

Draft recommendation to the European Commission in complaint 337/2003/ELB

Recommendation

Case 337/2003/ELB - Opened on 11/03/2003 - Recommendation on 15/07/2004 - Decision on 18/07/2005

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1))
The present case raises the same issue as complaint 2107/2002/(BB)PB, in which a draft recommendation was sent to the Commission on 15 June 2004. The present draft recommendation is, therefore, identical to that in the earlier case.

THE COMPLAINT

According to the complainant, the relevant facts are, in summary, as follows:

The complainant wishes to apply for a five-month training period at the Commission. He noticed on the website of the Commission that an age limit of 30 years applies. The application form for the training period mentions that exceptions could be made to this rule.

The complainant alleges that by not accepting applications from people over 30 years old the European Commission is guilty of age discrimination. He claims that the age limit rule should be abolished and training periods be offered on merit.

THE INQUIRY

The Commission's opinion

In summary, the Commission, in its opinion, made the following points:

The philosophy of the Commission's in-service training programme is aimed at young people at the start of their careers. This is the reason why an age limit of 30 years exists. The Commission does not consider that the age limit constitutes discrimination as the nature of the programme is specifically for young graduates. However, the Commission does grant exceptions in certain cases where there is good justification.

The Commission notes that the complainant (who is 44 years old) has already applied three times for in-service training at the Commission. He was granted an exemption for his first



application, was successful in the pre-selection process and was offered a three-month contract, which he declined. The complainant was not granted exemptions from the age limit for the following two applications.

The complainant lodged a previous complaint against the Commission with the European Ombudsman concerning the rejection of his application for in-service training periods. The European Ombudsman found that there was no instance of maladministration.

The Commission points out that all Commission trainees are already selected on merit, the major pre-selection criteria for this programme being qualifications, knowledge and ability. According to the Commission, merit is not linked to age and experience does not infer merit.

The complainant's observations

In his observations, the complainant made, in summary, the following points:

The Commission's opinion is in contradiction with the principle of equality of opportunity. This was the central theme of many conferences organised by the European Commission and attended by the complainant. Moreover, these conferences acknowledged that people's careers continually change, stop and start and that there is no beginning and no end.

The Commission's opinion also contradicts the statements of Commissioners Diamantopoulou and Bolkestein, which are respectively the following: *"Without a strong, knowledge-centred economy we cannot achieve other crucial goals of social inclusion and a society based on equality of opportunity for all. The Commission is firmly behind these goals and ambitions"* and *"Europeans can now live, work and study wherever they like in the EU"*.

The abolition of this rule would fall within the scope of the modernisation policy initiated by the Commission with the abolition of age limits in competitions. The five-month traineeship programme is the only European Commission competition which has an age limit rule.

The age limit rule is in breach of Article 21 of the Charter of Fundamental Rights which 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"*.

According to the complainant, the only criteria which should be used by the Commission for this programme should be qualifications, knowledge and ability.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman did not consider that the Commission had responded adequately to all the complainant's allegations. In accordance with Article 3 (5) of the Statute (2), he therefore wrote to the President of the Commission to propose a friendly solution on the basis of the following



analysis of the issues in dispute between the complainant and the Commission.

1 The allegation of discrimination

1.1 The complainant alleges that, by not accepting applications for traineeships from people over 30 years old, the European Commission is guilty of age discrimination. He claims that the age limit rule should be abolished and training periods be offered exclusively on merit.

1.2 The Commission explained that an age limit of 30 years exists because the philosophy of the Commission's in-service training programme is to aim at young people at the start of their careers. It did not consider that the age limit constitutes discrimination as the nature of the programme is specifically for young graduates. Furthermore, the Commission pointed out that all Commission trainees are already selected on merit, the major pre-selection criteria for this programme being qualifications, knowledge and ability.

1.3 The Ombudsman noted that the Commission had explained that the major pre-selection criteria are qualifications, knowledge and ability.

1.4 The Ombudsman also noted, however, that the rules governing in-service training periods with the Commission (Decision of the Commission of 7 July 1997) explicitly state that *"the age limit rule is thirty"*.

1.5 The Ombudsman recalled Article 21 of the Charter of Fundamental Rights which 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"*. 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).

