

## **Päätös asiassa 183/2006/MF - Väite vallan väärinkäytöstä tietoihin tutustumisen osalta**

Päätös

**Kanteluasia 183/2006/MF - Tutkittavaksi otetut kantelut, pvm 06/03/2006 - Päätökset,  
pvm 21/02/2007**

*Yhteenvedo päätöksestä kanteluun 183/2006/MF Europolia vastaan*

Kantelija pyysi Ranskan tietosuojakomissiota (CNIL) vahvistamaan, säilyttikö Europol häntä koskevia tietoja. CNIL välitti kirjeen Europolille, joka ilmoitti kantelijalle, että Europolilla ei ollut häntä koskevia henkilötietoja, joihin hänellä Europol-yleissopimuksen 19 artiklan 1 kohdan ja sovellettavan Ranskan lainsäädännön mukaisesti oli oikeus tutustua. Muutoksenhakukomitea vahvisti Europolin päätöksen.

Oikeusasiamiehelle tekemässään kantelussa kantelija väitti, että Europol oli virheellisesti kieltäytynyt antamasta tietoja häntä koskevista tiedoista ja myöntämästä hänelle oikeutta tutustua näihin tietoihin. Hänen mukaansa tämä oli vallan väärinkäyttöä. Kantelija väitti lisäksi, että Europol ei ollut käsitellyt huolellisesti hänen muutoksenhakukomitealle tekemäänsä valitusta, koska sen vastauksen ranskankielinen käännös oli osoitettu toiselle muutoksenhakijalle.

Europolin johtaja ilmoitti oikeusasiamiehelle, että tämän kirje, jossa Europolilta pyydettiin lausuntoa kantelusta, oli välitetty Europolin yhteiselle valvontaviranomaiselle (JSB).

Oikeusasiamiehelle lähettämässään kirjeessä JSB totesi, että muutoksenhakukomitean päätös oli kaikkia osapuolia sitova. EY:n perustamissopimuksen 195 artiklan 1 kohdassa säädetään, että oikeusasiamies tutkii mahdollisia hallinnollisia epäkohtia niitä tapauksia lukuun ottamatta, joissa epäilyksenalaisia seikkoja käsitellään tai on käsitelty oikeudenkäynnissä. Koska muutoksenhakukomiteaa oli pidettävä riippumattomana komiteana, joka tarjosi yksittäisille henkilöille oikeuskeinon Europolin päätöksiä vastaan, JSB oletti, että tämä poikkeus koski myös käsiteltävänä olevaa asiaa. Sen väitteen osalta, että kantelijan muutoksenhakua ei ollut käsitelty huolellisesti, JSB totesi, että muutoksenhakukomitea oli tehnyt kaksi päätöstä kahdessa eri asiassa ja että kantelijan muutoksenhakua koskevan päätöksen ranskankielisen käännöksen ensimmäinen sivu oli epähuomiossa korvattu toisen päätöksen ranskankielisen käännöksen ensimmäisellä sivulla. JSB korosti, että tällaisia virheitä ei pitäisi sattua, ja lisäsi, että se lähettäisi kantelijalle pahoittelunsa tästä virheestä.



Päätöksessään oikeusasiamies huomautti, että 195 artiklan 1 kohdassa mainittu poikkeus oli sovellettavissa vain tapauksiin, joita oli käsitelty tai jotka olivat käsiteltävinä tuomioistuimessa, ja että tämän tulkinnan vahvisti oikeusasiamiehen ohjesäännön 1 artiklan 3 kohta. Oikeusasiamies totesi, että hän ei ollut vakuuttunut siitä, että muutoksenhakukomiteaa tulisi pitää EY:n perustamissopimuksen 195 artiklan 1 kohdassa tarkoitettuna lainkäyttöelimenä ja että se seikka, että se oli tutkinut jotakin tiettyä tapausta, näin ollen estäisi häntä tutkimasta asiaa. Hän katsoi kuitenkin, että hänen ei ollut tarpeen ottaa tältä osin lopullista kantaa käsiteltävänä olevassa asiassa. Oikeusasiamies totesi tässä yhteydessä, että kantelija ei ollut esittänyt konkreettisia tietoja, jotka olisivat tukeneet hänen väitettään, jonka mukaan Europolin päätös oli ollut väärä ja siihen olisi liittynyt vallan väärinkäyttöä. Muutoksenhakukomitean päätöksen huolellinen tarkastelu ei liioin tuonut sellaista tietoa, joka olisi asettanut Europolin päätöksen kyseenalaiseksi. Näin ollen oikeusasiamies katsoi, ettei ollut perusteita sille, että hän jatkaisi kantelijan ensimmäisen väitteen tutkimista.

