

Decision of the European Ombudsman closing his inquiry into complaint 185/2005/ELB against the European Commission

Decision

Case 185/2005/ELB - Opened on 16/02/2005 - Recommendation on 31/03/2008 - Special report on 16/02/2005 - Decision on 04/12/2008

Summary of decision on complaint 185/2005/ELB against the European Commission

Auxiliary Conference Interpreters ('ACI') are freelance interpreters hired for specific conferences and meetings. The period of each specific assignment is short, normally lasting no more than a few days. In 2000, the European Commission and the European Parliament stopped hiring ACIs older than 65 years of age. The complainant, who had worked for these institutions for more than 35 years as an ACI, turned 65 in 2004. Since then, he no longer received job offers from these institutions. The complainant made two complaints to the Ombudsman, against the Commission and Parliament, arguing that they were discriminating against him on the basis of his age. In the second case against Parliament (Case 186/2005/ELB), which was closed on 19 November 2008, Parliament accepted the Ombudsman's draft recommendation and the Ombudsman therefore did not make a finding of maladministration.

In the case against the Commission, the Ombudsman took the view that the Commission had not adequately justified why it treated ACIs over 65 differently. The Commission, however, rejected both the friendly solution proposal and the draft recommendation made by the Ombudsman in an effort to solve the problem.

Since the present case raises an important issue of principle, the Ombudsman has now submitted a Special Report to Parliament.

In the Special Report the Ombudsman notes that he has already recommended to the Commission to change its current policy of imposing a ban on the recruitment of ACIs over 65 years of age. He also recommended that the Commission compensate the complainant.

Article 21 of the Charter of Fundamental Rights prohibits age discrimination. The Ombudsman accepts that a difference in treatment on grounds of age can, in exceptional circumstances, be justified in order to achieve 'legitimate aims'. In the present case, the Ombudsman did not



exclude the possibility that the Commission's stated aim - the recruitment and training of new interpreters - could be a 'legitimate aim'. However, he doubted that a *complete ban* on the recruitment of ACIs over 65 years of age was appropriate and necessary to achieve that aim.

In his Special Report the Ombudsman urges Parliament to support the recommendation he made to the Commission.

THE BACKGROUND TO THE COMPLAINT

1. The complainant worked for the European institutions for more than 35 years as a freelance auxiliary conference interpreter ('ACI'), translating into French from Dutch, English, German, Italian and Spanish. Freelance interpreters are hired for specific conferences and meetings. The period of each specific assignment is short, lasting normally no more than a few days.

2. On 13 July 1999, the Bureau of the European Parliament established rules for the hiring of ACIs ('the Rules of 1999'). On 28 July 1999, the Commission and Parliament signed a convention on working conditions and financial terms for ACIs ('the Convention of 1999'). Subsequently, Council Regulation No 628/2000 (1) provided for the recruitment of ACIs as "*auxiliary agents*".

3. In this context, the European Commission and the European Parliament decided to stop hiring ACIs older than 65 years of age. They based their respective decisions on Article 74 of the Conditions of Employment of Other Servants of the Communities ('the CEOS') (2). Subsequently, certain ACIs (3) initiated legal proceedings before the Court of First Instance against the Commission and Parliament (Joined Cases T-153/01 and T-323/01 (4), Case T-275/01 (5) and Case T-276/01 (6)), requesting the annulment of the institutions' letters stating that they could no longer recruit ACIs who are older than 65 years of age.

4. The Court of First Instance found that, as a result of these letters, the institutions had refused to recruit the applicants because of their age, and that these decisions were not lawful. The Court also held that the institutions had wrongly considered that Article 74(1) of the CEOS applied to the applicants.

5. On 27 August 2004, the Commission launched an appeal before the Court of Justice (Case C-373/2004 P (7)) against the judgment delivered by the Court of First Instance in Joined Cases T-153/01 and T-323/01.

THE SUBJECT-MATTER OF THE INQUIRY

6. The complainant stated that, even subsequent to the ruling of the Court of First Instance, the Commission refused to hire him as an ACI. In this context, he alleged that the Commission failed to comply with Article 21 of the Charter of Fundamental Rights (8) and with Article 5(3) of



the European Code of Good Administrative Behaviour (9) , both of which prohibit, *inter alia* , discrimination on the basis of age.

7. The complainant claimed that the Commission should put an end to the discrimination to which he has been subjected since he reached the age of 65. He also claimed compensation of EUR 14 619 from the Commission (EUR 10 932 corresponding to loss of earnings and EUR 3 687 corresponding to contributions to the " *Caisse de prévoyance des interprètes de conférence* ") and assessed the moral damage he had suffered to be EUR 20 000.

