



Decision of the European Ombudsman on complaint 3254/2004/(JMA)(OV)ID against the European Commission

Strasbourg, 15 December 2005

Dear Mr M.,

On 11 November 2004, you made a complaint to the European Ombudsman, alleging that the Commission had failed to properly deal with your complaints concerning the Greek authorities' failure to recognise you as a Chemical Engineer, on the basis of your professional qualification, obtained in the United Kingdom, as a Materials Engineer, and, in particular, that the Commission's interpretation of Directive 89/48/EEC with regard to your case was over-simplified.

On 20 December 2004, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 5 April 2004. I forwarded it to you with an invitation to make observations, which you sent on 30 May 2005.

On 15 November 2005 you were kindly requested, via e-mail, to clarify to the Ombudsman whether you had filed an action before a Greek Court regarding the Greek authorities' refusal to recognise you as a Chemical Engineer. By e-mail dated 23 November 2005, you informed me that you had filed with the Council of State of Greece an action for annulment of decision 64/2003 of the Council for the Recognition of Professional Equivalence of Higher-Education Diplomas, which concerned your case. Upon request, I have received from the Council of State of Greece a copy of this action.

I am writing now to let you know the results of the inquiries that have been made. To avoid misunderstanding, it is important to recall that the EC Treaty empowers the Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman. The Ombudsman's inquiries into your complaint have therefore been directed towards examining whether there has been maladministration in the activities of the Commission.

THE COMPLAINT

On 6 December 2001, the complainant filed with the competent Greek authority, the Council for the Recognition of Professional Equivalence of Higher-Education Diplomas ("SAEI"), an



application in order to obtain recognition of his right to exercise in Greece the profession of Chemical Engineer, on the basis of the higher-education diplomas and professional qualifications he had obtained in the United Kingdom ("UK"). By its decision 64/2003, the SAEI rejected the complainant's above-mentioned application, because the complainant had not obtained the necessary professional qualifications to practice the profession of Chemical Engineer in the UK. By letters dated 12 July 2002 and 18 September 2002, the complainant complained to the European Commission of the fact that Greece violated his rights, under the EC Treaty and Council Directive 89/48/EEC of 21 December 1998 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (1) (Directive 89/48/EEC), to exercise in Greece the profession of Chemical Engineer, on the basis of the higher-education diplomas and professional qualifications he had obtained in the UK. Following an extensive correspondence between the complainant and the Commission, the latter informed the complainant, by letter dated 10 July 2003, that the file of his case did not appear to contain evidence of the alleged violation of Community law, since, although it emerged from a document sent by the UK's "Engineering Council" that the complainant possessed the necessary qualifications for the exercise in the UK of the profession of "Materials Engineer", with specialisation in Polymer Science and Technology, the same document did not indicate (a) that the scope of activities covered by the profession of "Materials Engineer" was equivalent to the one corresponding to the profession of "Chemical Engineer" in the UK; or (b) that the complainant possessed the necessary qualifications for the exercise of the profession of "Chemical Engineer" in the UK. In this regard, the Commission had mentioned in its letter of 19 February 2003 addressed to the complainant that, on the basis of the information provided by the UK's "Institution of Chemical Engineers" and by the Greek authorities, the complainant's enrolment as "Chartered Chemical Engineer" in the UK would probably facilitate the recognition of his professional qualifications in Greece.

By letters of 13 September 2004 and 12 October 2004, the complainant challenged the way the Commission had interpreted and applied the Community law in his case, arguing, in essence, that (a) taking into account that the UK's "Engineering Council", which regulates the engineering profession in the UK, had confirmed that he " *is entitled to undertake the regulated profession of Materials Engineer with specialization in Polymer Science and Technology* ", and that " *the above professional recognition is at a level equal to that of a Chemical Engineer* ", his profession should be considered as equivalent/equal to the profession of "Chemical Engineer"; and (b) he had the right to be recognised in Greece as a "Chemical Engineer with specialisation in Materials Science and Technology". The complainant pointed out that a fellow student of his, having exactly the same academic qualifications and professional rights in the UK as himself, had been so recognised.

