

Cinneadh i gcás 2172/2005/MHZ - Urraíocht uachtaránacht na comhairle

Cinneadh

Cás 2172/2005/MHZ - Tosaithe an 26/07/2005 - Cinneadh an 04/12/2006

Scríobh an gearánaí chuig an gComhairle ag rá gurbh ábhar imní leis an urraíocht tráchtála a bhí ag Uachtaránacht na Comhairle. Thagair sé go háirithe do shampla Uachtaránacht na hÉireann (Eanáir go Meitheamh 2004). D'fhreagair an Rúnaíocht go gcuirfeadh sí an litir ar aghaidh chuig an iar-Uachtaránacht Éireannach agus chuig Uachtaránacht reatha Lucsamburg. Ina fhreagra ar an ngearánaí, labhair Uachtaránacht Lucsamburg faoina shuíomh gréasáin agus dúirt nach raibh aon urraithe ann.

Mhaigh an gearánaí nár fhreagair an Chomhairle a cheist faoi urraíocht tráchtála ar an Uachtaránacht. D'éiligh sé freagra ar a cheist.

Ina Tuairim, mheas an Chomhairle nár bhain ceist urraíocht tráchtála a hUachtaránachta le freagracht na Comhairle mar institiúid de chuid an Chomhphobail.

Ba é meas an Ombudsman gur freagra uireasach a thug an Chomhairle ar an méid ab ábhar imní leis an ngearánaí agus mhol sé réiteach cairdiúil don Chomhairle, eadhon go bhféadfadh an Chomhairle a freagra ar an ngearánaí a athbhreithniú agus a fhorlíonadh ach (i) glacadh leis gur cheist í urraíocht tráchtála a hUachtaránachta a bhaineann le raon freagrachta na Comhairle mar institiúid de chuid an Chomhphobail agus (ii) a rá go raibh sí toilteanach, taobh istigh d'achar oiriúnach, beart a dhéanamh le hurraíocht den sórt a chosc nó a rialáil ar bhealach a chinnteodh go ndéanfaí bainisteoireacht chóir ar aon choinbhleacht a bheadh ann idir an leas príobháideach agus an dualgas poiblí.

Dhiúltaigh an Chomhairle do mholadh an Ombudsman ar mhaithe le réiteach cairdiúil ar an ábhar céanna agus a chuir sí in iúl ina Tuairim.

Mheas an tOmbudsman nár ghá aon fhiosrúchán eile a dhéanamh maidir le ceist ghinearálta fhreagrachta na Comhairle as a hUachtaránacht, ó gurbh í an fhadhb céanna a bhí i gceist i gcás eile (1487/2005/GG), faoinar chuir sé tuarascáil speisialta faoi bhráid Pharlaimint na hEorpa i mí Samhna na bliana 2006.

B'ábhar imní fós leis an Ombudsman, áfach, go bhféadfaí dochar a dhéanamh do mhuinín na ndaoine as an Aontas agus as an gcaoi ar fheidhmigh sé mar gheall air gur dhiúltaigh an



Chomhairle don mholadh seo beart a dhéanamh le hurraíocht tráchtála ar a hUachtaránacht a chosc nó a rialáil ar bhealach a chinnteodh go ndéanfaí bainisteoireacht chóir ar aon choinbhleacht a bheadh ann idir an leas próbháideach agus an dualgas poiblí.

Toisc gurbh é seasamh na Comhairle gurbh iad údaráis na mBallstát a bhí freagrach as eagrú na hUachtaránachta, chinn an tOmbudsman ar an scéal a chur ar a súile dóibh siúd ina gceann agus ina gceann. Mar sin scríobh sé chuig na Buanionadaithe faoin scéal.

Strasbourg, 4 December 2006

Dear Mr M.,

On 12 June 2005, you made a complaint to the European Ombudsman concerning the Council's reply to a letter you sent to the Council on 11 January 2005.

On 26 July 2005, I forwarded the complaint to the Secretary-General of the Council.

On 26 October 2005, the Council informed me that it needed more time to prepare its opinion and, on 22 November 2005, it sent its opinion in English.

On 25 November 2005, the Council sent me the translation of its opinion into Polish. I forwarded the opinion to you with an invitation to make observations, which you sent on 30 January 2006.