Sen väitteen osalta, jonka mukaan kantelijan muutoksenhakua ei ollut käsitelty huolellisesti, oikeusasiamies totesi, että JSB oli esittänyt kantelijalle anteeksipyyntönsä tehdyn virheen johdosta. Oikeusasiamies katsoi näin ollen, ettei ollut perusteita jatkaa myöskään tapauksen tämän osa-alueen tutkimista.

Strasbourg, 21 February 2007

Dear Mr X,

On 12 December 2005, you made a complaint to the European Ombudsman against Europol concerning a request for access to data relating to you. On 21 January 2006, you sent me further documents related to your complaint.

On 6 March 2006, I forwarded the complaint to the Director of Europol. On 20 March 2006, the Director of Europol informed me that my letter of 6 March 2006 had been forwarded to Europol's Joint Supervisory Body. The Joint Supervisory Body sent me the English version of its opinion on 3 May 2006 and the French translation on 30 May 2006.

On 9 June 2006, you sent me a further letter related to your complaint. On 19 June 2006, I forwarded the opinion of Europol's Joint Supervisory Body to you with an invitation to make observations, which you sent on 7 July 2006. On 17 September 2006, you sent me a further letter related to your complaint.

I am writing now to let you know the results of the inquiries that have been made.

## THE COMPLAINT

According to the complainant, the relevant facts are, in summary, as follows:

On 10 January 2004, the complainant addressed a letter to the French Data Protection Commission ("CNIL") in which he requested that it ascertain whether data relating to him were



stored by Europol. On 26 February 2004, the CNIL forwarded the letter to Europol.

By letter dated 14 June 2004, Europol informed the complainant that it had checked its files and that no data concerning him, to which he was entitled to have access, in accordance with Article 19(1) of the Europol Convention in combination with the applicable legislation of France, were held by Europol.

On 4 July 2004, the complainant lodged an appeal against Europol's decision of 14 June 2004.

By decision of 12 December 2005, the Appeals Committee of Europol's Joint Supervisory Body ("JSB") upheld Europol's decision of 14 June 2004. The Appeals Committee referred, in particular, to Article 9(2) of the Convention of the Council of Europe of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, which foresees three exceptions to the right of access. It further stated that, pursuant to Article 19(3) of the Europol Convention, the right of access should be exercised in accordance with the law of the Member State where the right was claimed, in this case, France. The Appeals Committee considered that, in view of the law and practice in France regarding the right of access in relation with data handled by Europol, the decision of 14 June 2004 had been taken in compliance with Article 19(3) of the Europol Convention.

In his complaint to the European Ombudsman, the complainant submitted that none of the three exceptions foreseen in Article 9(2) of the Convention of the Council of Europe of 28 January 1981, on which Europol had based its decision, applied to his case. He stated that Europol's interpretation of this Article constituted an abuse of power. The complainant further stated that he had already contacted the CNIL and other relevant French authorities and that they had refused to give information concerning data relating to him.

On 21 January 2006, the complainant sent the Ombudsman a further letter related to his complaint. In this letter, he further alleged that Europol had failed properly to deal with his appeal to the Appeals Committee of 4 July 2004 because the French translation of its reply concerned another appellant.

On the basis of the complaint and of the complainant's further letter dated 21 January 2006, it emerged that that the complainant submitted the following allegations:

- Europol wrongly refused to give information about data relating to the complainant and to grant him access to these data. This constituted an abuse of power.
- Europol failed carefully to deal with the complainant's appeal of 4 July 2004 to the Appeals Committee because the French translation of its reply was addressed to another appellant.

