

Decision of the European Ombudsman on complaint 777/2001/IJH against the European Commission

Decision

Case 777/2001/IJH - Opened on 06/06/2001 - Decision on 17/06/2002

Strasbourg, 17 June 2002

Dear Drs A.,

On 16 May 2001, you made a complaint to the European Ombudsman concerning possible racism in recruitment to the Community institutions and bodies.

On 6 June 2001, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 8 November 2001 and I forwarded it to you with an invitation to make observations by 31 December 2001, if you so wished. No observations were received from you. On 11 February 2002, I wrote to the Commission to request further information in relation to your complaint.

In view of the nature of the additional information requested from the Commission, the Ombudsman set a deadline for the Commission's reply of one month longer than usual. Also on 11 February 2002, I informed you by letter of the action taken. On 28 February 2002, you replied to my letter of 11 February 2002. On 10 March 2002, you wrote to me again. The Commission replied to the Ombudsman's request for further information on 29 April 2002 and I forwarded the reply to you with an invitation to make observations, which you sent on 4 June 2002.

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

THE COMPLAINT

In May 2001, the complainant lodged a complaint with the Ombudsman concerning possible racism in recruitment to the Community institutions and bodies. As grounds for his complaint, the complainant stated that there are more than 30 million people of ethnic minority origin living in the European Union, yet hardly any of them are employed in the structure of the European Union as an employee.



THE INQUIRY

The Ombudsman considered it appropriate to ask the Commission to give an opinion on the complaint. The Ombudsman requested that the Commission's opinion include statistics concerning (a) the proportion of citizens of the European Union who are of ethnic minority origin and (b) the proportion of officials and other servants of the European Communities who are of ethnic minority origin.

The Commission's opinion

The Commission's opinion is set out in full below:

"Comprehensive statistics on the proportion of citizens of the European Union who are of ethnic minority origin are not available. Such statistics would need to be collected at the level of the Member States.

Similarly, the Commission has not established any statistical data on the basis of ethnic origin in relation to its staff. The Commission is not in a position, therefore, to indicate what proportion of its workforce is of ethnic minority origin.

When the Commission advertises recruitment competitions, they are open to all eligible candidates. This means that competitions are accessible to every European citizen who fulfils the general and specific eligibility conditions. No reference is made to ethnic origin in the advertisements and no details of a candidate's ethnic origin are sought.

Throughout the competition procedure and until the oral stage, full confidentiality is safeguarded as candidates are only identified by a code number, which reveals neither gender nor national origin.

Furthermore the Staff Regulations expressly provide that officials are entitled to equal treatment without reference, direct or indirect, to their racial origins and the Commission stresses that the same career path is open to all employees.

The reform consultative document on "Equal Opportunities" considers that it is important to recognise the issue of ethnic diversity and states that "in terms of racial and ethnic diversity, the Commission will raise the issue with Member States" with a view to encouraging applications. In addition, in co-operation with Member States, publicity for future competitions will be improved to ensure that it reaches all communities in the Member States."

The Ombudsman forwarded the Commission's opinion to the complainant who did not, at this stage, submit observations.

Further inquiries

After carefully examining the Commission's opinion, the Ombudsman was not satisfied that the Commission had responded adequately to the complaint. He therefore informed the Commission accordingly.

In summary, the Ombudsman's letter made the following points:



The Ombudsman notes that the Commission possesses no information that could put into question the accuracy of the complainant's observation that hardly any people of ethnic minority origin are employed in the structure of the European Union.

The Ombudsman understands the Commission to imply that the under-representation of ethnic minorities in the workforce of the Community institutions and bodies results from a disproportionately small number of applications from people of ethnic minority origin. The Ombudsman notes, however, that the Commission is unable to provide evidence to exclude other possible explanations. For example, the Commission does not possess statistical information concerning the chances that a person of ethnic minority origin who enters a recruitment competition will be put on the reserve list, or subsequently be employed if his or her name does appear on the reserve list.

The Ombudsman points out that the right to equality before the law and protection against racial discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.

In the Ombudsman's view, the Commission's opinion in this case discloses a passive attitude towards the under-representation of ethnic minorities in the workforce of the Community institutions and bodies, which is hard to reconcile with the Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999. These guidelines stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.

The Ombudsman also noted that Council Directive 2000/43 requires the Member States to designate bodies for the promotion of equal treatment without discrimination on the grounds of racial or ethnic origin. The competences of these bodies should include, amongst other things, conducting independent surveys concerning discrimination and publishing independent reports and recommendations on any issue relating to such discrimination. The Ombudsman is not aware that any Community body, other than the Commission, has the resources to carry out similar functions as regards recruitment to the Community institutions and bodies.

