

Decision of the European Ombudsman on complaint 1045/21.11.96/BH/IRL/JMA against the European Commission

Decision

Case 1045/96/JMA - **Opened on** 15/01/1997 - **Decision on** 29/07/1998

Strasbourg, 29 July 1998 Dear Mr H., On 21 November 1996, you lodged a complaint with the European Ombudsman concerning the allegedly unjustified refusal of the European Commission to give you access to certain documents. On 15 January 1997, I forwarded the complaint to the President of the Commission with a request for observations. On 14 April 1997, the Commission sent its comments which I forwarded to you on 21 April 1997 with an invitation to make observations before 31 May 1997, if you so wished. I received your comments on 28 May 1997. Given the nature of the dispute, I wrote again to the Commission on 28 July 1997 requesting an inspection of the requested documents. This inspection took place in Brussels on 10 October 1997. Having reviewed the content of the documents, I wrote again to the Commission on 12 December 1997 with a view to seeking a friendly solution to the complaint. The Commission replied to this initiative by letters of 3 February, 5 May, and 14 July 1998. You commented on the Commission's proposals by letters to me of 20 May and 24 July 1998. I am writing now to let you know the result of the inquiries that have been made.

BACKGROUND

The complaint On 8 August and 25 September 1996, the complainant wrote to the Commission requesting two different documents compiled by the institution which related to policies against poverty in the Union, and details of migrant organizations funded by the Commission. Having been informed of the negative decision of the Commission to his requests for both documents, the complainant wrote to the European Ombudsman, alleging that that refusal was unjustified.

THE INQUIRY

The Commission's opinion In its opinion, the Commission made the following comments: As regards the complainant's request for a document on poverty and social exclusion, the Commission considered that there could have been some confusion as to the object of the request. It explained that in the Commission's medium-term social action programme for



1995-1997, it had been announced that a report on all relevant Community actions on poverty and social exclusion would be prepared. Accordingly, the Commission started working with representatives from Member States in the context of a High Level Group on Social Exclusion. Following a request from the Commission in 1996, each Member State made available to the group information on its national criteria to define poverty and social exclusion, including an outline on how their policies were organised and determined. This compilation of documents from the Member States was the object of the complainant's request. The Commission decided not to forward a copy of these contributions to the complainant since the document in question was not an internal document. For the institution, it was merely a series of materials originally produced by different Member States that its services had only put together. Although the Commission had intended to take these contributions as a point of reference for its own proposal, the project was put off since October 1997 due to staff changes and the definition of new priorities. On the basis of the Commission Decision of 8 February 1994 on public access to Commission documents, the institution concluded that the requested materials could not be considered a Commission document. The Commission was of the view that the application for the documents should have been forwarded to the authors of each one of them, namely the Member States. The Commission's policy on public access to documents relates only to the institution's own documents and does not foresee that the Commission give access to documents produced by other bodies. The Commission pointed out, however, that it would make the final report available to the complainant once it has been completed. In line with the previous criteria, the Commission, in a letter of 1 October 1996, suggested that the complainant liaise with the Department of Social Welfare regarding the information he was seeking. Concerning the second request for a document, the Commission indicated that the internal document relating to the implementation of budget line B3-4110 had already been forwarded to the complainant on 30 October 1996. **The complainant's observations** On 28 May 1997, the Ombudsman received the complainant's observations on the opinion of the Commission. They are in summary as follows : In the complainant's view, there was no confusion as to the type of documents which had been requested. The request referred to a Commission document, and not to a number of different documents from the Member States. The fact that these materials had been partially translated and circulated with a Commission cover, led to the conclusion that the document should be considered a Commission document. The complainant added that in the Summer of 1996, the document had been circulated in Ireland as a Commission document. Although he had asked the Irish Department of Social Welfare for a copy of the document, the request had been refused on the grounds that it was a Commission document, and that the authority to make it available rested entirely with the Commission. The complainant did not share the Commission's views that since the document comprised of contributions from the different Member States, it could not be considered a Commission document. Insofar as the document had been compiled and circulated with the authority of the institution, it should be seen as a Commission document. Lastly, the complainant stressed that the Commission's reasoning could have negative consequences for transparency in the European Union. Hence, the document should be made available to him in the interests of transparency. **Further inquiries** Given the nature of the dispute, and in order to reach a satisfactory solution to the problem, the Ombudsman decided to have the document inspected by officials from his Secretariat. The inspection was aimed at assessing whether or not a document made of several different contributions of the Member States should be seen as a collated group of national



