

Complaint :1116/2008/PB
LO :PB
Date :24/04/08

Letter of inadmissibility

Brochures :

- EO**
- Committee on Petitions of the European Parliament**
- OTHER**

Original complaint
(Copy the complaint for the EO's file – Send by registered post)

Transfer of a complaint

- Letter to Institution + Original of the complaint (Send by registered post)
- Letter to inform the complainant
- (Copy the complaint for the EO's file)

Opinion Request

- Letter to inform the complainant
- Letter to President of the Institution
- Copy of the complaint
- (cc :

Observations request

- Letter to complainant
- Copy of the Institution's opinion
- Annexes

Further Inquiries / Friendly solution / Draft recommendation (circle as appropriate)

- Letter to inform the complainant
- Letter to President of the Institution
- Copy of the complaint's observations
- (cc :

Direct transmission to Commissioner's cabinet: Yes If yes, contact person:
No

Decision

- Original Decision to the complainant
- Letter to President of the Institution
- Copy of the decision in EN
- (cc :

NOT CONFIDENTIAL (scroll down to change)

Date of complaint :	17 April 08	2 years rule :	<input checked="" type="checkbox"/> tick if within 2 years
Date registered :	18 April 08	Prior approaches :	<input checked="" type="checkbox"/> tick if made
Date of summary :	22 April 08	Petition :	<input checked="" type="checkbox"/> tick if no petition
		Legal proceedings :	<input checked="" type="checkbox"/> tick if no proceedings
		Grounds :	<input type="checkbox"/> tick if grounds

Name of complainant : Mr Guido STRACK
On behalf of (*if relevant*) :
Language : German
Country of address : Germany
Nationality : German

SUMMARY

Complaint against :

The European Commission

Concerning:

1. The complaint concerns the Commission's response to access applications submitted by the complainant following the EO's decisions on complaints 1434/2004/PB, 3402/2004/PB, 144/2005/PB and 3002/2005/PB. The complainant refers to a "renewal" of these complaints. The complainant furthermore states that he submits a new complaint, and he encourages the EO to open an OI into certain procedural issues.

2. The EO's above-mentioned inquiries, closed in December 2007, concerned primarily the Commission's and OLAF's handling (substantive and procedural) of various access applications submitted by the complainant. The EO found maladministration in all these cases, in which he had made proposals for friendly solutions. While finding maladministration, the EO did not consider it appropriate to pursue the cases further. The reasons for this were stated in a paragraph having, in all cases, the following or similar wording:

"The Ombudsman recalls that he has already made a reasoned friendly solution proposal in this case. Furthermore he notes that he has dealt with a considerable number of complaints submitted by the complainant against the Commission. These cases demonstrate a more general and intense dispute between them, in the context of which the institution has strongly stood by, and insisted on, its (often principled) positions, even where the Ombudsman, on the basis of a reasoned analysis, has not considered them justified. The Ombudsman also regrets that the intensity of this dispute between the Commission and the complainant and the breakdown in communications that it implies has, for all practical purposes, made it impossible to arrive at a reasonable solution concerning this complaint. In view

of the above, and also taking into account the way the Commission has, in the context of the present inquiry, dealt with the interpretation and application of the exceptions laid down in Article 4 (1)(b) and (3) second subparagraph of Regulation 1049/2001, the Ombudsman does not find it opportune to further pursue the case by making a draft recommendation regarding the instances of maladministration identified in points 1.8 and 1.23 of the present decision. The Ombudsman will, thus, make a relevant critical remark below."

(Point 1.24 in case 1434/2004/PB; same in 3402/2004/PB, the conclusion, 144/2005/PB, point 1.13, and 3002/2005/PB, point 1.5.)

3. Following the closure of these cases, the complainant requested access, again, to the documents to which he had been refused access. He states that he made his requests to OLAF and the Commission on 18 and 19 January 2008. His present complaint only contains information (and copies of correspondence) relating to his application to the Commission.

4. The access application to the Commission was submitted on 19 January 2008. He essentially requested access to "all" the documents to which he had not been granted access in cases 1434/2004/PB, 144/2005/PB and 3002/2005/PB (he expressly referred to these inquiries in his request).

5. On 21 January 2008, the complainant received an acknowledgement of receipt. This informed him that his application had been registered on 30 January 2008, and that he would receive a reply within fifteen days (the normal deadline foreseen in Regulation 1049/2001).

