

Otsus juhtumi 2487/2006/DK kohta - Piiratud juurdepääs komisjoni ruumidele

Otsus

Juhtum 2487/2006/DK - Alguskuupäev: {0} 24/10/2006 - Otsuse kuupäev: {0} 11/03/2008

Euroopa Komisjoni vastu esitatud kaebuse 2487/2006/DK kohta langetatud otsuse kokkuvõte

2006. aastal ombudsmanile esitatud kaebuses väitis kaebuse esitaja, et tema suhtes on talitatud ebaõigesti, kui keelduti talle võimaldamast juurdepääsu komisjoni hoonetele. Olles analüüsinud kaebuse esitaja ja komisjoni vahelise kirjavahetuse sisu, jõudis ombudsman oma otsuses järeldusele, et kaebuse esitajale üldiselt ei keelatud juurdepääsu komisjoni ruumidele, vaid pigem seati juurdepääsule teatud tingimused. Need tingimused olid vajalikud selleks, et tagada hea halduse huvides kõnealuse institutsiooni sisese töö sujumine.

Seetõttu järeldas ombudsman, et oma otsuses kasutas komisjon põhjendatult oma pädevust reguleerida juurdepääsu komisjoni ruumidele. Seega ei tuvastanud ombudsman komisjoni tegevuses haldusomavoli.

Strasbourg, 11 March 2008

Dear Mr D.,

On 31 August 2006, you submitted a complaint to the European Ombudsman against the European Commission concerning the latter's alleged refusal to allow you to enter its premises in Luxembourg, in particular the premises of the Office for Official Publications of the European Communities ("OPOCE").

On 24 October 2006, I forwarded the complaint to the President of the Commission. The Commission sent the English version of its opinion on 20 December 2006, and its French translation on 31 January 2007. I forwarded it to you with an invitation to make observations, which you sent on 30 March 2007.

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

THE COMPLAINT



On 31 August 2006, the complainant, who is a retired official of the European Parliament was refused access to the premises of the European Commission in Luxembourg, and in particular to the premises of the Office for Official Publications of the European Communities ("OPOCE"). The complainant was of the opinion that the refusals were unjustified. He explained that, despite his repeated written requests to the Commission for clarification regarding the matter, the latter did not provide him with an acceptable explanation concerning the alleged refusal.

The complainant submitted a complaint to the European Ombudsman in which he alleged that:

- he was wrongly refused access to the premises of the Commission in Luxembourg, and in particular to the building of the Office for Official Publications of the European Communities; and
- the Commission has failed properly to reply to his letter of 23 June 2006 concerning the matter.

By letter of 24 October 2006, the Ombudsman informed the complainant that he considered his first allegation to be directed against both the Commission and OPOCE. However, it appeared that the complainant had not made prior administrative approaches to OPOCE in relation to his first allegation, as required by Article 2(4) of the Statute of the European Ombudsman. The Ombudsman therefore considered that the complainant's allegation against OPOCE was inadmissible.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first recalled the background of the case by explaining the following.

By letter of 8 December 2005 (1) , addressed to the Security Directorate of the Commission ("SDC"), OPOCE in Luxembourg, complained about the complainant's behaviour on the grounds that he was inviting certain female OPOCE officials, who were members of the Romanian team, to work privately for him as translators, pressing them to the point of harassment and interfering in their work. OPOCE therefore asked the SDC to deny the complainant access to its premises. The SDC reacted immediately to this request. The Deputy Head of Unit of the SDC, Mr F., responsible for the application of security rules in Luxembourg, informed the complainant orally that he was infringing the rules governing the general conditions of access by retired officials to Commission premises and asked him to refrain from doing so.

Between 9 December 2005 and 16 February 2006, the complainant telephoned Mr F. several times and sent him several letters, insisting that he should be given access to OPOCE premises. Mr F. however confirmed the original decision on the grounds that there had been no change in the underlying situation and that OPOCE had not indicated any wish to have the ban lifted. By letters of 7 and 16 March 2006, Mr F. explained again the relevant rules and confirmed the refusal to allow the complainant access to OPOCE premises.

A series of letters from both sides and further incidents caused by the complainant followed.



