

## Decision of the European Ombudsman on complaint 81/2000/ADB against the European Commission

Decision

**Case 81/2000/ADB - Opened on 01/02/2000 - Decision on 13/06/2001**

Strasbourg, 13 June 2001

Dear Mrs O.,

On 20 January 2000, you lodged a complaint with the European Ombudsman concerning the European Commission's refusal to pay you in respect of your copyrights for illustrations used for brochures published by DG X.

On 1 February 2000, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 11 May 2000 and I forwarded it to you with an invitation to make observations, if you so wished. I received your observations on 16 June 2000. Further to your letters of 16 August 2000 and 26 March 2001, I asked the Commission to provide me with additional information on two occasions, on 8 September 2000 and 3 April 2001.

I am now writing to let you know the results of the inquiries that have been made.

### THE COMPLAINT

The complainant is an illustrator. She was asked to provide Directorate General X of the European Commission with 8 illustrations to be used in information brochures about the European Union ("*Questions and answers about the EU*"). These brochures were first published in 1996. Some were reissued but the complainant was never informed or paid for it.

According to the complainant, the initial order form only foresaw one edition. It neither foresaw the payment of further editions, nor the transfer of the copyright to the European Commission. The complainant therefore contacted the Commission to agree on additional payments in respect of her copyrights for the reissues. The Commission refused because it was not foreseen in the initial agreement.

The complainant therefore lodged a complaint with the European Ombudsman concerning the Commission's refusal to pay her in respect of her copyrights for illustrations published by DG X



of the European Commission.

## **THE INQUIRY**

### **The European Commission's opinion**

The opinion of the European Commission on the complaint was in summary the following:

According to the order form the complainant was asked to create 8 illustrations for 6.000 FF each. On her invoice the complainant only mentioned that the artist would remain the owner of the illustrations which ought to be returned in a perfect condition. The payment of 48.000 FF was made on 25 October 1996. The complainant had never mentioned that this payment was only for the creation and not for the publication of the illustration. The Commission would never have paid only for the creation of works without having the right to publish them. Six illustrations have indeed been reissued with a slightly modified text. The new editions were almost identical to the previous ones. Thus the complainant had not been informed.

Nevertheless, despite the discrepancy of interpretations between the complainant and the Commission the latter would contact the complainant in order to try to find a friendly settlement.

### **The complainant's observations**

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In her reply of 14 June 2000, the complainant welcomed the Commission's desire to find a friendly settlement to the matter.

According to the French Code of Intellectual Property Rights, the Commission has legal obligations towards the artist. The settlement could of course not be based on the previous unsatisfactory agreement. It should be based on payments usually made in respect of copyrights for works copied on 6 million brochures and distributed throughout the European Union.

### **Further inquiries**

On 16 August 2000, the complainant informed the Ombudsman that despite the Commission's commitment of 11 May 2000 to contact the complainant in order to achieve a friendly settlement, no action had been taken. On 8 September 2000, the Ombudsman therefore contacted the Commission to inquire about the delay. On 16 November 2000, the Commission informed the Ombudsman that delays had occurred because of staff changes in the responsible DG and because of the summer holidays. In the meantime, the Commission had contacted the complainant. On 31 January 2001, the Commission informed the Ombudsman of its offer to pay 36.000 FF to the complainant.

On 26 March 2001, the complainant informed the Ombudsman that in its proposal, the Commission had left out important criteria when evaluating the amount to be paid to the complainant. The complainant considered the Commission's offer to be insufficient and proposed to agree on 50.000 FF. The Ombudsman communicated this information to the European Commission.

On 15 May the complainant informed the Ombudsman that in order to put an end to the dispute,



she had accepted the Commission's latest proposal to pay her 42.000 FF.

## **THE DECISION**

### **1 Refusal to pay the complainant in respect of her copyrights**

1.1 The complainant lodged a complaint with the European Ombudsman concerning the Commission's refusal to pay her in respect of her copyrights for illustrations published by DG X of the European Commission.

1.2 The Commission admitted that there had been a discrepancy between the Commission's and the complainant's interpretation of the original contract. Nevertheless it had the intention to find a friendly settlement to the matter.

1.3 The Ombudsman notes that on 11 May 2001, the complainant accepted a financial settlement of the matter proposed by the Commission.

### **2 Conclusion**

It appears that the Commission has taken steps to settle the matter and has thereby satisfied the complainant. The Ombudsman therefore closes the case.

The President of the European Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN