

Decision of the European Ombudsman closing the inquiry into complaint 2528/2011/MMN against the European Commission

Decision

Case 2528/2011/MMN - Opened on 17/01/2012 - Decision on 10/07/2014 - Institution concerned European Commission (No maladministration found) |

The case concerned the exercise by lawyers of the right of free movement within the EU. The European Commission rejected a complaint lodged by a person who qualified as a lawyer in Cyprus and who considered that the UK and/or the Cypriot authorities had infringed the free movement rules. The European Ombudsman inquired into the matter and found that the Commission had not committed any act of maladministration. As regards the UK, the Commission correctly concluded that the UK authorities had complied with the applicable rules. Likewise, as regards the Cypriot authorities, the Commission was right to consider that the complainant had failed to produce evidence that they had created an obstacle to the exercise of the complainant's right of free movement.

The background to the complaint

1. The case concerned the Commission's rejection of an infringement complaint against the United Kingdom and Cyprus for failure to comply with the EU rules concerning the free movement of lawyers within the EU.
2. The complainant had initially qualified as a lawyer in Cyprus and later on suspended his membership of the Cypriot Bar. He then decided to practise law again, this time in the UK. In order to do so, the UK authorities required him first to renew his lawyer's licence in Cyprus. However, according to the complainant, when he contacted the Cypriot authorities, the latter required him to indicate a place of residence and practice in Cyprus.
3. Since he was thus unable to establish himself as a lawyer in the UK, the complainant contacted SOLVIT and also lodged a complaint with the Commission against the UK and/or the Cypriot authorities for failure to comply with the rules on the free movement of lawyers.
4. In September 2011, the Commission informed the complainant that it intended to reject the complaint on the grounds that neither the UK nor the Cypriot authorities appeared to have



infringed EU law [1] . The Commission pointed out that, in order to practise as a lawyer in the UK under his Cypriot professional title, the complainant had to retain his registration as a lawyer with the competent Cypriot authority. It considered that, in order to carry out their supervisory and regulatory tasks, the Cypriot authorities were entitled to require the complainant to provide a local address and to pay the corresponding Bar fees.

5. In December 2011, SOLVIT informed the complainant that, in its view, EU law had not been infringed. Since the complainant was no longer a practising lawyer according to Cypriot law, he could not be regarded as a 'lawyer' pursuant to Directive 98/5 and he therefore could not avail himself of the right to register as a lawyer in the UK (that is, the host Member State) under that directive.

6. After receiving an e-mail from the complainant, the Commission indicated that, in view of the negative outcome of SOLVIT's intervention, it would reconsider its position and communicate with the complainant at a later date. In the absence of a further reaction from the Commission, the complainant contacted the European Ombudsman in December 2011.

The inquiry

7. The Ombudsman unsuccessfully tried to solve the case by approaching the Commission informally. In September 2012, the Ombudsman therefore opened a formal inquiry into the following allegation and claim.

Allegation

The Commission wrongly rejected the complaint relating to the alleged infringement by the UK and/or Cypriot authorities of the rules concerning the practice of the legal profession within the EU.

Claim

The Commission should resume its investigation into the complaint and initiate infringement proceedings against the Member State(s) concerned.

8. In the course of the inquiry, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's opinion. His services also carried out an inspection of the Commission's file concerning the present case. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Alleged wrong rejection of the infringement complaint



Arguments presented to the Ombudsman

9. The complainant argued that the Commission was wrong to reject the complaint relating to the alleged infringement by the UK and/or the Cypriot authorities of the rules concerning the practice of the legal profession within the EU. Thus, he took the view that the Commission should resume its investigation and initiate infringement proceedings against the Member State(s) concerned.

10. In its opinion, the Commission explained that when requiring the complainant to renew his licence as a practising lawyer in Cyprus before establishing himself in the UK under his home Member State title pursuant to Directive 98/5, the UK authorities had correctly applied the relevant provisions of EU law.

11. As regards the position of the Cypriot authorities, the Commission submitted that requiring lawyers to have an address in the home Member State could not be viewed in itself as an unjustified restriction of the right of free movement under the relevant rules, provided that the additional costs remain proportionate to the purpose of this requirement (that is, ensuring the supervision of lawyers). Several Member States impose a similar requirement. Moreover, although some Member States require a declaration that the lawyer concerned carries out professional activities in that State, they normally allow lawyers who are established abroad to cross out the statement indicating that they practise in the territory of the home country.

12. As far as the complainant is concerned, the Commission noted that he moved to the UK after having severed his links with the Cypriot Bar, and that he thus no longer appeared to maintain any form of professional establishment in Cyprus. The complainant subsequently tried to re-establish those links for the sole purpose of benefitting from Directive 98/5 without however actively pursuing any professional activity in Cyprus in the run-up to the attempt to register in the UK.

