

Decision of the European Ombudsman on complaint 659/2000/GG against the European University Institute

Decision

Case 659/2000/IJH)GG - Opened on 12/07/2000 - Decision on 24/11/2000

Strasbourg, 24 November 2000 Dear Mrs Y., On 28 March 2000, you lodged a complaint with the European Ombudsman against the European University Institute ("EUI"), concerning the rejection of your application to join the PhD programme at the EUI (complaint 428/2000). This complaint was declared inadmissible on the grounds that the appropriate administrative approaches had not been made to the EUI, as required by Article 2 (4) of the Statute of the Ombudsman. On 15 May 2000, you renewed your complaint, after making administrative approaches to the EUI. On 12 July 2000, I forwarded the complaint to the EUI for its comments. The EUI sent its opinion on your complaint on 31 August 2000, and I forwarded it to you on 9 October 2000 with an invitation to make observations, if you so wished. On 6 November, I received your observations on the EUI's opinion. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

Background The European University Institute ("EUI") which has its seat in Florence was created in 1972 by the six original member states of the European Communities through the Convention setting up a European University Institute and started its activities in 1976. All the other countries that have joined the EU since the EUI was founded have acceded to this Convention. The EUI is directed by a Principal (or President) who is responsible for the administration of the Institute. A High Council composed of representatives of the countries that have signed the Convention is responsible for the main guidance of the Institute. It directs the activities of the EUI and supervises its development. A representative of the EU takes part in the meetings of the High Council but has no right to vote. Finally, there is an Academic Council that has general powers with regard to research and teaching. The EUI was originally financed exclusively by the Contracting States. It appears that presently part of its budget (some 15.5 % in 2000) is financed by the EU. The EUI figures on a list of organisations devoted to furthering the Communities' interests, drawn up in accordance with Article 37 of the Staff Regulations (1) . All the other bodies on that list appear to be within the Ombudsman's mandate. Furthermore, according to the Explanatory Report on the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (2) , the EUI falls within that Convention's definition of "bodies set up in accordance with the Treaties". Subsequent to the Convention setting up the EUI, the Community has acquired competencies in the fields of education, culture and research (cf. Article 3 points (n) and (q) and



Articles 149, 151 and 163 of the EC Treaty). *The complainant's case* The complainant, a Swedish national, applied to join the Doctoral Programme at the Department of Political and Social Science of the EUI in February 2000. This three-year programme prepares for the submission and defence of a doctoral thesis. According to the relevant brochure published by the EUI, candidates are selected in two steps. The first step is a selection based on the information provided in the application. The second step is based on a short-listed interview with the faculty of the department chosen. When the complainant's application was rejected, she turned to the European Ombudsman for help (complaint 428/2000). She alleged that she had been the victim of racial discrimination. In a letter of 5 April 2000, the Ombudsman rejected this complaint on the grounds that the appropriate administrative approaches had not been made to the EUI, as required by Article 2 (4) of the Statute of the European Ombudsman (3) . On 7 April 2000, the complainant wrote to the EUI in order to ask for the reasons why her application had been turned down. In his reply of 4 May 2000, Dr Frijdal, the Head of the Academic Service at the EUI informed the complainant that he had chaired the meeting of the short-listing committee that had been held with a view to selecting Swedish candidates for an interview. He added that he had contacted the Department of Political and Social Science in order to ascertain the reasons why the complainant had not been selected. Dr Frijdal concluded that the committee had found that there had been stronger candidates with research projects that were more interesting to the department and that tied in more closely with the individual professors' expertise. Regarding the complainant's allegation that her application had been rejected on racial grounds, Dr Frijdal stressed that it had only been the academic suitability that had been taken into account. Dr Frijdal also pointed out that most applicants had very impressive qualifications and that the fact that most of them were nevertheless not admitted attested to the highly competitive nature of the programme. On 15 May 2000, the complainant turned to the Ombudsman again in order to lodge the present complaint. The complainant claimed that there appeared to be a great degree of confusion regarding the short-listing committee and the persons actually responsible for the decision. She pointed out that Dr Frijdal had explained that he was the chairman of that committee but then had noted that he had had to contact the Department of Political and Social Science in order to ascertain the reasons why she had not been selected. The complainant claimed that the EUI's response was clearly unsatisfactory. She put forward three arguments in this context. First, the EUI had in her view used the least objective of the criteria in order to reject her application, i.e. the adequacy and pertinence of the research proposal. It would have been more appropriate to base the decision on more objective criteria like the degrees or examination results obtained, academic references, the curriculum vitae and the knowledge of languages. Second, the complainant claimed that her research proposal did tie in with the expertise of at least five individual professors whose names she gave. Finally, the complainant argued that the quality and pertinence of the research proposal was something that only became important in the second round of the selection procedure, that is to say on the occasion of the interview. The complainant concluded that her application had not been subject to a fair procedure and that the EUI had been unable to offer a valid explanation for her rejection. It appeared that the complainant also continued to believe that she had been the victim of racial discrimination.