In its reply of 20 October 2004, the Commission confirmed that it was not in a position to undertake any further steps concerning the complainant's case, noting that (a) for the purposes of Directive 89/48/EEC, the "Engineering profession" is not to be considered as a single profession, since it encompasses numerous different specialisations which vary between Member States; (b) the British authorities had not confirmed that the complainant was fully qualified as a Chemical Engineer in the UK; (c) the letter of the UK's Engineering Council of 23 May 2003 merely confirmed that the complainant was entitled to undertake the



profession of Materials Engineer in the UK and that his professional recognition was " *at a level equal to* " that of a Chemical Engineer, which did not mean that the field of activities of both professions was the same or that the complainant was entitled to pursue the profession of Chemical Engineer in the UK; (d) as to the argument put forward by the complainant that other Materials Engineers had been recognised in Greece as Chemical Engineers with specialisation in Materials Science and Technology, no discrimination could be established on this basis, without further information, taking into account that (i) the fact that these persons had been granted academic recognition of their qualifications by the Greek authorities was outside the scope of Directive 89/48 and could not affect the interpretation of this Directive; and (ii) it was indicated in the complainant's letter of 22 July 2002 that those persons also exercised other professions connected to that of Materials Engineer.

Subsequently, on 11 November 2004, the complainant filed a complaint with the European Ombudsman (2) , alleging that the Commission had failed to deal properly with his aforesaid complaints concerning the Greek authorities' failure to recognise him as a Chemical Engineer on the basis of his professional qualification, obtained in the UK, as a Materials Engineer, and, in particular, that the Commission's interpretation of Directive 89/48/EEC with regard to his case was over-simplified.

THE INQUIRY

The Commission's opinion

In its opinion of 18 March 2005, the Commission made, in summary, the following observations regarding the complainant's case. The purpose of Directive 89/48/EEC is to allow a person fully qualified in a Member State for the exercise of a profession to exercise the same profession in another Member State. In Greece, the profession of Polymer Engineer does not exist, but there is the broader profession of Chemical Engineer. In the UK, both professions exist. The complainant applied to the Greek authorities for recognition of his right to exercise in Greece the profession of Chemical Engineer. Establishing the correspondence between professions in Member States is a particularly complex task in the field of Engineering, to the extent that there are numerous branches organised in different ways by the Member States and which may be considered as different professions. In such complex cases, the services of the Commission do not possess the technical competence necessary for determining which is, in a Member State A, the profession corresponding to the one a professional would like to exercise in a Member State B. Since the competence to organise the professions belongs to Member States, this analysis can be based only on the information provided by the competent national authorities.

As regards the complainant's case, in an e-mail dated 7 February 2003, the UK's Institution of Chemical Engineers indicated that " *[t]he standard of the academic qualification and the competence and training and experience required for registration as a Professional Member of the Institute of Materials is comparable to the standard required for registration as a Chartered Chemical Engineer with IChemE. However, registration as a Chartered Chemical Engineer may require a qualification to be gained in a different subject and for the competence, training and experience to be gained in a different field. Chemical Engineering is a diverse profession and*



Chartered Chemical Engineers find themselves working in many different areas and it is possible that someone who is working as a "polymer engineer" could qualify as a Chartered Chemical Engineer. It would be up to the individual to demonstrate that they can meet our Institution's requirements ." On the basis of these clarifications, the Greek authorities considered that the complainant was not qualified as a "Chemical Engineer" in the UK, and, hence, he was not entitled to have his qualifications recognised, with a view to exercising the profession of Chemical Engineer in Greece, on the basis of Directive 89/48/EEC. Taking into account the information provided by the British authorities, the Commission found that no violation of Community law had been established in this case. As to the complainant's argument that he was discriminated against, because other Materials Engineers with exactly the same academic qualifications and professional rights in the UK, had been recognised in Greece as Chemical Engineers with specialisation in Materials Science and Technology, the Commission reiterated what it had noted in its letter of 20 October 2004 (see above point (d)).

