



Draft recommendation to the European Commission in complaint 2107/2002/(BB)PB

Recommendation

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

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1)) THE COMPLAINT

The complaint was submitted on 3 December 2002, 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 applies an age limit of 30 to trainees. He therefore wrote to the European Ombudsman, alleging that the use of an age limit for trainees constitutes age discrimination and is 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 is not a pre-recruitment programme but a work experience programme, and as such the trainees do not have the same responsibilities as Commission officials, nor are they paid a salary but receive a standard grant.

The number of applications from well-qualified candidates always far exceeds the number of places available and there are some basic requirements, including an age limit, as it is addressed to young graduates who are at the beginning of their careers. In this case, the age limit is objectively justified and is 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 are granted from the age limit rule, provided that a covering letter is sent with the application requesting such an exemption and with a good justification for it. There are several criteria, which the Head of the Traineeship Office has to consider when granting exemptions. Examples of such criteria are: 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 dedicated studies relevant to a particular area of work within the Commission. It is evident that each case is judged on the basis of its own merits.



The complainant has not yet submitted an application or a request for an exemption from this age limit. It is therefore not possible at this stage 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 complainant made, in summary, the following observations:

The complainant submitted an application form for in-service training to the Traineeship Office on 8 January 2003, via e-mail. His candidate number was 003/232104. On 9 January 2003, he received an acknowledgement of receipt. After this, the complainant was supposed to send the paper application with copies of his personal documents.

Prior to his application, the complainant had sent an e-mail to the Traineeship Office, complaining about the age limit. On 4 December 2002, the Traineeship Office replied to him explaining that, even at his age, he was still able to apply for the traineeship. However, he would have to produce a reasonable justification in order to move forward in the selection process.

The complainant did not submit the paper application and his personal documents because he considered that he did not have a "good justification", except that he had decided to change his life and career.

The complainant referred to Articles 20 and 21 of the Charter of Fundamental Rights, Article 13 of the EC Treaty and Articles 2 and 7 of the Universal Declaration of Human Rights. He stated that he believed that what is written in the Charter should become a reality.

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 (2) 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 Ombudsman suggests that the 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 made the following remarks:



"The Commission takes full note of the points made by the Ombudsman concerning the age limit currently applied to applicants for in-service training within the Commission. The current rules governing in-service training are being reviewed, and the Commission will look carefully at the preconditions and will incorporate any necessary modifications and clarifications.

However, the Commission wishes to highlight that the age limit for this specific traineeship programme could not be considered discriminatory because it is justified by the following objective reasons:

- One of the main objectives of the Commission's traineeship programme is to provide practical working knowledge to young university graduates in the beginning of their professional career. It is therefore addressed to and mainly focussed on young persons. Youth is obviously defined by age ; therefore, certain age limits are required in its definition. This is clearly stated, for example, in the "Youth" Community Action Programme (Decision No. 1031/2000/EC of 13.4.2000, article 4), - an action addressed to young people, to which access is limited to the 15 to 25 year old age group. It should also be pointed out that, based on a similar rationale, all the other European Institutions (EP, Council, European Economic and Social Committee, Committee of the Regions, etc.) have established an age limit as admission - an eligibility criterion - to their own traineeship programme.*
- For the Commission's traineeship programme, age is an eligibility criterion and not a pre-selection criterion (selection criteria are clearly based on merit, i.e. qualifications, knowledge and abilities).*

It should be noted also that for other traineeship schemes currently existing in the Commission and managed by the Directorate-General for Personnel and Administration, (i.e. structural trainees, traineeships for national officials or researchers, etc.) there is no age limit, as they are not focussed on and addressed to young persons.

