

Decision of the European Ombudsman on complaint 176/97/JMA against the European Commission

Decision

Case 176/97/JMA - Opened on 21/04/1997 - Decision on 15/09/1998

Strasbourg, 15 September 1998 Dear Mr D., On 20 February 1997, you lodged a complaint on behalf of your client, Mr K., to the European Ombudsman concerning the failure of the European Commission to reply to your letters of complaint dated 7 August 1996 and 11 December 1996. As I informed you by letter of 21 April 1997, I forwarded the complaint to the President of the European Commission on that same date. The Commission sent its comments on 25 July 1997, which I passed on to you on 8 September 1997 with an invitation to make observations. I have received no reply from you. I am writing now to let you know the result of the inquiries that have been made.

BACKGROUND

Your complaint In the complaint to the Ombudsman, Mr D. indicated that the European Commission had not replied to his letters of 7 August 1996 and 11 December 1996. These letters had been sent to the Commission as formal complaints against the Portuguese authorities for its failure to respect Community law, in particular arts. 5, 8 and 177 of the EC Treaty. In his first letter to the Commission, the complainant explained that his client Mr K., originally a national of Finland, had been arrested by the Portuguese authorities following an extradition request from the Finnish authorities. However, in the course of the legal process, it was revealed that Mr K. had also taken the nationality of the Dominican Republic. In view of this fact, the competent Portuguese judicial authorities considered that by taking the Dominican Republic nationality, Mr K. had lost his original Finnish nationality, and accordingly applied in the case rules concerning third country nationals, rather than those for EU citizens. This approach was confirmed by the Portuguese Supreme Court. The complainant considered that this particular legal interpretation did not respect the provisions of arts. 8 and 8A of the Treaty, and furthermore that the Portuguese Supreme Court was under a duty to consult the Court of Justice of the European Communities before reaching its conclusions, in accordance with art. 177 of the Treaty. Taking into account the previous considerations, Mr D. asked the Commission to intervene in its role of guardian of the Treaty, with a view to ensuring that the Portuguese authorities were properly applying Community law. In the complainant's second letter to the Commission of 11 December 1996, Mr D. added some more documents related to the situation.



THE INQUIRY

The Commission's opinion The European Commission's comments to the complaint are in summary the following: The Commission first explained the exchange of correspondence which had taken place with Mr D. It was indicated that it had taken some time to forward the complainant's letter to the appropriate services. It was only after a thorough evaluation of the documents submitted in these letters that the Commission was able to draft a reply dated 6 June 1997. The Commission recognized the long delay, and apologized for not being able to respond to the letters in a more reasonable time. The reply from the Commission crossed in the mail with a third letter from the complainant of 9 June 1997. The reply to this letter is dated 17 June 1997. Mr D. also sent an additional letter to the Commission and although, in the view of the institution it did not contain any new element, the letter was replied to on 11 July 1997. As regards the factual situation, the Commission confirmed the basic facts described by the complainant. However, the Commission considered that no infringement of Community law had occurred in this case. Since none of the documents furnished in the complainant's letters proved that Mr K. still held the Finnish nationality, the Commission considered justified the approach taken by the Portuguese Supreme Court. Furthermore the Commission stated that, until now, it had not used infringement proceedings under article 169 of the Treaty against any ruling rendered by a national court. **The complainant's observations** I forwarded the Commission's comments to the complainant with an invitation to make observations. I have received no observation.

DECISION OF THE EUROPEAN OMBUDSMAN

On the basis of the information provided by the complainant and the observations submitted by the European Commission, the Ombudsman has reached the following conclusions: *Failure to answer* 1.1 The Commission has acknowledged that there was a failure to deal promptly with the letters sent by the complainant. However, the institution offered an explanation, apologized for the delay, and replied to all the letters sent by the complainant. 1.2. In view of these facts, there are no grounds for the European Ombudsman to pursue further this aspect of the case. *Decision not to take up a complaint* 2.1. Under Article 155 of the Treaty, the Commission's duty as the "Guardian of the Treaty" is to ensure that Community law is applied. 2.2. In carrying out its duty as Guardian of the Treaty, the Commission investigates possible infringements of Community law which come to its attention as a results of complaints, or at its own initiative. The investigation may lead to the sending of a letter of formal notice to the Member State concerned, which has the opportunity to submit its observations. If the Commission then considers that the Member State has failed to fulfill an obligation under the Treaty, Article 169 provides for it to deliver a reasoned opinion on the matter. 2.3. If the Commission chooses not to pursue an inquiry into the matter, there must be some reasoning supporting such course of action. Those reasons should provide the basis for any potential inquiry by the European Ombudsman in order to ensure that no maladministration has taken place. 2.4. The Commission justified its inaction in this case on the grounds that the approach taken by the Portuguese Supreme Court was reasonable. Since none of the documents furnished by the complainant proved that Mr K. still held the Finnish nationality, the Commission considered that there were no further elements to question this approach. The Commission also pointed out that until now it has not resorted to the infringement proceeding provided for in article 169 of the



Treaty when the infringement results from a ruling of a national Court. 2.5. In reviewing the course of action chosen by the Commission, the European Ombudsman finds that the institution acted within the limits of its legal authority and therefore no instance of maladministration has been established as regards this aspect of the case.

CONCLUSION

On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case. Yours sincerely Jacob SÖDERMAN cc: Mr Santer, President of the European Commission