6. In an e-mail of 11 February 2008, the Commission apparently extended the deadline for a reply to the complainant's application. Not having received a reply, the complainant made a confirmatory application for access on 22 February 2008.

7. On 15 April 2008, the Commission sent the complainant its decision on his confirmatory application. In its one-page decision, the Commission first refers to the content of the complainant's initial application of January 2008, stating that he again sought access to certain notes from the Commission's Secretary-General to the Director of OLAF (it appears to refer to the facts and decisions examined by the EO in cases 144/2005/PB and 3002/2005/PB). The Commission then informs the complainant that there are no new facts or circumstances ("Tatsachen") that could justify the re-examination of the Commission's original decisions¹. It should be noted that the Commission's decision only refers to its decision not to disclose the above-mentioned notes. It does not address possible access to the numerous other documents to which the complainant had requested access, again, on 19 April 2008.

¹ The Commission's letter also indicates that the complainant could submit a "confirmatory application" within 15 working days in reply. However, this would not appear to be consistent with the fact that its decision was sent to the complainant almost two months after his e-mail of 22 February 2008 containing a confirmatory application (submitted in accordance with the relevant rules under Regulation 1049/2001). At any rate, the complainant does not make specific allegations about this issue, which, also in light of the proposed action below, does not necessitate further examination here.

In his present complaint to the EO, the complainant essentially makes the following allegations:

1/ The Commission's decision of 15 April 2008 to reject the complainant's new access application was wrong. The complainant argues that the Commission's decision is "formalistic" and lacks any justification.

2/ The Commission has deliberately ("vorsätzlich") failed to respect the relevant deadlines in Regulation 1049/2001 in its handling of his new access application.

The complainant makes no express claims, but it is reasonable to presume that he wants access to the documents concerned, *including* the documents that are simply not mentioned in the Commission's above-mentioned decision of 15 April 2008 (why the Commission only referred, in that decision, to the said "notes" is not clear).

The complainant asks the EO to re-open his inquiries into "the above-mentioned inquiries".

In addition, the complainant (a) asks the EO to open an OI into the Commission's practices regarding registration and (procedural) handling of access applications, and (b) encourages the EO to support him in obtaining access to the documents, for instance by declaring himself ready to support the complainant in a court case and to share the financial risk involved, and/or the EO himself could request the Commission access to the documents concerned (the implication of this appears to be that the EO should thereafter hand out the documents to the complainant). It should be noted that the complainant, in a remark preceding these suggestions, states that if he has to go to court, he risks that the court will agree with the reasons for non-disclosure put forward by the Commission.

The complainant asks for an urgent handling of his case, in light of "the time-limits", and a reply by no later than 5 May 2008.

On 18 April 2008, the complainant phoned PB to know if the EO had received his e-mail of 17 April 2008. PB confirmed that the e-mail had been received, and that it had been registered, in full, as a new complaint in accordance with the EO's practice. The complainant expressed some dissatisfaction with this, stating that he had primarily asked for a re-opening of the inquiries concerned. PB explained to the complainant the EO's practice. The complainant stated that absolutely wanted a reply by 5 May 2008 in light of the time-limit for going to court.

ANALYSIS

1. Scope of the complaint

The complainant refers to new access applications submitted to the Commission *and* OLAF, and states that he wishes the EO to re-open "all" the inquiries referred to (which strictly speaking appears to include inquiry 3402/2004/PB concerning OLAF). However, his e-mail of 17 April 2008 and its annexes essentially contain no comments on, account

of, or documents on, the complainant's latest communication with OLAF. The EO therefore has to understand his complaint of 17 April 2008 to only concern the Commission. The complainant should be informed accordingly.

2. The allegations - insufficient grounds

The complainant's first allegation appears, *prima facie*, to have merits. Under normal circumstances, the EO should therefore consider opening an inquiry. However, it is clear that the Commission's decision of 15 April 2008 is based, in essence, on decisions of non-disclosure which have already been the object of EO inquiries, which resulted in relevant friendly solution proposals and critical remarks about how the Commission had handled, both from a procedural and substantive point of view, access applications made by the complainant. In the EO closing decisions concerned, the EO explained why he did not consider it justified to further pursue the matters (see references in point 2 above). In light of the above, the EO should inform the complainant that there are not sufficient grounds for opening an inquiry into his allegations.