Regarding the point made that the method by which exemptions of age are granted or refused appears to be arbitrary because the Commission has not established specific criteria for the identification of "good reasons" of exemption, the Commission notes the following:

Each individual request for age exemption is examined and decided on a case-by-case basis according to the justifications provided for each application. The Commission believes that the establishment of a detailed and complete list of objective reasons for which exemption should be granted, invites the risk of not including all objective reasons for exemptions, thus considerably limiting the possibility of suitable judgement in individual cases. It may further tempt candidates to use reasons found on such a list rather than using their own real justifications.

It should be pointed out that from the total of 21.437 applications received for the last 3 training periods (March 2003, October 2003, March 2004) only 20 requests for age exemptions (0,09%) were refused, whereas 277 requests were actually granted.

Concerning [the complainant's] case, all deadlines for the October 2003 in-service training period for which he applied have obviously now expired. It is therefore not possible to find a friendly solution for this training period. He may, of course, apply for the next available training



period, which starts in October 2004. Any application from [the complainant] *will be carefully examined.*"

The complainant's observations

In his observations of 2 January 2004, the complainant maintained his allegation and claim.

THE DECISION 1 The allegation of unfair discrimination

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

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

1.3 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 (3) .

In its opinion, the Commission had explained that exemptions are granted for the age limit rule and 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.

1.4 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 is 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 applies 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.

1.5 The Ombudsman has carefully examined the Commission's arguments, and makes the following remarks:

1. As regards the Commission's first point, the Ombudsman takes note of the fact that the Commission's traineeship programme is aimed at university graduates, which is a legitimate objective. The Commission has not, however, explained why it considers 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 points out that there are examples of training programmes at the EU level where no age limit is provided for in the rules governing those programmes (4).

3. As regards the Commission's reference to its other traineeship programmes where no age limit is applied, the Ombudsman welcomes the fact that no such limit is applied to those programmes. This cannot, however, influence the Ombudsman's finding on the use of age limit in the programme here concerned.

4. As regards the fact that 20 requests for age exemptions were refused and 277 were granted out of the 21 437 applications received for the training periods March 2003 - March 2004, the Ombudsman notes that the proportion of applications where age is an issue appears to be very small. This, in the Ombudsman's view, indicates 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 points 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 notes that the difficulties of establishing a list of exemptions, referred to by the Commission, suggest 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 the above findings, the Ombudsman maintains his conclusion that the age limit in the Commission's traineeship programme constitutes unjustified discrimination, and accordingly makes the draft recommendation below.

1.6 For the purpose of its response to the draft recommendation, the Ombudsman invites 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" (5) . The communication refers to Article 14 of the Charter of Fundamental Rights, which recognises that *"Everyone has the right to education and to have access to vocational and continuing training "* (p 23, emphasis added), and defines lifelong learning as *"All learning activity undertaken throughout life, with the aim of improving knowledge, skills and competences within a personal, civic, social and/or employment-related perspective"* . The communication emphasises the need for learners to *"genuinely take advantage of equal opportunities throughout their lives"* (p 4), and refers to the importance of facilitating access to learning opportunities for groups at particular risk of exclusion, such as older workers (p 13).

2. Conclusion

In view of the above, the Ombudsman makes the following draft recommendation to the Commission, in accordance with Article 3 (6) of the Statute of the Ombudsman:

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

The Commission and the complainant will be informed of this draft recommendation. In accordance with Article 3 (6) of the Statute of the Ombudsman, the Commission shall send a detailed opinion by 15 September 2004. The detailed opinion could consist of the acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 15 June 2004

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, OJ 1994 L 113, p. 15.

(2) 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, OJ 1994 L 113, p. 15.

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

(4) Cf. the conditions referred to on the websites of the Translation Centre for the Bodies of the European Union (http://www.cdt.europa.eu/DbWeb/CdtWeb/CdtWeb.nsf/F_Job?ReadForm&Lan=EN&Choice=2&) and EUROJUST (<http://www.eurojust.europa.eu/policy.htm#Recruitment> policy for interns). The Ombudsman's rules, which also contain no age limit, are available on <http://www.ombudsman.europa.eu/trainee/en/default.htm> .

(5) 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

