

## Entscheidung in der Sache 2787/2005/OV - Falsche Einstufung eines freiberuflichen Dolmetschers

Entscheidung

Fall 2787/2005/OV - **Geöffnet am** 14/09/2005 - **Entscheidung vom** 13/01/2006

Der Beschwerdeführer arbeitete ab 1995 als freiberuflicher Dolmetscher (als Hilfskraft angestellter Dolmetscher - auxiliary conference interpreter „ACI“) für das Europäische Parlament. Aufgrund seiner vorangehenden vierjährigen einschlägigen Erfahrungen stufte das Parlament ihn sofort in Kategorie 1 [1] ein. 2001 nahm der Beschwerdeführer seine Tätigkeit für den Gemeinsamen Dolmetscher- und Konferenzdienst des Generaldirektorats Dolmetschen der Europäischen Kommission („GD SCIC“) auf. Entgegen seinen Erwartungen wurde er als Dolmetscher der Kategorie 2 eingestuft. Ende 2004 beschlossen die Gemeinschaftseinrichtungen die Zusammenlegung ihrer ACI-Listen und alle ACI erhielten ein persönliches Datenblatt („*fiche signalétique*“). Das Datenblatt des Beschwerdeführers schien zu zeigen, dass er erst ab November 2004 als Dolmetscher der Kategorie 1 eingestuft worden war. Nachdem der Beschwerdeführer diesen vermeintlichen Fehler bemerkt hatte, wandte er sich im April 2005 per E-Mail an die Kommission und bat um Berichtigung seines persönlichen Datenblattes, dahingehend, dass er seit Januar 1995 und nicht erst seit November 2004 Dolmetscher der Kategorie 1 gewesen sei. Der Beschwerdeführer beantragte ferner die Auszahlung der 28% seines Gehaltes, die dem Betrag entsprachen, der ihm aufgrund einer angeblichen falschen Einstufung ab 2001, seit Beginn seiner Tätigkeit für die Kommission bis zum November 2004, als diese ihn in Kategorie 1 einstuft, nicht ausbezahlt worden war. Die Kommission antwortete dem Beschwerdeführer, dass seine Klassifizierung nicht geändert werde.

Im August 2005 reichte der Beschwerdeführer beim Bürgerbeauftragten Beschwerde gegen die Kommission ein und forderte, dass die Kommission i) sein persönliches Datenblatt berichtigen und offiziell anerkennen solle, dass er seit Januar 1995 Dolmetscher der Kategorie 1 war und ii) seine Bezahlung für den Zeitraum September 2001 bis 10 November 2004 berichtigen solle, d.h. als für den Zeitraum, für den er fälschlicherweise in Kategorie 2 eingestuft war sowie ihm die 28% des Gehaltes auszuzahlen, die ihm hierfür noch geschuldet werden.

In ihrer Stellungnahme zu der Beschwerde erklärte die Kommission, dass die Angaben auf dem persönlichen Datenblatt des Beschwerdeführers entsprechend seines Antrags berichtigt werden würden. Der Beschwerdeführer unterrichtete den Bürgerbeauftragten



später, dass er zwar das ihm aufgrund der falschen Klassifizierung geschuldete Gehalt nicht erhalten habe, aber doch zumindest eine moralische Genugtuung.

[1] Die Institutionen der europäischen Union haben zwei Kategorien von freiberuflichen Konferenzdolmetschern („ACI“) und zwar Kategorie 2 (Anfänger) und Kategorie 1 (Dolmetscher mit mehr als 100 Tagen Berufserfahrung bei den Gemeinschaftseinrichtungen). Der Unterschied in der Vergütung beträgt 28%.

Strasbourg, 13 January 2006

Dear Mr X.,

On 23 and 24 August 2005, you made a complaint to the European Ombudsman against the European Commission concerning your allegedly erroneous classification as a Category 2 interpreter.

On 14 September 2005, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 21 November 2005. On 5 December 2005, I forwarded it to you with an invitation to make observations. On 8 December 2005, I received your letter of 24 November 2005 in which you informed my services that you wanted to terminate the proceedings before the Ombudsman. By e-mail of 21 December 2005, you informed my services again that you found it appropriate for the Ombudsman to close the case. On 12 January 2006, you had a telephone conversation with my services.

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

#### THE COMPLAINT

According to the complainant, the relevant facts are as follows:

The complainant started working as a conference interpreter for the European Parliament in 1995. The European Institutions have a system of two categories for session auxiliary conference interpreters ("ACIs"), namely Category 2 (beginning interpreter) and Category 1 (experienced interpreter, having worked more than 100 days for the European Institutions (1)). The difference in remuneration is 28% (2) .

