

Comments of the European Commission on a request for reply from the European Ombudsman

- Complaint on how the European Commission dealt with a complaint about how the Vice-President of the Commission for Democracy and Demography responded publicly to critical media coverage (ref. 874/2020/EWM)

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 29 June 2020, the European Ombudsman has launched an inquiry against the Commission related to the handling of correspondence from a Croatian citizen, Ms [REDACTED].

On 30 April 2020, Ms [REDACTED] sent a correspondence to the Commission criticising Vice-President Šuica for a lack of objectivity and impartiality with regard to a phone call she made to the programme 'The Voice of the People' broadcasted by a local TV station in Dubrovnik, on 25 April 2020. According to Ms [REDACTED], the comments made by Vice-President Šuica during the TV show breached the Code of Conduct for the Members of the European Commission.

On 11 May 2020, the Commission replied to Ms [REDACTED], notably by reassuring her that the European Commission and Vice-President Šuica attached utmost importance to the freedom of expression and to the freedom and pluralism of the media, which were fundamental European values enshrined in the European Union's Charter of Fundamental Rights.

The complainant was not satisfied with the Commission's reply, because she felt that the Commission should nonetheless have taken a position on the comments of Vice-President Šuica. On 19 May 2020, she filed a complaint with the European Ombudsman and requested that the 'European Commission should force Vice-President Šuica to apologize to the journalist, to the local TV station and should publicly acknowledge her mistake'. She also requested that Vice-President Šuica 'should get an official warning from European Commission that this kind of behaviour will not be tolerated'.

The Ombudsman opened an inquiry and asked the Commission for a written reply to this complaint and a number of matters set out in the Ombudsman's letter. The Ombudsman's letter referred notably to the impression that Vice-President Šuica appeared to say that she believed that 'the media should not broadcast or publish statements criticising public figures' and that she seemed to 'imply that the radio station allows such critical statements to be broadcast in order to increase its popularity'.

The Ombudsman recalled a recommendation she had issued in 2018 that 'European Commissioners should be mindful of the need to exercise due caution in media interviews'. It underlined the paramount importance of freedom of expression and the freedom and pluralism of the media and that 'any statements that could be perceived as an attempt to stifle critical media coverage should be avoided'. The Ombudsman referred to the Code of Conduct for Commissioners, which entered into force in 2018, and which gave 'expression to the legal requirement on Commissioners to exercise appropriate discretion in their public utterances', citing Articles 2(5), 5(1) and (4) as well as 9(3) of the Code.

Finally, the European Ombudsman asked the Commission to explain how the Commission ensured in practice that Commissioners are made aware of their obligations under the Code of Conduct for the Members of the European Commission.

II. COMMISSION'S REPLY TO THE COMPLAINANT AND TO THE INQUIRY

The comments of Vice-President Šuica and the Commission's alleged failure to take a position on them

In response to the letter of the complainant of 30 April 2020, the European Commission, by means of a letter of its Secretary-General dated 11 May 2020, informed and reassured the complainant that the Commission and Vice-President Šuica attached 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.

The letter referred explicitly to the fact that, since the TV programme had been broadcast, Vice-President Šuica had already reiterated her unwavering support for those freedoms and clarified that it had not been, and was not, her intention to impair the independence of the TV station in question, the independence of the journalist, Mr Pasko Tomaš, or the independence of his programme 'The Voice of the People' ('Glas Naroda').

The Commission has publicly confirmed this position, notably in the pressroom of the European Commission. This position includes obviously the freedom to 'broadcast or publish statements criticising public figures'.

Vice-President Šuica has therefore already clarified her personal comments in order to dispel any possible misunderstanding, which the statements might have created within parts of the public, and both the Commission and Vice-President Šuica have taken a very clear position on the matter.

The Commission confirms hereby its own position and Vice-President Šuica's clarifications and firm commitment to the freedom of expression and the freedom and pluralism of the media.

Awareness of Members of the Commission of their obligations

According to Article 17(3) of the Treaty on European Union (TEU), the Members of the Commission are chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt. The Members of the Commission are chosen according to a procedure set out in Article 17(7) TEU involving the Member States, the European Council, the Council, the European Parliament and the President-elect after his or her election by the European Parliament.

The procedure in the Parliament involves notably a public statement by the candidate for President followed by a debate as well as the holding of public hearings of Commissioners-designate. According to Article 1(1) of Annex VII of the Parliament's Rules of Procedure, Parliament evaluates Commissioners-designate based on their general competence, European commitment and personal independence. According to Article 3(5) of Annex VII, the responsible committees submit written questions to the Commissioners-designate including one, which is common to all Commissioners-designate and relates to the issues of general competence, European commitment and personal independence.

In the entire process, the awareness of the obligations of Members of the Commission is of utmost importance. All Commissioners-designate had to answer questions in this regard, in addition to submitting a declaration of interests. Most Commissioners-designate referred in their answers even explicitly to the Code of Conduct for the Members of the Commission.

Finally, at the beginning of their mandate, all Members of the Commission take an oath before the Court of Justice of the European Union, pledging to respect the Treaties and the Charter of Fundamental Rights of the EU, and to carry out their responsibilities in complete independence and in the general interest of the Union.

In her mission letters addressed to the Commissioners-designate in September 2019, the President-elect stated her determination to ensure that the highest levels of transparency and ethics would be respected and referred explicitly to the Code of Conduct.

With regard to the Commission appointed in 2019, the Commission departments provided information to the designated and appointed Members of the Commission, which included information about the Code of Conduct and the Code itself. The Commission departments also provided information and training to the staff of Cabinets of Members of the Commission about their own ethical obligations and those of the Members in order to allow them to assist the Members in respecting and fulfilling their obligations in their daily work.

The Commission has also set up, for the first time, a Network of Ethics and Transparency Contact Points in the Cabinets of the Members of the Commission to have regular interlocutors for transparency and ethics issues.

Administrative support with regard to Members' obligations under the Treaties and the Code of Conduct is provided during the whole period of a Commission's term of office, from the period of setting up of a new Commission, during the Commission's term of office itself and at the end of the mandate for outgoing and former Members.

III. CONCLUSIONS

Vice-President Šuica has explicitly clarified that it was not her intention to impair in any way the freedom of expression or the freedom and pluralism of the media.

Both Vice-President Šuica and the European Commission have publicly expressed their position on this matter.

According to Article 17 TEU, Members of the Commission are chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt. Article 17 TEU has established a procedure serving this purpose. Moreover, the Commission has put in place administrative support measures to assist Members in fulfilling and respecting these obligations.

Therefore, the Commission considers that there is no instance of maladministration in its activities.

For the Commission
Ursula VON DER LEYEN
The President