The Ombudsman therefore requested the Commission to consider taking measures to obtain statistical information concerning the chances that persons of ethnic minority origin who enter a recruitment competition will be put on the reserve list, or subsequently be employed if their names do appear on the reserve list.

The Commission's complementary opinion

The Commission's complementary opinion made, in summary, the following points:

1 General remarks

The Commission to date has not received a single complaint from a candidate in any of its recruitment competitions alleging that a failure to obtain employment in the Commission was



due to the candidate's racial or ethnic origin, or alleging racial discrimination. The Commission is ready to examine any specific complaint submitted by an individual or a group of individuals who claim that they have been victims of discrimination on the basis of their ethnic origin. However, the Commission is not in a position to comment on an allegation of discrimination that appears to be based solely on "observations that hardly any people of ethnic minority origin are employed in the structure of the European Union".

Anonymity is a guarantee of equal treatment for candidates. The Commission's selection procedures are organised to the greatest extent possible so as to ensure anonymity. From the beginning of the selection process, candidates' personal data is encoded and they are assigned a candidate number which will follow them throughout the whole of the competition procedure. At no stage of the application process are photos requested. After the written tests have taken place, the competition secretary assigns each candidate a further secret number. This is the only identification of a candidate that the markers will have access to until the final oral stage. He or she is the only person who can link the candidate number and the secret number, in order to ensure total anonymity of the candidates during the marking stage of the written competition.

Article 1 (a) of the Staff Regulations requires EU Institutions to ensure equal treatment of individuals without reference, direct or indirect, to race. The Commission can reassure the Ombudsman that any person who enters a recruitment competition and is put on a reserve list is a potential candidate for a post if a vacancy occurs in his or her field of expertise.

The Commission rejects the idea that the fact that it does not possess statistical data on the ethnic origin of its officials indicates a passive attitude towards the under-representation of ethnic minorities in the workforce of the Community institutions and bodies. In not collecting data on ethnic origin the Commission is respecting the different national experiences and sensitivities in Member States, whose policies and practices on the collection of relevant statistics vary greatly, and is securing equal treatment in recruitment procedures.

2. Collection of statistical data

The Commission cannot accept the Ombudsman's request to obtain statistical information concerning the chances that persons of ethnic minority origin who enter a recruitment competition will be put on the reserve list, or subsequently be recruited and employed if their names do appear on the reserve list. The Commission's position on this subject results from the following objective constraints:

First, the problem of defining the concept of "minority" It should be noted that the Commission has no competence to define what is understood by an "ethnic minority", and such a definition may differ between Member States. Council Directive 2000/43/EC does not provide for such a definition.

Secondly, the fact that aggregated statistics on the proportion of citizens of the European Union who belong to ethnic minorities are not available. These statistics would necessarily need to be aggregated from statistics collected nationally.

However, a significant number of Member States prohibit the collection of such statistics under



national legislation. Prohibitions of this nature are often determined by the specific national history and culture. Even where there is no specific prohibition, these data are not often collected. The information in the Commission's possession indicates that the majority of Member States do not collect such statistics in relation to their national civil services for reasons of protection of privacy. However, this issue will be discussed with Member States in the coming months.

Thirdly, the absence of statistical data on the ethnic origin of people in the Commission is a logical consequence of the principle that the Commission does not ask applicants/staff members for any information linked to their ethnic background. According to the data protection Regulation 45/2001 (1), the processing of such data, when necessary to comply with specific obligations of the Institutions in the field of employment law, would require either an authorisation by a legal instrument (which currently does not exist) or, if necessary, insofar as it is agreed upon by the European Data Protection Supervisor (who has not yet been nominated, despite the Commission's efforts for a rapid adoption of his statute), subject to adequate safeguards.

3. Promoting applications from ethnic minorities

The Commission's policy stated in the White Paper on Reforming the Commission adopted by the Commission on 1 March 2000 is to better reflect cultural diversity and ethnicity in its staff and to promote equal opportunities and balance in its workforce. The first aim is to attract a maximum number of applications from candidates of ethnic minority origins to the Commission's open competitions. Positive actions to encourage applications from members of minority communities to recruitment competitions are already in preparation. However, co-operation with Member States is also crucial. It is in the very nature of recruitment competitions that only the best applicants will succeed and access to education and qualifications nationally is therefore of obvious importance, as is targeted information to communities of ethnic minority origin in the Member States.

