for visiting groups such as the group in question. The Representations order the travel tickets after liaising with the participants for their travel choice. Participants are not allowed to purchase their own travel tickets. All participants are contacted by a Representation official who asks them for their preference. The Commission argued that, in this case, " *all ten Turkish Cypriot participants finally chose to fly (from Tymbou) via Istanbul (to Brussels)* ".

The Ombudsman's assessment

26. The Ombudsman points out that, in its letters to the Permanent Representative of Cyprus in 2006, the Commission explained that the use of Tymbou airport does not imply an infringement of the applicable rules and, notably, the Green Line Regulation. In so far as Turkish Cypriot visitors are concerned, when applying its policy concerning procedures for travel tickets, the Commission's stated practice has been to allow Turkish Cypriot visitors to choose to fly to Brussels from Tymbou airport.

27. The Ombudsman considers that the Commission's practice appears to be in line with the relevant applicable rules. Indeed, in the Ombudsman's view, allowing Turkish Cypriot visitors to choose the airport they depart from seems to be in line with the objective of facilitating the integration of the Turkish Cypriots into the EU and, consistent with the legal framework analysed above, it does not imply the recognition of any other authority in the island other than the Republic of Cyprus [9] . In principle, such choice could also be in the interest of economy and efficiency. In light of these considerations, the Ombudsman finds that no maladministration has been established as regards this allegation.

28. That said, however, in so far as this official visit is concerned, there is no evidence to



support the Commission's contention that the Turkish Cypriot participants were indeed offered the choice of which airport to use for their travel. It is clear from the documents disclosed by the Commission in its decision of 2 May 2013 on the complainant's confirmatory application that it was the Commission that proposed to the Turkish Cypriot NGO representatives that they take the itinerary from Tymbou airport to Brussels via Istanbul. In fact, one representative asked whether he could fly from Larnaca airport and was informed that such change was not possible because of the group booking. The Ombudsman regrets that, in its submissions in this complaint, the Commission did not present the facts concerning this issue accurately. However, because this conduct does not affect the Ombudsman's findings in relation to this allegation (point 27 above), the Ombudsman does not consider it appropriate to pursue the matter further, and she, therefore, closes this aspect of the case.

29. It is important nevertheless to highlight the importance of providing the Ombudsman with accurate information. In discharging this obligation, which stems from the constitutional principle of mutual sincere cooperation between EU institutions [10], the Commission both helps the Ombudsman to carry out her inquiries into complaints and shows its own commitment to contribute to a fair inquiry, thereby upholding the fundamental right of citizens to turn to the Ombudsman. In this case, the Ombudsman expresses her disappointment that, in its submissions to the Ombudsman in the context of this inquiry, the Commission did not always present the facts accurately. The Ombudsman trusts that this will not happen again. In this respect, the Ombudsman will make a further remark below.

Conclusions

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

There was no maladministration by the Commission in relation to its handling of the application for access to documents nor in relation to the travel arrangements to Brussels for the Turkish Cypriot NGO representatives. There was maladministration on the part of the Commission in its failure to meet the standards of the European Code of Good Administrative Behaviour in its handling of correspondence; however, this failure has been remedied by the apology offered to the complainant by the Commission.

Further remark

In order to enable the Ombudsman to carry out her tasks and to show its own commitment to a fair inquiry, the Commission must present facts accurately. The Ombudsman invites the Commission to draw lessons for the future from her conclusion in this case that the Commission failed accurately to present the facts concerning the use of Tymbou airport in the northern part of Cyprus by Turkish Cypriot NGO representatives for the purposes of an official visit to Brussels.



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

Emily O'Reilly

Strasbourg, 19/02/2015

[1] Case C-432/92 *The Queen and Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd and Others* [1994] ECR I-3087, paragraph 37.

[2] UN Security Council, Resolution 541 (1983) Adopted by the Security Council at its 2500th meeting, on 18 November 1983, S/RES/541 (1983).

[3] Article 1 of Protocol No 10 on Cyprus. See: Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 10 on Cyprus, OJ 2003 L 236, p. 955.

[4] Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession, OJ 2004 L 161, p. 128.