8. In addition, he alleged that the Commission failed to comply with Article 19 of the European Code of Good Administrative Behaviour, which concerns the need for institutions to provide information concerning the possibilities of appeal.

THE INQUIRY

9. The complainant submitted his complaint on 16 January 2005. On 8 June 2005, the Commission sent its opinion, which was forwarded to the complainant for his observations. On 13 July 2005, the complainant sent his observations.

10. On 13 December 2005, the Ombudsman requested further information from the Commission. On 20 March 2006, the Commission replied to his request. On 2 April 2006 and 19 May 2006, the complainant sent his observations.

11. On 1 December 2006, the Ombudsman wrote to the President of the Commission seeking a friendly solution to the complaint. The Commission sent its reply on 16 March 2007 and the complainant sent his observations on 25 May 2007.

12. On 31 March 2008, the Ombudsman addressed a draft recommendation to the Commission. On 26 June 2008, the Commission sent its detailed opinion concerning this draft recommendation. The complainant made his observations on the Commission's opinion on 31 July 2008.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation of a general policy of discrimination against ACIs over 65 years of age and related claim

13. The Ombudsman considers that the present case raises an important issue of principle. He takes the view that the Commission infringes the principle of non-discrimination on the basis of age by imposing an absolute ban on hiring freelance auxiliary conference interpreters over 65 years of age. This constitutes an instance of maladministration, the importance of which justifies the submission of a special report to Parliament. The Ombudsman's analysis as regards this allegation is presented in the Special Report submitted to Parliament, which is attached to the



present decision. The Statute of the Ombudsman provides that the submission of a report to the European Parliament constitutes the final step in an inquiry by the Ombudsman.

B. Allegation of failure to comply with Article 19 of the European Code of Good Administrative Behaviour *Arguments presented to the Ombudsman*

14. The complainant stated that the Ombudsman should examine whether, when deciding not to recruit him, the Commission complied with Article 19 of the European Code of Good Administrative Behaviour, which states the following:

" A decision of the Institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time-limits for exercising them.

Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under the conditions specified in, respectively, Articles 230 and 195 of the Treaty establishing the European Community. "

15. In its opinion dated 10 March 2006, the Commission pointed out that the European Code of Good Administrative Behaviour was not legally binding on it. However, Article 3 of its own Code was binding and provided as follows: " [w]here Community law so provides, measures notified to an interested party should clearly state that an appeal is possible and describe how to submit it ". In the present case, the Commission took no decision as regards the complainant. Consequently, the Commission considered that the above-mentioned article was not applicable.

16. In his observations, the complainant admitted that no decision was taken and recalled that this was one of the problems encountered by the applicants in the course of the legal proceedings.

The Ombudsman's assessment

17. Given that the complainant admitted that no decision was taken, the Ombudsman takes the view that there is no maladministration as regards this aspect of the complaint.

C. Conclusions

The Ombudsman refers to his Special Report as regards the allegation of a general policy of discrimination. He finds no maladministration as regards the alleged failure to comply with Article 19 of the Code of Good Administrative Behaviour.

The complainant and the European Commission will be informed of this decision.



P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 4 December 2008

(1) Council Regulation No 628/2000 of 20 March 2000, amending Regulation No 259/68 laying down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the Communities, OJ 2000 L 76, p. 1. Article 1 of this Regulation reads as follows:

" (...) (2) All conference interpreters should consequently be engaged as auxiliary staff covered by Title III of the Conditions of Employment of Other Servants of the European Communities (...)

The following paragraph shall be added to Article 78 of the Conditions of Employment of Other Servants of the European Communities:

The same conditions of recruitment and remuneration applied to conference interpreters engaged by the European Parliament shall apply to auxiliary staff engaged by the Commission as conference interpreters on behalf of the Community institutions and bodies. "

(2) Article 74 of the CEOS (in the version applicable at that time) provided as follows: *" Apart from cessation on death, the employment of auxiliary staff shall cease: 1. where the contract is for a fixed period: (...) (b) at the end of the month in which the servant reaches the age of 65 years (...)* "

(3) The complainant was not a party to these court proceedings.

(4) Joined Cases T-153/01 and T-323/01 *Alvarez Moreno v Commission* [2004] ECR-SC I-A-161 and II-719.

(5) Case T-275/01 *Alvarez Moreno v Parliament* [2004] ECR-SC I-A-171 and II-765.

(6) Case T-276/01 *Garroni v Parliament* [2004] ECR-SC I-A-177 and II-795.

(7) Case C-373/04 P *Commission v Alvarez Moreno* [2006] ECR I-1.

(8) Article 21 of the Charter of Fundamental Rights states that: *" Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. "*

(9) Article 5(3) of the European Code of Good Administrative Behaviour states the following: *" The official shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation. "*

