

## Decision of the European Ombudsman on complaint 2107/2002/(BB)PB against the European Commission

Decision

**Case 2107/2002/(BB)PB - Opened on 31/12/2002 - Recommendation on 15/06/2004 -  
Decision on 07/07/2005**

The complaint concerned the rules governing in-service training periods with the Commission, which explicitly mentioned an age limit of 30 years. The complainant alleged that the age limit constituted age discrimination and was contrary to the Charter of Fundamental Rights of the European Union.

Article 21 of the Charter of Fundamental Rights states that: "Any discrimination based on any ground such as [...] age [...] shall be prohibited". According to the established case law of the European Court of Justice, a difference in treatment is discriminatory if it is not justified by objective factors.

The Commission argued that the age limit of 30 years was objectively justified because the Commission's in-service training programme was aimed at young people at the beginning of their careers, and that the age limit was therefore non-discriminatory and in conformity with Article 21 of the Charter of Fundamental Rights.

On 15 June 2004, the Ombudsman addressed a draft recommendation to the Commission according to which the latter should abolish the age limit in its traineeship programme.

On 29 March 2005, the Commission informed the Ombudsman that it had adopted a new decision on the rules governing its traineeship programme, and that the new rules contained no age limit. The rules were applicable as from 1 March 2005.

On the basis of his inquiries, the Ombudsman concluded that the Commission had accepted the Ombudsman's draft recommendation and that the measure taken by the Commission was satisfactory. The Ombudsman therefore closed the case.

The Ombudsman also noted that several other Community institutions and bodies apply an age limit in their traineeship programmes. The Ombudsman therefore announced that he would launch an own initiative inquiry into these programmes.

Strasbourg, 7 July 2005



Dear Mr B.,

On 3 December 2002, you made a complaint to the European Ombudsman concerning the application of an age limit in the European Commission's traineeship programme.

On 31 December 2002, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 20 March 2003. On 28 March 2003, I forwarded it to you with an invitation to make observations, which you sent on 4 April 2003.

On 17 October 2003, I made a proposal for a friendly solution in your case, and on that same date sent you a copy of my letter to the Commission. The Commission sent me its reply to my proposal for a friendly solution on 28 November 2003. I sent you a copy of the Commission's reply to my proposal for a friendly solution on 19 December 2003, with an invitation to make observations. You sent your observations on 2 January 2004.

On 15 June 2004, I made a draft recommendation to the Commission, a copy of which I sent to you on that same date. The Commission sent its detailed opinion on my draft recommendation on 13 August 2004, stating that it was internally discussing the possibility of implementing the draft recommendation in the context of a general amendment to the rules on its traineeship programme. I forwarded a copy of the Commission's opinion to you, inviting you to submit observations. No observations were received from you.

On 13 January 2005, I made further inquiries, asking the Commission to inform me about any progress in implementing the draft recommendation, and I informed you on that same date. The Commission replied to my further inquiries on 29 March 2005, and I forwarded a copy of the reply to you with an invitation to make observations by 31 May 2005. No observations were received from you by that date.

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

## **THE COMPLAINT**

The complaint was submitted by a student at the Copenhagen Business School. The complainant stated that it was part of his course to do a traineeship of 3-6 months, and that he had inquired into the possibility of doing so at the European Commission. The complainant, who was forty years old at the time of submitting his complaint, had noticed that the Commission applied an age limit of 30 to trainees. He therefore wrote to the European Ombudsman, alleging that the use of an age limit for trainees constituted age discrimination and was contrary to the Charter of Fundamental Rights of the European Union. He claimed that the age limit should be abolished.

## **THE INQUIRY**

### **The Commission's opinion**



In its opinion, the Commission made the following comments:

The programme of in-service training offered by the Commission was not a pre-recruitment programme but a work experience programme, and as such the trainees did not have the same responsibilities as Commission officials, nor were they paid a salary (but received a standard grant).

The number of applications from well-qualified candidates always far exceeded the number of places available. It was addressed to young graduates who are at the beginning of their careers. In this case, the age limit was objectively justified and was therefore non-discriminatory and in conformity with Article 21 of the Charter of Fundamental Rights of the European Union, which forbids discrimination *inter alia* on the grounds of age.

However, exemptions were granted from the age limit rule, provided that a covering letter was sent with the application requesting such an exemption and with a good justification for it. There were several criteria, which the Head of the Traineeship Office had to consider when granting exemptions. Examples of such criteria were: extensive long-term studies, private circumstances (e.g., military service, severe illness, care of a close relative during long or terminal illness, etc.) or a combination of professional experience and specialised studies relevant to a particular area of work within the Commission. It was evident that each case was judged on the basis of its own merits.

