

Draft recommendation to the European Commission in own-initiative inquiry OI/2/2003/GG

Recommendation

Case OI/2/2003/GG - Opened on 17/11/2003 - Recommendation on 19/07/2004 - Special report on 17/11/2003 - Decision on 20/12/2004

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

THE REASONS FOR THE OWN-INITIATIVE INQUIRY

Complaint 1857/2003/GG (Confidential)

On 6 October 2003, the European Ombudsman received a complaint from Mr X., the Press and Information Officer at the European Commission's Delegation in Y. In this complaint, Mr X. alleged that his grading in Group (2) II had been a violation of the Commission's rules and that he had been discriminated against on the basis of his nationality. In order to support his allegation, Mr X. referred inter alia to his professional qualifications.

The Treaty establishing the European Community provides for the European Ombudsman to receive complaints from "*any citizen of the Union or any natural or legal person residing or having its registered office in a Member State of the Union.*"

Given that Mr X. did not appear to fall into any of these categories, the Ombudsman informed him, on 21 October 2003, that he had no power to deal with his complaint.

However, given the seriousness of the issues raised by Mr X., the Ombudsman considered that these issues should be examined. He therefore decided to open an own-initiative inquiry into this matter.

The information requested in the own-initiative inquiry

The Ombudsman therefore requested the Commission to explain the reasons for Mr X.'s grading and to comment on Mr X.'s allegation that he had been discriminated against on the basis of his nationality.

Given that Mr X. had required confidential treatment for his complaint, the Ombudsman considered that it would be appropriate to treat this own-initiative inquiry confidentially as well.

THE INQUIRY

The Commission's opinion



In its opinion, the Commission made the following comments:

Mr X., a national of Y, was employed as Press and Information Officer, under the responsibility of the Head of Section, in the Delegation of the Commission to Y. He had been recruited as a local agent in Group II.

Posts of press and information officers were created in the Delegations either in Group II or in Group I, depending on the functions to be performed. The majority (2/3) of the posts were indeed in Group I, but more than half of those press and information officers were placed under the direct responsibility of the Head of Delegation.

Furthermore, Y was not the only major country where the press officer post had a Group II status. The claim of discrimination on the basis of nationality could therefore not be accepted.

The level of previous professional experience of the selected candidate was not a criterion for determining the level of the post which was only established according to the tasks to be performed as well as to the structure of the establishment plan.

The classification of the post of Mr X. had therefore been made correctly in accordance with the applicable rules.

The observations of the complainant in case 1857/2003/GG

A copy of the Commission's opinion was forwarded to Mr X. for his information. Mr X. subsequently submitted observations to the Ombudsman in which he expressed the view that he was carrying out more or less the same duties as Group I press and information officers in other countries. He further submitted that he was performing an additional duty, namely that of a permanent web-designer, which no other Group I press and information officer in the region had been entrusted with. Mr X. also pointed out that the difference in salaries between Group I and Group II was huge. Finally, Mr X. argued that the Commission had avoided mentioning its "Framework Rules" according to which the post of press and information officer fell in Group I and not in Group II. Mr X. submitted that the Commission had ignored its own rules.

Further inquiries *First request for further information*

On 4 February 2004, the Ombudsman asked the Commission to provide him with a copy of the rules it applied in order to determine the grading of the post of a press and information officer in a Delegation. In this context the Ombudsman attracted the Commission's attention to the fact that the complainant in complaint 1875/2003/GG had made express reference to what he called the "Framework Rules" that in his view governed this classification.

The Commission's reply

On 1 March 2004, the Commission submitted a copy of the "Framework rules laying down the conditions of employment of local staff of the Commission of the European Communities serving in non-member countries" that had been published in its Administrative Notices on 22 June 1990.

Article 4 of the "Framework Rules" provides that there shall be a single career structure for local staff comprising six groups "corresponding to the duties to be performed" and described in Annex I.



As far as the correlation between basic posts and duties in Groups I and II is concerned, Annex I reads as follows:

I. Administrative, advisory and supervisory posts

These posts involve administrative, advisory and supervisory duties in the following areas: politics, economics (trade, industry and finance), science and technology, energy, computers, development, press and information, translation and interpreting.

Examples: engineers, lawyers, economists, data-processing analysts, agronomists, press officers, translators, interpreters, editors, project leaders, administrative and financial staff.

II. Executive posts

These posts involve difficult and complex office work, under general guidance, mainly in the areas of administration, accounts, documentation and technical matters.

Examples: administrative staff, accountants, documentalists, archivists, sub-editors, computer and technical staff.”

