

Decision of the European Ombudsman on complaint 518/2004/MF against the European Commission

Decision

Case 518/2004/MF - Opened on 30/03/2004 - Decision on 06/12/2005

At the time of the complaint, the complainant was a civil servant working for the town hall of Saragossa, in Spain. On 9 February 2004, she applied for a traineeship to the European Commission. Applicants were required to be less than thirty years old but exemptions were possible. As the complainant exceeded the thirty-year age limit, she requested an exemption from the age limit. On 19 February 2004, she was informed that her application had been refused on the grounds that she was over thirty years age, without being given any further reasons.

The complainant alleged that the European Commission had failed to reply to her request for an exemption from the age limit. She claimed that her application for a traineeship should be accepted.

In its opinion, the Commission stated that the Traineeships Office did acknowledge that it had only informed the complainant of the rejection of her application due to the age limit. This was due to the wrong encoding of refusal reasons into the new computerised system. Consequently, the complainant was only informed that her application had been refused as she had not met the age limit criterion. However, as soon as this error became known, an additional explanatory letter was sent to the complainant. The reasons for which the complainant's request for exemption was refused were the following: 1) the complainant had not given any factual, specific or justifiable reason for an exemption; 2) the complainant only declared knowledge of one foreign European language (French), whereas applicants from Member States were required to have minimum good knowledge of at least two Community languages; 3) the complainant only indicated one specific Directorate General in her traineeship application.

On 29 April 2005, the Ombudsman made a proposal for a friendly solution to the Commission, on the basis of the following considerations: Firstly, in view of his draft recommendation to the Commission in complaint 2107/2002/(BB)PB and of the Commission's decision to abolish the age limit as one of the selection criteria for the in-service traineeship programme, the complainant's age no longer constituted an obstacle for the admission of her application for a traineeship at the European Commission. Secondly, the Ombudsman considered that it emerged from the complainant's observations and the document submitted by her that she had a good knowledge of, at least, two Community languages. Thirdly, the Ombudsman stated that



he was not aware of any rule in the Commission decision on traineeships of 7 July 1997 pursuant to which candidates had to specify a specific number of Directorates-General in which they wish to do their traineeship.

The friendly solution proposed consisted in the following:

"The Commission could review its decision to reject the complainant's application for its trainees".

In its reply to the Ombudsman's proposal, the Commission accepted the friendly solution proposed and stated that it would exceptionally consider the complainant's file as automatically pre-selected for the in-service training session starting on 1 March 2006. The complainant's name would therefore be included in the list of pre-selected candidates.

By e-mail of 10 August 2005, the complainant informed the Ombudsman's services that she considered that a friendly solution to her complaint had been achieved. She thanked the Ombudsman for his successful intervention and congratulated him for the efforts he had made to achieve a friendly solution with the Commission concerning her case.

Following the Ombudsman's initiative, the Ombudsman concluded that it appeared that a friendly solution to the complaint had been agreed between the Commission and the complainant. The Ombudsman therefore closed the case.

Strasbourg, 6 December 2005

Dear Ms M.,

On 24 February 2004, you made a complaint to the European Ombudsman against the European Commission concerning the use of exemption from the age limit set for traineeships organised by the latter.

On 30 March 2004, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 9 June 2004. A translation into Spanish of the Commission's reply was sent on 17 June 2004, I forwarded it to you with an invitation to make observations, which you sent on 15 July 2004.

On 29 April 2005, I made a proposal to the European Commission for a friendly solution to your complaint. On 8 July 2005, the Commission sent its reply to this proposal. A translation into Spanish of the Commission's reply was sent to you on 14 July 2005. On 10 August 2005, you informed my services by e-mail that you considered that a friendly solution had been achieved.

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 is a civil servant working for the town hall of Saragossa, in Spain. On 9 February 2004, she applied for a traineeship to the European Commission. Applicants were required to be less than thirty years old but exemptions were possible. As the complainant exceeded the thirty-year age limit, she requested an exemption from the age limit.