The complainant's observations

The complainant submitted extensive and elaborate observations (dated 30 May 2005) on the Commission's opinion, invoking violation and misapplication of Directive 89/48 on its part, on the basis of the following arguments:

- (a) Directive 89/48 has not been properly implemented by Greece;
- (b) The Commission's reply to his above-mentioned argument that he was discriminated against by the Greek authorities was based on a misreading of his letter dated 22 July 2002;
- (c) The profession of Engineer with specialisation in Polymer Materials Science and Technology *does* exist in Greece, as a regulated profession, within the meaning of Directive 89/48/EEC, and the Commission should have considered that the SAEI was bound to examine which one of the nine specialisations of Engineers provided for under Greek legislation was the closest to his overall professional qualifications and to classify him as an Engineer with this specialisation;
- (d) A license to exercise the regulated profession of Chemical Engineer in the UK is not a prerequisite for the recognition by the Greek authorities of his professional qualifications, as a (Chemical) Polymer Engineer;
- (e) The above-mentioned e-mail of the UK's Institution of Chemical Engineers dated 7 February 2003 was misinterpreted by the Commission and was communicated to him only in October 2004, in violation of his rights of defence;
- (f) Chemical Engineer and Polymer Engineer are not two completely different professions in the UK, and, as the UK's Institution of Chemical Engineers had clearly suggested, a Polymer Engineer may be registered as a Chartered Chemical Engineer if he complies with the Institution's requirements;
- (g) The Commission indirectly approved the Greek authorities' demand for an academic equivalence of his diplomas as a prerequisite for the recognition of the professional



equivalence of his qualifications; and

(h) The Commission wrongly ignored the fact that the SAEI had failed to take into account his professional experience in Greece as a counterbalancing factor.

Moreover, in his observations, the complainant argues that, assuming that his case is not covered by Directive 89/48, the Commission should have accepted that the SAEI ought to have recognised his professional qualifications, on the basis of Articles 43 and 47 of the EC Treaty, as interpreted by the Court of Justice in Case 340/89 *Vlassopoulou* (3), Case C-319/92 *Haim* (4), and Case C-238/98 *Hocsmán* (5). In conclusion, the complainant points out that the Commission should be considered to have deliberately allowed itself to be deceived by the SAEI, since the Commission itself accepted that it relied solely on the information given to it by the competent authorities, following a "super-simplified" interpretation of the principles and provisions of the Directive which it adopted in his case and, consequently, for the profession of Engineer, and following a flagrant breach of the principle of non-discrimination.

Further inquiries

In his letter of 12 July 2002 to the Commission, the complainant stated, inter alia, that if the SAEI decided to reject his application of 6 December 2001 concerning the recognition of his right to exercise in Greece the profession of Chemical Engineer, he would contest the legality of such a decision before Greek Courts. On 15 November 2005 the complainant was, thus, requested, via e-mail, to clarify to the Ombudsman whether he had filed an action before a Greek Court concerning the rejection of his above-mentioned application. Subsequently, by e-mail sent on 23 November 2005, the complainant informed the Ombudsman, that he had filed with the Council of State of Greece an action for annulment of decision 64/2003 of the SAEI (under registration number 6348/2.9.2003). In the same e-mail, the complainant noted that the Greek Council of State, in its decisions 4753/1997 and 2070/1999, had already dealt with his case, suggesting that Directive 89/48/EEC was applicable. The complainant further indicated that he considered that the Commission's intervention could be an effective means of eliminating the arbitrariness of the Greek authorities in his case, and that the Council of State would not examine whether the Commission had fulfilled its responsibilities as guardian of the EC Treaty.

