

Decision of the European Ombudsman on complaint 926/99/VK against the European Commission

Decision

Case 926/99/VK - Opened on 05/10/1999 - Decision on 28/11/2000

Strasbourg, 28 November 2000 Dear Mr W., On 19 July 1999, you made a complaint to the European Ombudsman against the Board of Governors of the European Schools concerning the failure to establish special provisions for handicapped teachers. Taking into account the allegation, and the fact that the European Commission has a representative on the Board of Governors of the European Schools and that it finances a significant part of the total expenditure of the schools, the complaint was sent to the Commission for an opinion. On 5 October 1999, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 31 January 2000 and I forwarded it to you with an invitation to make observations, if you so wished. I received your observations on 13 March 2000. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant is a teacher who is severely disabled due to a car accident in 1988. Since September 1993, the complainant has been seconded by the minister of education of the State of Lower Saxony, Germany as a teacher to the European School in Luxembourg. In October 1998, the complainant addressed the Board of Governors of the European Schools to complain about the fact that the Regulation for members of the seconded staff of the European Schools did not contain any provisions for severely disabled teachers. He put forward that there was a need to provide those provisions, particularly in the light of a government declaration annexed to the Treaty of Amsterdam according to which: "the institutions of the Community shall take account of the needs of persons with a disability" (1). The complainant further referred to the practice of his original employer, the State of Lower Saxony that provided special recognition for handicapped teachers with reduced working hours for the teachers concerned in accordance with its law on civil servants. In its reply to the complainant, the Board of Governors stated that special provisions for disabled persons such as the reduction of working hours, were not foreseen in the Regulation of the seconded personnel of the European Schools. It further stated that the Regulation could be changed. A request would have to be made either by a national delegation represented in the Board of Governors or by the personnel committee. The complainant was also informed that national provisions such as the one from the State of Lower Saxony, have no bearing on existing provisions of the European Schools. Against this background, the complainant lodged the complaint with the European Ombudsman. He put forward that he should be recognised as a disabled teacher and as a result, special provisions



should be established in the Regulation for members of the seconded staff of the European Schools, such as the reduction of working hours for disabled teachers.

THE INQUIRY

The Commission's opinion In its opinion, the Commission in substance stated the following: Under the Convention of 12 April 1957, the European Schools are run by a Board of Governors, an intergovernmental, non-Community body composed of the Ministers of each of the contracting parties responsible for education and/or external cultural relations. Under the Agreement of the Board of Governors and the ECSC, signed on 11 December 1957, the European Community only contributes to the School's running costs with an annual grant and has a seat on the Board of Governors. The Board of Governors has approved Regulations according to which the members of the teaching staff are assigned or seconded to the Schools by the competent national authorities and, during their secondment are covered by the Regulations. Those Regulations provide for neither compensatory allowances nor reductions in working hours for disabled teachers, although the Schools do provide support with any work which a disability might make difficult to carry out. Thus it is not within the Commission's remit to intervene - in the secondment and assignment of teachers, which is the exclusive responsibility of the national authorities and the head teachers of the Schools; - in the regulation of the working conditions, which form part of the employment relationship between the School and the staff; - in the resolution of disputes, either administrative or legal, arising from that relationship, the responsibility for which lies with the Representative of the Board of Governors and the Complaints Board respectively. The Commission stated that it had, however, contacted the competent bodies of the European School in Luxembourg and asked for additional information on the case. According to the information supplied by the Board of Governors and the management of the European School in Luxembourg, the complainant was seconded by German authorities in September 1993. The accident causing his disability occurred prior to his appointment. The complainant agreed to work as a teacher under the conditions laid down in the Regulations when he was selected for the post. The complainant's administrative appeal under Article 79 of the Regulations regarding recognition of his claim was rejected by the Board of Governors on 21 October 1999. The reason for the rejection was the fact that European Schools are not obliged to take account of provisions on the disabled in force in individual Member States, but must act in accordance with the Regulations approved by the Board of Governors, which were known and accepted by the complainant at the time of his appointment. Under Article 80 of the Regulations, the complainant has 3 months in which to submit an appeal against the decision by the Representative of the Board of Governors to the Complaints Board. This body has exclusive competence of first and last instance to rule on any dispute between the management bodies of the Schools and their members of staff regarding the legality of an act which adversely affects them. **The complainant's observations** In his observations, the complainant maintained his complaint. The complainant confirmed that he accepted the conditions of the Regulation for members of the seconded staff when he entered the teaching staff of the European School in Luxembourg. He further stated that this approval did not diminish his right to initiate changes to the Regulations.

THE DECISION

1 The alleged failure to recognise the complainant as a disabled teacher of the European



Schools 1.1 The complainant stated that the Regulations for the members of the seconded staff of the European Schools which defines the relationship between the Schools and its teachers should recognise his special needs as a disabled teacher and as a result, special provisions should be established in the Regulation for members of the seconded staff of the European Schools, such as the reduction of working hours for disabled teachers. 1.2 Taking into account the allegation, and the fact that the European Commission has a representative on the Board of Governors of the European Schools and that it finances a significant part of the total expenditure of the schools, the complaint was sent to the Commission for an opinion. 1.3 The Commission stated that it has no responsibility as regards the regulation of the Schools' working conditions for teachers as the Schools are run by a Board of Governors, an intergovernmental, non-Community body. 1.4 The Ombudsman notes that the Commission contributes to the running costs of the Schools and that it has a seat on the Board of Governors. 1.5 The Board of Governors approved of the Regulations for members of seconded staff of the European Schools which regulate the working relations of the seconded teaching personnel. These Regulations do not foresee any special provisions for handicapped staff. 1.6 The European Union is governed by the rule of law and by its general principles. One of its values is the aim to achieve equal opportunities for all members of the society. The Community has expressed the aim to take account of the needs of disabled persons. The European Parliament (2) and the Economic and Social Committee have called on the European Commission to take further action to fight discrimination in this field. In its White Paper on European Social Policy, the Commission expressed its belief that, at the next opportunity to revise the Treaties, "serious consideration must be given to the introduction of a specific reference to combat discrimination on the grounds of (...) disability" (3) . Within this frame, the Commission promised to undertake further action in this field to emphasise its importance. 1.7 The Ombudsman therefore considers that it would be in line with good administrative practice to take the necessary steps to initiate changes to the Regulation for members of the seconded staff of the European Schools as regards special provisions for disabled staff. The Ombudsman has been informed that the Commission has proposed that changes to the Regulation for members of the seconded Staff of the Schools in view of the introduction of provisions for disabled staff should be considered by the Board of Governors. On the basis of the Ombudsman's inquiries there appears to be no maladministration by the European Commission in this case. **2 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to be no maladministration by the European Commission. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely, Jacob SÖDERMAN

(1) Declaration No. 22 regarding persons with a disability in the annex of the Treaty of Amsterdam.

(2) OJ C 17/196 of 22 January 1996.

(3) Commission White Paper on European Social Policy, 17 July 1994, Com (94) 333 final, p.40.