Europese Ombudsman

Besluit in zaak 874/2020/MIG over de behandeling door de Europese Commissie van een klacht over de publieke reactie van de vicevoorzitter voor Democratie en Demografie van de Commissie op kritische verslaggeving in de media

Besluiten
Zaak 874/2020/MIG - **Geopend op** 29/06/2020 - **Besluit over** 26/03/2021 - **Betrokken instelling** Europese Commissie (Geen verder onderzoek gerechtvaardigd) |

De zaak betrof een klacht gericht aan de Europese Commissie waarin bezorgdheid werd geuit over de manier waarop de vicevoorzitter van de Commissie voor Democratie en Demografie in het openbaar had gereageerd op kritische berichtgeving in de media, met name op opmerkingen die zij had gemaakt tijdens een inbelprogramma op de Kroatische televisie. De klager was van mening dat de verklaringen van de vicevoorzitter niet verenigbaar waren met haar verplichtingen als Eurocommissaris en was ontevreden over de wijze waarop de Commissie had gereageerd op de in zijn klacht aangekaarte kwesties.

De Ombudsman stelde vast dat de verklaringen van de vicepresident aldus konden worden begrepen dat de media geen kritische opmerkingen over publieke figuren mogen uitzenden of publiceren. Het feit dat de verklaringen ook zo werden opgevat, blijkt duidelijk uit de publieke reactie, waaronder deze klacht en de berichtgeving in de media die op het incident volgde. Daarom achtte de Ombudsman de verklaringen misplaatst.

Na het incident hebben de vicevoorzitter en de Commissie verklaard dat zij de vrijheid van meningsuiting en de vrijheid en de pluriformiteit van de media volledig steunen. De vicevoorzitter verklaarde verder dat het niet haar bedoeling was de onafhankelijkheid van de media te ondermijnen.

Hoewel de Ombudsman verheugd is over deze verklaringen, betreurt hij dat noch de Commissie noch de vicevoorzitter verontschuldigingen heeft aangeboden in verband met het incident. Dat had de publieke verontrusting over de uitlatingen enigszins kunnen wegnemen.

De Ombudsman sluit haar onderzoek af met een oproep aan de Commissie om de Eurocommissarissen eraan te herinneren dat zij de nodige voorzichtigheid dienen te betrachten wanneer zij publieke verklaringen afleggen.

Background to the complaint

1. On 25 April 2020, a caller on a local call-in TV show [1] in Croatia questioned on-air how the Commission Vice-President for Democracy and Demography, Ms Dubravka Šuica [2] , had accrued her wealth.

2. The Commission Vice-President called into the show and commented on the statements made about her. According to a transcript [3] , the Vice-President, among other things, said to the journalist hosting the TV show: "(...) *my wish would be for you to somehow prevent speaking this way about any individual, any Croat, Croat woman or citizen of this country. I am really sorry if your show wants to gain popularity in this way ... I am the godmother of your Dubrovnik television and I am very happy that I could be that at that time. However, I am really sorry that you allow the citizens to throw rubbish, sludge, mud on me* ". She also said that the caller, who had made the allegations, *"of course has the right to his opinion, but I have the right to my defence and I have the right to warn you that this was not correct"* . [4]

3. When the TV show did not air for the next two days, there was public speculation that this was linked to the incident. [5]

4. Shortly after the incident, a Commission spokesperson commented on the Vice-President's appearance on the TV show in reply to a question from a journalist. [6] The spokesperson said that *"the Vice-President expresses and confirms her unabated support to the independence of the media, freedom of expression and information, and she wants to point out that the TV house in Dubrovnik was opened during her tenure as mayor of that city, so obviously she supports its operations"* . The spokesperson stated that the Vice-President rejected the allegation that she had exerted influence on whether the TV show was aired.

5. On 30 April 2020, the complainant, a Croatian citizen, contacted the Commission to raise concerns about the Vice-President's statements on the TV show, and claiming that they raised concerns about her objectivity and impartiality.