At his request, the Ombudsman received from the Council of State of Greece a copy of the above-mentioned action lodged by the complainant. In this action, the complainant contests the legality of decision 64/2003 of the SAEI, invoking violation and misapplication of Directive 89/48, on the basis of the following arguments:

(a) Directive 89/48 has not been properly implemented by Greece;

(b) The profession of Engineer with specialisation in Polymer Materials Science and Technology does exist in Greece, as a regulated profession, within the meaning of Directive 89/48/EEC, and the SAEI should have examined which one of the nine specialisations of Engineers provided for under Greek legislation was the closest to his overall professional qualifications and to classify him as an Engineer of this specialisation;

(c) A license to exercise the regulated profession of Chemical Engineer in the UK is not a



prerequisite for the recognition by the Greek authorities of his professional qualifications, as a (Chemical) Polymer Engineer;

(d) The challenged decision relies on a document of the UK's Institution of Chemical Engineers which has not been communicated to him, in violation of his rights of defence;

(e) Chemical Engineer and Polymer Engineer are not two completely different professions in the UK;

(f) The challenged decision could not require an academic equivalence of his diplomas as a prerequisite for the recognition of the professional equivalence of his qualifications; and

(g) The SAEI failed to take into account his professional experience in Greece as a counterbalancing factor.

Moreover, the complainant argues that, assuming that his case is not covered by Directive 89/48, the SAEI should have recognised his professional qualifications, on the basis of Articles 43 and 47 of the EC Treaty, as interpreted by the Court of Justice in Case 340/89 *Vlassopoulou* (6) , Case C-319/92 *Haim* (7) , and Case C-238/98 *Hocsman* (8) .

THE DECISION

1 Alleged failure to deal properly with the complainant's infringement complaint to the Commission

1.1 On 6 December 2001, the complainant filed with the competent Greek authority, the Council for the Recognition of Professional Equivalence of Higher-Education Diplomas ("SAEI"), an application in order to obtain the recognition of his right to exercise in Greece the profession of Chemical Engineer, on the basis of the higher-education diplomas and professional qualifications he had obtained in the United Kingdom ("UK"). By its decision 64/2003, the SAEI rejected the complainant's above-mentioned application, because the complainant had not obtained the necessary professional qualifications to practice the profession of Chemical Engineer in the UK. By letters dated 12 July 2002 and 18 September 2002, the complainant complained to the European Commission of the fact that Greece violated his rights, under the EC Treaty and Council Directive 89/48/EEC of 21 December 1998 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (9) ("Directive 89/48/EEC") to exercise in Greece the profession of Chemical Engineer, on the basis of the higher-education diplomas and professional qualifications he had obtained in the UK. Following an extensive correspondence between the complainant and the Commission, the latter informed the complainant, by letter dated 10 July 2003, that the file of his case did not appear to contain evidence of the alleged violation of Community law. By letters of 13 September 2004 and 12 October 2004, the complainant challenged the way the Commission had interpreted and applied the Community law in his case. In its reply of 20 October 2004, the Commission confirmed that it was not in a position to undertake any further steps concerning the complainant's case. Subsequently, on 11 November 2004, the complainant filed a complaint with the European Ombudsman, alleging that the Commission



had failed to properly deal with his aforesaid complaints concerning the Greek authorities' failure to recognise him as a Chemical Engineer on the basis of his professional qualification, obtained in the UK, as a Materials Engineer, and, in particular, that the Commission's interpretation of Directive 89/48/EEC with regard to his case was over-simplified.

1.2 In its opinion of 18 March 2005, the Commission explained and defended its actions in handling the complainant's infringement complaint.

1.3 The complainant submitted extensive and elaborate observations (dated 30 May 2005) on the Commission's opinion, invoking violation and misapplication of Directive 89/48 on its part, on the basis of several arguments. Moreover, in his observations, the complainant argues that, assuming that his case is not covered by Directive 89/48, the Commission should have accepted that the SAEI ought to have recognised his professional qualifications, on the basis of Articles 43 and 47 of the EC treaty, as interpreted by the Community Court in the Case 340/89 *Vlassopoulou* (10) , Case C-319/92 *Haim* (11) , and Case C-238/98 *Hocsman* (12) . In conclusion, the complainant points out that the Commission should be considered to have deliberately allowed itself to be deceived by the SAEI, since the Commission itself accepted that it relied solely on the information given to it by the competent authorities, following a "super-simplified" interpretation of the principles and provisions of the Directive which it adopted in his case and, consequently, for the profession of Engineer, and following a flagrant breach of the principle of non-discrimination.

