

Decision of the European Ombudsman in the own initiative inquiry 303/97/PD into the Commission's administrative procedures in relation to citizens' complaints about national authorities - Commission reference: Letter of 11 August 1997 PhG/es SG/D(97) 35503

Decision

Case 303/97/PD - Opened on 15/04/1997 - Decision on 13/10/1997

Strasbourg, 13 October 1997 Mr President, 1. By letter of 15 April 1997, I initiated an inquiry on my own initiative under Article 138e of the Treaty establishing the European Community. The inquiry concerned the possibilities for improving the quality of the Commission's administrative procedures for dealing with complaints concerning Member States' infringement of Community law. I received the Commission's comments on this matter on 22 August 1997. I am writing now to let you know the results of the inquiry.

The substance of the own initiative inquiry

2. The general background to this inquiry was in substance that an essential part of the Ombudsman's mission consists in enhancing relations between the Community institutions and bodies and European citizens. One of the important relations concerns one of the Commission's prime tasks, that is to act as Guardian of the Treaty in accordance with Article 155 of the Treaty of Rome. The Commission has consistently recognized that it relies to a considerable extent on private citizens and firms to detect Member States' infringements of Community law. The citizens' confidence in the Commission's dealings with alleged infringements is thus crucial. 3. The more specific background was that I have received many complaints concerning the administrative procedures used by the Commission in dealing with complaints lodged by private citizens concerning Member States' failure to fulfil their Community law obligations. The object of these complaints is not the discretionary powers of the Commission to bring legal proceedings against a Member State under Article 169 of the Treaty, but rather the administrative process which takes place before judicial proceedings may begin. The allegations in the complaints submitted to me concern in particular, excessive time taken to process complaints, lack of information about the on-going treatment of the complaint and not receiving any reasoning as to how the Commission has reached a conclusion that there is no infringement by a Member State. 4. Against this background, I was particularly concerned about the administrative procedures used by the Commission to deal with complaints. Without prejudice to the question whether principles of Community law might require more developed procedural rights for citizens who lodge a complaint with the Commission, it appeared to me that



the Commission could itself decide to create more developed procedural rights for these citizens as a matter of good administrative behaviour, consistent with the case-law of the Court of Justice that individuals cannot challenge before the Court of Justice the Commission's decision not to bring proceedings under Article 169. I therefore suggested that the Commission might communicate to registered complainants a provisional conclusion that there is no breach of Community law and its findings in support of that conclusion, with an invitation to submit observations within a defined period, before making its final decision. I pointed out the two advantages of such a procedure. Firstly, it would most likely contribute to a more effective administration, by giving complainants the opportunity to criticize the Commission's views and therefore give the Commission the opportunity to respond to this criticism. Secondly, it would enhance the citizens' trust in the Commission by allowing the citizens to participate more fully in the Article 169 procedure and thereby making these activities more transparent.

The Commission's comments

5. In its comments, the Commission stated that complaints from individuals remain the most important source on which the Commission bases its task of monitoring the application of Community law. For that reason, the Commission acknowledged that complainants have a place in infringement proceedings and that, in the period before judicial proceedings may begin, they enjoy procedural safeguards which the Commission has constantly developed and improved. The Commission declared itself ready to continue along those lines. 6. The Commission furthermore stated that all complaints which reach the Commission are registered and that no exceptions are made to this rule. Once the Commission receives a complaint, it acknowledges receipt by letter to the complainant with an annex attached, explaining the details of the infringement proceedings. Once the complaint has been registered, the complainant is informed of the action taken in response to the complaint, including representations made to the national authorities concerned. The complainant is also informed about the outcome of the investigation of his complaint, whether no action has been taken on it or infringement proceedings have been instituted. The complainant is also notified if other proceedings on the same issue are already under way. As for deadlines for processing complaints, the Commission has stated that under its internal rules of procedure, a decision to close a file without taking any action or a decision to initiate official infringement proceedings must be taken on every complaint within a maximum period of one year from the date on which it was registered, except in special cases, the reasons for which must be stated. The Commission has further pointed out that delays in processing complaints are often related to the fact that discussions and exchanges with national authorities take considerable time. The Commission considers it to be one of its priority objectives to reduce such delays. 7. As for informing the complainant of the draft decision rejecting the complaint, the Commission has stated that in several cases, the complainant is informed beforehand that the complaint will be rejected, often with a statement of the reasons for the proposed rejection. The Commission declares itself prepared to extend this practice, leaving aside cases where the complaint is obviously without foundation and cases where nothing further has been heard from the complainant.

The European Ombudsman's decision

8. The Commission has been constructive and service minded in its approach to this inquiry. I have been pleased to see that the Commission appears to be committed to constant



development and improvement of the position of citizens in the Article 169 procedure, in the period before judicial proceedings may begin. 9. As for the processing of the complaints and the time involved, it appears from the Commission's comments that: (i) the receipt of complaints is acknowledged; (ii) the complainant is kept informed about the action taken by the Commission; (iii) under the Commission's internal rules, a decision to close the file without taking any action or a decision to initiate official infringement proceedings must be taken within a maximum period of one year from the date when the complaint was registered, except in special cases, the reasons for which must be stated. These reasons may relate to the time taken by necessary discussions with national authorities concerned and awaiting reply to the Commission's requests for information from the same authorities. The observance of these rules appears to be an adequate means for ensuring both that the citizen is kept informed about the processing of his complaint and that the complaint will be processed without undue delay and within a maximum period of one year, unless there are special reasons. I therefore find that the inquiry has not revealed any instance of maladministration in this respect. 10. The Commission has taken note of suggestions made to it with regard to improving citizens' procedural rights in the Article 169 procedure in the period before judicial proceedings may begin. It appears that in future, the Commission will, in all cases, inform the complainant of its intention to close the file with the reasons why the Commission finds that there is no infringement of Community law, except where a complaint is manifestly unfounded or where the complainant appears to have lost interest in the complaint. This is a valuable step in the process, to which the Commission has committed itself, of constant development and improvement in the procedural position of the complainant in the Article 169 procedure in the period before judicial proceedings may begin. The citizens will thereby have the possibility to put forward views and criticisms concerning the Commission's point of view before it commits itself to a final conclusion that there is no infringement of Community law. 11. Against this background there appears to be no instance of maladministration and therefore I close the case.

Further remarks by the European Ombudsman

12. The Commission has stated that when acknowledging receipt of a complaint, it forwards an annex to the complainant setting out the purpose and giving details of the infringement proceedings. In this annex the Commission also provides information about the role played by national courts in ensuring the proper application of Community law. In other contexts, the Commission equally stresses the crucial role of national courts in this respect. In the Member States there also exist important extra-judicial mechanisms, such as national ombudsmen and similar bodies, created with a view to providing a remedy and redress to citizens when they have been exposed to an improper application of the law. I therefore suggest to the Commission that it consider the possibility of also providing information about these bodies when appropriate. Yours sincerely, Jacob SÖDERMAN