Due to the complainant's previous 4 years of professional experience, Parliament immediately granted him Category 1 status when he started working for it in 1995.

In 2001 (3) , the complainant started working for the Joint Interpreting and Conference Service of the Directorate General for Interpretation of the European Commission ("DG SCIC"). Since it is the Commission that pays all auxiliary conference interpreters, regardless of which institution they work for, the complainant assumed that he would continue to be paid as a Category 1 interpreter. However, the Commission classified him as a Category 2 interpreter, and, unlike Parliament, did not send out detailed payslips.



At the end of the year 2004, the European Institutions decided to merge their ACI lists and all ACIs were sent a personal data sheet ("fiche signalétique"). From that sheet, it appeared that the complainant had been classified as a Category 1 interpreter only in November 2004. It was not until the beginning of 2005 that the complainant noticed something was wrong.

On 13 April 2005, the complainant wrote an e-mail to the Commission informing it of the allegedly erroneous classification as a Category 2 interpreter. On 24 April 2005, the complainant wrote another e-mail to the Commission, asking a) for rectification of his personal data sheet, which should mention that he has been a Category 1 interpreter since January 1995 and not since November 2004, and b) for the payment of 28% of his salary corresponding to the sum unpaid due to the allegedly erroneous classification for the period from 2001, when he joined the Commission, to November 2004, when he was classified as a Category 1 interpreter. The Commission replied on 6 June 2005 to the complainant's e-mail of 13 April 2005, stating that, as he had worked 100 days for the Commission (that is to say, the minimum required for obtaining the status of an experienced interpreter) on 10 November 2004, he was classified as a Category 1 interpreter only as of that date. By letter of 15 June 2005 in reply to the complainant's e-mail of 24 April 2005, the Commission answered that the complainant's classification would not be changed. No rectification was therefore made to the complainant's salary for the relevant period.

On 23 August 2005, the complainant made the present complaint to the Ombudsman claiming that the Commission should:

- rectify his personal data sheet and officially acknowledge that he has been a Category 1 interpreter since January 1995; and
- rectify his payments for the period between September 2001 and 10 November 2004 during which time he was erroneously classified as a Category 2 interpreter and pay the 28% of his salary still due to him for that period.

#### **THE INQUIRY The Commission's opinion**

In its opinion, the Commission made the following comments:

As regards the background of the case, the Commission observed that, on 13 April 2005, the complainant sent an e-mail to DG SCIC and to Parliament officially requesting rectification of his ACI category. The complainant was first recruited by Parliament in 1995 as an experienced interpreter (Category 1), having worked for the Council of Europe for more than 100 days between 1991 and 1995.

The complainant was recruited for the first time by the Commission in December 2001 as a beginner interpreter (Category 2) given that he never informed DG SCIC that he was already considered an experienced interpreter by Parliament.

The Commission observed that the European Institutions decided jointly that all ACIs, who at the beginning of 2005 were in Category 1 at Parliament and in Category 2 at DG SCIC and vice versa, would be upgraded as of 1 January 2005, the date of the full merger of the



Luxembourg and Brussels Payments Offices. Before this date, Parliament and DG SCIC used entirely separate payments systems. As a consequence, no data on freelance interpreters were shared between the Institutions.

Only when DG SCIC was informed directly by freelance interpreters that they had worked for other institutions and/or bodies listed in the same classification criteria (available online), were those days of work added to interpreters' personal data sheets. The upgrade took place when a total of 100 days was attained.

Before the merger of the payments offices, DG SCIC could not have known that the complainant had been classified at the higher ACI category by Parliament. No information regarding his category had in fact ever been transmitted to DG SCIC, by himself or by any other institution or body.

DG SCIC upgraded the complainant to Category 1 on 10 November 2004, on the basis of the information available internally and in full accordance with the rules (100 days worked for the Commission), as no other information had been received prior to that date. The category according to which a freelance interpreter was paid by DG SCIC was clearly indicated on the salary statements sent to each freelance interpreter.

The Commission concluded that no financial consequences could be seen to arise from the above due to the fact that no request or communication to DG SCIC had taken place in 2001, when the complainant started working for DG SCIC, nor in the time up to the date when he had attained his hundredth day and was upgraded to Category 1. The data encoded in the complainant's personal data sheet would be completed so that it would appear clearly that he was Category 1, from 2 January 1995, for Parliament and Category 1, from 10 November 2004, for DG SCIC.

