



Decision in case 1642/2018/PB on how the European Commission handled a complaint about alleged EU law breaches in a recruitment procedure at an Austrian university

Decision

Case 1642/2018/PB - Opened on 17/10/2018 - Decision on 17/10/2018 - Institution concerned European Commission (No maladministration found) |

The complaint to the European Commission

- 1.** The complainant, who is of a nationality other than Austrian, works at an Austrian university as an academic in the field of law. He considered that the university breached the right to free movement [1] and the right to non-discrimination (gender [2]) in a recruitment procedure. The complainant therefore made a complaint to the European Commission, asking it to take action against Austria for having infringed EU law (a so-called infringement complaint).
- 2.** The complainant explained that the university had organised a recruitment procedure for academic staff that was clearly geared towards the recruitment of one specific person, who had to be of Austrian nationality. The recruitment procedure was thus flawed and had meant the complainant was excluded because he was of not of Austrian nationality. He put forward his impression that Austrian universities regularly organise recruitment procedures as here described.
- 3.** The complainant argued that the university's actions were a breach of the fundamental EU right of freedom of movement of workers because applicants from other EU Member States could not have applied. He also argued that, since the recruitment procedure was aimed at recruiting a specific person, by its very nature it excluded applicants of the gender opposite to that person.
- 4.** The complainant informed the Commission that he had already contacted the Austrian Federal Ministry for Education, Science and Research. The ministry had informed him that it could not intervene because Austrian universities act autonomously when they recruit academic staff members.

The European Commission's response to the complainant

- 5.** The European Commission informed the complainant that it would not take action on the issues he had raised in his infringement complaint. It explained that the fact that there had apparently been only one internal male applicant fulfilling the criteria in question, and who was in this case of Austrian citizenship, does not in itself make the vacancy publication contrary to EU rules on free movement of workers and on gender equality. It noted that the



conditions in the recruitment notice did not stipulate any specific citizenship or gender.

6. The Commission added that it may open an infringement procedure only if it considers that a Member State has failed to fulfil an obligation under the EU Treaties. In its view, nothing in the documents and submissions provided by the complainant suggested that Austrian national legislation or administrative practices on filling academic posts at Austrian universities does not comply with EU law in respect to the right to the free movement of workers or gender equality. The complainant's case seemed to be limited to one individual vacancy notice for an academic post at the university in question. The Commission then advised the complainant to turn to a national court if he wanted to seek redress.

7. The complainant was not satisfied with the Commission's response and therefore turned to the Ombudsman arguing that, by not taking action on his infringement complaint, it had breached his right to good administration [3] . In particular, he expressed concern that the Commission had misunderstood or misinterpreted his arguments.

The European Ombudsman's findings

8. The Commission is responsible for overseeing the effective application, implementation and enforcement of EU law by the Member States [4] . In the event that a Member State fails to fulfil an obligation under the Treaties, the Commission can take measures (infringement proceedings) to bring this infringement to an end.

9. The Commission enjoys discretionary power in deciding whether or not, and when, to start an infringement procedure against a Member State [5] and acts on the basis of its policy on the monitoring of the application and implementation of EU law by Member States [6] . In line with this policy, the Commission gives priority to cases where the incorrect application of EU law is of a systemic nature [7] . The primary purpose of the infringement procedure is to ensure that Member States give effect to EU law in the general interest, not to provide individual redress [8] . For example, the Commission starts infringement proceedings against a Member State that has in place national legislation or administrative practice contrary to EU law. Individual cases of potential incorrect application of EU law, which do not raise issues of general practice or of a systematic failure to comply with EU law, should be dealt with at the national level [9] .

10. An examination of the correspondence between the Commission and the complainant shows that, although there are some differences in formulation and presentation, the Commission did not misunderstand the issues raised in his infringement complaint.

11. Based on the above, there was no maladministration by the Commission in deciding not to take action on the substantive issues raised in the infringement complaint.

12. The Commission appears to have handled the infringement complaint in a balanced manner. It did not categorically deny the complainant's arguments that breaches of EU law could occur if it were to be proven that there are systemic problems with administrative practices concerning recruitment procedures similar to that described in the infringement complaint.



13. The advice given to the complainant by the Commission, that he could consider pursuing the matter before a national court, was reasonable at the time it was given.

14. Based on the information provided by the complainant, the Ombudsman finds no maladministration [10] in this case.

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Strasbourg, 17/10/2018

[1] He referred to Article 45 of the Treaty on the Functioning of the European Union.

[2] He referred to Article 157 of the Treaty on the Functioning of the European Union.

[3] Article 41 of the EU Charter on fundamental rights.

[4] Article 17(1) Treaty on the European Union and Article 258 Treaty of the Functioning of the European Union.

[5] Judgment of the Court of Justice of 6 December 1989, *Commission v Greece*, C-329/88, ECLI:EU:C:1989:618.

[6] Communication from the Commission, EU law: Better results through better application, OJ 2017 C 18, available at:
<https://ec.europa.eu/info/publications/communication-commission-eu-law-better-results-through-better>

[7] Point 3 of the Communication.

[8] Point 4 of the Communication.

[9] Point 3 of the Communication.

[10] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the Decision of the European Ombudsman adopting Implementing Provisions