Moreover, the complainant should be informed that the EO monitors, through complaints, the Commission's procedural handling of access applications and he does not consider it justified to open at the present time an own-initiative of the kind suggested by the complainant.

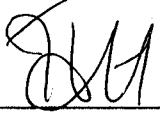
The complainant is perfectly well aware of the possibility of going to court, but this option should nevertheless be mentioned for the sake of completeness and to indicate that the EO in fact considers that this would be the appropriate course of action at this point.

In light of the above, the remainder of the complainant's e-mail of 17 April 2008 need not be addressed.

PROPOSAL

Reject the complaint on the above grounds.

Visa HLT :	ID	Visa HLD: JSA
Date :	22/04/08	Date : 23/04/08

Approved by the Secretary General :	
Date :	23/04/2008 

(cases where **no inquiry** takes place)

1. Please fill in both sides of this information sheet by circling the appropriate answer when several possibilities are given, or by filling in the blanks.
2. Attach the COMPLAINT SUMMARY on a separate sheet. Please also copy the COMPLAINT SUMMARY under :

S:/LEGAL/Complaint summaries/Inadmis or /No Grounds/Year of registration
 name of the file : number of complaint (4 numbers)-
 year of registration-initials of the LO-
 language of complaint

ex : 0003-2007-MD-es
 (please use Read-Only option)

Case reference : 1116/2008/PB Date of closure of file:.....
 Confidential : Yes/**No**
 On behalf of : (fill out when needed).....

Kind of complainant : Specify if it is a :
physical person (man or woman?) **specify if Community staff** or MEP -
legal person : company - lawyers office - association - NGO - or other.....
 For both categories mention any information you have such as : **nationality (if possible)**
Area of activity e.g. : journalist - farmer - student - doctor - dentist - vet - teacher - other.....

Transmitted : **directly** - by a MEP - by transfer from the Committee on Petitions of EP -
 Other :

Institution or body complained against :
Sec Gen
Eur. Commission (+DG or service, when possible. See "E:\LEGAL\RESOURCES) - Eur. Parliament (+ DG, when possible); Court of Auditors - Court of Justice - Committee on Petitions of EP - MEP
 other.....
 if it concerns a **national body or institution**, please be as precise as possible :
 mention the country :.....
 and circle the appropriate answer among the following proposals, or complete the heading "other" :
 government; administration; Courts; Social security; police; tax authorities; Health service; prisons;
 other :

Keywords (NB: Keywords " 2", "3" and "4" are only given for *within the mandate*, *admissible*, but **not grounded** complaints):
 1. stracke - PUBAC cases not re-opened
 2.
 3.
 4.

Within the mandate ?

Yes

No *

Outside mandate because :

1 - Not an authorized complainant

2 - _____ →

3 - Court of Justice and Court of First Instance acting in their judicial role (Art. 195)

4 - Does not concern maladministration (Art. 2.2)

Not against a Community institution or body (Art.2.1)

- National authorities
 - Purely national matter
 - Community law
- Other bodies
 - . cross border problem (freedom of movement)
 - . diplomatic protection
 - . elections
 - . other fields

Admissible ?

Yes

No *

Inadmissible because :

- 1- Author/object not identified (Art.2.3)
- 2- Alleged facts are or have been the subject of legal proceedings (Art 195)
- 3- Dealt with or has been settled by a court (Art. 1.3)
- 4- Time limit exceeded (Art. 2.4)
- 5- Prior administrative approaches not made (Art. 2.4)
- 6- Internal remedies not exhausted in staff cases (Art. 2.8)

No grounds for investigation (Art 195) :

- dealt with or being considered by another competent body (please specify :)
- other

Not sufficient grounds for investigation (Art 195) :

- claims too general in nature
- not enough supporting evidence supplied
- *et-action more relevant*

go to court

Advice to go to other agencies ? *No*

Yes* Committee on Petitions EP -

National/Regional Ombudsman or Committee on Petitions (mention the COUNTRY) :

EC (DG) - EP (DG.....) - Other :

* Transferred to : Committee on Petitions EP - National/Regional Ombudsman or Committee on Petitions (COUNTRY :)-

Other :