The complainant claimed that he should be granted access to data relating to him that are in the possession of Europol and the national authorities.

## **THE INQUIRY**

### **The Ombudsman's approach**



The Ombudsman decided to open an inquiry into the complainant's case. However, the Ombudsman informed the complainant that he had decided to consider as inadmissible and, in accordance of Article 2(1) of his Statute, close his claim to be given access to data relating to him that were in the possession of national authorities, because this aspect of the case was not directed at a Community institution or body.

Given that the complainant had pointed out in his complaint that he had already contacted the CNIL and other relevant French authorities concerning this issue, the complainant was advised to refer the matter to the French national Ombudsman.

The Ombudsman forwarded the complaint to Europol, asking the latter for its opinion.

#### **The Europol Director's letter of 20 March 2006 to the Ombudsman**

On 20 March 2006, Europol's Director informed the Ombudsman that, given that " *the complainant questioned the findings and the handling by Europol's Joint Supervisory Body of his appeal against an Europol decision regarding his right of access to data relating to him and possibly stored by Europol* " and that " *the Joint Supervisory Body, pursuant to Article 24(1) of the Europol Convention, was independent from Europol* ", the Ombudsman's letter of 6 March 2006 asking for an opinion on the complaint had been forwarded to the JSB.

#### **The JSB's opinion**

The opinion of the JSB on the complaint was, in summary, as follows:

General remarks as regards the forwarding of the Ombudsman's letter of 6 March 2006 to the JSB and on the status of the Appeals Committee

By creating Europol, a European platform for the exchange and handling of personal data was set up. In view of this, one of the recitals of the Europol Convention mentions that particular attention must be paid to the protection of the rights of individuals, and in particular to the protection of their personal data. For this reason, Article 14 of the Europol Convention refers to a standard of data protection corresponding to the principles of the Convention of the Council of Europe of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data ("Convention 108") and to Recommendation No R (87) of the Committee of Ministers of the Council of Europe of 17 September 1985 ("Recommendation 87"), regulating the use of personal data in the police sector. Taking into account these principles, a specific data protection regime for Europol was created in the Europol Convention.

Following these data protection principles, Article 24 of the Europol Convention set up the JSB as an independent supervisory body, with the task of reviewing Europol's activities in order to ensure that the rights of the individual are not violated by the handling of personal data held by it. These rights are specified in the Europol Convention and more specifically in Article 19, which deals with the right of access and to have data checked by Europol, and Article 20(4), which concerns the right to have data corrected or deleted.

In safeguarding the rights of the individuals, the Europol Convention also provided individuals with the right to request the JSB to ensure that the manner in which personal data were handled by Europol is lawful and accurate.

The JSB had adopted Rules of Procedure which, according to Article 24(7) of the Europol



Convention, had been unanimously approved by the Council.

Both Convention 108 and Recommendation 87 foresaw a remedy in case an individual's request was not complied with. Principle 6.6 of Recommendation 87 specifically mentions a right to appeal to a supervisory authority. Since the Europol Convention does not create the possibility for individuals to submit their case to the Court of Justice of the European Communities, and in order to provide the individual with a legal procedure to appeal against Europol's decisions, Article 24(7) of the Europol Convention instructs the JSB to set up a special committee. This is the Appeals Committee of the JSB.

Individuals may appeal to the Appeals Committee of the JSB against a decision of Europol on a request (a) for access to data, (b) to have these data checked or (c) for correction or deletion. According to Article 24(7) of the Europol Convention, the decisions of the Appeals Committee are final as regards all parties concerned.

The Europol Convention and the specific provisions in the Rules of Procedure thus clearly create an independent and specific legal provision for the individual to appeal against Europol decisions.

In order to underline the independent status of the Appeals Committee, the Council, when unanimously approving the Rules of Procedure, had adopted a Declaration relating to the membership of the Appeals Committee.