[5] Specifically, Article 1 of Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction, OJ 2006 L 65, p. 5, provides:

" *Overall Objective and Beneficiaries*

1. The Community shall provide assistance to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community with particular emphasis on the economic integration of the island, on improving contacts between the two communities and with the EU, and on preparation for the acquis communautaire.

2. Assistance shall benefit inter alia local bodies, cooperatives and representatives of civil society, in particular organisations of the social partners, business support organisations, bodies carrying out functions in the general interest in the areas, local or traditional communities, associations, foundations, non-profit organisations, non-governmental organisations, and natural and legal persons.

3. The granting of such assistance shall not imply recognition of any public authority in the areas other than the Government of the Republic of Cyprus. "



[6] 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.

[7] Article 4(1)(b) of Regulation 1049/2001 which provides:

" The institutions shall refuse access to a document where disclosure would undermine the protection of:

[...]

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. "

[8] Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession, OJ 2004 L 161, p. 128.

[9] Article 1(3) of Regulation 389/2006, cited above at footnote 5.

[10] Article 13(2), second sentence of the Treaty on European Union provides: *" The institutions shall practice mutual sincere cooperation "*.

The case concerned the Commission's handling of an official visit to Brussels by members of Turkish Cypriot NGOs. It was submitted by a former Cypriot MEP.

The complainant alleged that, because Turkish Cypriot NGO representatives flew to Brussels from Tymbou airport, which is located in the northern part of Cyprus, the Commission infringed EU and international law. Moreover, the complainant complained about the Commission's handling of (a) his requests for access to the flight arrangements in question, and (b) the correspondence on this issue.

The Ombudsman inquired into these issues and found that there was no maladministration as regards the Commission's handling of the request for access to documents nor as regards the making of travel arrangements to Brussels for the NGO members concerned. The Ombudsman found maladministration by the Commission as regards the manner in which it handled correspondence from the complainant; but this deficiency was subsequently remedied by way of the apology offered by the Commission.

However, the Ombudsman noted that, in stating that the Turkish Cypriots chose to fly from Tymbou airport, the Commission was not entirely frank. The Ombudsman made a further remark to the Commission in which she highlighted the importance of providing her with accurate information and invited the Commission to draw lessons for the future.



The background to the complaint

1. As a result of the intervention of the Turkish armed forces in 1974, the territory of Cyprus has been *de facto* partitioned into a zone where the authorities of the Republic of Cyprus continue fully to exercise their powers and a zone where they cannot in fact do so [1]. In 1983, the Security Council of the United Nations (UN) ruled that the declaration by the Turkish Cypriot authorities purporting to create an independent State in northern Cyprus was invalid and called upon all states not to recognise any Cypriot State other than the Republic of Cyprus [2]. Given that when, in 2004, the Republic of Cyprus acceded to the EU, a comprehensive settlement to the Cyprus problem had not been reached, the Treaty on the Accession of Cyprus (Protocol No 10) provided that the application of the body of EU law (*acquis*) was suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control [3]. In order to prepare and facilitate the full application of the *acquis* in the northern part of Cyprus following a solution to the Cyprus problem, the EU has adopted measures to regulate the movement of goods and persons across the line dividing the island ('Green Line Regulation') [4] and to promote the economic development of the Turkish Cypriot community and economic integration of the island [5].

2. It is against this background, that this complaint was submitted by a former Cypriot MEP. Specifically, this complaint, which originated in correspondence sent to the Commission by another Cypriot MEP (the complainant's predecessor), was about the Commission's handling of an official visit by members of Turkish Cypriot NGOs to Brussels, which took place on 20-21 February 2012, was financed by the Commission, and was organised by the Commission's representation in Cyprus.

3. The complainant's main grievance was that the Turkish Cypriot NGO representatives flew to Brussels from Tymbou airport, which is located in the northern part of Cyprus. The complainant alleged that this infringed international law, including the UN Security Council Resolutions, the rules of the International Civil Aviation Organisation (ICAO) and of EUROCONTROL, as well as the EU *acquis* in relation to Cyprus. In the correspondence sent to the Commission which led to this complaint, the complainant also complained about (a) the Commission's handling of his requests for access to documents concerning the flight arrangements for the Turkish Cypriot NGO representatives, and (b) the Commission's delay in responding to his and his predecessor's letters on this issue.