On 19 February 2004, she was informed that her application had been refused on the grounds that she was over thirty years of age, without being given any further reasons.

In her complaint to the European Ombudsman, the complainant alleged that the European Commission had failed to reply to her request for an exemption from the age limit.

The complainant claimed that her application for a traineeship should be accepted.

THE INQUIRY

The Commission's opinion

The opinion of the European Commission on the complaint was in summary as follows:

Regarding the existence of age limits, one of the main objectives of the Commission's traineeship programme is to provide practical working knowledge to young university graduates at the beginning of their professional careers. Therefore, the traineeship programme is addressed to, and mainly focuses on, young people. Given that youth is obviously defined by age, age limits are required in the traineeship programme's eligibility criteria. It should also be pointed out that most of the other European Institutions (European Parliament, Council, European Economic and Social Committee, Committee of the Regions, etc.) have established an age limit as an admission or eligibility criterion to their own traineeship programmes. For the above objective reasons, the age limit was therefore not considered as discriminatory.

The Traineeships Office did acknowledge that it had only informed the complainant of the rejection of her application due to the age limit. This was due to the wrong encoding of refusal reasons into the new computerised system (which contains several standardised categories of reasons for refusal). Consequently, the complainant was only informed that her application had been refused as she had not met the age limit criterion. However, as soon as this error had become known, an additional explanatory letter had been sent to the complainant. The reasons for which the complainant's request for exemption was refused were the following:

- the complainant had not given any factual, specific or justifiable reason for an exemption;
- the complainant only declared knowledge of one foreign European language (French), whereas applicants from Member States were required minimally to have a good knowledge of at least two Community languages; and
- the complainant only indicated one specific Directorate General in her application.

In addition, the Commission noted that the current rules governing in-service training were being reviewed. Consequently, the Commission would look carefully at the preconditions (including



the age limit) and, if appropriate, incorporate, any necessary modifications and clarifications.

The complainant's observations

In her observations dated 15 July 2004, the complainant maintained her complaint and made in summary the following further comments:

The Commission had only sent a letter explaining the reasons for its decision not to apply the exemption for the age limit thanks to the Ombudsman's intervention.

The complainant indicated that, in her application for a traineeship, she had stated that she had a written and oral comprehension of the French language. She further enclosed with her application a certificate demonstrating that she had taken two English-language courses.

The complainant deliberately indicated one Directorate General in her application for a traineeship because she was looking for specific and concrete professional experience.

The complainant argued that the Commission's rules governing traineeships were unclear. On the one hand, the Commission stated in its opinion on the complaint that one of the main objectives of the Commission's traineeship programme was to provide practical working knowledge to young university graduates at the beginning of their professional careers. On the other hand, in its "decision on traineeships of 7 July 1997", paragraph 8, the Commission stated that *"in-service training at the Commission is open to candidates who (...) are public sector employees, provided they have a university degree or equivalent diploma, or have been engaged for at least three years in advisory duties"*.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the European Commission's opinion and the complainant's observations, the Ombudsman was not satisfied that the Commission had responded adequately to the complainant's allegation and claim. In accordance with Article 3 (5) of the Statute (1), the Ombudsman therefore wrote to the President of the European Commission to propose a friendly solution on the basis of the following analysis.

1. On 9 February 2004, the complainant applied for a traineeship at the European Commission. Applicants were required to be less than thirty years old but exemptions were possible. As the complainant exceeded the thirty-year age limit, she requested an exemption from the age limit. The complainant alleged that the European Commission had failed to reply to her request for an exemption from the age limit.