1.6 The Ombudsman also recalled that, following the European Ombudsman's own initiative inquiry OI/2/2001/(BB)OV, the Commission agreed to abolish the use of age limits for all recruitment competitions. Moreover, the Commission contributed to the Ombudsman's initiative by encouraging the other European Union institutions to abolish the use of age limits.

1.7 The Ombudsman noted that, according to the Decision of the Commission of 7 July 1997, *"(...) the Head of the Traineeships Office may, if there is a good reason, make exception to this age limit at the candidate's request"*. However, the Commission had not put forward, in its opinion, any criteria for the identification of good reasons. Decisions by the Commission to grant or refuse exemptions to the age limit rule could therefore appear arbitrary.

1.8 In the light of the above, the Ombudsman's provisional conclusion was that the Commission's use of an age limit for training periods with the Commission appeared discriminatory and arbitrary.

The proposal for a friendly solution

The European Ombudsman suggested 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.



The Commission's response

In reply to the Ombudsman's proposal, the Commission points out the following:

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 if appropriate any necessary modifications and clarifications.

However, the Commission wishes to highlight that the age limit for this specific traineeship program 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. Therefore it is addressed to and mainly focused 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 (4) - an action addressed to young people, to which access is limited to the 15 to 25 years old age group. It should also be pointed out that, based on a similar rationale, all the other European Institutions have established an age limit for admission - an eligibility criterion - to their own traineeship programmes.
- For the Commission's traineeship programme, age is an eligibility criterion and not a pre-selection or a selection criterion (selection criteria are clearly based on merit, i.e. qualifications, knowledge and abilities).

It should be noted that for other traineeship schemes currently existing in the Commission and managed by DG ADMIN, (i.e. structural trainees, traineeships for national officials or researchers, etc.) there is no age limit, as they are not focused 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, as the Commission has not established specific criteria for the identification of good reasons of exemption, the Commission wishes to note 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 of age could 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 were refused, whereas 277 requests were actually granted.



Concerning the complainant's case, it is not possible to find a friendly solution for the current training period or the next, as he has not submitted an application. 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, the complainant made, in summary, the following points:

The complainant considers that the reference to the Youth Community Action Programme to justify an age limit is irrelevant. Confusion seems to reign with regard to the Commission's granting of exemptions to the age limit. The complainant indicates that he will send a new application to the Commission's Traineeship programme when there will no longer be age limits. When he last applied to this programme, the reply of the Commission was the following:

"Following your application for a stage, I regret to have to tell you that it has not been possible to accept your application as the following requirement of the rules governing in-service training has not been fulfilled: trainees must not be more than thirty years old" .

THE DECISION

1 The allegation of discrimination

1.1 The complainant alleges that, by not accepting applications for traineeships from people over 30 years old, the European Commission is guilty of age discrimination. He claims that the age limit rule should be abolished and training periods be offered exclusively on merit.

1.2 After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman wrote to the President of the Commission to propose a friendly solution in accordance with Article 3 (5) of the Statute. The Ombudsman's provisional conclusion was 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 that the Commission should 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.

1.3 The Commission rejected the Ombudsman's proposal for a friendly solution, making, in summary, the following points:

- 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.
- All the other institutions apply an age limit in their traineeship programme.
- The Commission applies no age limit to its other traineeship programmes not aimed at young persons.
- Of the 21 437 applications received for the training periods March 2003, October 2003 and March 2004, only 20 requests for age exemptions were refused, whereas 277 requests were actually granted.
- 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.



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

- 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.
- 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 (5) .
- 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.
- 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, October 2003 and 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.
- 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.

1.5 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" (6) . 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 31 October 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 July 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) *"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."*

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

(4) Decision No 1031/2000/EEC of 13 April 2000.

(5) 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&\[Link\]](http://www.cdt.europa.eu/DbWeb/CdtWeb/CdtWeb.nsf/F_Job?ReadForm&Lan=EN&Choice=2&[Link])) and EUROJUST ([http://www.eurojust.europa.eu/policy.htm#Recruitment policy for interns \[Link\]](http://www.eurojust.europa.eu/policy.htm#Recruitment%20policy%20for%20interns)). The Ombudsman's rules, which also contain no age limit, are available on <http://www.ombudsman.europa.eu/trainee/en/default.htm> [Link].

(6) 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 [Link]