4. On 7 January 2013, the complainant lodged this complaint with the European Ombudsman.

The inquiry

5. The Ombudsman opened an inquiry into the complaint and identified the following allegations and claims:

1) By not granting the complainant access to the requested documents, the Commission infringed Regulation 1049/2001.



- 2) The Commission should grant the complainant access to the requested documents.
 - 3) In handling the correspondence it received on the matter concerned, the Commission infringed the European Code of Good Administrative Behaviour.
 - 4) The Commission should provide a timely reply to the letters it receives in accordance with the European Code of Good Administrative Behaviour.
 - 5) By allowing Turkish Cypriot NGO representatives to travel to Brussels via Tymbou airport, the Commission condoned a violation of international and EU law.
 - 6) The Commission should ensure that Larnaca airport is used by persons travelling from Cyprus to visit the Commission.
6. In the course of the inquiry, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's opinion. In addition, the Ombudsman made further inquiries asking the Commission to address a number of questions. The Ombudsman received the Commission's reply, on which the complainant did not submit any observations. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that the Commission failed to give access to the requested documents and the related claim

Arguments presented to the Ombudsman

7. On 18 October 2012, the complainant asked the Commission to grant him access to all documents relating to the flight arrangements for the Turkish Cypriot NGO representatives and to the handling of the matter by the Commission. When the complainant lodged this complaint on 7 January 2013, the Commission had neither granted access to the requested documents nor provided a written reply to justify its refusal.
8. In its opinion, the Commission stated that the complainant's request for access to documents was handled as a request for access to information. In its reply to the complainant of 8 November 2012, the Commission acknowledged the use of Tymbou airport and informed him that it did not intend to withhold any information. In any event, the Commission argued that, in the absence of a reply, the complainant ought to have made a confirmatory application. However, after reviewing the complaint, the Commission acknowledged that, in fact, the complainant intended to make a request for access to documents rather than a request for access to information. To respond to this, the Commission registered the complainant's request as a confirmatory application and promised to provide the complainant with a reply and inform the Ombudsman.



9. In his observations, the complainant disputed the Commission's argument that his request was misunderstood. He pointed out that both his predecessor's letter of 2 March 2012 to the Commission Representation in Cyprus and his own letter of 19 October 2012 to the President of the Commission clearly referred to Regulation 1049/2001 [6] . The complainant argued that the Commission chose to misunderstand the request for access to documents on purpose.

10. In her further inquiries, the Ombudsman drew the Commission's attention to the fact that, although the time limit for replying to the complainant's request had elapsed, the Commission appeared neither to have taken a decision on the complainant's request nor to have informed the Ombudsman about the decision. On this basis, the Ombudsman asked the Commission to provide her with information on how it had dealt with the matter and to forward her a copy of its decision on the complainant's confirmatory application.

11. In its reply to the Ombudsman's further inquiries, the Commission stated that, on 2 May 2013, it sent to the complainant its decision on the confirmatory application of which it enclosed a copy. In that decision, the Commission stated that it had identified 10 documents covered by the complainant's request. The Commission disclosed documents no. 1 and 7 in their entirety. Documents no. 2a, 3, 3a, 4, 5, 6 and 8 were disclosed after they had been redacted to remove reference to the names, e-mails and signatures of natural persons not working for the Commission. The Commission refused access to document no. 2, which is a compilation of eleven applications by Turkish Cypriots for the information visit in question together with CVs, covering letters and copies of passports/IDs. The Commission stated that the entirety of the information covered by document no. 2 constitutes personal data. Therefore, partial access to it could not be given either, given that the document was fully covered by the exception relating to the protection of personal data [7] .

