

Decision of the European Ombudsman on complaint 3078/2006/DK against the European Parliament

Decision

Case 3078/2006/DK - Opened on 14/11/2006 - Decision on 19/05/2008

Strasbourg, 19 May 2008

Dear Mr X,

On 2 October 2006, you submitted a complaint to the European Ombudsman against the European Parliament's Competitions and Selection Procedures Unit, in Luxembourg, concerning the rejection of your application for the post of Secretary in the Maltese Translation Unit in the Parliament.

On 14 November 2006, I forwarded the complaint to the President of Parliament. Parliament sent its opinion on 13 February 2007. I forwarded it to you with an invitation to make observations, which you sent on 20 April 2007.

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

THE COMPLAINT

In his complaint, the complainant made the following submissions. In December 2005, he sent his application for the selection procedure for the post of Secretary (Function Group II) in the Maltese Translation Unit at the European Parliament. According to the eligibility criteria, contained in Annex 1 of the Guide to selection procedures for Auxiliary contract staff (PE/CONT/II/02/2005) ("the Guide"), the qualifications/experience required for applicants for Function Group II were " *a level of post-secondary education attested by a diploma or a level of secondary education attested by a diploma giving access to post-secondary education, followed by at least three years' professional experience in the field concerned.* "

On 31 January 2006, Parliament's Competitions and Selection Procedures Unit ("CSP Unit") informed the complainant that his application had been rejected because he did not comply with the above condition.

The complainant, who was residing in Luxembourg at that time, decided to go personally to the CSP Unit to complain about the rejection of his application, on the grounds that he indeed had a



level of secondary education, attested to by a diploma, giving access to post-secondary education. According to the complainant, he spoke to an official of the CSP Unit, who apologised for having failed to realise what type of diploma the complainant actually possessed and promised that his application would " *be given the necessary attention once again* ".

However, on 4 April 2006, the Head of Unit of CSP informed the complainant that he did not qualify for admission to the selection procedure, because:

" the School Leaving Certificate you obtained in 1990 (at the age of 16) cannot be considered as 'Secondary education giving access to post-secondary education' as specified in our Indicative guide to qualifications giving access to Function Group II and III. The equivalent in the Maltese educational system is a Matriculation Certificate (2 subjects at Advanced Level and 4 subjects at Intermediate Level, including systems of knowledge). None of the papers which accompanied your application form can be considered as corresponding to [the] said Matriculation Certificate. "

In his complaint to the European Ombudsman, the complainant argued that the above qualifications, namely, two subjects at Advanced Level and four subjects at Intermediate Level, including systems of knowledge, were already considered as post-secondary education in Malta and thus the Head of Unit of CSP erred in this regard. The complainant stated that the fact that he had a diploma giving access to post-secondary education was confirmed by the Malta Qualifications Recognition Information Centre in its letter of 15 September 2006. The complainant attached copies of his three diplomas to his complaint.

In light of the above, the complainant alleged that:

- Parliament's Competitions and Selection Procedures Unit had unfairly rejected his application on the grounds that he did not have secondary education attested to by a diploma giving access to post-secondary education, and
- the Selection Procedure for Auxiliary Contract Staff (PE/CONT/II/02/2005) was discriminatory and contained administrative irregularities.

The complainant claimed that the situation should be redressed.

By letter of 14 November 2006, the Ombudsman opened an inquiry into the complainant's first allegation and claim. The second allegation was not taken up for inquiry, since the complainant did not appear to have made relevant prior administrative approaches to the institution concerned, as required by Article 2(4) of the Statute of the Ombudsman.

THE INQUIRY

Parliament's opinion

In its opinion, Parliament made, in particular, the following comments:

On 14 December 2005, the complainant submitted two applications for his inclusion on the list of candidates suitable to serve as contract staff for auxiliary tasks. The second application



concerned Function Group II (field 1 secretarial work) and required either (i) a secondary education diploma giving access to post-secondary education followed by three years of specific professional experience in the field concerned, or (ii) a post-secondary education diploma. The present complaint concerned the rejection of this application.

On 31 January 2006, Parliament informed the complainant that he had failed to prove that he was in possession of a diploma corresponding to the basic admission criteria laid down by the Conditions of employment of other servants of the European Communities ("CEOS") and detailed in the Guide, which contained an indicative list of qualifications giving access to the selection procedure. In particular, the Guide specified, with regard to candidates from Malta, that the required qualification was either the "*matriculation certificate*", which is considered as a secondary education diploma giving access to post-secondary education, or, alternatively, a post-secondary education diploma.

The complainant then submitted another (undated) application for Function Group II, field 1 (secretarial work). By letter of 4 April 2006, the CSP Unit explained to the complainant what diplomas and qualifications were required with regard to his applications.