6. On 11 May 2020, the Commission replied that "[the Commission] *and Vice-President Šuica attach utmost importance to the freedom of expression and to the freedom and pluralism of the media, which are fundamental European values enshrined in the European Union's Charter of Fundamental Rights".* It added that, since the programme was broadcast, Vice-President Šuica had also reiterated her support for those freedoms and that she had no intention to undermine the independence of the TV station or journalist in question .

7. Dissatisfied with the Commission's reply, the complainant turned to the Ombudsman.

The inquiry

8. The Ombudsman opened an inquiry into how the Commission dealt with the complaint about

how Vice-President Šuica had responded publicly to critical media coverage.

9. In the course of the inquiry, the Ombudsman received the Commission's reply to her request for comments [7] , including for information on how it ensures that Commissioners are made aware of their obligations under its Code of Conduct [8] . The complainant then commented on the Commission's reply. The Ombudsman also took account of the Commission's follow-up reply to two complaints she had received concerning the adequacy of the Code of Conduct. [9]

Arguments presented to the Ombudsman

10. The complainant considered that the Vice-President's statements on the TV programme were unacceptable and contrary to fundamental EU principles. She argued that members of the public should be allowed to raise questions about the wealth of a politician.

11. Regarding the Commission's response to her complaint, the complainant was concerned that the Commission had not explicitly commented on the Vice-President's statements, but merely reiterated that the Vice-President had confirmed her support for freedom of expression. In her view, the Commission should have asked the Vice-President publicly to acknowledge her mistake and to apologise. The Commission should also have given her an *"official warning"* that such statements are intolerable.

12. In its reply to the Ombudsman, the Commission reiterated the importance of freedom of expression and media freedom. The Commission also said it had publicly confirmed that this includes the *"freedom to broadcast or publish statements criticising public figures"* .

13. The Commission concluded that the Vice-President had clarified her statements *"to dispel any possible misunderstandings, which the statements might have created within parts of the public"* .

14. The Commission also explained that, in the context of their appointment procedure, Commissioners have to answer questions regarding their obligations and that most of the current Commissioners had referred in their replies explicitly to the Code of Conduct [10] . At the start of their term of office, the new Commissioners were provided with information on the Code of Conduct. In addition, the new Commissioners' private office staff ('cabinet') were informed about their own and their Commissioner's ethical obligations and received training on the matter, to assist their Commissioner in respecting and fulfilling their obligations in their daily work. The Commission also stressed that Commissioners are provided with administrative support in relation to their obligations under the Code of Conduct throughout their term of office and beyond.

15. In reply, the complainant criticised the fact that the Vice-President had not expressed her support for media independence and freedom of expression personally, but through a Commission spokesperson.

16. In addition, the complainant drew attention to the fact that the Vice-President, several weeks after the incident in question, had participated in a campaign video clip supporting the election campaign of the Croatian political party to which she is affiliated. [11] Since this is also at odds with the Code of Conduct, the complainant questioned whether the Vice-President really was familiar with the Code.

17. In its response to that incident, the Commission acknowledged that mistakes were made regarding the campaign video, and promised to draw up guidelines clarifying how the relevant rules set out in the Code of Conduct should be applied in practice. [12]

The Ombudsman's assessment

18. Given their role as the highest public servants of the EU executive, Commissioners are expected to observe the highest ethical standards [13] . When speaking in public, they should ensure that their statements do not cast doubt on their integrity or the dignity of their office [14] . Commissioners should therefore exercise appropriate discretion in their public utterances. [15]

19. In light of these principles and given the paramount importance of freedom of expression and freedom and pluralism of the media in a democratic society, the Ombudsman considers that any statement by a Commissioner that could be *perceived* as an attempt to stifle critical media coverage should be avoided.

20. Having reviewed a transcript of the Vice-President‘s statements on the TV show in question, the Ombudsman considers that they could be understood as a desire to stifle debate about her wealth, or to imply that the media should not broadcast or publish critical comments about public figures in general. The fact that her comments were perceived as such is clearly reflected by the public response, including this complaint and the subsequent media coverage on the incident and speculation about the cancellation of the TV show.