The complainant had not submitted an application or a request for an exemption from this age limit. It was therefore not possible at the time of the opinion to say whether or not his application would be accepted, or whether an exemption would be granted in his favour.

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

The Commission's opinion was forwarded to the complainant, who maintained his complaint.

## **THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION**

After careful consideration of the opinion and the complainant's observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's allegation.

#### **The proposal for a friendly solution**

Article 3 (5) of the Statute of the Ombudsman (1) directs the Ombudsman to seek, as far as possible, a solution with the institution concerned to eliminate the instance of maladministration and satisfy the complaint.

The Ombudsman therefore made the following proposal for a friendly solution to the Commission:

The European Commission could take action to avoid the appearance of discrimination and arbitrariness by reconsidering the selection criteria for its training programme in order to avoid



any reference to the age of candidates.

This proposal was based on the Ombudsman's preliminary conclusion that decisions by the Commission to grant exemptions to the age limit rule could appear arbitrary because the non-exhaustive list of "good justifications" for exemption referred to in the Commission's opinion did not appear to be based on any clear and objective principles.

#### **The Commission's opinion**

In its reply of 28 November 2003, the Commission reiterated that its traineeship programme was aimed at young university graduates in the beginning of their professional career. It was therefore addressed to and mainly focussed on young persons. Youth, the Commission stated, should obviously be defined by age, and certain age limits were therefore required.

The Commission also noted that all the other European Institutions applied an age limit in their traineeship programmes.

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

The Commission's opinion was forwarded to the complainant, who maintained his allegation and claim.

## **THE OMBUDSMAN'S DRAFT RECOMMENDATION**

#### **The draft recommendation**

On 15 July 2004, the Ombudsman addressed the following draft recommendation to the Commission:

The Commission should abolish the age limit in its traineeship programme.

This draft recommendation was based on the following considerations:

1 The complaint concerned the rules governing in-service training periods with the Commission, which explicitly mentioned an age limit of 30 years. The complainant alleged that the age limit constituted age discrimination and was contrary to the Charter of Fundamental Rights of the European Union.

2 In its opinion, the Commission argued that the age limit of 30 years was objectively justified because the Commission's in-service training programme was aimed at young people at the beginning of their careers, and that the age limit was therefore non-discriminatory and in conformity with Article 21 of the Charter of Fundamental Rights.

3 Following receipt of the complainant's observations on the Commission's opinion, the Ombudsman examined the case and concluded that the Commission's use of an age limit for training periods with the Commission appeared to be discriminatory and arbitrary. The Ombudsman therefore proposed a friendly solution, suggesting to the Commission that it avoid any reference to the age of candidates. The Ombudsman's finding was based on the following considerations:



Article 21 of the Charter of Fundamental Rights states that: "Any discrimination based on any ground such as [...] age [...] shall be prohibited". According to the established case law of the European Court of Justice, a difference in treatment is discriminatory if it is not justified by objective factors (2) .

In its opinion, the Commission had explained that exemptions were granted for the age limit rule and had provided a list of "good justifications". The list of examples did not appear to be based on any clear and objective principles. Thus, decisions by the Commission to grant or refuse exemptions to the age limit rule could appear arbitrary.

4 The Commission rejected the Ombudsman's proposal for a friendly solution, making, in summary, the following points:

1. One of the main objectives of the Commission's traineeship programme was to provide practical working knowledge to young university graduates in the beginning of their professional career.
2. All the other institutions apply an age limit in their traineeship programme.
3. The Commission applied no age limit to its other traineeship programmes not aimed at young persons.
4. Of the 21 437 applications received for the training periods March 2003 - March 2004, only 20 requests for age exemptions (0,09%) were refused, whereas 277 requests were actually granted.
5. Establishing a detailed and comprehensive list of objective reasons on the basis of which exemption could be granted would entail the risk of excluding objective reasons for exemption.

5 The Ombudsman carefully examined the Commission's arguments, and came to the following conclusions:

1. As regards the Commission's first point, the Ombudsman took note of the fact that the Commission's traineeship programme was aimed at university graduates, which is a legitimate objective. The Commission had not, however, explained why it considered it to be justified to discriminate between 'young' and 'old' university graduates.
2. As regards the Commission's observation that all other institutions apply an age limit in their traineeship programme, the Ombudsman pointed out that there were examples of training programmes at the European Union level where no age limit was provided for in the rules governing those programmes (3) .
3. As regards the Commission's reference to its other traineeship programmes where no age limit was applied, the Ombudsman welcomed the fact that no such limit was applied to those programmes. This could not, however, influence the Ombudsman's finding on the use of an age



limit in the programme here concerned.