On 22 March 2006, my services called you in order to discuss the possibility of a friendly solution to your complaint.

On 12 April 2006, I sent to the Council my proposal for a friendly solution to your complaint. I forwarded a copy of the proposal to you on the same day, together with a translation into Polish.

On 24 May 2006, the Council replied to my proposal in English. It also sent a translation of that reply into Polish, which I forwarded to you with an invitation to send observations.

On 27 June 2006, you sent me your observations on the Council's reply to my proposal for a friendly solution to your complaint.

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

THE COMPLAINT

On 11 January 2005, the complainant sent to the Council a letter in which he expressed his concerns regarding the fact that the Irish Presidency of the Council (January to June 2004) had



been sponsored by private companies (as announced on the Presidency website: <http://www.eu2004.ie/sitetools/sponsorship.asp> [Nasc]). In his letter, the complainant took the view that the sponsorship of the Irish Presidency by private companies was against the rules of democracy, could have resulted in the loss of its independence, and could have given rise to conflicts of interest. He argued that private companies should not be allowed to sponsor the leadership of the EU; that sponsorship of the Presidency by private companies should be discontinued; and that there should be an investigation into whether such sponsoring of the Irish Presidency had had any impact on the EU legislative process.

On 27 January 2005, the Secretariat-General of the Council informed the complainant that his letter had been passed on to the Irish Presidency and to the Luxembourg Presidency (January to June 2005) in order for them to take a stance on this issue. However, up to 20 April 2005, the complainant had not received any answer. At that point, he lodged a complaint with the Ombudsman (1618/2005/MHZ) concerning the Council's failure to reply. Following the Ombudsman's intervention, the Luxembourg Presidency sent a reply to the complainant on 30 May 2005 and a copy to the Ombudsman. On 31 May 2005, the Ombudsman informed the complainant of his decision to close the case as settled by the institution but pointed out that this decision did not imply an evaluation of the substance of the answer that the Luxembourg Presidency had sent him.

The answer sent by the Luxembourg Presidency to the complainant contained a summary of the complainant's queries and information concerning the Luxembourg Presidency's website, including the fact that the Luxembourg Presidency had no website sponsors.

On 12 June 2005, the complainant lodged the present complaint with the Ombudsman, which was registered as 2172/2005/MHZ.

The complainant alleged that the Council had failed to answer his query concerning the sponsorship of the Presidency by private companies.

He claimed that he should receive an answer to his query.

In support of his allegation, the complainant argued that the Council had failed to respect Article 41 of the Charter of Fundamental Rights of the European Union.

THE INQUIRY

The Council's opinion

The Council made, in summary, the following points.

In his letter of 11 January 2006 to the Secretariat-General of the Council, the complainant argued that elements of the Irish Presidency were sponsored by private companies and expressed the fear that this circumstance could influence and therefore interfere with the



European legislative process.

Since the matter did not concern the Council's website, the Secretariat-General informed the complainant on 27 January 2005 that it was forwarding his letter to the former Irish Presidency and to the Luxembourg Presidency (which was holding the Presidency at that time). The Luxembourg Presidency replied to the complainant on 30 May 2005 and the Secretariat-General undertook the task of translating that answer into Polish.

The organisation of the Presidency, including the decision to seek sponsorship for elements of the Presidency, is, in principle, a matter for Member State authorities. It is not a matter falling within the Council's power of decision. The sponsorship concerned was a matter for the Irish government to address. In return for sponsoring elements of the Irish Presidency, sponsors were permitted to display the Presidency logo on their advertisements and products and to have their company logos placed on the Irish Presidency's website. *"The Irish authorities have pointed out that the principles and processes which informed the Irish sponsorship model made it clear to potential sponsors that the provision of goods and services for the Presidency would not impact on any policy issues or decisions being taken by the Government. Consequently, the Council fails to see how sponsorship concerned could have influenced the legislative process (which, moreover, involves other institutions as well)."*

After receiving the complainant's letter of 11 January 2005, the Council made every effort to provide him with an answer within a reasonable time, and in accordance with its Code of Good Administrative Behaviour. On 27 January 2005, the Department of Public Information of the Secretariat-General informed the complainant that it had forwarded a copy of his request to the Irish and Luxembourg Presidencies "for acknowledgement". As regards the answer of the Luxembourg Presidency, the Council considered that its reply of 30 May 2005 could not have been more exhaustive, since neither the Luxembourg authorities nor the Council, as an EU institution, was responsible for the organisation of the Irish Presidency. The Irish authorities wrote to the complainant on 3 November 2005.