21. Therefore, the Ombudsman finds that the Vice-President’s statements were inappropriate.

22. The Commission’s subsequent reference to “ *possible misunderstandings, which the statements might have created within parts of the public”* was also inappropriate, suggesting that the problem lay with the public’s perception rather than with the Vice-President’s chosen words.

23. The Ombudsman notes that, following the incident, both the Commission and the Vice-President expressed their strong support for freedom of expression and freedom of the media. The Vice-President clarified that it was not her intention to undermine the independence of the TV station, of the journalist or of the programme in question.

24. In the course of this inquiry, the Commission further clarified that it also supports the *“freedom to broadcast or publish statements criticising public figures”* . The Ombudsman regrets that the Commission has done so only after her intervention and not when the

complainant first raised her concerns. The Ombudsman also regrets that neither the Vice-President nor the Commission issued an apology in relation to the incident. That could have gone some way towards acknowledging the public disquiet over the remarks .

25. That having been said, the Ombudsman is satisfied that the Commission has taken and generally takes concrete, practical steps to ensure that Commissioners are aware of their obligations.

26. In response to separate concerns raised about the participation of the Commission President and Vice-President Šuica in an election campaign video clip, the Commission has committed to drawing up dedicated guidelines to ensure the correct interpretation and proper application of the Code of Conduct. [16] The Ombudsman welcomes this response, which illustrates that the Commission takes seriously concerns about Commissioners' ethical conduct.

27. The Ombudsman, however, calls on the Commission, once again [17] to remind Commissioners of the need to exercise due caution when making public statements.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There are no further inquiries justified.

The complainant and the Commission will be informed of this decision **.**

Emily O'Reilly European Ombudsman

Strasbourg, 26/03/2021

[1] Called 'The Voice of the People' ('Glas Naroda').

[2] The TV show was on a Dubrovnik based channel and Ms Šuica is a former mayor of Dubrovnik,

[3] See https://morski.hr/2020/04/26/suica-ljuta-nazvala-u-eter-i-napala-voditelja-ja-sam-kuma-vase-televizije/ [Link].

[4] This excerpt is a translation of the transcript. For the original text in Croatian please refer to the transcript, see footnote 3.

[5] See, for example, https://www.telegram.hr/politika-kriminal/emisija-u-kojoj-je-dubravka-suica-u-eteru-napravila-eksces-nije-ukinuta-voc [Link].

[6] See https://www.vecernji.hr/vijesti/glasnogovornik-komisije-komentirao-suicino-javljanje-u-program-dubrovacke-televizije [Link], the recording of the spokesperson's response is embedded in this article.

[7] Available at: https://www.ombudsman.europa.eu/en/correspondence/en/129654 [Link].

[8] Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018D0221%2802%29 [Link].

[9] Complaints 1141/2020/MIG and 1143/2020/MIG about the European Commission and statements made by its President and its Vice-President for Democracy and Demography in the run-up to the Croatian elections, see case page: https://www.ombudsman.europa.eu/en/case/en/57346 [Link].

[10] See footnote 8.

[11] This issue was subject to complaints 1141/2020/MIG and 1143/2020/MIG, see footnote 9 above.

[12] The Commission's follow-up reply to complaints 1141/2020/MIG and 1143/2020/MIG is available at:

https://www.ombudsman.europa.eu/en/correspondence/en/136786 [Link].

[13] In accordance with Article 2(2) of the Code of Conduct.

[14] In accordance with Article 2(5) of the Code of Conduct.

[15] See also Articles 5(1 and 4) and 9(3) of the Code of Conduct.

[16] https://www.ombudsman.europa.eu/en/case/en/57346 [Link]

[17] See the Ombudsman's recommendation in case 1419/2016/JN on the European Commission's failure to reply to a Czech citizen concerning statements made by the Commissioner for Justice, Consumers and Gender Equality in relation to the Stork's Nest Case ("Kauza Čapí hnízdo") on Czech radio:

https://www.ombudsman.europa.eu/en/recommendation/en/89218 [Link].