On 11 July 2006, the complainant submitted a further application relating to Function Group II, field 1. In that application, he provided more details concerning the subjects studied. In this application, he also claimed that the list of courses followed at the "Learn Key Institute" between April 2005 and January 2006, as attached to his application, should be considered as a post-secondary diploma. However, he did not provide any additional proof or copies of diplomas establishing that he was in possession of a diploma at the required level.

The complainant's application was examined by the selection committee on 30 August 2006, but was not accepted by it. By letter of 6 September 2006, the CSP Unit informed the complainant that he did not meet the selection criteria and that his name was, accordingly, not included on the list of candidates suitable for serving as contract staff for auxiliary tasks in the secretarial field.

As regards terminology, Parliament explained that the term "secondary education" in the Maltese system referred to the second part of compulsory schooling. In the present case, the complainant submitted (i) a document attesting only to the fact that he had completed compulsory schooling at "St Joseph's school" and (ii) the two "City and Guilds" diplomas, which did not, in any way, give access either to the "Sixth Form" or to university. Parliament stressed that the complainant did not submit any other diploma certifying that he had completed studies classified as "post-secondary" in the Maltese system. The two "City and Guilds" diplomas, in "Business practise" and "Secretarial and administration", presented by the complainant and providing evidence of studies lasting nine months, could not be considered as an equivalent to the required diploma. Given that the complainant had not proved that (i) he was in possession of a secondary education diploma giving access to post-secondary education and (ii) he had a specific diploma in the relevant field, his applications were rejected.

Parliament concluded its opinion by stating that the complainant's various applications had been



examined by the selection committee, which did nothing more than correctly apply the conditions laid down in the Guide.

The complainant's observations

In his observations, the complainant made, in particular, the following remarks:

The "*matriculation certificate*" in Malta was acquired during post-secondary education and gave access to tertiary education. Furthermore, he had provided Parliament with copies of each of his three diplomas. It was therefore difficult to understand Parliament's submission that he "*did not provide any additional proof or copies of Diplomas attesting that he [was] in possession of a Diploma at the required level*". The complainant added that his three diplomas could be earned, at present, at the Malta College of Arts, Science and Technology ("MCAST"), which was a governmental post-secondary school in Malta. The complainant pointed out that it appeared that Parliament had failed to recognise his qualification as a "Beauty Specialist", which was issued by the "International Therapy Examination Council" in 1998. The complainant stated that, in November 2005, he commenced an Honours Diploma in Business Management and Administration, as well as one in Modern Management and Administration at the University of Cambridge. He thus argued that his current diplomas were not only recognised as post-secondary education diplomas, but that they also gave access to tertiary education and that, therefore, he had obtained three diplomas at post-secondary level. The complainant added that he had 15 years of professional experience. He also stated that, in light of his above-mentioned three diplomas and professional experience, he fulfilled all of the requirements for the post for which he had applied.

THE DECISION

1 Allegation that Parliament rejected unfairly the complainant's application for the post of Secretary in its Maltese Translation Unit

1.1 In December 2005, the complainant sent his application for the selection procedure for the post of Secretary [Function Group II (field 1 secretarial work)] in the Maltese Translation Unit at the European Parliament. The basic admission criteria were laid down by Article 82 of the Conditions of employment of other servants of the European Communities (1) ("CEOS") and detailed in the Guide to selection procedures for auxiliary contract staff ("the Guide"). The CEOS and the Guide provided that, with regard to the required qualifications, a level of post-secondary education attested to by a diploma or a level of secondary education attested to by a diploma giving access to post-secondary education, and appropriate professional experience of at least three years were required for admission to the selection procedure. The complainant indicated in his application (2) the following diplomas or certificates: (i) a school-leaving certificate from "St Joseph's School"; (ii) a diploma in Business Practice, awarded by the "Learnkey Institute (City & Guilds)" in 2006; (iii) a diploma in Secretarial and Administration, awarded by the "Learnkey Institute (City & Guilds)" in 2006; and (iv) a certificate from the "International School of Beauty", issued in 1998. The complainant's application was rejected because the diplomas he submitted in support of his candidacy fell short of the above condition concerning the required qualifications.

1.2 The Ombudsman, first, notes that the assessment of whether the diplomas or certificates



submitted by the complainant met the aforementioned requirement depended on the relevant national legislation.

1.3 With regard to the school-leaving certificate, the Ombudsman notes that, as Parliament has indicated, this document attests only to the fact that the complainant finished compulsory schooling in Malta. It does not seem to be in dispute that this certificate does not correspond, in view of the applicable national rules, to the required qualification.

