

Decision of the European Ombudsman on complaint 159/2001/PB against the European Commission

Decision

Case 159/2001/PB - Opened on 28/02/2001 - Decision on 06/09/2001

Strasbourg, 6 September 2001

Dear Ms G,

On 7 February, you made a complaint to the European Ombudsman concerning the handling of your infringement complaint submitted to the Commission on 8 April 2000.

On 28 February 2001, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 2 May 2001, and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

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

To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Commission.

THE COMPLAINT

In February 2001, the complainant submitted a complaint to the Ombudsman, concerning an infringement complaint to the European Commission.

According to the complainant, he had submitted an infringement complaint to the Commission on 8 April 2000. He stated that he considered that the Danish Library Board had acted in breach of EC Directive 92/100, but provided no further details of his view.



The complainant explained that he had attempted to find out what had happened to his infringement complaint. On 24 July 2000, he requested information from the Commission about the handling of his infringement complaint, but received no reply. At the end of October 2000, the complainant contacted the Commission's Representation in Copenhagen, which in early November informed him that his letters to the Commission in Brussels had been registered in respectively DK MARKT and DK TAXUD; the Representation also referred him to two persons in the Commission who could provide more detailed information about the infringement complaint.

In his complaint to the Ombudsman, the complainant alleged that there was delay and a failure to reply by the Commission. He stated that although the Commission's complaint form for submission of infringement complaints states that an acknowledgement of receipt for infringement complaints should be provided within six weeks, he had not received any response from the Commission for ten months.

The complainant claimed:

1. To know what was happening with his infringement complaint
2. Access to the Commission's file on his infringement complaint.

THE INQUIRY

The Commission's opinion

The complaint was sent to the Commission for opinion.

In its opinion, the Commission referred to a letter that it had sent the complainant on 15 March 2001, i.e. subsequent to the lodging of the present complaint. The Commission enclosed a copy of the letter.

In its letter to the complainant, the Commission first apologised for the delay in replying to the complainant's infringement complaint.

The Commission then explained that lending rights are harmonised at EU-level by Council Directive 92/100. The Directive establishes that the author of a work has an exclusive copyright as far as the lending of the work is concerned. The Directive also establishes a right to a reasonable payment for the lending. However, the Directive does not harmonise the method by which the individual works are classified, nor the method by which the annual payments to the authors are calculated. It is therefore the national authorities which determine the more precise rules for this, and the national courts which decide disputes about the payment.

The Commission concluded in its letter that it is not in a position to initiate infringement proceedings in regard the questions raised in the complainant's infringement complaint.

The complainant's observations

The Commission's opinion was sent to the complainant for observations. It appears that no



observations were submitted to the Ombudsman.

THE DECISION

1 The alleged delay and failure to reply

1.1 The complainant alleged that there was delay and a failure to reply by the Commission. In its opinion, the Commission submitted a copy of a reply which it had sent to the complainant after the lodging of the present complaint. The Commission also acknowledged that there had been undue delay, and apologised to the complainant for this delay.

1.2 The Ombudsman notes that the Commission has replied to the complainant and admitted the excessive delay. Given that the Commission has apologised for the delay, the Ombudsman considers that there is no maladministration by the Commission.

1.3 In regard to the complainant's first claim, the Ombudsman notes that the Commission has sent the complainant a letter in which it explains its decision to close its file on his infringement complaint.

1.4 In regard to the complainant's second claim, it appears that this claim was directly related to his dissatisfaction with not receiving any information about what was happening to his infringement complaint. Given that the complainant has received a reasoned reply from the Commission, and that he has not pursued the second claim in any observations on the Commission's opinion, the Ombudsman considers that there is no maladministration by the Commission.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to be 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