THE INQUIRY

According to Article 195 of the EC Treaty, the European Ombudsman is entrusted with the task



of examining instances of maladministration in the activities of the Community institutions and bodies. In his letter to the EUI, the Ombudsman expressed the view that there were several arguments that seemed to allow the conclusion that the EUI was to be considered a Community body for the purposes of the Ombudsman's mandate. He invited the EUI to comment on this issue. The Ombudsman also expressed his hope that the EUI would respond to the complainant's allegations. **The opinion of the European University Institute** In its opinion, the President of the EUI informed the Ombudsman that in so far as the interesting question as to whether the EUI could be considered to be a Community body for the purpose of the European Ombudsman's mandate was concerned, he did not wish to propose a view in the absence of an opinion on the issue by the Institute's governing body, the High Council. The President of the EUI confirmed the contents of the letter that had been sent to the complainant on 4 May 2000. He also quoted the wording of some of the rules in Chapter 2 (Admission) of the EUI's "Academic Rules and Regulations for the Doctoral Programme". According to Article 2.5 (1) of these rules, the selection was the collective responsibility of the faculty. Article 2.5 (3) provided that each department carefully considered the potential supervision of the candidate taking into account the profile of the department and distribution of supervision among its faculty for the whole of the period concerned. According to Article 2.6, the meetings of the short-listing committees were chaired by the Head of the Academic Service. Article 2.6 also provides that the "departments prepare shortlists of potential candidates". The President of the EUI pointed out that the decision not to propose the complainant for an interview was an academic decision, which was the responsibility of the faculty, and which was based on a comparative evaluation of academic merit, proposed thesis vis-à-vis department profile, and departmental capacity to supervise the proposed topic. The EUI's procedures did not provide for an appeal against such a decision. The President of the EUI furthermore stated that in the 25 years of its existence, the EUI had never been accused of rejecting an application on racial grounds and that he completely trusted the academic judgement of the faculty in this matter. In his view, the complainant's application had been treated in accordance with the EUI's procedures in good faith and had not been ignored. **The complainant's observations** In her observations, the complainant maintained her complaint. She considered the EUI's letter to be an insulting refusal to reveal any facts. In her view, the EUI should have cited the number of Swedes of foreign origin that had been admitted in the 25 years of its existence rather than rely on the general statement that it had made in this context.

THE DECISION

1 The Ombudsman's jurisdiction 1.1 According to Article 195 of the EC Treaty, the European Ombudsman is entrusted with the task of examining instances of maladministration in the activities of the Community institutions and bodies. 1.2 The European University Institute ("EUI") was created in 1972 by the six original member states of the European Communities through the Convention setting up a European University Institute and started its activities in 1976. All the other countries that have joined the EU since the EUI was founded have acceded to this Convention. The activities of the EUI are directed by a High Council composed of representatives of the countries that have signed the Convention. A representative of the EU takes part in the meetings of the High Council but has no right to vote. The EU now provides part of the EUI's budget. 1.3 None of the Treaties establishing the European Communities and the European Union defines the term "Community body". 1.4 There are, however, a number of



arguments that militate in favour of the proposition that the European Ombudsman should be entitled to receive complaints concerning instances of maladministration in the activities of the EUI. 1.5 The EUI figures on a list of organisations devoted to furthering the Communities' interests, drawn up in accordance with Article 37 of the Staff Regulations (4) . All the other bodies on that list appear to be within the Ombudsman's mandate. Furthermore, according to the Explanatory Report on the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (5) , the EUI falls within that Convention's definition of "bodies set up in accordance with the Treaties". In this connection, it should also be pointed out that, subsequent to the Convention setting up the EUI, the Community has acquired competencies in the fields of education, culture and research (cf. Article 3 points (n) and (q) and Articles 149, 151 and 163 of the EC Treaty). 1.6 In his opinion, the President of the EUI informed the Ombudsman that in so far as the interesting question as to whether the EUI could be considered to be a Community body for the purpose of the European Ombudsman's mandate was concerned, he did not wish to propose a view in the absence of an opinion on the issue by the Institute's governing body, the High Council. No such opinion from the High Council was received by the Ombudsman. 1.7 In view of the above, the Ombudsman considers that it is not excluded that the EUI could be considered to be a Community body for the purposes of the European Ombudsman's mandate. **2 Lack of fair procedure**