2. The Commission stated that the Traineeship Office acknowledged that it had only informed the complainant of the rejection of her application due to the age limit. This was due to the wrong encoding of refusal reasons into the new computerised system (which contains several standardised categories of reasons for refusal). Consequently, the complainant was only informed that her application had been refused on the grounds that she had not met the age



limit criterion. However, as soon as this error had become known, an additional explanatory letter had been sent to the complainant. The reasons for which the complainant's request for exemption was refused were the following: 1) the complainant had not given any factual, specific or justifiable reason for an exemption; 2) the complainant only declared knowledge of one foreign European language (French), whereas applicants from Member States were required to have a good knowledge of at least two Community languages; 3) the complainant only indicated one specific Directorate General in her traineeship application.

3. On 15 June 2004, the Ombudsman addressed a draft recommendation to the Commission in complaint 2107/2002/(BB)PB, asking it to abolish the age limit in its traineeship programme (2) .

4. On 29 March 2005, the Commission informed the Ombudsman that *" on 2 March 2005, in line with the European Ombudsman's recommendation, the Commission has adopted a decision on rules governing the official traineeships scheme of the European Commission (C(2005)458) in which it abolishes the age limit as one of the selection criteria for the in-service programme ."*

5. The Ombudsman therefore considers that the complainant's age no longer constitutes an obstacle for the admission of her application for a traineeship at the European Commission. In these circumstances, the Ombudsman takes the view that the first of the three reasons for which the complainant's request for exemption was refused by the Commission, namely that she had not given any factual, specific or justifiable reason for an exemption, is now no longer relevant.

6. The Ombudsman further notes that, in its opinion on the complaint, the Commission stated that the second reason for which the complainant's request for exemption had been refused was that the latter had only declared knowledge of one foreign European language (French), whereas applicants from Member States were required to have a good knowledge of at least two Community languages.

7. The Ombudsman observes that point 10 of paragraph "Admission and selection of trainees" of the Commission decision on traineeships of 7 July 1997, which was applicable at the date of the facts, states that *" [a]pplicants must have a thorough knowledge of one Community language and a satisfactory knowledge of one other "*. In the present case, and in view of the information submitted to him, the Ombudsman notes that the complainant is a Spanish citizen. It appears therefore that she has a good knowledge of Spanish. The Ombudsman notes that in her observations, the complainant stated that she had indicated in her application for a traineeship that she had a written and oral comprehension of the French language and that she had enclosed with her application a certificate demonstrating that she had taken two English-language courses. The Ombudsman considers that it emerges from the above that the complainant had a good knowledge of, at least, two Community languages. In these circumstances, the Ombudsman considers that the reason invoked by the Commission to refuse the complainant's request for exemption does not appear to be in compliance with its decision on traineeships of 7 July 1997.

8. The Ombudsman further notes that, in its opinion on the complaint, the Commission stated



that the third reason for which the complainant's request for exemption had been refused was that the latter had only indicated one specific Directorate-General in her traineeship application.

On the basis of the information at his disposal, the Ombudsman is not aware of any rule in the Commission decision on traineeships of 7 July 1997 pursuant to which candidates had to specify a specific number of Directorates-General in which they wish to make their traineeship. The Ombudsman therefore considers that it appears that the Commission has not established its argument that the application was inadmissible on the grounds that the complainant had only indicated one specific Directorate-General in her traineeship application.

9. In the light of the above, the Ombudsman's provisional conclusion is that the Commission wrongly refused the complainant's application for a traineeship or for an exemption of the age limit applicable at the date of her complaint. This could be an instance of maladministration.

The possibility of a friendly solution

On the basis of the above considerations and in accordance with Article 3(5) of the Statute of the European Ombudsman, the Ombudsman proposed a friendly solution between the complainant and the Commission.

The friendly solution proposed consisted in the following:

The Commission could review its decision to reject the complainant's application for its traineeship programme.