In its accompanying note, the Commission submitted that the classification of a post in one of these groups was determined on the basis of the duties to be performed. According to the Commission, a press officer was in Group I when the post had been created to perform advisory or supervisory duties. The contract of Mr X. clearly indicated that he worked “as requested by his immediate superior”. This meant that his was an “executive post” within the meaning of Group II.

Second request for further information

On 18 March 2004, the Ombudsman addressed a second request for further information to the Commission covering the following issues:

(1) Annex 1 of the “Framework rules” listed the posts of “press officers” as examples of posts that involved “administrative, advisory and supervisory duties” and that thus constituted “administrative, advisory and supervisory posts” within the meaning of Group I. The Commission was asked to explain why it should nevertheless be entitled to classify press officers in Group II.

(2) In its opinion, the Commission mentioned that two thirds of all press officers were classified in Group I but that more than half of those posts were placed under the direct responsibility of the Head of Delegation. The Commission was asked to explain under whose responsibility the remainder of the press officers classified in Group I worked and whether these press officers did not have to carry out their work “as requested by [their] immediate superior”.

(3) The Commission was asked to provide an establishment plan of its Delegation to Y showing the position of the press officer there.



(4) In its opinion, the Commission submitted that Y was not the only major country where the press officer was classified in Group II. The Commission was asked to provide examples of other major countries where this was the case and, if available, a full list of countries where there was a press officer showing the latter's grade.

The Commission's reply

On 3 May 2004, the Commission submitted a copy of the establishment plan of its Delegation in Y and a list of the 19 countries where the Press Officer was placed in Group II. It also made the further following comments:

Press officers were classified in Group II when they did not work directly under the authority of the Head of Delegation, but as requested by their immediate superior. The press officers of Group I who were not placed under the immediate responsibility of the Head of Delegation were placed under the responsibility of a Head of Section with a wide management role, who was not only in charge of the area "press and information" but also of other areas such as political, economic and trade issues. Only in the Commission Delegations in Moscow, New York and Washington there was a different structure, as each of these Delegations had its own press office.

In the case of the Delegation in Y, the Head of Section (who supervised different policy areas) was assisted by an "ALAT" in Group I who co-ordinated a team dealing with different fields including press and information. Mr X. was a member of this team.

Mr X.'s observations

A copy of the Commission's replies to the Ombudsman's first and second requests for further information was forwarded to Mr X. for his information. Mr X. subsequently submitted observations in which he made the following comments:

Since his appointment, he had been working under the immediate responsibility of the Head of the Political Affairs, Trade and Economic Analysis and Media Relations Section (not under an "ALAT" Group I). The same was true of the majority of press and information officers in the region. Of the 19 Press and Information Officers recruited in Group II, 17 belonged to the African continent and none to Europe or America (3) . Some press and information officers recruited in Group II had been promoted to rectify the anomalous situation.

Third request for further information

On 17 May 2004, the Ombudsman addressed a third request for further information to the Commission. The Ombudsman pointed out that Annex 1 of the "Framework Rules" listed the posts of "press officers" as examples of posts that involved "administrative, advisory and supervisory duties" and that thus constituted "administrative, advisory and supervisory posts" within the meaning of Group I. He therefore asked the Commission to explain why it should nevertheless be entitled to classify press officers in Group II.

The Commission's reply

In its reply, the Commission submitted that the fact that "press officers" were listed as examples of posts that involved "administrative, advisory and supervisory duties" within the meaning of Group I did not mean that all the press officers had advisory and supervisory duties. Some of them only had complex executive duties, under the responsibility of a supervisor other than the Head of Delegation, so there were also press officers in Group II. This was the case of Mr X.



THE DECISION

1 Allegedly incorrect and discriminatory grading of post of press officer

1.1 The present inquiry concerns the case of Mr X., the Press and Information Officer at the European Commission's Delegation in Y. Mr X.'s post was graded in Group II ("Executive posts") out of the six groups foreseen in the "Framework rules laying down the conditions of employment of local staff of the Commission of the European Communities serving in non-member countries" that had been published in the Commission's Administrative Notices on 22 June 1990. According to Mr X., most of the press officers in other delegations held posts graded in Group I ("Administrative, advisory and supervisory posts"). It appears that there is a substantial difference in salary between Group I and Group II. Mr X. alleged that his grading in Group II had been a violation of the Commission's rules and that he had been discriminated against on the basis of his nationality.

1.2 Given that Mr X. was not among those persons who can, in accordance with Article 195 of the EC Treaty, submit complaints to the Ombudsman, his complaint (1875/2003/GG) had to be rejected. However, given the seriousness of the issues raised by Mr X., the Ombudsman considered that these issues should be examined. He therefore decided to open an own-initiative inquiry into this matter.