2.1 The complainant, a Swedish national, applied to join the Doctoral Programme at the Department of Political and Social Science at the EUI. This application was rejected. The complainant claims that her application was not subject to a fair procedure. It is clear, however, that this allegation also encompasses an attack regarding the merits of the EUI's decision. 2.2 The European University Institute takes the view that the complainant's application was treated in accordance with the EUI's procedures in good faith and that it was an academic decision that was the responsibility of the faculty. 2.3 It appears both from the comments made by the complainant and the EUI and from the documents submitted by both parties that candidates for the relevant programme are selected in two steps. The first step is a selection based on the information provided in the application. The second step is based on a short-listed interview with the faculty of the department chosen in Florence. 2.4 According to the EUI, the complainant's application was examined by a short-listing committee chaired by the EUI's Head of the Academic Service. The EUI further submits that the decision not to propose the complainant for an interview was an academic decision, which was the responsibility of the faculty, and which was based on a comparative evaluation of academic merit, proposed thesis vis-à-vis department profile, and departmental capacity to supervise the proposed topic. 2.5 The Ombudsman agrees with the EUI's view that the rejection of the complainant's application was an academic decision that was the responsibility of the faculty. Academic bodies taking decisions on the admission of candidates naturally dispose of a wide margin of appreciation. In such circumstances, the Ombudsman must limit his examination to the question whether the body concerned went beyond the limits of its legal authority and whether the procedural rules in place were complied with. 2.6 In so far as the procedural aspect of the complainant's claim is concerned, the complainant stresses that in his letter to her of 4 May 2000, the Head of the EUI's Academic Service informed her that he had chaired the meeting of the short-listing committee that had been held with a view to selecting Swedish candidates for an interview but that he also added that he had contacted the Department of Political and Social Science in order to ascertain the reasons why the complainant had not been selected. The complainant



considers that there appeared to be a great degree of confusion regarding the short-listing committee and the persons actually responsible for the decision. 2.7 According to Article 2.5 (1) of Chapter 2 (Admission) of the EUI's "Academic Rules and Regulations for the Doctoral Programme", the selection is the collective responsibility of the faculty. Article 2.6 of these rules provides that the "departments prepare shortlists of potential candidates". It thus appears that the decision to invite candidates for interviews is made by the department, not the short-listing committee. One may however assume that the departments take their decision as to whom to invite for an interview on the basis of the result of the examination of the applications by the short-listing committees. In these circumstances, it is not surprising that the Head of Service who had chaired the relevant meeting of the short-listing committee still had to contact the faculty in order to ascertain the reasons why the complainant's application had been rejected. The Ombudsman thus concludes that it has not been proven that the EUI failed to comply with its procedural rules when dealing with the complainant's application. 2.8 In so far as the substantial aspects of this claim are concerned, the complainant submits that (1) the EUI used the least objective criterion (i.e., the quality and pertinence of her research proposal) in order to reject her application, that (2) her research proposal did, contrary to what the EUI claimed, tie in with the experience of individual professors at the EUI and that (3) the quality and pertinence of her research proposal should only have become important in the second round of the selection procedure, that is to say on the occasion of the interview. The EUI considers that it acted properly when taking its decision which was an academic one. This decision was based on a comparative evaluation of academic merit, proposed thesis vis-à-vis department profile, and departmental capacity to supervise the proposed topic. 2.9 The Ombudsman considers that the view put forward by the EUI is reasonable. In his view, none of the arguments submitted by the complainant is capable of establishing that the EUI went beyond the limits of its legal authority when dealing with her application. 2.10 On the basis of the above, there appears to have been no maladministration on the part of the EUI in so far as the first allegation put forward by the complainant is concerned. **3 Failure to provide a valid explanation for the rejection of the application** 3.1 The complainant claims that the EUI failed to provide her with a valid explanation for the rejection of her application. 3.2 In its opinion, the EUI refers to the letter that was sent to the complainant by its Head of the Academic Service on 4 May 2000 and confirms the contents of this letter. 3.3 The Ombudsman considers that the explanations provided by the EUI in its letter of 4 May 2000 allowed the complainant to understand on what grounds the EUI had rejected her application. 3.4 On the basis of the above, there appears to have been no maladministration on the part of the EUI in so far as the second allegation put forward by the complainant is concerned. **4 Racial discrimination** 4.1 In her original complaint (complaint 428/2000), the complainant alleged that she had been the victim of racial discrimination. It appears that this allegation is also implicit in her present complaint. However, the complainant has not put forward any evidence to support her allegation. 4.2 The President of the EUI points out that in the 25 years of its existence, it has never been accused of rejecting an application on racial grounds and that he fully trusts the academic judgement of the faculty in this matter. 4.3 The Ombudsman considers that the inquiry has not brought to light any elements which would warrant the conclusion that the complainant's application was rejected on grounds other than academic ones. 4.4 On the basis of the above, there appears to have been no maladministration on the part of the EUI in so far as the third allegation put forward by the complainant is concerned. **5 Conclusion** On the basis of the European Ombudsman's inquiries



into this complaint, there appears to have been no maladministration on the part of the European University Institute. The Ombudsman therefore closes the file. The President of the European University Institute will also be informed of this decision. Yours sincerely Jacob SÖDERMAN

(1) Rules determining the list of organisations devoted to furthering the Communities' interests referred to in the second indent of Article 37 (1)(b) of the Staff Regulations of officials of the European Communities.

(2) Text approved by the Council on 3 December 1998, 1998 OJ C 391/1.

(3) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, page 15.

(4) Rules determining the list of organisations devoted to furthering the Communities' interests referred to in the second indent of Article 37 (1)(b) of the Staff Regulations of officials of the European Communities.

(5) Text approved by the Council on 3 December 1998, 1998 OJ C 391/1.