

Decision of the European Ombudsman on complaint 1671/2000/ADB against the European Commission

Decision

Case 1671/2000/ADB - Opened on 19/01/2001 - Decision on 19/11/2001

Strasbourg, 19 November 2001

Dear Mr P.,

On 17 December 2000, you made a complaint to the European Ombudsman concerning the Commission's refusal to intervene on your behalf about your working relations with the European Patent Office.

On 19 January 2001, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 26 February 2001. I forwarded it to you with an invitation to make observations, which you sent on 25 April 2001.

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

THE COMPLAINT

The complainant worked as an official at the European Patent Office (hereafter EPO). In 1990, he was dismissed because he wanted to create a trade union, which the EPO did not consider appropriate. Given that there is no higher authority entitled to supervise EPO decisions, the complainant decided to complain to the European Commission in its capacity as member of the European Patent Organisation's Administrative Council (hereafter Administrative Council). He alleged infringements of Community Law and asked the Commission to intercede on his behalf with the Administrative Council. In December 1998, the European Commission refused, arguing that the institution was only an observer and could therefore not intervene on his behalf.

On 17 December 2000, the complainant therefore lodged a complaint with the European Ombudsman, and made the following allegation:

In refusing to make the Administrative Council aware of Infringements of Community Law by the EPO, the Commission acted with negligence.



THE INQUIRY

The Commission's opinion

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

The status of the Commission within the Administrative Council is that of an observer. The Commission can therefore only intervene in matters of common interest to the European Union and the European Patent Organisation. The internal organisation of the EPO does not belong to this category.

Moreover, in accordance with the Convention of Munich on European Patents of 5 October 1973, the European Patent Organisation is an intergovernmental organisation, independent from the European Union. The EPO can by no way be considered as a decentralised agency of the EU.

Given that the European Union is not a party to the Munich Convention and that the European Patent Organisation is an autonomous organisation, the Commission cannot exercise its prerogatives as guardian of the EU treaties to intervene in the internal organisation of the EPO. In any event, Community Law does not bind intergovernmental organisations since they are not the addressees of Community acts.

The European Commission considers that a judicial control of the EPO exists. The competent authority concerning the working relations between the EPO and its employees is the Administrative Tribunal of the International Labour Organisation.

Finally, the European Commission's role as guardian of the EU treaties aims at ensuring that European legislation is applied correctly in the general interest. This function cannot apply to subjective interests of private individuals regarding labour law issues.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In his reply, the complainant repeated that he had been damaged by the Commission's negligence and stated the following:

The European Commission tends to underestimate the malfunctioning of the EPO. The dismissal of the complainant is not due to a mere conflict in a working relation but to a plot intended to eliminate a trade unionist. The European Commission mentions "*alleged infringements of Community Law*". In national law, those infringements would be qualified as crimes and offences.

Moreover, there is no way to appeal against a judgement of the Administrative Tribunal of the International Labour Organisation. Although in the complainant's case the judgement of this court was signed by a judge who had died one week before the date of the judgement, no appeal is possible. No Court exists to hear cases of malfunctioning within the EPO.

Although the European Commission has started to take significant steps towards the integration of the EPO into the European Union, it does not seem to have any consideration for the status



of the EPO's staff.

THE DECISION

1 Alleged refusal to intervene on the complainant's behalf

1.1 The complainant alleged that the European Commission, in refusing to make the Administrative Council of the EPO aware of infringements of Community Law by the EPO, acted with negligence.

1.2 The Commission argued that it only has an observer status within the Administrative Council and that matters of internal organisation of the EPO are not among the matters in which the Commission can intervene.

1.3 The Ombudsman notes that the European Patent Organisation is an intergovernmental organisation, which is separate from the European Union. This organisation enjoys privileges and immunities as set out in a protocol of the European Patent Convention. Specific procedures for disputes between the European Patent Organisation and its staff are foreseen in article 13 of this Convention. The European Union or the European Commission are not among the members of the organisation which is composed of twenty Member States.

1.4 In view of the above, there is no indication in the present file, or in the European Patent Convention, that the European Commission would have had a legal obligation or possibility to intervene on the complainant's behalf. The Ombudsman therefore considers that there is no evidence of maladministration by the Commission as regards this aspect of the case.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN