

Wednesday 3 September 2008

Special Report from the European Ombudsman following the draft recommendation to the European Commission in complaint 3453/2005/GG

P6_TA(2008)0398

European Parliament resolution of 3 September 2008 on the Special Report from the European Ombudsman following the draft recommendation to the European Commission in complaint 3453/2005/GG (2007/2264(INI))

(2009/C 295 E/10)

The European Parliament,

- having regard to the Special Report from the European Ombudsman to the European Parliament,
 - having regard to Article 195(1), second subparagraph, and Article 211 of the EC Treaty,
 - having regard to Decision 94/262/ECSC, EC, Euratom of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties ⁽¹⁾, particularly Article 3(7) thereof,
 - having regard to the Commission communication of 20 March 2002 on relations with the complainant regarding infringements of Community law (COM(2002)0141) ⁽²⁾,
 - having regard to Rule 195(2), first sentence, of its Rules of Procedure,
 - having regard to the report of the Committee on Petitions and the opinion of the Committee on Employment and Social Affairs (A6-0289/2008),
- A. whereas Article 195 of the EC Treaty empowers the European Ombudsman to receive complaints from any citizen of the Union concerning instances of maladministration in the activities of the Community institutions or bodies,
- B. whereas complaints submitted by citizens constitute an important source of information on possible infringements of Community law,
- C. whereas under Article 211 of the EC Treaty the Commission in its role as guardian of the Treaties is responsible for ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied,
- D. whereas, pursuant to the first paragraph of Article 226 of the EC Treaty, if the Commission considers that a Member State has failed to fulfil an obligation under the Treaty, it 'shall' deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations, and whereas, pursuant to the second paragraph of that article, if the State concerned does not comply with the opinion within the period laid down by the Commission, the latter 'may' bring the matter before the Court of Justice,
- E. whereas the Ombudsman has previously emphasised, in his Decision on complaint 995/98/OV, that, even though the Commission enjoys discretionary powers with respect to the opening of infringement procedures, these are nevertheless subject to legal limits 'established by the case law of the Court of Justice which requires, for example, that administrative authorities should act consistently and in good faith, avoid discrimination, comply with the principles of proportionality, equality and legitimate expectations and respect human rights and fundamental freedoms',

⁽¹⁾ OJ L 113, 4.5.1994, p. 15.

⁽²⁾ OJ C 244, 10.10.2002, p. 5.

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- F. whereas the Commission has stressed that this role is essential to the interests of European citizens, and has recognised the importance of the rule of law in this context ⁽¹⁾,
- G. whereas the Commission confirms that its abovementioned communication of 20 March 2002 sets out the administrative measures for the benefit of the complainant with which the Commission undertakes to comply when handling his/her complaint and assessing the infringement in question,
- H. whereas the Ombudsman considers that the Commission's failure to decide on a definitive position as regards the complainant's infringement complaint constitutes an instance of maladministration,
- I. whereas the Ombudsman's recommendation to the Commission is that it should deal with the complainant's complaint as rapidly and diligently as possible,
1. Endorses the European Ombudsman's recommendation to the Commission;
 2. Stresses that the way in which the Commission handles complaints submitted by citizens in which an infringement of Community law by Member States is alleged should always be in conformity with principles of good administration;
 3. Points out that, in its abovementioned communication of 20 March 2002, the Commission has entered into certain commitments as regards its handling of infringement complaints;
 4. Points out that the Commission has indicated in that communication that, as a general rule, it will decide whether to open infringement proceedings or to close the file within one year from the date of registration of the complaint and that it will inform the complainant in writing when this time-limit is exceeded;
 5. Accepts that in difficult and complicated cases the Commission's investigations may require more than one year; considers, however, that exceeding the one-year time-limit is justified only when investigations are indeed still ongoing;
 6. Notes that in the present case concerning the German Government's failure to properly apply the Working Time Directive ⁽²⁾ the Commission intended to deal with the complaint in the light of its proposal for an amendment of the Directive and decided to await the outcome of the discussions on its proposal with the other Community institutions;
 7. Recalls that that proposal was submitted in September 2004 and that there is no evidence that the Commission has taken any further steps since then in order to proceed with its investigation;
 8. Notes that instead of taking one of two possible decisions — either to initiate formal infringement proceedings or to close the case — the Commission abstained from taking any further action as regards its investigation;
 9. Is of the opinion that Community law does not envisage the possibility of disregarding existing laws and judgments on the grounds that new rules are being considered; points out that the Commission also failed to deal with issues in the complaint that are not related to the proposed changes to the applicable Directive;
 10. Acknowledges that the Commission has certain discretionary powers with regard to the management of complaints and infringement proceedings, in particular as regards bringing matters before the Court of Justice, but points out that Article 226 of the EC Treaty stipulates that the Commission is to initiate the pre-litigation phase if it considers that a Member State has failed to fulfil an obligation under the Treaty;