1.3 In its opinion, the Commission took the view that the post of Mr X. had been classified correctly in accordance with the applicable rules and that there had been no discrimination on the grounds of nationality. The Commission submitted that posts of press and information officers were created in the Delegations either in Group II or in Group I, depending on the functions to be performed. The majority (2/3) of the posts were indeed in Group I, but more than half of those press and information officers were placed under the direct responsibility of the Head of Delegation.

1.4 In its reply to a request for further information made by the Ombudsman, the Commission submitted a copy of the "Framework Rules". According to Annex I of these rules, administrative, advisory and posts involve "administrative, advisory and supervisory duties in the following areas: (...) press and information (...)". Among the examples of such posts that are listed in Annex I are "press officers". In its accompanying note, the Commission submitted that a press officer was in Group I when the post had been created to perform advisory or supervisory duties. The contract of Mr X. clearly indicated that he worked "as requested by his immediate superior". According to the Commission, this meant that his was an "executive post" within the meaning of Group II.

1.5 In its reply to a second request for information made by the Ombudsman, the Commission submitted that press officers of Group I who were not placed under the immediate responsibility of the Head of Delegation were placed under the responsibility of a Head of Section with a wide management role, who was not only in charge of the area "press and information" but also of other areas such as political, economic and trade issues. Only in the Commission Delegations in Moscow, New York and Washington there was a different structure, as each of these



Delegations had its own press office. In its reply to a third request for information made by the Ombudsman, the Commission alleged that not all the press officers had advisory and supervisory duties. Some of them only had complex executive duties, under the responsibility of a supervisor other than the Head of Delegation, so there were also press officers in Group II. According to the Commission, this was the case of Mr X..

1.6 The Ombudsman notes that Annex I of the “Framework Rules” lists the posts of press officers as examples of “administrative, advisory and supervisory posts” that belong to Group I. In the light of this provision, the Ombudsman takes the view that it is for the Commission to show on what legal basis and applying what criteria it should nevertheless be entitled to grade some press officers (and Mr X. in particular) in Group II.

1.7 The Ombudsman notes, however, that the Commission has been unable to clarify this legal basis and these criteria, notwithstanding several requests for information to that effect made by the Ombudsman. The Commission has emphasised the fact that among the two thirds of press officers who are graded in Group I, half were placed under the direct responsibility of the Head of Delegation which is not the case with Mr X.. However, since this means that the other half of these two thirds of press officers in Group I does not work under the direct responsibility of the Head of Delegation, it is difficult to see how the Commission could rely on this criterion in order to justify the fact that some press officers are graded in Group I and others in Group II. The Commission also relied on the fact that Mr X.’s contract obliged him to work “as requested by his immediate superior” in order to justify its view that Mr X.’s was an “executive post”. However, and although the Ombudsman put a question to that effect to it, the Commission did not claim that the press officers in Group I who do not work under the direct responsibility of the Head of Delegation would not be obliged to work as requested by their immediate superior. In its reply to the Ombudsman’s second request for information, the Commission submitted that press officers of group I who do not work under the immediate responsibility of the Head of Delegation were placed under the responsibility of a Head of Section. The Commission seemed to suggest that this was not the case of Mr X. since the latter was, according to the Commission, a member of the team of an “ALAT” (an agent) assisting the Head of Section. The Ombudsman notes, however, that the establishment plan of the Delegation in Y that the Commission submitted at the Ombudsman’s request does not confirm any such sub-ordination of Mr X. to the “ALAT”. It should further be noted that in its opinion, the Commission itself pointed out that Mr X. was employed “under the responsibility of the Head of Section”.

1.8 In these circumstances, the Ombudsman considers that the Commission has been unable to provide a coherent and convincing explanation for the fact that it graded the post of Mr X. (and of other press officers) in Group II although its “Framework Rules” mention press officers as examples of “administrative, advisory and supervisory posts” that belong to Group I. This is an instance of maladministration.

1.9 As regards Mr X.’s allegation that he was also the subject of discrimination on the basis of his nationality, the Ombudsman considers that the evidence in his possession does not allow him to conclude that this allegation is justified.

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 draft recommendation

The Commission should reconsider its rules concerning the classification of posts of press officers in its delegations in third countries in general and the classification of the post of Mr X. in particular.

The Commission and Mr X. 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, 19 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, 1994 OJ L 113/15.

(2) The complainant and (following him) the Ombudsman first used the expression "Grade". However, the "Framework Rules" (see below) use the expression "Group", and it is therefore this expression which will be used here.

(3) The Ombudsman notes that this does not appear to be entirely correct. As far as he can see, 15 of the 19 Press and Information officers in Group II work in Africa, 2 in Asia, one in a former Soviet republic and one in America (Barbados).