Comments on the complainant's allegations and claim

As regards the complainant's first allegation, after having received Europol's decision on his request that it ascertain whether data relating to him were stored by the latter, the complainant lodged an appeal against that decision. By decision of 12 December 2005, the Appeals Committee concluded that Europol's decision had been taken in compliance with Article 19(3) of the Europol Convention. This decision was binding for all parties concerned.

Since the Appeals Committee was to be regarded as an independent committee providing individuals with a legal remedy against Europol's decisions, the Europol's JSB assumed that the "*exception of Article 195, second sentence*" (1) of the EC Treaty applied to the legal proceedings in the Appeals Committee in its judicial role.

As regards the complainant's second allegation, on 12 December 2005, two decisions in two different cases had been adopted by the Appeals Committee. It emerged from the enclosures to the complaint that the first page of the French translation of the decision on the complainant's appeal had been accidentally replaced by the first page of the French translation in the other decision. Although the working procedures in the secretariat aimed to deal with the legal proceedings and decisions of the Appeals Committee very carefully, apparently a mistake had been made. A consultation with the data protection secretariat responsible for the administrative procedures did not provide any other explanation for this regrettable, human error. It was clear that such a mistake should not take place, and the JSB would send its apologies to the complainant for this error.

**The complainant's letter of 9 June 2006**



By letter of 9 June 2006, the complainant informed the Ombudsman that, following his intervention, he had received an apology from the JSB as regards the mistake concerning his name in the decision of the Appeals Committee. He enclosed the relevant letter from the JSB of 29 May 2006.

#### **The complainant's observations**

In his observations on the JSB's opinion, which were submitted on 7 July 2006, the complainant maintained his complaint. He also submitted that there was an infringement of fundamental rights because the decisions of the Appeals Committee were binding for all parties concerned. The complainant further pointed out that the JSB opinion was irregular from a legal point of view because its pages were not numbered and because the last page had not been signed.

## **THE DECISION**

### **1 The scope of the Ombudsman's inquiry**

1.1 On 10 January 2004, the complainant sent a letter to the French Data Protection Commission ("CNIL") in which he requested that it ascertain whether data relating to him were stored by Europol. On 26 February 2004, the CNIL forwarded the letter to Europol. By letter dated 14 June 2004, Europol informed the complainant that it had checked its files and that no data concerning him to which, in accordance with Article 19(1) of the Europol Convention in combination with the applicable legislation of France, he was entitled to have access, were handled at Europol. On 4 July 2004, the complainant lodged an appeal against Europol's decision of 14 June 2004. By decision of 12 December 2005, the Appeals Committee upheld Europol's decision of 14 June 2004. In his subsequent complaint to the Ombudsman and his further letter dated 21 January 2006, the complainant alleged that Europol had wrongly refused to give information about data relating to him and to grant him access to these data. In the complainant's view, this constituted an abuse of power. The complainant further alleged that Europol had failed carefully to deal with his appeal of 4 July 2004 to the Appeals Committee because the French translation of its reply was addressed to another appellant. The complainant claimed that he should be granted access to data relating to him in the possession of Europol and the national authorities.

1.2 In his reply dated 6 March 2006, the Ombudsman informed the complainant that, he had decided to consider as inadmissible and, on the basis of Article 2(1) of his Statute, close his claim to be given access to data relating to him in the possession of national authorities, because this aspect of the case was not directed at a European institution or body.

1.3 The present decision therefore only deals with the complainant's allegations and claim directed at Europol.

1.4 Given that the complaint was initially directed against Europol, the Ombudsman forwarded it to the Director of Europol and asked Europol to submit an opinion on it. However, on 20 March 2006, the Director of Europol informed the Ombudsman that, given that " *the complainant questioned the findings and the handling by Europol's Joint Supervisory Body of his appeal against an Europol decision regarding his right of access to data relating to him and possibly stored by Europol* " and that " *the Joint Supervisory Body, pursuant to Article 24(1) of the Europol*



*Convention, was independent from Europol* ", the Ombudsman's letter of 6 March 2006 asking for an opinion on the complaint had been forwarded to the Europol's JSB.