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

On 24 November 2005, the complainant wrote to the Ombudsman's office enclosing correspondence he had had with the Director-General of DG SCIC. The complainant pointed out that, although the Director-General did not offer any financial compensation for the classification error, he stated in his letter of 14 October 2005 that the complainant's personal data sheet would be amended to officially acknowledge that he was a Category 1 interpreter from 2 January 1995 onwards as far as Parliament was concerned.

The complainant stated that, although this was not a perfect solution, he felt that this was probably the best redress he could obtain. He therefore suggested terminating the proceedings before the Ombudsman upon receipt of his revised personal data sheet.

On 21 December 2005, the complainant sent an e-mail informing the Ombudsman's office that, on 8 December 2005, he had received a copy of his personal data sheet which had been rectified to confirm that he had been a Category 1 interpreter for Parliament as of 2 January 1995. The complainant therefore found it appropriate for the Ombudsman to close the case.



The complainant thanked the Ombudsman and his staff for following his complaint, stating that, although he received no financial compensation, he had obtained moral redress.

In a telephone conversation with the Ombudsman's office on 12 January 2006, the complainant clarified that he wanted to withdraw his complaint.

#### **THE DECISION 1 Allegedly incorrect classification of conference interpreter**

1.1 The complainant, who was an auxiliary conference interpreter of Category 1 (4) status for the European Parliament since 1995, started in 2001 to work for the Joint Interpreting and Conference Service of the Directorate General for Interpretation of the European Commission ("DG SCIC"). Since it is the Commission that pays all auxiliary conference interpreters ("ACIs"), regardless of which institution they work for, the complainant assumed that he would continue to be paid as a Category 1 interpreter. At the end of the year 2004, the European Institutions decided to merge their ACI lists and all ACIs were sent a personal data sheet ("fiche signalétique"). From that sheet, it appeared that the complainant had been classified by the Commission as a Category 1 interpreter only from November 2004 onwards. In his complaint to the Ombudsman, the complainant claimed that the European Commission should rectify his personal data sheet and officially acknowledge that he has been a Category 1 session auxiliary conference interpreter since January 1995. The complainant further claimed that the Commission should rectify his payments for the period between September 2001 and 10 November 2004 when he was classified as a Category 2 interpreter and pay the 28% of his salary still due to him for that period.

1.2 In its opinion, the Commission concluded that no financial consequences could be seen to arise from the complainant's situation due to the fact that no request or communication to the Joint Interpreting and Conference Service of the Directorate General for Interpretation of the European Commission ("DG SCIC") had been made in 2001, when the complainant started working for DG SCIC, nor at the time up to the date when he had attained his hundredth day as an ACI and was upgraded to Category 1 interpreter. The Commission however stated that the data encoded in the complainant's personal data sheet ("fiche signalétique") would be completed so that it would appear clearly that he was a Category 1 interpreter, from 2 January 1995, for the European Parliament and a Category 1 interpreter, from 10 November 2004, for DG SCIC.

1.3 On 21 December 2005, the complainant sent an e-mail informing the Ombudsman's office that, on 8 December 2005, he had received a copy of his personal data sheet which had been rectified to confirm that he had been a Category 1 interpreter for Parliament as of 2 January 1995. The complainant therefore found it appropriate for the Ombudsman to close the case. He stated that, although he received no financial compensation, he had obtained moral redress. In a telephone conversation with the Ombudsman's office on 12 January 2006, the complainant clarified that he wanted to withdraw his complaint.

#### **2 Conclusion**

It appears from the information supplied to the Ombudsman by the complainant that he wishes to drop the complaint. The Ombudsman therefore closes the case.



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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) See Article 2 of the Agreement on Working Conditions and Financial Terms for Session Auxiliary Conference Interpreters (ACI) and Freelance Interpreters (FLI) recruited by the Institutions of the European Union. This Agreement was concluded on 28 July 1999 between Parliament, the Commission and the Court of Justice on the one hand, and the International Association of Conference Interpreters (AIIC) on the other hand.

(2) See Article 6 of the Agreement.

(3) According to the documents in the file, the date on which the complainant started to work as an interpreter for the Commission is 8 September 2001.

(4) The European Institutions have a system of two categories for session auxiliary conference interpreters ("ACIs"), namely Category 2 (beginning interpreter) and Category 1 (experienced interpreter, having worked more than 100 days for the European Institutions). The difference in remuneration is 28%.