

Decision of the European Ombudsman on complaint 1075/97/IJH against the European Commission

Decision

Case 1075/97/ijh - Opened on 15/12/1997 - Decision on 21/09/1998

Strasbourg, 21 September 1998 Dear Mr D., On 17 November 1997, you made a complaint to the European Ombudsman against the Commission. Your complaint to the Ombudsman concerned the way in which the Commission had dealt with a complaint which you had made to it, concerning the UK government's alleged failure properly to implement the law about the imposition of surcharges on package holidays. On 15 December 1997, I forwarded your complaint to the President of the Commission. On 2 February 1998 you wrote again, enclosing copies of a further letter you sent to the Commission on 25 November 1997 and the Commission's reply dated 21 January 1998. On 5 March 1998, the Commission sent me its opinion on your complaint. I forwarded the Commission's opinion to you with an invitation to make observations, which you sent on 30 April 1998. I am writing now to let you know the results of the inquiries that have been made. The EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman. The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

THE COMPLAINT

On 15 August 1995, the complainant made a complaint to the Commission concerning the alleged failure of the UK government properly to implement and enforce the provisions relating to surcharges contained both in Council Directive 90/314/EEC and in the national legislation through which the Directive was transposed into domestic law. (1) The Commission registered the complaint as No. 95/4883. On 14 February 1996, DG XXIV of the Commission informed the complainant that the Directive appeared to have been properly transposed into domestic law, but that the Commission had requested information from the UK authorities concerning a guidance booklet about the law published by the UK Department of Trade and Industry (DTI) and that Article 169 infringement proceedings might commence if the reply from the UK authorities were not satisfactory. On 7 October 1997 DG XXIV informed the complainant that his complaint had resulted in a change of wording in the DTI's guidance booklet and that the



Commission had decided not to go further in the matter. The letter also explained that the Directive in question did not require that injunctive powers should be available to national authorities to deal with possible infringements of national provisions transposing Community law, but that a proposal for a Directive containing such injunctive powers was being considered. In summary, the complaint to the Ombudsman made three allegations:

- the time taken to deal with the complaint to the Commission was excessive;
- the Commission's letter dated 7 October 1997 contained irrelevant information;
- the Commission had failed to deal properly with the issues raised in the complaint and by approving the revised wording of the DTI's guidance booklet the Commission had colluded with the UK government's failure to implement Directive 90/314 properly and effectively.

As regards the third allegation, the complainant referred to the fact that the guidance booklet omits key words that appear both in the Directive and in the Regulations through which the Directive was transposed into domestic law. Firstly, the law provides that a surcharge may be imposed only "*if the contract states precisely how the revised price is to be calculated*", whereas the booklet omits the words "*precisely*" and "*to be*". According to the complaint, package tour companies do not, in practice, explain in their contracts the method by which surcharges will be calculated. Secondly, the law provides that surcharges may be imposed only in respect of a limited range of items including "*fees chargeable for services such as landing taxes or embarkation or disembarkation fees at ports or airports*". However, the booklet refers only to "*fees chargeable for services*" and, in practice, package tour companies frequently add amounts in respect of administration charges and agents' commissions, which they are not entitled to charge. According to the complainant, the consumer protection which the Directive aims to provide is thereby negated.

THE INQUIRY

The Commission's opinion The complaint was forwarded to the Commission. The Commission's opinion included, in summary, the following points: The complainant had complained to the Commission about both the text of the guidance booklet and the absence of an enforcement mechanism in case a package travel contract does not "*state precisely how the revised price is to be calculated*". The Commission informed the UK authorities of the complaint on 6 December 1995. In a letter of 7 March 1996 the UK authorities took the view that the guidance booklet was not misleading. However, in a meeting with officials of DG XXIV on 26 July 1996, the UK authorities showed their readiness to modify the text of the booklet. Taking into account the new text, which was communicated on 10 October 1996, the Commission decided to close the file on 19 March 1997 because it considered that the UK was not in breach of Community law. The complainant was informed of this decision and the reasons for it by letter of 7 October 1997. That letter also contained clear and detailed information on the questions raised by the complainant concerning the issue of enforcement. The Commission's opinion also expressed regret for the delay between closing the file (19 March 1997) and informing the complainant of this decision (7 October 1997). **The complainant's observations** In his observations, the complainant maintained the allegations of excessive delay, irrelevant information and collusion in misrepresenting the meaning of the Directive. He repeated his view that the Commission had ignored his main point about the importance of the precise wording of the Directive. In this respect, he considered the revised wording of the DTI guidance booklet to be no better than the original.