1.5 It emerges from the above that Europol argues that both the JSB and the Appeals Committee are independent of it. The Ombudsman considers that this assessment appears to be correct, given that Article 24(1) of the Europol Convention provides as follows: "*An independent joint supervisory body shall be set up, which shall have the task of reviewing, in accordance with this Convention, the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by Europol. (...) In the performance of their duties, the members of the joint supervisory body shall not receive instructions from any other body*". Given that, pursuant to Article 24(7) of the Europol Convention, the Appeals Committee is set up by the JSB, this committee must also be considered as being independent from Europol.

1.6 The Ombudsman takes the view, however, that the fact that a body is independent vis-à-vis another body does not necessarily mean that it has to be considered as a separate Community body within the meaning of Article 195 of the EC Treaty. For example, the Ombudsman frequently has to deal with complaints about recruitment procedures handled by the European Personnel Selection Office ("EPSO"). Although selection boards play a major role in such recruitment procedures and although these selection boards are, within the field of their responsibilities, independent of EPSO, the Ombudsman has always taken the view that the complainee in such cases is EPSO, and not the selection board concerned. However, the Ombudsman considers that there is no need in the present case to decide whether, for the purposes of Article 195 of the EC Treaty, the JSB (or the Appeals Committee) should be considered as Community bodies to be distinguished from Europol.

1.7 The Ombudsman notes that the complainant's first allegation concerns a decision adopted by Europol. Although the relevant decision was confirmed by the Appeals Committee, it appears clear that the first allegation is directed at Europol's decision, and not at the decision of the Appeals Committee. The Ombudsman therefore considers it appropriate to consider that the inquiry into this allegation concerns Europol and that the present decision should be addressed to it. The potential relevance of the decision of the Appeals Committee in this context will be discussed in point 2 below.

1.8 The Ombudsman notes that the complainant's second allegation is also directed at Europol. It should however be noted that this allegation concerns the way in which a decision of the Appeals Committee was brought to the attention of the complainant. In reality, this allegation must therefore be understood as being directed at the Appeals Committee.

1.9 However, the Ombudsman notes that, in its opinion, the JSB explained that, on 12 December 2005, two decisions in two different cases were adopted by the Appeals Committee and that the first page of the French translation of the decision on the complainants appeal had accidentally been replaced by the first page of the French translation in the other decision. The JSB concluded that, although the working procedures in its secretariat aimed at dealing very carefully with the legal proceedings and decisions of the Appeals Committee, a mistake had





apparently been made. It added that a consultation with the data protection secretariat responsible for the administrative procedures had not provided any other explanation for this regrettable human error. The JSB stressed that such mistakes should not occur and added that it would send its apologies to the complainant for this error. The Ombudsman notes that in its letter to the complainant of 29 May 2006 the JSB did indeed apologise for the mistake that had been made.

1.10 In view of these circumstances, the Ombudsman considers that, even if the JSB or the Appeals Committee were to be considered as a Community body and to be distinguished from Europol for the purposes of Article 195 of the EC Treaty, there would in any event be no grounds to pursue his inquiry into this aspect of the case.

1.11 The Ombudsman further notes that, in his observations, the complainant submitted that the JSB's opinion was irregular from a legal point of view because its pages were not numbered and because the last page had not been signed.

1.12 In this context, it should be noted that the JSB had sent its opinion to the Ombudsman first in English and subsequently provided a translation into French (the language of the case). It was this translation that had been forwarded to the complainant by the Ombudsman. Given that the relevant text constituted a translation of the English original, there was no need for it to be signed. The English original of the JSB's opinion had been duly signed. A copy of this original is attached for the complainant's information. As regards the presentation of the JSB's opinion, the Ombudsman is of the view that it would have been useful to add page numbers. However, the Ombudsman considers it obvious that their absence does not make the opinion invalid.

## **2 As regards Europol's handling of the complainant's request to give him information about data relating to him and to grant him access to these data**

2.1 In his complaint to the Ombudsman, the complainant alleged that Europol had wrongly refused to give information about data relating to him and to grant him access to these data. In the complainant's view, this constituted an abuse of power.

