

Otsus juhtumi 1552/2009/OV kohta - Ülikooli välja antud kvalifikatsiooni diplomina tunnustamisest keeldumine

Otsus

Juhtum 1552/2009/OV - **Alguskuupäev:** {0} 15/07/2009 - **Soovitus** 24/03/2010 - **Otsuse kuupäev:** {0} 20/12/2010

1996. aasta novembris andis Delfti Tehnikaülikool kaebuse esitajale tunnistuse *Examenuitslag*. See dokument tõendab, et ta on edukalt läbinud rakendusfüüsika õppe esimese astme. 2001. aasta märtsis anti kaebuse esitajale pärast õppe teise astme läbimist loodusteaduse magistri kraad (MSc). 2007. aasta aprillis värvati kaebuse esitaja tööle komisjoni lepingulise töötajana ametikoha kategoorias IV, palgaaste 14. See kategooria ja palgaaste eeldab vähemalt 4-aastast töökogemust. Komisjon alustas kaebuse esitaja töökogemuse arvestust magistrikraadi saamisest. Kaebuse esitaja teatas komisjonile, et pärast ülikooli õppekava reformi 2002. aastal võrdsustati õppe esimese astme lõpetamise kvalifikatsioon bakalaureusekraadiga. Kaebuse esitaja leidis, et kui komisjon alustaks ametikoha kategooria ja palgaastme määramisel töökogemuse arvestamist alates tunnistuse *Examenuitslag* saamisest, oleks tema töökogemus vähemalt 8 aastat. Kaebuse esitaja arvas seega, et tema palgaaste peaks olema 15. Komisjon lükkas tema taotluse tagasi ja väitis, et *Examenuitslag* ei ole diplom, vaid tunnistus õppe esimese astme eduka lõpetamise kohta ning et loodusteaduse magistri kvalifikatsioon on jagamatu. Komisjon keeldus vastu võtmast kaht Delfti Ülikooli haldusnõukogu selget avaldust, milles kinnitati, et *Examenuitslag* on võrdsustatud praeguse bakalaureusekraadiga. Seetõttu pöördus kaebuse esitaja ombudsmani poole, väites, et komisjon on eksinud, jättes tunnustamata diplomina dokumendi, mis tõendab, et ta on lõpetanud õppe esimese astme ja nõudes, et komisjon peab oma otsuse üle vaatama ja määrama talle palgaastme 15.

Ombudsman leidis, et komisjon ei ole asjakohaselt analüüsinud, kas *Examenuitslag* võiks olla diplom. Seetõttu tegi ta komisjonile soovitusettepaneku, milles palus (i) otsus läbi vaadata ja (ii) selgitada Delfti Ülikooli haldusnõukogu selgesõnaliste avalduste arvestamata jätmist. Komisjon oma arvamuse juurde ja väitis, et ta ei nõustu endiselt Delfti Ülikooli seisukohaga, et *Examenuitslag* on diplomiga võrdne. Komisjon tõi samuti välja, et isegi kui kaebuse esitaja erialast töökogemust oleks hakatud arvestama alates tunnistuse *Examenuitslag* saamisest, oleks see ikkagi lühem kui 8 aastat. Ombudsman järeldas, et see varem tõstatamata väide oli tõene ja et seetõttu on õige ka komisjoni otsus määrata kaebuse esitajale palgaaste 14 ja mitte 15. Ombudsman järeldas, et juhtumi edasiseks uurimiseks puudub alus. Et komisjon keeldus korduvalt võtmast arvesse liikmesriigi ülikooli selget seisukohta, otsustas ombudsman siiski teatada Madalmaade võimuorganitele kõnealuse juhtumi asjaoludest.



The background to the complaint

1. The complainant studied Applied Physics at the Technical University of Delft in the Netherlands from 1992 to 2000. These studies consisted of two cycles, *Doctoraal I* and *Doctoraal II* [1] [Linki], lasting three and two years respectively. The complainant, who was working at the same time as doing his studies, took however more time to complete both cycles [2] [Linki]. On 20 November 1996, the complainant received an *Examenuitslag*, a document attesting that he had successfully completed the first cycle (*Doctoraal I*) of his studies. On 6 March 2001, following the completion of the *Doctoraal II* cycle, the complainant obtained the degree of Master of Science in Applied Physics.

2. On 16 April 2007, the complainant started to work as a member of the contract staff at the Joint Research Centre ('JRC') of the European Commission. He was recruited on the basis of Article 3a of the Conditions of Employment of Other Servants of the European Communities (CEOS) and classified in grade 14 of Function Group IV. In accordance with Article 10(1)(c) of the General Implementing Provisions of 7 April 2004 on the procedures governing the engagement and the use of contract staff at the Commission of the European Communities ('the GIP'), this grade corresponds to professional experience of more than four years. The next grade (grade 15) corresponds to a professional experience of more than eight years.

3. Article 2(1)(d) of the GIP requires, for recruitment in Function Group IV, " *completed university studies of at least three years attested by a diploma and appropriate professional experience of at least one year* " (emphasis added). Article 7(3) of the GIP provides that "[i] *n order to be taken into account professional experience must have been acquired in an activity corresponding at least to the level of qualification required for the access to the function group and having a link with one of the institution's sectors of activity. It shall be taken into account from the date on which the person fulfils the minimum qualifications for engagement set out in Article 2.* " (emphasis added)

4. On the basis of the above provisions, the Commission calculated the complainant's professional experience by taking the date on which he obtained his Master's degree (6 March 2001) as its reference point. It thus counted his professional experience from 6 March 2002 onwards, after having deduced one year of professional experience, as required by Article 2(1)(d) of the GIP. Given that the complainant entered its service on 16 April 2007, the Commission concluded that his professional experience could not exceed five years and one month.