documents, and accordingly excluded from public access as the Commission considered. The review of the document took place in the Commission premises in Brussels on 10 October 1997. The Commission had given notice of this inspection beforehand to all members of the High Level Group. In the course of the meeting, Commission officials explained that the document had been originally conceived in 1995 as a means to improve mutual understanding among Member States on their national policies on social exclusion and poverty. To that end a High Level Group had been set up by the Commission with the participation of national experts from all Member States. In the context of that High Level Group and in order to prepare discussions, the Commission distributed a questionnaire among all Member States towards the end of 1995. All replies from Member States were collated by the Commission services into a single document which was distributed during the meeting of the High Level Group on 18 July 1996. In accordance with Article 3.5 of his Statute, the Ombudsman wrote a new letter to the European Commission on 12 December 1997 with a view to seeking a friendly solution to the complaint. Reference was made in that letter to the position taken by the Commission as regards the documents, and to the fact that when the complainant asked Member States to have access to the documents, he was informed that the request should have been addressed to the Commission. The Ombudsman also indicated that it was regrettable that the complainant's attempts to obtain the document had all met with a negative response from both, the Commission and the Member States. Furthermore, the Ombudsman considered that the lack of transparency in this particular case could have negative consequences on the public confidence in the Community administration contrary to Declaration N. 17 on the right of access to information of the Treaty on European Union.

Proposal of a Friendly Solution In view of the previous considerations, the Ombudsman proposed a friendly solution by which the Commission would make available to the complainant the requested documents. In its reply of 3 February 1998 the Commission reaffirmed its opinion about the nature of the document. However, it agreed to the Ombudsman's proposal to reach an *ad hoc* agreement for this particular case. To that end, the Commission asked Member States whether or not their contributions could be released, and under which conditions. The Commission agreed to forward the replies from Member States to the Ombudsman, in accordance with their instructions. By letter of 13 May 1998, the Commission informed the Ombudsman of the replies received from the Member States to its request. In addition, it forwarded to the Ombudsman a copy of the letter of 14 July 1998 sent by its services to the complainant. This letter explained explaining in detail the results of its initiative. It appears that all Member States had agreed to forward their documents to the complainant, although some of them under certain restrictions regarding reproduction and copyright. Furthermore, the Commission had even agreed to send the complainant a copy of the notes prepared by its services during the meeting of the High Level Group on Social Exclusion in June 1996. In two letters to the Ombudsman of 20 May and 24 July 1998, the complainant indicated that all the documents initially requested had already been forwarded to him, as proposed in the Ombudsman's initiative for a friendly solution. The complainant thanked the Ombudsman for the work which had been undertaken and acknowledged the significant progress which had been made. In the view of the complainant, the Ombudsman had done all that was within his powers and authority, and therefore he agreed to the closing of the case. Nonetheless, the complainant expressed some concern regarding the use of the documents which he had received. He was also concerned in relation to the slow procedure for public access to documents in the European Union, and on the difficulties



involving public access to documents deemed to be authored by Member States. Since, as the complainant himself has expressed, the outcome of the Ombudsman's initiative is fully satisfactory for him, the Ombudsman considers that a friendly solution to the problem has been reached.

DECISION OF THE EUROPEAN OMBUDSMAN

- The Ombudsman's inquiries into this case appeared to reveal *prima facie* evidence of maladministration.
- In accordance with Article 3 § 5 of his Statute, the Ombudsman therefore carried out an inspection of the documents requested by the complainant, and on that basis proposed a friendly solution.
- Following this initiative by the Ombudsman, the Commission and the complainant have reached a friendly settlement of the complaint.

The Ombudsman has therefore decided to close the case. Jacob Söderman cc: Mr Santer, President of the European Commission