The Ombudsman's assessment

12. After a careful review of the file, the Ombudsman confirms that it was clear all along that the complainant intended to make a request for public access to the documents concerning the flight arrangements of the Turkish Cypriot NGO representatives. It is clear from the file that the Commission initially failed to deal with it as a request for public access to documents and dealt with it as a request for information instead. The complainant questioned the Commission's motives for doing so. However, there is nothing to suggest that, as the complainant argued, the Commission " *chose to misunderstand the complainant's request on purpose* ". On the contrary, the Commission's insistence that it did not intend to withhold any information implies that the Commission perceived the complainant's request as a means of proving that the Turkish Cypriot NGO representatives had travelled to Brussels using Tymbou airport. The Ombudsman finds it more likely that the Commission initially failed to follow-up the complainant's request because it had already acknowledged that the Turkish Cypriot NGO representatives had used Tymbou airport for their trip to Brussels.

13. Furthermore, the Commission adopted a confirmatory decision in which, as mentioned



above, it: (i) gave full access to documents no. 1 and 7; (ii) gave partial access to documents no. 2a, 3, 3a, 4, 5, 6 and 8, on the basis of the exception relating to the protection of personal data; and (iii) refused access to document no. 2 on the same ground. The Ombudsman considers this decision reasonable. She also notes in this respect that the complainant did not submit any additional observations to contest the correctness of the Commission's approach. The Ombudsman considers therefore that the Commission's initial failure to handle properly the complainant's request has been remedied in the course of the inquiry. Therefore, there is no maladministration in relation to this allegation.

Allegation that in handling the correspondence it received on the matter concerned, the Commission infringed the European Code of Good Administrative Behaviour (ECGAB) and the related claim

Arguments presented to the Ombudsman

14. In his complaint, the complainant argued that the Commission failed to reply to the letters of 2, 27 and 28 March 2012 and that this constitutes an infringement of the ECGAB.

15. In its opinion, the Commission argued that the delay in answering was due to the increased workload of the Commission's Representation in Cyprus caused by the fact that Cyprus held the Presidency of the EU and because of the change of the Head of the Commission's Representation in Cyprus. However, on 16 October 2012, when the Head of Representation received the complainant's follow-up letter of the same day, he tried to contact the complainant by phone without success. On 18 October 2012, the Head of Representation wrote to the complainant.

16. In his observations, the complainant pointed out that the Commission Representation has no relationship to the Cypriot Presidency of the Council of the EU. The Commission's argument to this effect should be rejected. Moreover, the complainant argued that the Head of Representation's reply to his letter did not address the substance of the issues he had raised.

17. In her further inquiries, the Ombudsman noted that the reasons put forward by the Commission for the unsatisfactory handling of the complainant's correspondence were not convincing. The Ombudsman suggested that it would be both appropriate and constructive for the Commission to offer the complainant an apology for that delay.

18. In its reply to the Ombudsman's further inquiries, the Commission stated that the Head of Representation in Cyprus "apologised unreservedly" for not replying to the letter of 27 March 2012 and acknowledged that the reply to this letter was "unfortunately not sent due to a failure in the handling of correspondence by the Representation". The Commission went on to state that subsequently the Head of Representation acted promptly by informing the Commission Headquarters and by giving instructions to prepare "a thorough reply" to the complainant's



request. The Commission stated that, if the Ombudsman wishes the apology on the grounds stated above to be repeated, the Head of Representation would be willing to do so.

The Ombudsman's assessment

19. In the course of her inquiry, the Ombudsman advised the Commission that the reasons given for the unsatisfactory handling of the correspondence it had received from the complainant and his predecessor were not convincing. To remedy this finding of maladministration the Ombudsman suggested that the Commission could consider offering the complainant an apology. In response to the Ombudsman's suggestion, the Commission enclosed a letter from the Head of the Commission's Representation in Cyprus in which he acknowledged the mistake that had been made and apologised unreservedly for it. The Ombudsman considers that the tone and content of the Head of Representation's apology suffice to remedy the Commission's maladministration arising from its failure to uphold the ECGAB in this instance.