2.2 In its opinion, the JSB stated that, after having received Europol's decision on his request that it ascertain whether data relating to him were stored by the latter, the complainant lodged an appeal against that decision. By decision of 12 December 2005, the Appeals Committee concluded that Europol's decision had been taken in compliance with Article 19(3) of the Europol Convention. According to the JSB, the decision of the Appeals Committee was binding for all parties concerned. Since the Appeals Committee was to be regarded as an independent committee providing individuals with a legal remedy against Europol's decisions, the JSB assumed that the "*exception of Article 195, second sentence*" (2) of the EC Treaty applied to the legal proceedings in the Appeals Committee in its judicial role.

2.3 In his observations on the JSB's opinion, the complainant further submitted that there was an infringement of fundamental rights because the decisions of the Appeals Committee were binding for all parties concerned.

2.4 The Ombudsman recalls that Article 195(1) of the EC Treaty is worded as follows:





*" 1. The European Parliament shall appoint an Ombudsman empowered to receive complaints (...) concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.*

*In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. (...) "*

2.5 The Ombudsman takes the view that the exception set out in the first paragraph of Article 195(1), according to which the Ombudsman is prevented from examining a case where the relevant facts are or have been the subject of "legal proceedings", is only applicable where a case was or is pending before a court. This interpretation is confirmed by Article 1(3) of the Ombudsman's Statute, which provides that " [t]he Ombudsman may not intervene in cases before courts or question the soundness of a court's ruling. "

2.6 The Ombudsman has carefully examined the Europol Convention and the Rules of Procedures of the JSB (3) , and particularly those governing the Appeals Committee. It appears to emerge from these rules that the Appeals Committee has been conceived as an independent control mechanism with a view to providing citizens with a remedy against Europol in the area concerned. It further appears that the provisions governing the Appeals Committee are to some extent similar to those that can usually be found in the rules applicable to a judicial body. However, the Ombudsman is nevertheless not convinced that the Appeals Committee should be considered as constituting a judicial body for the purposes of Article 195 of the EC Treaty and that the fact that it examined a given case should therefore prevent the Ombudsman from carrying out an inquiry. In this context, the Ombudsman notes in particular that Article 25(1) of the Rules of Procedure of the JSB stipulates that a meeting of the Appeals Committee shall only be effective if four fifths of its members or their alternates attend. It thus appears that decisions of the Appeals Committee can be taken even though certain of its members are absent. Furthermore, Article 12(3) of these Rules provides that a member of the Appeals Committee who is unable to attend a meeting may be represented by his alternate. It thus appears that the actual composition of the body that deals with a given appeal is not clearly established at the very outset.

In these circumstances, the Ombudsman considers that the fact that the Appeals Committee has already examined the relevant decision of Europol does not oblige him to close his inquiry on account of the exception concerning legal proceedings that is set out in the second paragraph of Article 195(1) of the EC Treaty.

2.7 The Ombudsman notes that, in its opinion, the JSB has stressed the fact that the decisions of the Appeals Committee are binding for all parties concerned. This argument is based on Article 24(7) of the Europol Convention (4) , which states that the JSB " (...) shall set up internally a committee comprising one qualified representative from each Member State with



*entitlement to a vote. The committee shall have the task of examining the appeals provided for in Articles 19(7) and 20(4) by all appropriate means. Should they so request, the parties, assisted by their advisers if they so wish, shall be heard by the committee. The decisions taken in this context shall be final as regards all the parties concerned "* (emphasis added).