The Council concluded that there could be no maladministration on its part since it did not have responsibility in the matter raised in the complainant's allegation. The Council also stated that, as an institution, it has never been sponsored by private companies.

As regards the complainant's argument concerning the infringement of Article 41 of the Charter, the Council pointed out that the Luxembourg authorities' answer was not a decision but rather constituted a letter from these authorities addressing the complainant's concerns. The Luxembourg authorities could do little more than refer to their own website. Therefore, in their letter, they informed the complainant that the Luxembourg Presidency website was set up under the responsibility of the relevant Luxembourg authorities and did not include support from outside sponsors.

The Council also enclosed with its opinion a copy of the letter that the Irish authorities sent to the complainant on 3 November 2005. According to the Council, that letter constituted a reply to the complainant's letter of 11 January 2005, which was forwarded to the Irish authorities by the



Secretariat-General. That letter, which starts by presenting apologies to the complainant for the delay in writing to him, continues as follows:

" The success of sponsorship arrangements in recent Presidencies encouraged Ireland to take the view that the 2004 Presidency offered a valuable and important opportunity for Irish business to promote what is best about Ireland, in particular the economic, trade and tourism sectors. The Irish authorities modelled their approach on that applied by other Presidencies by inviting offers of sponsorship from companies. All sponsorship was in the form of goods or services and no cash sponsorship was offered or considered. The decision to invite sponsorship was a matter for the Irish authorities and did not involve the Council of the EU or its Secretariat General.

Bearing in mind that certain business categories particularly lend themselves to a sponsorship agreement, the Department of Foreign Affairs contacted various umbrella groups for business in Ireland to outline the sponsorship possibilities. Prior to entering into these sponsorship agreements, all offers of sponsorship were considered by the Inter-Departmental Presidency Planning Group, under the chairmanship of the Department of Foreign Affairs.

The Government of Ireland was encouraged by the number of companies that sought to enter into sponsorship arrangements either for the entire Presidency or for particular events. Sponsorship helped to develop a wider ownership in, and involvement with, the Presidency.

While public and local authorities took part in most events, this was in the context of the Government's commitment to full State support for the Presidency and, in this regard, State bodies were not considered sponsors. The vast majority of the considerable financial cost incurred during Ireland's Presidency was borne by the State authorities.

The Government of Ireland has emphasised on several occasions that, other than allowing the sponsors to use the Presidency logo or placing the companies' logos on the Presidency website, none of the sponsors sought any favours or return for their sponsorship. It was also made clear to sponsors that the Irish Government's position on any issue or proposal would not be influenced or compromised by such sponsorship. "

The complainant's observations

The complainant's observations are, in summary, as follows.

The complaint concerned the general issue raised by the fact that a Presidency of the Council had been sponsored by private companies. The complainant's letter of 11 January 2005 had referred to the website of the Irish Presidency, on which the sponsoring was announced, only in order to demonstrate the fact that such sponsoring of the Presidency by private companies had, in fact, taken place.

The Council had failed to take a position on the issue of sponsorship of the Presidency by private companies, either before or after the answers sent to the complainant by the Irish and Luxembourg Presidencies.



The letter sent to him by the Luxembourg Presidency was not an answer to his query because it focussed only on its own website.

The complainant noted that the Irish Presidency had stated that it had been sponsored by Irish firms. The complainant expressed the view that national interests should not be promoted by using EU institutions. He also pointed out that, according to its website, the Irish Presidency was also sponsored by leading international corporations, such as Microsoft and Dell.

During the Irish Presidency, the complainant was particularly interested in the legislative process concerning one specific Directive. He noted that the Irish Presidency had made intensive efforts to advance the adoption of this Directive, which appeared to be very advantageous for Microsoft. The complainant observed, however, that the European Parliament had rejected that draft. The complainant therefore questioned the Council's statement contained in its opinion, that sponsorship could not have influenced the legislative process. The complainant wished the Council to verify whether the sponsoring of the Irish Presidency by private companies had had an impact on its decision-making process.