⁽¹⁾ Commission communication of 11 December 2002 entitled 'Better monitoring of the application of Community law' (COM(2002)0725 final).

⁽²⁾ Directive 2003/88/EC, which replaced and repealed Directive 93/104/EC (OJ L 299, 18.11.2003, p. 9).

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11. Is of the opinion that those discretionary powers are also subject to legal limits set by general principles of administrative law, as established by the case-law of the Court of Justice, and should not exceed the limits indicated by the Commission itself in its abovementioned communication of 20 March 2002;
12. Restates its concern at the unjustified and excessive amount of time — often spanning several years — which the Commission takes to pursue and conclude infringement proceedings and its dissatisfaction with the frequent examples of non-compliance by Member States with decisions of the Court of Justice; considers that this undermines the credibility of the formulation and coherent application of Community law and that it serves to discredit the objectives of the EU;
13. Emphasises once again the key role of the Member States in correctly implementing Community legislation and underlines the fact that the practical application thereof is decisive for the purposes of increasing the relevance of the European Union for its citizens;
14. Asks the Commission to provide a list naming the Member States whose legislation is not in line with all provisions of the Working Time Directive and specifying the action it is taking with regard to this; urges the Commission to take prompt action, in accordance with its prerogatives, in all cases and in all Member States where the transposition or implementation of the Directive does not comply with the law laid down by the legislature and by the Court of Justice;
15. Urges the Commission to analyse forthwith the new German law adopted on 1 January 2004, and which came into effect on 1 January 2007, in order to establish whether it is in line with all the provisions of the Working Time Directive and all applicable judgments of the Court of Justice; underlines the need for the Commission to examine the details of the implementation of that Directive;
16. Notes that the Commission has recently revised its guidelines on infringement procedures; understands from this document that a list of the decisions will be provided in advance to the Permanent Representatives and the Member States and that press releases on adopted infringement decisions may be issued on the day of formal adoption; notes, however, that no provision is made to inform Parliament or its responsible committees;
17. Reiterates its urgent call on the Commission to keep Parliament, and in particular its Committee on Petitions, fully informed of decisions in infringement files at all stages of the procedure;
18. Stresses that, under Article 230 of the EC Treaty, Parliament has the right to bring actions before the Court of Justice under the same conditions as the Council and the Commission and that Parliament, pursuant to Article 201 of the Treaty, is empowered to exercise control over the activities of the Commission;
19. Also urges all the Member States, in the light of the foregoing, to apply faithfully all the rules relating to health and safety at work on the basis of the principle that, in the event of any doubt, the interpretation of the law which is most favourable to the health and safety of workers should prevail (*in dubio pro operario*);
20. Instructs its President to forward this resolution to the Council, the Commission and the European Ombudsman.

Equality between women and men — 2008

P6_TA(2008)0399

European Parliament resolution of 3 September 2008 on Equality between women and men — 2008 (2008/2047(INI))

(2009/C 295 E/11)

The European Parliament,

- having regard to Articles 2, 3(2) and 141 of the EC Treaty,
- having regard to Article 23 of the Charter of Fundamental Rights of the European Union,