The issue of racial and ethnic diversity of Commission staff has been raised with Member States and the Commission hopes that it will be discussed in a meeting of Heads of Member States' national civil services in the coming months. In addition, in co-operation with Member States, publicity for future competitions will be improved to ensure that it reaches the broadest range of communities in the Member States. This will involve, for example, advertisements in regional, local and specialist papers, increased contacts with minority groups and recruitment sources in the Member States as well as on the EUROPA web site. These elements are included in an Action Plan on Equal Opportunities and Flexible working Arrangements, drafted on the basis of the Global Package for the Reform of Personnel Policy of October 2001. The Action Plan will be submitted to the Commission for adoption in the near future. In the longer term, however, it remains the case that the Commission is largely reliant on the ability of Member States to facilitate access for people from ethnic minorities to education, employment and professions and in particular to posts in national civil services and, ultimately, international administrations. This is an unavoidable reality, particularly in view of the fact that all EU Institutions recruit staff by open competition, and will continue to do so.

The Commission's approach to recruitment is in line with Council Directive 2000/43/EC, which



prohibits racial discrimination in, amongst other things, employment and education.

As from 1 January 2003, all European recruitment competitions will be organised by the inter-institutional European Recruitment Office. The future Management Board, on which the Ombudsman is foreseen to be represented, will obviously have an important responsibility in this respect.

The complainant's observations

The complainant noted that the Commission accused him of making an accusation based only on appearance. The complainant pointed out that when Condoleezza Rice and Colin Powell appear on television it is obvious that Black Americans are employed in the high echelons of power in the USA. The complainant does not see this happening in Europe and hopes for a commitment from the President of the Commission and Commissioner Kinnock to employ more ethnic minorities.

The complainant mentioned that the UK recently adopted new legislation on race relations (2) and expressed the hope that the EU could adopt similar legislation to make the avenues of employment and power more accessible to the ethnic minorities inhabiting Europe. Then Europe could call itself a true democracy and state that its policies are inclusive.

The complainant also requested the assistance of the Ombudsman to bring the EU before the European Court of Human Rights if it does not enact legislation to show the ethnic background of its employees and employ more members of ethnic minorities.

THE DECISION

1 The issues raised by the complaint

1.1 The complainant alleged possible racism in recruitment to the Community institutions and bodies. As grounds for his complaint, the complainant stated that there are more than 30 million people of ethnic minority origin living in the European Union, yet hardly any of them are employed in the structure of the European Union as an employee.

1.2 The Ombudsman considered it appropriate to ask the Commission to give an opinion on the complaint.

1.3 The Commission's opinion referred to measures to prevent discrimination in the recruitment procedure, the availability of statistical information and the Commission's activity in relation to the issue of ethnic diversity. These three subjects are examined below.

2 Measures to exclude discrimination in the recruitment procedure

2.1 The Commission argues that its selection procedures are organised so as to ensure, as far as possible, the anonymity of candidates, which is a guarantee of equal treatment. At the beginning of the selection process, candidates' personal data is encoded and a candidate number is assigned which will follow them throughout the whole of the competition procedure. At no stage of the application process are photos requested. After the written tests have taken place, the competition secretary assigns each candidate a further secret number. This is the only identification of a candidate that the markers will have access to until the final oral stage.



The competition secretary is the only person who can link the candidate number and the secret number.

2.2 The Commission also assured the Ombudsman that any person who enters a recruitment competition and is put on a reserve list is a potential candidate for a post if a vacancy occurs in his or her field of expertise.

2.3 The Commission also pointed out that it has not received a single complaint from a candidate in any of its recruitment competitions alleging that a failure to obtain employment in the Commission was due to the candidate's racial or ethnic origin, or alleging racial discrimination.

2.4 The Ombudsman accepts that anonymity can guarantee equal treatment until the final oral stage of the competition procedure. The Ombudsman points out, however, that the oral stage of the competition necessarily involves a meeting between the candidate and the markers. Furthermore, the offer of a post to a person whose name is on a reserve list is normally preceded by an interview. Although no evidence of discrimination has been presented, the Ombudsman notes that the Commission is unable to provide statistical evidence of equal treatment in the oral stage of competitions and in the choice of whom to appoint from reserve lists. This issue is considered further in part 3 of the present decision below.

3 The lack of statistical information

3.1 The Ombudsman requested the Commission to provide statistics concerning (a) the proportion of citizens of the European Union who are of ethnic minority origin and (b) the proportion of officials and other servants of the European Communities who are of ethnic minority origin.

3.2 According to the Commission, comprehensive statistics on the proportion of citizens of the European Union who are of ethnic minority origin are not available. Such statistics would need to be collected at the level of the Member States. The Commission has not established statistical data on the basis of ethnic origin in relation to its staff and is not in a position, therefore, to indicate what proportion of its workforce is of ethnic minority origin.

3.3 Taking account of the above reply, the Ombudsman requested the Commission to consider taking measures to obtain statistical information concerning the chances that persons of ethnic minority origin who enter a recruitment competition will be put on the reserve list, or subsequently be employed if their names do appear on the reserve list.