Allegation that, by allowing Turkish Cypriot NGO representatives to travel to Brussels via Tymbou airport instead of Larnaca airport, the Commission condoned a violation of international and EU law and the related claim

Arguments presented to the Ombudsman

20. In support of this allegation, the complainant argued that the use of Tymbou airport by the Turkish Cypriot NGO representatives for an official visit organised by the Commission infringed international law, including the UN Security Council Resolutions, the rules of ICAO and EUROCONTROL, as well as the EU *acquis* in relation to Cyprus. This is so because it meant that the Commission indirectly recognised the " *pseudostate* " in the northern part of Cyprus and, consequently, encroached upon the sovereignty of the Republic of Cyprus.

21. In its opinion, the Commission argued that, while it encourages " *bi-communal* " activities, it leaves Turkish Cypriots who participate in meetings to choose the airport which is more convenient for them to use. The Commission acknowledged the sensitivity of the question related to the use of Tymbou airport, and expressed its worry that no settlement of the Cyprus question had been reached, as well as its readiness to continue providing political support and technical advice to the Turkish Cypriot community on issues within the EU's competence.

22. In his observations, the complainant acknowledged the Commission's role in the " *bi-communal* " activities but argued that its comments did not reply to his concerns. The complainant insisted that, in promoting these activities, the Commission should comply with the applicable international rules. Moreover, the complainant argued that the Commission's



argument that it is up to the Turkish Cypriots to decide how to travel to Brussels does not reflect reality. The complainant argued that the Commission itself announced to the Turkish Cypriot NGO representatives the details of their flights. In any event, when visits to Brussels take place at the Commission's expense, the Commission should ensure that all applicable international rules are complied with.

23. In her further inquiries, the Ombudsman asked the Commission to address the complainant's argument that the Commission made the travel arrangements for the Turkish Cypriot NGO representatives.

24. In its reply to the Ombudsman's further inquiries, the Commission stated that, while it understands the sensitivity of the question, it has a long standing practice according to which Greek Cypriot participants use Larnaca airport. It is left to "*the Turkish Cypriot participants to decide on the basis of the convenience which airport they will use for their travel. This has led ten Turkish Cypriot participants of the above-mentioned information visit to travel to Brussels from the Tymbou airport*".

25. The Commission enclosed two letters it had sent to the Permanent Representative of the Republic of Cyprus to the EU in 2006 in which it explained that, taking into account the 'Green Line Regulation' [8] concerning the crossing by EU citizens of the line from and to the areas not controlled by the Republic of Cyprus, as interpreted by the Supreme Court of the Republic of Cyprus, travel undertaken via Tymbou airport does not establish an infringement of the applicable rules. In addition, the Commission enclosed a copy of its policy regarding the procedures for travel tickets. According to that policy, the Commission's Visitors' Centre is responsible for purchasing travel tickets for visiting groups such as the group in question. The Representations order the travel tickets after liaising with the participants for their travel choice. Participants are not allowed to purchase their own travel tickets. All participants are contacted by a Representation official who asks them for their preference. The Commission argued that, in this case, "*all ten Turkish Cypriot participants finally chose to fly (from Tymbou) via Istanbul (to Brussels)*".

The Ombudsman's assessment

26. The Ombudsman points out that, in its letters to the Permanent Representative of Cyprus in 2006, the Commission explained that the use of Tymbou airport does not imply an infringement of the applicable rules and, notably, the Green Line Regulation. In so far as Turkish Cypriot visitors are concerned, when applying its policy concerning procedures for travel tickets, the Commission's stated practice has been to allow Turkish Cypriot visitors to choose to fly to Brussels from Tymbou airport.

27. The Ombudsman considers that the Commission's practice appears to be in line with the relevant applicable rules. Indeed, in the Ombudsman's view, allowing Turkish Cypriot visitors to choose the airport they depart from seems to be in line with the objective of facilitating the integration of the Turkish Cypriots into the EU and, consistent with the legal framework analysed



above, it does not imply the recognition of any other authority in the island other than the Republic of Cyprus [9] . In principle, such choice could also be in the interest of economy and efficiency. In light of these considerations, the Ombudsman finds that no maladministration has been established as regards this allegation.