The European Commission's response

In its reply to the Ombudsman's proposal, the Commission stated that, taking into account the fact that, by adopting the new rules governing its official traineeships scheme on 2 March 2005, it had now abolished the requirement concerning age as one of the selection criteria for the in-service traineeship programme, it accepted the Ombudsman's proposal to seek a friendly solution with the complainant. The Commission would therefore exceptionally consider the complainant's application as automatically pre-selected for the in-service training session starting on 1 March 2006.

The complainant's name would therefore be included in the list of pre-selected candidates, from which the Directorates-Generals and services make their final choices. It should be noted that inclusion in the list of pre-selected candidates does not guarantee a place as a trainee. It was not possible to accept the complainant's application for the in-service training session period starting in October 2005 as the final selection procedure for this session was already too advanced.

The complainant would be informed by e-mail and by post about the Commission's decision to include her name in the list of pre-selected candidates.

The complainant's additional observations

By e-mail of 10 August 2005, the complainant informed the Ombudsman's services that she considered that a friendly solution to her complaint had been achieved. She thanked the Ombudsman for his successful intervention and congratulated him for the efforts he had made to achieve a friendly solution with the Commission concerning her case.



THE DECISION

1 Alleged failure of the European Commission to reply to the complainant's request for exemption from the age limit and to accept her application for a traineeship

1. On 9 February 2004, the complainant applied for a traineeship to the European Commission. Applicants were required to be less than thirty years old but exemptions were possible. As the complainant exceeded the thirty-year age limit, she requested an exemption from the age limit. The complainant alleged that the European Commission had failed to reply to her request for an exemption from the age limit. The complainant claimed that her application for a traineeship should be accepted.

2. The Commission stated that the Traineeships Office did acknowledge that it had only informed the complainant of the rejection of her application due to the age limit. This was due to the wrong encoding of refusal reasons into the new computerised system (which contains several standardised categories of reasons for refusal). Consequently, the complainant was only informed that her application had been refused as she had not met the age limit criterion. However, as soon as this error became known, an additional explanatory letter was sent to the complainant. The reasons for which the complainant's request for exemption was refused were the following: 1) the complainant had not given any factual, specific or justifiable reason for an exemption; 2) the complainant only declared knowledge of one foreign European language (French), whereas applicants from Member States were required to have minimum good knowledge of at least two Community languages; 3) the complainant only indicated one specific Directorate General in her traineeship application.

3. On 29 April 2005, the Ombudsman made a proposal for a friendly solution to the Commission, on the basis of the following considerations: Firstly, in view of his draft recommendation to the Commission in complaint 2107/2002/(BB)PB and of the Commission's decision to abolish the age limit as one of the selection criteria for the in-service traineeship programme, the complainant's age no longer constituted an obstacle for the admission of her application for a traineeship at the European Commission. Secondly, the Ombudsman considered that it emerged from the complainant's observations and the document submitted by her that she had a good knowledge of, at least, two Community languages. Thirdly, the Ombudsman stated that he was not aware of any rule in the Commission decision on traineeships of 7 July 1997 pursuant to which candidates had to specify a specific number of Directorates-General in which they wish to do their traineeship.

4. On the basis of the above, the Ombudsman made a provisional finding of maladministration by the European Commission, and proposed a friendly solution which was that the Commission could review its decision to reject the complainant's application for its traineeship programme.

5. The Commission accepted the friendly solution proposed and stated that it would exceptionally consider the complainant's file as automatically pre-selected for the in-service training session starting on 1 March 2006. The complainant's name would therefore be included in the list of pre-selected candidates, from which the Directorates-Generals and services make



their final choices. The complainant will be informed by e-mail and by post about the Commission's decision to include her name in the list of pre-selected candidates.

6. In her observations, the complainant informed the Ombudsman that she considered that a friendly solution to the complaint had been achieved.

7. On the basis of the above, the Ombudsman notes that a friendly solution has been agreed between the complainant and the Commission.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the Commission and the complainant. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) "As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint."

(2) See the Ombudsman's website:

<http://www.ombudsman.europa.eu/recommen/en/022107.htm> [Link].