These included repeated bullying and insulting behaviour towards a female employee in a Commission restaurant and the theft of a dictionary from the library of the Directorate-General for Translation. The exchange of letters (2) with the SDC ended with two letters by the complainant, addressed to Mr F., in which he made critical comments, while fully recognising the facts that had given rise to his exclusion.

On the substance of the complaint, the Commission made the following submissions.

As regards the complainant's first allegation, the Commission considered that the documents attached to its opinion provided sufficient information for the Ombudsman to conclude that the complainant was not wrongly refused access to Commission premises. The complainant had been asked to comply with the existing procedure governing the general conditions of access by retired officials to Commission premises and to adapt his behaviour to that expected of visitors to those premises. In this regard, the Commission referred, in particular, to the notes of 7 and 16 March 2006 (3) from Mr F. to the complainant, by which the complainant was informed that:

- visits to the European Commission and OPOCE must be based on proper reasons (e.g., public service, contacts with the horizontal services dealing with individual rights or visits to a person who had previously accepted such a visit);
- access to common social spaces (e.g., cafeterias and restaurants) was only authorised when it did not interfere with the ability of the Commission's services to perform their duties; and
- access to a staff member's office without his/her permission was strictly forbidden.

The Commission pointed out that, with a view to protecting its staff members, Mr F. informed the complainant, by letter of 22 June 2006, that (i) he was authorised entry to Commission and OPOCE premises only upon issuance of a visitor's pass and when accompanied by a staff member; and (ii) access to the Sickness insurance service was authorised upon request (*simple demande*) and carried out in the company of a security guard.

As regards the complainant's second allegation, the Commission explained that the contents and the general thrust of the complainant's letter of 23 June 2006 did not bear directly upon the decision to refuse him access to Commission premises, but rather to attack the Commission's staff member who took the said decision. The Commission recalled that its Code of Good Administrative Behaviour did not apply to correspondence which could reasonably be regarded as improper, for example, because it was repetitive, abusive and/or pointless, and that in such cases the Commission reserved the right to discontinue any such exchanges of correspondence. Since the complainant had not (i) requested any kind of information; (ii) requested an answer or (iii) put forward any new information that could have been used to re-evaluate the above-mentioned decision, the Commission decided that no answer was required. The Commission, nevertheless, recognised that it should have informed the complainant of its decision to discontinue any further correspondence with him regarding the matter, and apologised for this failure.

The Commission concluded its opinion by stating that it regretted that the complainant's behaviour had been such as to require the refusal of his unaccompanied access to Commission and OPOCE premises. It went on to point out that, however, the refusal was necessary in order



to protect Commission staff and to avoid disruption in the performance of their appointed tasks. The Commission noted that the complainant had been repeatedly asked, orally and in writing, to behave in an appropriate manner, to respect the rights of Commission staff and to avoid disrupting their work. The complainant's failure to respond constructively to these requests made the imposition of the controls unavoidable.

The complainant's observations

In his observations, the complainant maintained his complaint.

THE DECISION

1 Allegation that the complainant was wrongly refused access to Commission premises in Luxembourg

1.1 In his complaint, the complainant alleged that he was wrongly refused access to the premises of the European Commission in Luxembourg.

1.2 In its opinion, the Commission pointed out that Mr F., Deputy Head of Unit of the Security Directorate of the Commission ("SDC"), informed the complainant, by letter of 22 June 2006, that (i) he was authorised to enter the Commission and OPOCE premises only upon the issuance of a visitor's pass and when accompanied by a staff member; and (ii) his access to the Sickness insurance service was simply authorised upon request and carried out in the company of a security guard.

1.3 In his observations, the complainant did not contest the Commission's submission concerning his restricted access to Commission premises.

1.4 The Ombudsman considers it necessary first to recall, on the basis of the documents contained in the file, the relevant events which ultimately led to the alleged refusal to allow the complainant access to Commission premises. In this regard, the Ombudsman notes the following:

On 8 December 2005, the Director of Directorate Resources of OPOCE sent a letter to the SDC requesting that the complainant be banned from accessing the premises of OPOCE. This request was based on the fact that the complainant had allegedly invited some female OPOCE officials to work privately for him as translators, pressing them to the point of harassment and interfering with their work (4) .