2.8 The Ombudsman considers that this last sentence appears to have been intended to ensure that a decision of the Appeals Committee on an appeal against a decision by Europol concerning access to data or information relating to such data is final and cannot be called into question by any other authority. It could therefore be argued that this also applies to the Ombudsman and that the latter should not be entitled to open or proceed with an inquiry on a complaint directed at Europol, once the Appeals Committee has dealt with the relevant issue. In support of such an interpretation, one could in particular refer to the fact that the Europol Convention constitutes an international treaty entered into by the Member States of the EU in 1995, that is to say the same contracting parties that also set up the EC Treaty. On the other hand, the adoption (and ratification) of such a convention was foreseen by Article 34(2) (d) of the Treaty on European Union ("TEU"). This provision is part of Title VI of the TEU. However, Article 41 of the TEU stipulates that Article 195 of the EC Treaty "*shall apply to the provisions relating to the areas referred to in this Title*". In light of this provision, it appears rather doubtful whether Article 24(7) of the Europol Convention could indeed limit the Ombudsman's mandate in the way outlined above.

2.9 The Ombudsman considers, however, that it is not necessary for him to take a definitive position on this issue in the present case. In the Ombudsman's view, this issue would only need to be resolved if there were any tangible indications pointing to the possibility that there was any maladministration in the present case.

2.10 It should be noted that Europol's decision states that "*[i]n accordance with the procedure stipulated in the Europol Convention and the applicable national legislation of France, I would like to inform you that, following your request, checks of Europol files have been made. Following Article 19 of the Europol Convention in combination with the applicable legislation of France, I would like to inform you that no data concerning you are processed at Europol to which you are entitled to have access in accordance with Article 19 of the Europol Convention*". In its decision, the Appeals Committee stated that "*[i]n view of the law and practice in France regarding the right of access in relation with data processed by Europol and in view of Article 19(3) of the Europol Convention, the decision of Europol on the request from [ the complainant ] is in compliance with Article 19(3) of the Europol Convention.*" The reasoning used both by Europol itself and by the Appeals Committee is thus fairly succinct. The Ombudsman considers, however, that this fact as such is not surprising, since Europol and the Appeals Committee would otherwise have had to disclose facts that, in their view, could not be disclosed.

2.11 However, the Ombudsman notes that the complainant has not provided, either in his complaint or in his observations, any concrete elements that would support his allegation that Europol acted wrongly or abusively when, after having checked its files, it decided that there were no data concerning him to which he was entitled to have access in accordance with Article 19(1) of the Europol Convention in combination with the applicable legislation of France. Nor



has a careful examination of the decision of the Appeals Committee of 12 December 2005 yielded any element that would call Europol's decision into doubt. In view of these circumstances, the Ombudsman considers that there appear to be no grounds to pursue his inquiry into the complainant's allegation.

2.12 In his observations, the complainant argued that there was an infringement of fundamental rights because the decisions of the Appeals Committee were binding on all parties concerned. It is not clear whether the complainant thus wished to submit a further allegation. The Ombudsman notes that any such allegation would in effect challenge a provision contained in the Europol Convention, namely, Article 24(7) thereof, which provides that the decisions of the Appeals Committee shall be final as regards all the parties concerned. It should be recalled in this context that, pursuant to Article 2(2) of his Statute, the Ombudsman can only deal with complaints concerning maladministration. He is therefore unable to examine complaints that concern the merits of legislation or international treaties. The Ombudsman would therefore not be in a position to deal with any allegation the complainant might wish to raise in this context.

### **3 The complainant's claim**

3.1 The complainant claimed that he should be granted access to data relating to him in the possession of Europol.

3.2 In view of the above and of his conclusion in point 2.11, the Ombudsman concludes that no further inquiries appear to be necessary into the complainant's claim.

### **4 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to be no grounds for further inquiries into this case. The Ombudsman therefore closes the case.

The Director of Europol will be informed of this decision. A copy of the present decision will also be sent to the Director of the JSB for his information.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) The Ombudsman understands that Europol is referring to the second paragraph of Article 195(1) of the EC Treaty.

(2) The Ombudsman understands that Europol is referring to the second paragraph of Article 195(1) of the EC Treaty.

(3) Act No 1/99 of the Joint Supervisory Body of Europol of 22 April 1999 laying down its rules of procedure, OJ 1999, C, 149- 01).

(4) The Europol Convention is available on Europol's website (<http://www.europol.eu.int/index.asp?page=legalconv> [Linkki]).