13. Thus, the information available to the Commission at the time it closed the complainant's case did not point to the existence of an infringement of EU law by the UK or Cypriot authorities. Moreover, when the Ombudsman's representatives inspected the Commission's file, the Commission officials present at the inspection indicated that there was no evidence in the file that the complainant had made a request to re-register as a lawyer with the Cypriot Bar. He had merely indicated his intention to practise in another Member State, which was the reason why his request was refused by the Cypriot authorities.

14. Finally, the Commission indicated that, although the replies received from the Cypriot authorities in the context of the investigation of the infringement complaint raised certain issues which the Commission was still trying to address, those issues were not relevant to the complainant's case.

15. In his observations, the complainant argued, as regards the position of the Cypriot authorities, that in order to obtain a renewal of his licence, he had been required to declare that he was working in Cyprus. However, since he intended to work in the UK, he was unable to



make such a statement without making a false declaration.

16. The complainant also confirmed that he did not maintain any links with the Cypriot Bar. In his view, it would be illogical to require lawyers to practise simultaneously in two Member States in order to be able to benefit from Directive 98/5.

17. As far as the position of the UK authorities is concerned, the complainant did not dispute that the UK was right to have required him to renew his lawyer's licence in Cyprus before permitting him to practice as a lawyer in the UK pursuant to Directive 98/5.

The Ombudsman's assessment

18. The Ombudsman notes that the establishment of an internal market within the EU is one of the fundamental goals of the EU [2] . The internal market comprises an area without internal frontiers in which, *inter alia* , the free movement of persons and services is ensured [3] .

19. With a view to achieving this goal, Directive 98/5 was adopted specifically in order to make it easier for nationals of Member States to practise the profession of lawyer, whether in a self-employed capacity or as employees, in a Member State other than that in which they obtained their professional qualifications.

20. According to Article 1 of Directive 98/5, the term 'lawyer' means any person who is a national of a Member State and who is authorised to pursue his professional activities under one of the professional titles listed in the Directive [4] .

21. Under Article 3 of Directive 98/5/EC, a lawyer who wishes to practise in a Member State other than that in which he obtained his professional qualification must register with the competent authority of that Member State (the 'host Member State'). The competent authority of the host Member State will register the lawyer upon presentation of a certificate attesting to his registration with the competent authority of the home Member State.

22. It is common ground that the UK authorities (the 'host Member State') refused to register the complainant as a lawyer for the purposes of Directive 98/5 because he was no longer 'authorised' to practise as a lawyer in Cyprus (the 'home Member State'). Indeed, although the complainant became a fully qualified lawyer in Cyprus, he subsequently decided not to renew his licence. Thus, at the time of his application to be registered as a lawyer by the UK authorities, he was no longer registered as an active lawyer in Cyprus.

23. Therefore, as the complainant himself admitted, the Commission rightly concluded that the UK authorities had correctly interpreted and applied EU law, namely Directive 98/5.

24. As regards the position of the Cypriot authorities, the complainant contended that he was unable to renew his licence because he was required to declare that he permanently resides and practises law in Cyprus (which would have been impossible for him since he currently



resides in the UK and wishes to practise law in that country).

25. The Commission's interpretation of the requirements imposed by the Cypriot authorities, however, appears to be different. In the Commission's view, the Cypriot authorities merely required the provision of an address for service in Cyprus. This would not constitute an unjustifiable restriction of the right of free movement under EU law. Moreover, and crucially, the Commission pointed out that there was no evidence of a request made by the complainant to the Cypriot Bar indicating that he intended to practise in another Member State and that such a request had been refused for that specific reason.

26. The Ombudsman notes that the inspected documents of the file lend support to the Commission's position in this respect. The Ombudsman's services requested the complainant to provide evidence of the alleged refusal by the Cypriot authorities to renew the complainant's licence. However, the complainant did not produce such evidence.

27. In these circumstances, the Ombudsman takes the view that the Commission was correct to conclude that there was insufficient evidence of an infringement of EU law by the Cypriot authorities as far as the complainant was concerned.

28. In view of the foregoing, the Ombudsman considers that the complaint cannot be upheld.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

No maladministration was found on the part of the Commission.

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

Emily O'Reilly

Done in Strasbourg on 10 July 2014

[1] In particular, Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained ('Directive 98/5'), OJ 1998 L 77 p. 36.

[2] Article 3 TEU.

[3] Article 26 TFEU.



[4] Such as ' *Advocate/Barrister/Solicitor* ' in the UK, and ' *Avocat* ' in France.