THE DECISION

1 Preliminary remarks concerning the Commission's procedures for dealing with complaints concerning infringements of Community law by Member States. 1.1 The Commission closed its file on the complaint in this case in March 1997. In April 1997 the Ombudsman began an own initiative inquiry into the possibilities for improving the quality of the Commission's administrative procedures for dealing with complaints concerning infringements of Community law by Member States. (2) During the own-initiative inquiry the Commission indicated that it had adopted an internal rule of procedure that a decision either to close a file without taking any action, or 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. 1.2 Furthermore, the Commission undertook that, apart from cases where a complaint is obviously without foundation and cases where nothing further is heard from the complainant, the Commission will ensure that a complainant is informed of its intention to close a case. It appears, therefore, that in cases such as the present, in which the Commission finds that there is no infringement of Community law, complainants should have the possibility to put forward views and criticisms concerning the Commission's point of view before the Commission commits itself to a final conclusion that there is no infringement. *2 The complaint of excessive delay.* 2.1 In the present case, the delay between registration of the complaint and the Commission's decision to close the file was over two years. In its opinion, the Commission apologized for the further delay (nearly seven months) before the complainant was informed of this decision. 2.2 The Commission's adoption of the internal rule referred to in paragraph 1.1 above and the commitment referred to in paragraph 1.2 above should prevent unnecessary delay in dealing with future complaints. It therefore appears that the Commission has already acted to ensure that future cases are dealt with in approximately half the time taken to deal with the present case. In view of this commitment and of the Commission's apology referred to in paragraph 2.1 above, no further action by the Ombudsman appears necessary. *3 The allegation that the Commission's letter dated 7 October 1997 contained irrelevant information.* 3.1 The Commission's letter to the complainant dated 7 October 1997 informed him of the Commission's view that the modified text of the DTI guidance booklet met the necessary demands for clarification and that the Commission had decided not to go further into the matter. As noted in paragraph 1.2 above, complainants should, in future, have the opportunity to put forward views and criticisms concerning the Commission's point of view before the decision to close a case is made. 3.2 According to the complainant, the Commission included irrelevant material in its letter: in particular, the additional explanation concerning the absence of a requirement of injunctive provisions to enforce Directive 90/314 and the information about a proposal for a new Directive which would require such provisions. 3.3 The complaint to the Commission dated 15 August 1995 expressly raised the issue of the absence of any means of enforcement of the Directive. The Ombudsman therefore considers that it was correct for the Commission to deal with this matter in its letter to the complainant. Furthermore, it does not appear inappropriate for the Commission also to volunteer information about legislative proposals relating to enforcement. 3.4 There appears, therefore, to be no maladministration in relation to this aspect of the complaint. *4 The allegation that the Commission failed to deal properly with the issues raised by the complaint and colluded with a failure by the UK government to implement Directive 90/314 properly and effectively.* 4.1 The



complainant's main claim in relation to this aspect of the case concerns the fact that the DTI guidance booklet does not reproduce exactly the wording of the Directive and transposing Regulations. He alleges that, as a result, package tour operators regularly include in their contracts provisions which are void according to the Directive and transposing Regulations and that the consumer protection which the Directive aims to provide is thereby negated. According to the complainant, the Commission has failed to deal satisfactorily with this complaint and by approving the revised wording of the DTI guidance booklet has colluded with a failure by the UK government to implement Directive 90/314 properly and effectively. 4.2 In its opinion, the Commission refers to its letter to the complainant dated 21 January 1998 in reply to the complainant's letter dated 25 November 1997. The complainant's letter explained why he considered the revised wording of the guidance booklet to be unacceptable. The Commission's reply stated that Member States are obliged only to transpose and implement Directive 90/134 and that they have no obligation to publish and distribute information on the measures taken to comply with the Directive. Consequently the guidance booklet could be judged to infringe the Directive only if it gravely endangered its aim, which did not seem to be the case. The Commission's reply also expressed the view that enforcement provisions do not seem to be necessary, because if a package travel contract fails to state precisely how the revised price is to be calculated, the sanction is simply that the organiser will not be entitled to any additional payment and that this is in full compliance with Article 4 (4) (a) of the Directive. 4.3 The Commission has therefore responded to the arguments presented by the complainant. It has made clear what it considers the Member State's legal obligations to be and why it considers that there is no infringement of Community law by the Member State. There is no evidence available to the Ombudsman to suggest maladministration by the Commission in its assessment of these matters. 4.4 The correspondence between the complainant and the Commission (referred to in paragraph 4.2 above) took place after the Commission had already closed the file on the complaint. As noted in paragraph 1.2 above, in future, complainants should have the possibility to put forward views and criticisms concerning the Commission's point of view before the Commission commits itself to a final conclusion that there is no infringement. 4.5 In view of the above, there appears to be no maladministration in relation to this aspect of the complaint. 5 *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 therefore closes the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob Söderman

(1) Directive 90/314/EEC on package travel, package holidays and package tours, 1990 OJ L 158/61; The Package Travel, Package Holidays and Package Tours Regulations 1992, SI 1992 3288.

(2) 303/97/PD, reported in the European Ombudsman's Annual Report for 1997 pp 270-274 and see the Commission's 15th Annual Report on Monitoring the Application of Community law (1997), Introduction pp III-IV (COM (1998) 317 final).