1.4 With regard to the complainant's two "City & Guilds" diplomas, Parliament has pointed out that these diplomas, attesting to studies lasting nine months, do not correspond to a Matriculation Certificate, do not, in any way, give access either to the "Sixth Form" or to university, and do not reflect studies classified as "post-secondary" in the Maltese system. In support of his allegation, the complainant attached to his complaint a letter from the Academic Credentials Evaluation Board of the Malta Qualification Recognition Information Centre ("MQRIC"). According to the complainant, MQRIC confirmed that he has a diploma giving access to post-secondary education. The Ombudsman notes that MQRIC's letter of 15 September 2006 stated, with regard to the complainant's "City & Guilds" diplomas, that:

" as indicated on the two diplomas under review, these were awarded on the basis of a number of level 1 passes. The ACEB considers these diplomas as not being comparable to Ordinary Level standard grades 1 - 5 / A - C. However, they may be considered comparable to grades 6 - 7 / D to G. " (3)

The Ombudsman consequently finds that MQRIC's letter does not state that any of these two diplomas could be considered as a post-secondary diploma or as a diploma giving access to post-secondary education. Furthermore, the complainant has not made any specific, duly substantiated, arguments to the effect that the above-quoted passage of MQRIC's letter means, on the basis of the applicable national rules, that his two "City & Guilds" diplomas fulfil the requirement mentioned in point 1.1 of the present decision.

1.5 With regard to the complainant's "Beauty Diploma", the Ombudsman considers it necessary first to clarify the following. The complainant stated in his observations that it appeared that Parliament had failed to recognise his qualification as a "Beauty Specialist", which was issued by the "International Therapy Examination Council" in 1998. The Ombudsman notes, however, that, on his application for the post of Secretary in the Maltese Translation Unit at Parliament (4) , the complainant indicated, under "Higher education", that he finished his studies at the "International School of Beauty" in June 1998. The Ombudsman also notes that in his complaint, the complainant provided a copy of his two "City & Guilds" diplomas; a copy of a certificate issued by the International School of Beauty (5) ; and a copy of his "Beauty Specialist Diploma", awarded by the "International Therapy Examination Council" (6) . However, it has not been demonstrated that the complainant submitted to Parliament, together with his application for the post in question, a copy of this latter diploma.

Furthermore, as regards the complainant's certificate from the "International School of Beauty", the Ombudsman notes that Parliament has stated that "*[n]one of [the complainant's] papers*



which accompanied [his] application form can be considered as corresponding to the Matriculation Certificate ". The Ombudsman also notes that the complainant did not challenge the finding of the Selection Committee that this qualification could not be considered as a post-secondary diploma or as a diploma giving access to post-secondary education. Nor has the complainant made specific, duly substantiated, arguments that would suggest otherwise.

1.6 Finally, with regard to the complainant's argument that, since he commenced, in November 2005, an Honours Diploma in Business Management and Administration, as well as one in Modern Management and Administration at the University of Cambridge, his current diplomas are not only recognised as post-secondary education diplomas, but they also give access to tertiary education, the Ombudsman notes the following. This argument was presented for the first time only in the complainant's observations on Parliament's opinion, and it therefore appears that the requirement, as provided for by Article 2(4) of the Ombudsman's Statute, that prior administrative approaches have to be made, is not met. For this reason, and given the fact that the complainant has not provided any relevant supporting documents or any specific information about the nature of these studies and the relevant eligibility conditions, the Ombudsman does not consider it justified further to examine this argument. The Ombudsman wishes to point out, however, that the complainant remains free to submit a new complaint concerning this particular point, once he has made the relevant prior administrative approaches to Parliament and has made certain to provide the pertinent documentary evidence supporting his position.

1.7 In light of the above, the Ombudsman concludes that the complainant's allegation has not been substantiated. Accordingly, he finds no corresponding instance of maladministration on the part of Parliament.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by Parliament corresponding to the complainant's allegation. The Ombudsman therefore closes the case.

The President of Parliament will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Available on the Commission's website (http://ec.europa.eu/dgs/personnel_administration/statut/tocen100.pdf [Link]).

(2) Parliament attached a copy of the complainant's application to its opinion.

(3) The Ombudsman notes that, according to Article 11(2) of the Employment and Training Services Act of Malta (L.N. 347 of 2005): "*In classifying qualifications and national standards of*



knowledge of skills, competences and attitudes, the Council shall be guided by eight levels of qualifications and competence as indicated in the Schedule to these regulations, describing the levels of qualifications and competences needed to access further study and training and to perform work at a special level. " Furthermore, according to the Schedule to the above Act, Level 1 is " often the entry point to a lifelong pathway for people with no qualifications. Learning is normally developed during compulsory education and contributes to general education but is also achieved through adult learning programmes and through non-formal and informal learning opportunities ".

(4) See footnote 2.

(5) The text of which reads: "*International School of Beauty - Mr X - The above student has studied at the above school in Theory and Practice for 300 hrs in the art of Beauty Specialist and Electrical Equipment. "*

(6) The text of which reads: "*ITEC - International Therapy Examination Council - England - An independent Examining Body - Beauty Specialist Diploma, awarded to Mr X who has successfully passed the practical and theoretical examinations to the standards set by the International Therapy Examination Council. "*