1.4 In his letter of 12 July 2002 to the Commission, the complainant stated, inter alia, that if the SAEI decided to reject his application of 6 December 2001 concerning the recognition of his right to exercise in Greece the profession of Chemical Engineer, he would contest the legality of such a decision before Greek Courts. On 15 November 2005 the complainant was, thus, requested, via e-mail, to clarify to the Ombudsman whether he had filed an action before a Greek Court concerning the rejection of his above-mentioned application. Subsequently, by e-mail sent on 23 November 2005, the complainant informed the Ombudsman, that he had filed with the Council of State of Greece an action for annulment of decision 64/2003 of the SAEI (under registration number 6348/2.9.2003). In the same e-mail, the complainant noted that the Greek Council of State, in its decisions 4753/1997 and 2070/1999, had already dealt with his case, suggesting that Directive 89/48/EEC was applicable. The complainant further indicated that he considered that the Commission's intervention could be an effective means of eliminating the arbitrariness of the Greek authorities in his case, and that the Council of State would not examine whether the Commission had fulfilled its responsibilities as guardian of the EC Treaty.

1.5 In relation to the complainant's references to the decisions 4753/1997 and 2070/1999 of the Greek Council of State, the Ombudsman notes that the Greek Council of State, in its decision 4753/1997, merely held that, taking into account the diplomas the complainant had obtained in the UK, the complainant had standing to bring an action for annulment of the Government's failure to transpose Directive 89/48/EEC into the Greek legal order, with a view to pursuing, on the basis of this Directive, the recognition in Greece of his professional qualifications as a Chemical Engineer. However, the Council of State, in its decisions 4753/1997 and 2070/1999, neither stated explicitly nor suggested that Directive 89/48/EEC



actually applied to the complainant's case.

1.6 Moreover, at his request, the Ombudsman received from the Council of State of Greece a copy of the above-mentioned action lodged by the complainant. In this action, the complainant contests the legality of decision 64/2003 of the SAEI, invoking violation and misapplication of Directive 89/48, on the basis of several arguments, which are identical, in substance, to the ones made in the complainant's complaint to the Ombudsman, and in his observations on the Commission's opinion. Moreover, in the same action, the complainant argues that, assuming that his case is not covered by Directive 89/48, the SAEI should have recognised his professional qualifications, on the basis of Articles 43 and 47 of the EC treaty, as interpreted by the Community Court in the Case 340/89 *Vlassopoulou* (13) , Case C-319/92 *Haim* (14) , and Case C-238/98 *Hocsman* (15) .

1.7 As set out in Article 195 EC, " [i]n accordance with his duties, the European Ombudsman shall conduct inquiries for which he finds grounds" Moreover, Article 3(1) of the Statute of the European Ombudsman provides that " [t]he Ombudsman shall, on his own initiative or following a complaint, conduct all the enquiries which he considers justified to clarify any suspected maladministration in the activities of Community institutions and bodies ." In deciding whether further inquiry into, and consideration of, a complaint is justified, the Ombudsman examines, in particular, whether the assessment of the merits of the complaint involves an examination of legal or factual issues raised in an action filed before a Community or National Court (16) . This is all the more important where the complaint involves issues pertaining to the interpretation and application of national legislation, since National Courts are better positioned than the European Ombudsman to deal with such questions.

1.8 After having carefully examined the complainant's complaint, his observations on the Commission's opinion, and the action for annulment of decision 64/2003 of the SAEI that the complainant had filed before the Council of State of Greece on 2 September 2004, the Ombudsman finds that the assessment of the merits of the complainant's allegation that the Commission failed to properly deal with his complaints, since it failed to properly interpret and apply Directive 89/48/EEC and Articles 43 and 47 of the EC Treaty in his case, would involve a thorough examination of issues raised in the complainant's action before the Council of State of Greece, including, *inter alia* , questions pertaining to the interpretation and application of Greek legislation regarding the regulation in Greece of the professional activities of a "Materials Engineer, with specialisation in Polymer Science and Technology" and their relationship with the activities which fall within the scope of the profession of Chemical Engineer, as regulated in that Member State. Under these circumstances, and although the "facts alleged" by the complainant are not the subject of the above legal proceedings (17) , for the Commission is not a party to these proceedings, the Ombudsman concludes that further inquiry into, and consideration of, the above-mentioned allegation is not justified, since it would, in essence, amount to a duplication of the legal proceedings initiated by the complainant before the Greek Council of State. The Ombudsman, nevertheless, notes that the complainant may renew his complaint to the Ombudsman, after the completion of these legal proceedings, in particular if the Commission fails to reconsider its reply to his infringement complaint, or maintains the positions taken in its replies considered in the present Decision, despite the fact that it has been notified of a final