3.4 The Commission gave two reasons for rejecting the Ombudsman's suggestion. The first reason is the problem of defining the concept of minority. According to the Commission, it has no competence to define what is understood by an ethnic minority, and such a definition may differ between Member States. The second reason concerns data protection. According to the data protection Regulation (3) , the processing of such data, when necessary to comply with specific obligations of the Institutions in the field of employment law, would require either an authorisation by a legal instrument, which currently does not exist, or the agreement of the European Data Protection Supervisor, who has not yet been nominated.



3.5 The Ombudsman points out that the Commission's inability to define what counts as an ethnic minority need not prevent it from obtaining statistical information. For example, if applicants were invited to complete a form, on a voluntary basis, stating whether they belong to an ethnic minority and if so, to describe it, those persons who regard an ethnic origin as being part of their identity would have the opportunity to express themselves. The information collected need not be used in any part of the selection process and could be stored in aggregate form only and for the sole purpose of monitoring the effectiveness of the Commission's stated policy of encouraging applications from members of minority communities in order to promote equal opportunities and balance in its workforce.

3.6 The Ombudsman also points out that experience in some Member States shows that a procedure of the kind outlined in paragraph 3.5 above is consistent with internationally recognised data protection standards.

3.7 The Ombudsman is not aware, however, of any specific legal obligation on the Commission to collect such statistical information. He therefore considers that no further inquiries into the matter are justified in the context of the present complaint.

4 The Commission's activity in relation to the issue of ethnic diversity

4.1 The Ombudsman informed the Commission of his view that the Commission's first opinion disclosed a passive attitude towards the under-representation of ethnic minorities in the workforce of the Community institutions and bodies.

4.2 In reply, the Commission referred to its stated policy to better reflect cultural diversity and ethnicity in its staff and to promote equal opportunities and balance in its workforce. Positive actions to encourage applications from members of minority communities to recruitment competitions are already in preparation. The issue of racial and ethnic diversity of Commission staff has been raised with Member States and the Commission hopes that it will specifically be discussed in a meeting of Heads of Member States' national civil services in the coming months. In addition, in co-operation with Member States, publicity for future competitions will be improved to ensure that it reaches the broadest range of communities in the Member States. These elements are included in an Action Plan on Equal Opportunities and Flexible Working Arrangements that will be submitted to the Commission for adoption in the near future.

4.3 The Commission also pointed out that, as from 1 January 2003, all European recruitment competitions will be organised by the inter-institutional European Recruitment Office and stated that the future Management Board, on which the Ombudsman is foreseen to be represented, will obviously have an important responsibility in this respect.

4.4 The Ombudsman welcomes the Commission's recognition of the need to tackle the under-representation of ethnic minorities in the workforce of the Union institutions and bodies. In the Ombudsman's view, effective measures for this purpose would be in accordance with both the Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999 and with the principles of Directive 2000/43 (4) .



4.5 As regards the role of the future European Recruitment Office, the Ombudsman understands the Commission to mean that it should promote equal opportunities and ethnic diversity in the staff of the Union institutions and bodies. The Ombudsman welcomes the Commission's positive approach to the role of the new Office.

4.6 In view of the Commission's recognition of the need to promote equal opportunities and ethnic diversity as well as its ongoing activity, including the intended adoption of an Action Plan in the near future, the Ombudsman considers that no further inquiries into the present complaint are justified.

5 The complainant's request for assistance to bring a case to the European Court of Human Rights

5.1 In observations on the Commission's complementary opinion, the complainant requested the assistance of the Ombudsman to bring the EU before the European Court of Human Rights if it does not enact legislation to show the ethnic background of its employees and employ more members of ethnic minorities.

5.2 In response, the Ombudsman points out that his functions do not include the provision of assistance to bring legal proceedings. The Ombudsman also informs the complainant that although all the Member States are signatories of the European Convention on Human Rights, the European Union as such is not a signatory.

6 Conclusion

For the reasons stated in paragraphs 3.7 and 4.6 above, the Ombudsman considers that no further inquiries into the present complaint are justified. The Ombudsman therefore closes the case.

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

Yours sincerely,

Jacob SÖDERMAN

(1) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, 2001 OJ L 8/1.

(2) The Ombudsman understands the complainant to refer to the Race Relations (Amendment) Act 2000 which amongst other things, places a general duty on public authorities to work towards the elimination of unlawful discrimination and promote equality of opportunity and good relations between persons of different racial groups.

(3) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data



by the Community institutions and bodies and on the free movement of such data, 2001 OJ L 8/1.

(4) Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 2000 OJ L 18/22.