Finally, the complainant expressed the view that, in order to ensure the democratic functioning of the Union, the Council should take responsibility for the Presidency's actions performed in the name of the Council. Otherwise, and bearing in mind that the national authorities of one Member State do not have any obligation to account for their actions to the citizens of another Member State, the Presidency, which has an impact on the decision-making process concerning all the European citizens, would not be accountable. For these reasons, the complainant deplored the fact that the Council did not see anything wrong in sponsoring of its Presidency. The complainant took the view, therefore, that sponsoring of the Council or of its Presidency should never take place and that the Council should amend its own Rules of Procedure to prohibit all sponsorship of the Presidency.

In his observations, the complainant not only responded to the Council's opinion on his original allegation and claim but also appeared to raise a number of new issues. The Ombudsman did not understand the complainant to wish to submit these new issues as additional allegations and claims on which the Council should be invited to give an opinion.

The Ombudsman's proposal for a friendly solution, described below, was therefore based only on the inquiries into the complainant's original allegation and claim.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the opinion and the complainant's observations, the Ombudsman was not satisfied that the Council had responded adequately to the complainant's allegation and claim.



The proposal for a friendly solution

Article 3(5) of the Statute of the Ombudsman directs him to seek, as far as possible, a solution with the institution concerned to eliminate the instance of maladministration and satisfy the complainant.

The Ombudsman made the following proposal for a friendly solution to the Council:

The Council could consider revising and supplementing its reply to the complainant, by (i) accepting that the question of commercial sponsorship of its Presidency is a matter within the responsibility of the Council as a Community institution and (ii) indicating its willingness, within an appropriate time-frame, to take measures to prevent such sponsorship, or to regulate it in a way that ensures that possible conflicts between private interests and public duties are properly managed.

The Ombudsman's proposal for a friendly solution was based on the following considerations:

1 The complainant sent to the Council a letter in which he expressed his concerns regarding the fact that the Irish Presidency of the Council (January to June 2004) was sponsored by private companies. The complainant took the view that the sponsorship of the Irish Presidency by private companies was against the rules of democracy and could have resulted in the loss of the Presidency's independence and have given rise to conflicts of interest. He argued that private companies should not be allowed to sponsor the leadership of the EU. The complainant claimed that sponsorship of the Presidency by private companies should be discontinued and that an investigation should be launched as to whether such sponsoring of the Irish Presidency had any impact on the EU legislative process.

The Secretariat General of the Council informed the complainant that his letter had been passed on to the former Irish Presidency and to the Luxembourg Presidency (which was holding the Presidency at that time) to allow them to state their views on the issue. The answer sent by the Luxembourg Presidency to the complainant contained a brief summary of the complainant's queries and information concerning the Luxembourg Presidency's website. It also stated that the Luxembourg Presidency had no website sponsors.

The complainant alleged that the Council had failed to answer his query concerning the sponsorship of the Presidency by private companies.

He claimed that he should receive an answer to his query.

2 In its opinion, the Council argued, in summary, that it did not have responsibility for the matter raised in the complainant's allegation. The organisation of the Presidency, including the seeking of sponsorship for certain aspects of the Presidency is a matter for the Member State authorities concerned and does not fall within the Council's power of decision. The sponsorship concerned was a matter for the Irish government to address. After receiving the complainant's letter, the Council made every effort to provide him with an answer within a reasonable time and



forwarded a copy of his request to the Irish and Luxembourg Presidencies.

The Council also stated, in summary, that it has never been sponsored by private companies as an institution, and it does not see how the sponsorship of the Irish Presidency could have influenced the European legislative process given that (i) the legislative process also involves other institutions; and (ii) the Irish authorities made it clear to potential sponsors that the provision of goods and services for the Presidency would not have an impact on any policy issues or decisions of the Irish Government.

3 In his observations, the complainant emphasised that his complaint concerned the general issue of sponsoring of a Presidency of the Council by private companies.

4 The Ombudsman notes that the answers which the complainant received in response to his letter to the Council include two main elements: namely (i) an argument that the Council as such is not responsible for its Presidency in regard to matters of sponsorship and (ii) an assertion that the sponsorship of the Irish Presidency did not influence the legislative process. The Ombudsman therefore considers that he should examine the adequacy of the answers sent to the complainant in terms of these two elements.