4. The Ombudsman noted that the proportion of applications where age was an issue appeared to be very small. This, in the Ombudsman's view, indicated that removing the age limit would be unproblematic. Doing so would furthermore eliminate the need to deal with requests for exemptions and thereby simplify the administrative tasks of the Commission.

5. As regards the Commission's concern about the effects of trying to establish a comprehensive list of objective reasons on the basis of which exemption could be granted, the Ombudsman pointed out that his proposal for a friendly solution was that the Commission should remove the age limit, not that it should establish a comprehensive list of reasons for exemptions. The Ombudsman furthermore noted that the difficulties of establishing a list of exemptions, referred to by the Commission, suggested that it would be more expedient to eliminate the need for such a list of exemptions by removing the age limit.

In the light of these findings, the Ombudsman maintained his conclusion that the age limit in the Commission's traineeship programme constituted unjustified discrimination, and accordingly made the draft recommendation referred to above.

6 For the purpose of its response to the draft recommendation, the Ombudsman furthermore invited the Commission to also reconsider its position in the light of its commitment to promote lifelong learning, as set out in its Communication on "Making a European Area of Lifelong Learning a Reality" (4) .

#### **The Commission's opinions**

In its detailed opinion on the draft recommendation, the Commission stated that its rules governing in-service training were under review and that it was examining the question of abolishing the age limit in line with the Ombudsman's draft recommendation.

On 13 January 2005, the Ombudsman made further inquiries, asking the Commission to inform him about progress in implementing the draft recommendation.

The Commission replied on 29 March 2005, stating that it had adopted a new decision on the rules governing its traineeship programme, and that the new rules contained no age limit. The rules would be applicable as from 1 March 2005. The Commission enclosed a copy of its new decision. Recital (7) of the Commission's decision refers to the fact that the Ombudsman stated in his draft recommendation that the Commission should abolish the age limit in its traineeship programme. Article 1.1 of the Annex to its decision states that "[t]hese rules govern the official traineeship scheme of the Commission of the European Union. This scheme is addressed mainly to young graduates, without excluding those who - in the framework of lifelong learning - have recently obtained a university diploma and are at the beginning of a new professional career".

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

The Ombudsman forwarded a copy of the reply to the complainant with an invitation to make observations. No observations have been received from the complainant.



## THE DECISION

### 1 Allegation of unfair discrimination

1.1 The complaint concerned the rules governing in-service training periods with the Commission, which explicitly mentioned an age limit of 30 years. The complainant alleged that the age limit constituted age discrimination and was contrary to the Charter of Fundamental Rights of the European Union.

1.2 In its opinions on the complaint and on the Ombudsman's proposal for a friendly solution, the Commission argued that the age limit of 30 years was objectively justified because the Commission's in-service training programme was aimed at young people at the beginning of their careers, and that the age limit was therefore non-discriminatory and in conformity with Article 21 of the Charter of Fundamental Rights.

1.3 On 15 June 2004, the Ombudsman addressed a draft recommendation to the Commission according to which the latter should abolish the age limit in its traineeship programme.

1.4 On 29 March 2005, the Commission informed the Ombudsman that it had adopted a new decision on the rules governing its traineeship programme, and that the new rules contained no age limit. The rules were applicable as from 1 March 2005.

### 2 Conclusion

2.1 On the basis of his inquiries, the Ombudsman concludes that the Commission has accepted the Ombudsman's draft recommendation and that the measure taken by the Commission is satisfactory.

2.2 The Ombudsman therefore closes the case. The President of the European Commission will also be informed of this decision.

## FURTHER REMARK

The Ombudsman is aware that several other Community institutions and bodies apply an age limit in their traineeship programmes. The Ombudsman will therefore launch an own-initiative inquiry into these programmes.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) 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, Official Journal 1994 L 113, p. 15.



(2) Case C-171/88, Rinner-Kühn [1989] ECR 2743, paragraph 12.

(3) Cf. the conditions referred to on the websites of the Translation Centre for the Bodies of the European Union ( <http://www.cdt.europa.eu> [Link]) and EUROJUST ( <http://www.eurojust.europa.eu> [Link]). The Ombudsman's rules, which also contain no age limit, are available on <http://www.ombudsman.europa.eu> [Link].

(4) Communication from the Commission on "Making a European Area of Lifelong Learning a Reality" (COM(2001) 678 final, available on : [http://ec.europa.eu/education/policies/lll/life/communication/com\\_en.pdf](http://ec.europa.eu/education/policies/lll/life/communication/com_en.pdf) [Link])