On 10 December 2005, the complainant sent a letter to Mr F., in which he explained that, on the previous day, upon entering the building of OPOCE, he was informed by the security services that he needed a written permit to enter the building in question. The complainant therefore requested that Mr F. issue such a written permit, on the basis of the fact that " *he was interested in the European Union* " and that he " *tried to inform the people (...) about their carrier [sic] possibilities within the European institutions* ". The complainant added that he was trying to find collaborators for the Polish, Czech, Hungarian, Romanian and Bulgarian languages, with a view to establishing a translation business at a later stage.



Not having received the requested authorisation, the complainant sent another letter to Mr F. on 16 February 2006, asking for the issuance of the said authorisation.

On 7 March 2006, Mr F. replied to the complainant and pointed out that his access to the premises of the Commission and of OPOCE was subject to the general rules applicable to retired officials, and that any access, other than (i) that related to the complainant's administrative situation, (ii) the use of public financial and social services and (iii) that requested by visiting officials who had expressed their consent to receive him, was unacceptable and abusive.

On 9 and 12 March 2006, the complainant sent two further letters to Mr F. concerning the same matter.

On 16 March 2006, Mr F. replied to the complainant confirming that his access to Commission premises was subject to the general rules applicable to retired officials. He also referred to the complainant's behaviour, on 8 March 2006, towards a female official working in Unit OIL-03 at the Commission. In this regard, Mr F. emphasised that the Staff Regulations obliged the complainant to refrain from any action or behaviour which might reflect adversely upon his position, and that politeness and neatness were qualities that every citizen could expect from a civil servant of the EU. In light of these considerations, the fact that the complainant had addressed himself to an official in a way that could injure the latter's personal dignity and professionalism was very unfortunate. Mr F. therefore requested that the complainant refrain from any action or behaviour likely to disturb the peace of officials and of their services, in particular to refrain from practices that could, under the legislation of Luxembourg, lead to criminal proceedings.

On 22 June 2006, Mr Z., the Head of the Library of the Directorate-General for Translation, sent an e-mail to Mr F. informing him that the complainant had tried to take a dictionary, instead of borrowing it, from the library, and that, the previous day, the complainant had to be reminded about what constituted appropriate behaviour in a library. Mr Z. added that the complainant had already disturbed another visitor of the library by shouting and by being rude to a woman who had taken his seat at a desk. For these reasons, and because the complainant did not work at the Commission (5) anymore, Mr Z. considered that the complainant should not be allowed to enter the library again.

Also on 22 June 2006, Mr F. sent a letter to the complainant in which he referred to the latter's attempt illicitly to take a book out of the library of the Directorate-General for Translation on that same day, and to the fact that this attempt was thwarted by a security agent. Mr F. therefore recalled again that the Staff Regulations obliged the complainant to refrain from any action or behaviour which might reflect adversely upon his position and noted that the complainant appeared not to have respected this requirement. Mr F. informed the complainant that, as a consequence of his behaviour, his access to the premises of the Commission and of OPOCE had been subjected to the following restrictions: (i) the complainant's general access to the said premises would be authorised upon the issuance of a visitor's pass and would be carried out in the company of an active staff member, and (ii) his access to the services of the Sickness



insurance would be authorised upon request (*simple demande*) under the escort of a security guard.

On 23 June 2006, the complainant sent a letter to Mr F., which he began as " *ce que vous avez qualifié, hier, de 'tentative de vol' cadre bien avec votre mentalité de fonctionnaire flic. Votre sourire sadique me dégoûte .* " (6) (Emphasis in original). The complainant then stated that he had still not received a reply from Mr F. to his question whether he was again allowed to access the premises of OPOCE. The complainant also pointed out that he only wished to borrow the dictionary in question from the Commission's library in order to make an urgent translation.

1.5 Taking into account the above, the Ombudsman, first, notes that, whereas the complainant's allegation was that he was wrongly refused access to Commission premises in Luxembourg, it appears that, in fact, his access to Commission premises has not been refused, in general, but has rather been made subject to certain conditions. Relatedly, the Ombudsman remarks that the regulation of access to the premises of Community institutions falls within their authority with respect to their internal organisation, which authorises them to take appropriate measures in order to ensure that their internal operation is in conformity with the interests of sound administration (7) .