Responsibility of the Presidency for commercial sponsorship

5 As regards responsibility for commercial sponsorship of the Presidency, the Ombudsman notes that Article 203 of the EC Treaty provides that the office of President shall be held in turn by each Member State in the Council for a term of six months. The Ombudsman also notes that, in the context of Community law concerning access to documents, the Council has made clear in a previous opinion that it does not regard the Presidency as a separate institution (1). In the same previous opinion, the Council drew a distinction between documents written by a Member State holding the Presidency in its capacity as Presidency of the Council and documents written by that Member State not relating to its role as Presidency of the Council. It added that only the former was governed by Community law on access to Council documents.

6 The Ombudsman shares the Council's view that the Presidency is not a separate institution from the Council. Moreover, the Ombudsman considers that the distinction drawn by the Council between documents written by a Member State in its capacity as Presidency of the Council and documents written by that Member State not relating to its role as Presidency of the Council makes sense and provides a useful analogy in the present case, which concerns the reply to a citizen's concerns about sponsorship of the Presidency.

7 The Ombudsman is unable to understand, however, on what basis the Council could possibly consider that sponsorship of the Presidency of the Council (as opposed to sponsorship of a Member State that happens to be holding the Presidency) is not a matter within the responsibility of the Council as a Community institution. The Ombudsman therefore takes the view that this aspect of the Council's answer to the complainant was inadequate.

The possibility of commercial sponsorship influencing the legislative process



8 As regards the possibility of commercial sponsorship of the Council's Presidency influencing the legislative process, the Ombudsman notes that the Council stated in its opinion that it does not see how the sponsorship of the Irish Presidency could have influenced the European legislative process given that (i) the legislative process also involves other institutions; and (ii) the Irish authorities made it clear to potential sponsors that the provision of goods and services for the Presidency would not have an impact on any policy issues or decisions of the Irish Government.

9 As regards point (i), the Ombudsman sees no reason to dispute the Council's apparent view that the role of other Community institutions promotes the integrity of the legislative process. However, the Ombudsman also takes the view that, although the Council is not only one actor in the legislative process, the possibility that the Council Presidency may be influenced by commercial sponsorship would tend to undermine citizens' trust in that process and hence weaken its legitimacy. The Ombudsman points out in this context that the OECD has stated that "building trust in public institutions is a keystone of good governance" (2) .

10 As regards point (ii), the Ombudsman considers it relevant and useful for the Council to have clarified for the complainant the terms on which sponsorship was invited and accepted by the Irish Presidency. However, the Ombudsman points out that, in general, the mere assertion that a conflict of interest does not affect policy or decisions is considered to be an insufficient response if such a conflict exists. In this regard, the Ombudsman draws the Council's attention to the principles adopted by the OECD in June 2003 in its *Recommendation of the Council on OECD Guidelines for managing conflicts of interest in the public service* . The Ombudsman notes in particular, the following statement: "While a conflict of interest is not *ipso facto* corruption, there is increasing recognition that conflicts between the private interests and public duties of public officials, if inadequately managed, can result in corruption" (3) .

The Ombudsman therefore took the view that this aspect of the Council's answer to the complainant was also inadequate.

The Council's reply to the proposal for a friendly solution

The Council sent a concise reply. It stated that, for the reasons which it had already explained in detail in its opinion on the complaint, it cannot accept that the question of commercial sponsoring of its Presidency is a matter which falls within the responsibility of the Council as a Community institution. Given that the Council bears no responsibility for the decision of a government holding the Presidency to avail itself of the opportunities offered by sponsorship, the Council is not in a position to follow up on the Ombudsman's request to consider a friendly solution to the matter.

The complainants' observations

The complainant expressed his regret that the Council did not show more understanding as regards the proposal for a friendly solution. He asked the Ombudsman to use all possible legal



means to convince the Council to adopt a more conciliatory attitude.

THE DECISION

1 Adequacy of the Council's reply to a citizen's concerns about commercial sponsorship of the Presidency of the Council

1.1 The complainant alleged that the Council had failed to answer his query concerning the sponsorship of the Presidency by private companies. He claimed that he should receive an answer to his query.