judgment rendered by the Council of State of Greece in his case, or of a preliminary ruling of the Court of Justice, that may be given at the request of the Greek Council of State in the context of his case, which casts doubt on the propriety of its reply to the complainant's infringement complaint.

1.9 In his observations on the Commission's opinion, the complainant argued, for the first time, that (a) the Commission had misread his letter dated 22 July 2002; and (b) the above-mentioned e-mail of the UK's Institution of Chemical Engineers of 7 February 2003, relied upon by the Commission, was communicated to him only in October 2004, in violation of his rights of defence. The Ombudsman points out that these allegations, which are relevant to positions taken by the Commission in its aforesaid letters of 20 October 2004, and of 10 July 2003, respectively, raise further issues regarding the propriety of the handling of the complainant's infringement complaint, and do not appear to have been preceded by appropriate administrative approaches, as required by Article 2(4) of the Statute of the European Ombudsman. Under these circumstances, the Ombudsman will not initiate inquiries into the foregoing new allegations. The Ombudsman notes that the complainant has the possibility to make a new complaint if he wishes to pursue these allegations.

2 Conclusion

On the basis of the above, the Ombudsman finds that further inquiry into, and consideration of, the complaint is not justified. The Ombudsman therefore closes the case.

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

FURTHER REMARK

The complainant may renew his complaint to the Ombudsman, after the completion of the legal proceedings he has initiated before the Council of State of Greece, in particular if the Commission fails to reconsider its reply to his infringement complaint, or maintains the positions taken in this reply, despite the fact that it has been notified of a final judgment rendered by the Council of State of Greece in his case, or of a preliminary ruling of the Court of Justice, that may be given at the request of the Greek Council of State in the context of his case, which casts doubt on the propriety of its reply to the complainant's infringement complaint.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ L 19/24.01.1989, p. 16.

(2) On 19 September 2005, the complainant had submitted to the Ombudsman a similar complaint (2822/2004/JMA), which was rejected as inadmissible, because there was no indication that the complaint had been preceded by appropriate administrative approaches



to the Commission.

(3) Case 340/89 Vlassopoulou [1991] ECR 2357.

(4) Case C-319/92 Haim [1994] ECR I-425 (' Haim I').

(5) Case C-238/98 Hocsman [2000] ECR I-6623.

(6) Case 340/89 Vlassopoulou [1991] ECR 2357.

(7) Case C-319/92 Haim [1994] ECR I-425 (' Haim I').

(8) Case C-238/98 Hocsman [2000] ECR I-6623.

(9) OJ L 19/24.01.1989, p. 16.

(10) Case 340/89 Vlassopoulou [1991] ECR 2357.

(11) Case C-319/92 Haim [1994] ECR I-425 (' Haim I').

(12) Case C-238/98 Hocsman [2000] ECR I-6623.

(13) Case 340/89 Vlassopoulou [1991] ECR 2357.

(14) Case C-319/92 Haim [1994] ECR I-425 (' Haim I').

(15) Case C-238/98 Hocsman [2000] ECR I-6623.

(16) Cf., e.g., Decision on complaint 803/2004/JMA, paragraph 1.8 (action before Community Court).

(17) Article 195 of the Treaty establishing the European Community empowers the European Ombudsman to receive complaints "... *concerning instances of maladministration in the activities of the Community institutions or bodies ... except where the alleged facts are or have been the subject of legal proceedings.* "