28. That said, however, in so far as this official visit is concerned, there is no evidence to support the Commission's contention that the Turkish Cypriot participants were indeed offered the choice of which airport to use for their travel. It is clear from the documents disclosed by the Commission in its decision of 2 May 2013 on the complainant's confirmatory application that it was the Commission that proposed to the Turkish Cypriot NGO representatives that they take the itinerary from Tymbou airport to Brussels via Istanbul. In fact, one representative asked whether he could fly from Larnaca airport and was informed that such change was not possible because of the group booking. The Ombudsman regrets that, in its submissions in this complaint, the Commission did not present the facts concerning this issue accurately. However, because this conduct does not affect the Ombudsman's findings in relation to this allegation (point 27 above), the Ombudsman does not consider it appropriate to pursue the matter further, and she, therefore, closes this aspect of the case.

29. It is important nevertheless to highlight the importance of providing the Ombudsman with accurate information. In discharging this obligation, which stems from the constitutional principle of mutual sincere cooperation between EU institutions [10] , the Commission both helps the Ombudsman to carry out her inquiries into complaints and shows its own commitment to contribute to a fair inquiry, thereby upholding the fundamental right of citizens to turn to the Ombudsman. In this case, the Ombudsman expresses her disappointment that, in its submissions to the Ombudsman in the context of this inquiry, the Commission did not always present the facts accurately. The Ombudsman trusts that this will not happen again. In this respect, the Ombudsman will make a further remark below.

Conclusions

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

There was no maladministration by the Commission in relation to its handling of the application for access to documents nor in relation to the travel arrangements to Brussels for the Turkish Cypriot NGO representatives. There was maladministration on the part of the Commission in its failure to meet the standards of the European Code of Good Administrative Behaviour in its handling of correspondence; however, this failure has been remedied by the apology offered to the complainant by the Commission.

Further remark

In order to enable the Ombudsman to carry out her tasks and to show its own commitment to a fair inquiry, the Commission must present facts accurately. The Ombudsman invites the Commission to draw lessons for the future from her conclusion in this case that the Commission failed accurately to present the facts concerning the



use of Tymbou airport in the northern part of Cyprus by Turkish Cypriot NGO representatives for the purposes of an official visit to Brussels.

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

Emily O'Reilly

Final English version of the decision on complaint **44/2013/ANA**

Strasbourg, 19/02/2015

[1] Case C-432/92 *The Queen and Minister of Agriculture, Fisheries and Food, ex parte S.P. Anastasiou (Pissouri) Ltd and Others* [1994] ECR I-3087, paragraph 37.

[2] UN Security Council, Resolution 541 (1983) Adopted by the Security Council at its 2500th meeting, on 18 November 1983, S/RES/541 (1983).

[3] Article 1 of Protocol No 10 on Cyprus. See: Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Protocol No 10 on Cyprus, OJ 2003 L 236, p. 955.

[4] Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession, OJ 2004 L 161, p. 128.

[5] Specifically, Article 1 of Council Regulation (EC) No 389/2006 of 27 February 2006 establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community and amending Council Regulation (EC) No 2667/2000 on the European Agency for Reconstruction, OJ 2006 L 65, p. 5, provides:

" Overall Objective and Beneficiaries

*1. The Community shall provide assistance to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community with particular emphasis on the economic integration of the island, on improving contacts between the two communities and with the EU, and on preparation for the *acquis communautaire*.*

2. Assistance shall benefit inter alia local bodies, cooperatives and representatives of civil society, in particular organisations of the social partners, business support organisations, bodies carrying out functions in the general interest in the areas, local or traditional communities, associations, foundations, non-profit organisations, non-governmental organisations, and natural and legal persons.



3. *The granting of such assistance shall not imply recognition of any public authority in the areas other than the Government of the Republic of Cyprus. "*

[6] 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.

[7] Article 4(1)(b) of Regulation 1049/2001 which provides:

" The institutions shall refuse access to a document where disclosure would undermine the protection of:

[...]

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. "

[8] Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession, OJ 2004 L 161, p. 128.

[9] Article 1(3) of Regulation 389/2006, cited above at footnote 5.

[10] Article 13(2), second sentence of the Treaty on European Union provides: *" The institutions shall practice mutual sincere cooperation "*.