1.2 After careful consideration of the opinion and the complainant's observations, the Ombudsman was not satisfied that the Council had responded adequately to the complainant's allegation and claim. The reasons for the Ombudsman's view are explained above (points 1-10).

1.3 The Ombudsman therefore proposed a friendly solution, in which he invited the Council to revise and supplement its reply to the complainant, by (i) accepting that the question of commercial sponsorship of its Presidency is a matter within the responsibility of the Council as a Community institution and (ii) indicating its willingness, within an appropriate time-frame, to take measures to prevent such sponsorship, or to regulate it in a way that ensures that possible conflicts between private interests and public duties are properly managed.

1.4 The Council's reply stated that, for the reasons which it had already explained in detail in its opinion on the complaint, it cannot accept that the question of commercial sponsorship of its Presidency is a matter which falls within the responsibility of the Council as a Community institution. Given that the Council bears no responsibility for the decision of a government holding the Presidency to avail itself of the opportunities offered by sponsorship, it is not in a position to follow up on the Ombudsman's request to consider a friendly solution to the matter.

1.5 The complainant asked the Ombudsman to use all possible legal means to convince the Council to adopt a more conciliatory attitude.

1.6 The Ombudsman has carefully considered what further steps are possible and appropriate in the light of the Council's rejection of the proposal for a friendly solution. In doing so, the Ombudsman has taken into account that the complaint concerns matters of public interest and that no personal interests of the complainant are at issue.

1.7 The Ombudsman notes that the question of the Council's responsibility for its Presidency, as regards the Presidency's website, is raised in another case (1487/2005/GG), on which the Ombudsman has presented a Special Report to the European Parliament. The Ombudsman considers that it would be useful and appropriate to draw Parliament's attention to the fact that the same question arises in the present case. The Ombudsman will write to the President of the European Parliament accordingly. The Ombudsman considers that no further action in the framework of the present inquiry is necessary as regards this aspect of the case.



1.8 The Ombudsman welcomes the fact that the Council's opinion of 22 November 2005 on the complaint paid serious attention to the substantive concerns raised by the complainant as to the possible effects, in general, of commercial sponsorship of the Council Presidency. However, for the reasons of principle explained in the proposal for a friendly solution, the Ombudsman invited the Council to consider indicating its willingness, within an appropriate time-frame, to take measures to prevent commercial sponsorship of its Presidency, or to regulate it in a way that ensures that possible conflicts between private interests and public duties are properly managed.

1.9 Given the Council's position that it has no responsibility for Presidency websites, it did not respond as regards this aspect of the proposal for a friendly solution. In view of the Council's position, the Ombudsman takes the view that no progress can be made on this aspect of the case within the framework of the present inquiry.

1.10 The Ombudsman remains concerned, however, that citizens' trust in the Union and its functioning could be adversely affected by the Council's failure to respond to the invitation to consider indicating its willingness, within an appropriate time-frame, to take measures to prevent commercial sponsorship of its Presidency, or to regulate it in a way that ensures that possible conflicts between private interests and public duties are properly managed.

1.11 Given the Council's position that the organisation of the Presidency, including the decision to seek sponsorship for elements of the Presidency, is, in principle, a matter for Member State authorities and that it does not fall within the responsibility of the Council as a Community institution, the Ombudsman takes the view that the most useful action he can take in this regard is to bring the matter to the attention of the Member States individually. The Ombudsman will therefore write to the Permanent Representatives to the European Communities of all the Member States.

2 Conclusion

For the reasons stated in points 1.7 and 1.9 above, the Ombudsman considers that no further inquiries are justified as regards the present complaint.

The Ombudsman therefore closes the case.

The Secretary-General of the Council will be informed of this decision.

For the reason stated in point 1.7 above, the Ombudsman will also send a copy of the decision to the President of the European Parliament.

Yours sincerely,



P. Nikiforos DIAMANDOUROS

- (1) See the Ombudsman's decision of 30 June 1998 on complaint 1056/96.
- (2) Communiqué of the 2000 Council meeting at Ministerial level.
- (3) Point 4 of the Preface to the Annex. See <http://www.oecd.org/dataoecd/13/22/2957360.pdf>
[Nasc]