1.6 In the present case, the complainant appears to have been involved in certain incidents in the Community workplace in Luxembourg. In particular, it is not in dispute that the complainant attempted to leave the premises of the Commission/OPOCE with a book he had taken from the library of the Directorate-General for Translation, and that this attempt, which was likely to amount to a criminal offence, was not successful, because of the intervention of an official of the library and a security guard.

1.7 The Ombudsman finds that, in light of the above, the Commission's decision at issue seems to reflect a reasonable exercise of its authority to regulate access to Community premises. Moreover, the complainant did not make, in his complaint, any specific, duly substantiated, arguments demonstrating that, in the case at hand, the Commission had exercised the above power, in the case at hand, in a manner which was unlawful or otherwise contrary to pertinent rules or principles of good administration.

1.8 In view of the above, the Ombudsman considers that the complainant's allegation has not been substantiated. He thus finds no instance of maladministration corresponding to this allegation.

2 Allegation that the Commission has failed properly to reply to the complainant's letter of 23 June 2006

2.1 The complainant alleged that the Commission has failed properly to reply to his letter of 23 June 2006 concerning his refusal to access Commission premises in Luxembourg.

2.2 In its opinion, the Commission explained that the contents and the general thrust of the complainant's letter of 23 June 2006 did not bear directly upon the Commission's decision to refuse the complainant access to its premises, but rather to attack the Commission's staff member who took the said decision. In this regard, the Commission argued that its Code of



Good Administrative Behaviour did not apply to correspondence which could reasonably be regarded as improper, for example, because it was repetitive, abusive and/or pointless, and that, in such cases, it reserved the right to discontinue any such exchanges of correspondence. Since the complainant did not (i) request any kind of information; (ii) request an answer or (iii) provide any new information in his letter that could have been used to re-evaluate the above-mentioned decision, the Commission decided that no answer was required. The Commission, nevertheless, recognised that it should have informed the complainant of its decision to discontinue any further correspondence with him regarding the matter, and apologised for this failure.

2.3 The Ombudsman, first, notes that, in his letter of 23 June 2006 to Mr F., the complainant began by saying: " *ce que vous avez qualifié, hier, de 'tentative de vol' cadre bien avec votre mentalité de fonctionnaire flic. Votre sourire sadique me dégoûte. J'ai encore un petit compte à régler avec vous .* " (8) (Emphasis in original). The Commission could, thus, reasonably deem the complainant's language to be improper and abusive, which could justify a decision to discontinue the relevant correspondence. Relatedly, the Commission recognised, in the context of the present inquiry, that it should have informed the complainant of its decision to discontinue any further correspondence with him about the matter, and apologised for this failure. Moreover, in its letter of 22 June 2006 to the complainant (see point 1.4 above), the Commission informed him of the possibilities open to him to launch a formal administrative appeal and to complain to the Ombudsman. Taking the above into account, the Ombudsman concludes that no further inquiry into, and consideration of, the allegation are justified.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Commission corresponding to the complainant's first allegation. Moreover, no further inquiry into, and consideration of, the complainant's second allegation are justified.

The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

- (1) A copy of which the Commission attached to its present opinion.
- (2) Copies of the letters between the complainant and the Commission services were attached to the Commission's opinion.
- (3) These notes have been attached to the Commission's opinion on the present complaint.



(4) In support of the above submission, the Commission attached to its opinion a copy of the complainant's letter of 8 December 2005, addressed to a certain Ms R., in which the complainant wrote: "*In a few days, I will come and give the Romanian text about [a specific subject-matter] to all of your colleagues who are currently proof-reading. I very strongly wish, as I explained to you, to have their opinion in writing on the general quality of the text, which is in fact a translation. (...) Some of you may later become translators in my team, or in an EU institution. This operation is also to represent a test in view of this possible development. I would also like to discuss your situation as a 'contractual agent'.*" (Emphasis in the original).

(5) The Ombudsman notes that the Commission meant to refer to Parliament.

(6) Translation from the French original by the Ombudsman's services: "*[w]hat you have described yesterday as an 'attempt to steal' fits well with your police-civil servant mentality. Your sadistic smile disgusts me . I still have a score to settle with you.*" (Emphasis in original).

(7) Case C-58/94 *Netherlands v Council* [1996] ECR I-2169, paragraph 37.

(8) See note 6 above.