5. On 16 October 2008, the complainant requested the Commission to reconsider its position. He referred to the judgment of the Civil Service Tribunal in Case F-68/06 *Bakema v Commission* [3] [Linki], in which the court held that whenever a university-level course consists of two main cycles, the Commission should examine whether (i) the first qualification obtained is equivalent to a Bachelor's degree and (ii) the second qualification is equivalent to a Master's degree. He



added that, as a result of a reform at the Technical University of Delft, the curriculum he had followed had been modified. His *Doctoraal I* and *Doctoraal II* diplomas now corresponded to a Bachelor's degree and a Master's degree. The complainant submitted that, taking the *Doctoraal I* diploma obtained on 20 November 1996 as the basis for the aforementioned calculation, he had acquired more than eight years of professional experience. He therefore requested to be reclassified in grade 15.

6. By decision dated 19 February 2009, the Commission rejected the complainant's request. It pointed out that the document of 20 November 1996 was in fact an *Examenuitslag* . i.e., a mere declaration attesting the successful completion of the first cycle of his studies. The Commission stated that this document could therefore not be taken into consideration. It further submitted that the result of his studies was only attested by the Master of Science in Applied Physics, awarded on 6 March 2001, and that this degree was indivisible. The Commission took the view that its position on the indivisibility of a diploma had been confirmed by the Civil Service Tribunal in its judgment in Case F-136/06 *Realí v Commission* [4] [Linki]. It further pointed out that, in the *Bakema* case, the applicant had obtained an initial diploma of " *Kandidaats* ". According to the Commission, it was the complainant's responsibility to provide it with any diplomas he might have obtained before the *Doctoraal II* diploma.

7. On 26 February 2009, the complainant lodged an internal complaint against this decision. He insisted that the *Bakema* judgment was relevant to his case and stated that it was unclear from the Commission's reply why the *Examenuitslag* could not be considered as a university diploma. He enclosed a letter dated 23 October 2008 from the Management Board [5] [Linki] of his University, which stated that " *the Doctoraal I of the old curriculum Applied Physics as followed by you before the introduction of the Bachelor-Master structure [is] equivalent to the current Bachelor's degree of the curriculum* " [6] [Linki]. The complainant further pointed out that, in the *Realí* case, the applicant suggested that his single diploma should be split into two diplomas. This was in no way comparable to his situation, given that he had already obtained two diplomas.

8. By decision of 6 May 2009, the Commission rejected the complainant's complaint. It argued that, contrary to the situation underlying the *Bakema* judgment, in which a valid pre-existing diploma had been produced, the complainant did not provide the administration with any diploma attesting the completion of the *Doctoraal I* cycle. It reiterated its view that the document entitled *Examenuitslag* did not constitute a university diploma but merely a declaration attesting the successful completion of the first cycle of the complainant's studies. The Commission pointed out that the diploma, which the complainant obtained on 6 March 2001, was a *Getuigschrift* , that is to say, a degree, and not simply a document indicating that he had successfully passed an examination. It further pointed out that the diploma of 6 March 2001 had been issued by the Board of Examiners, appointed under the provisions of the Dutch Law on Higher Education and Scientific Research Act (the 'Dutch Law') and empowered to award the academic degree of *Engineer* , whereas the *Examenuitslag* had been issued by the Examination Administration on behalf of the Board of Examiners. The difference in value between the *Examenuitslag* of 1996 and the *Getuigschrift* of 2001 was underlined by the fact that, already on 2 September 1994, that is two years after starting his studies, the complainant had obtained



an *Examenuitslag*. The Commission also argued that the letter from the University dated 23 October 2008 did not affect its conclusion that the *Examenuitslag* was not a diploma.

9. On 2 June 2009, the complainant asked the Commission to reconsider its decision in light of two pieces of new evidence. The first consisted of excerpts from the Dutch Law concerning the *Getuigschrift* (certificate). The second was a further letter from the Management Board of the University dated 19 May 2009, which reiterated that the Bachelor-Master structure had been introduced in 2002 and had divided the previous curriculum (" *Doctoraal* ") into a Bachelor and Master curriculum. The letter contained the following statement: " *I hereby declare that the Doctoraal I diploma awarded to you on the basis of the old doctoral curriculum Applied Physics is equivalent to the current Bachelor's degree ... In other words, if the Bachelor-Master structure would have existed already in 1996, this diploma would have been awarded as a Bachelor's degree ...* " [7] [\[Linki\]](#)

10. By decision of 5 June 2009, the Commission rejected the complainant's request for reconsideration. It stated that the complainant had not submitted any new evidence, given that (i) it already knew of the Dutch law when the decision of 6 May 2009 was adopted, and (ii) the letter dated 19 May 2009 contained the same declaration as the letter dated 23 October 2008, which the Commission had already dealt with in its decision of 6 May 2009.

11. On 15 April 2010, the complainant's contract as a member of the Commission's contract staff expired and was not renewed.

The subject matter of the inquiry

12. In his complaint to the Ombudsman, the complainant made the following allegation and claim:

Allegation :

The Commission wrongly refused to recognise the complainant's " *Examenuitslag* " of 20 November 1996 as a diploma and failed to provide sufficient reasons for its decision of 6 May 2009.

Claim :

The Commission should review its decision of 6 May 2009 and classify the complainant in grade 15, step 1, of Function Group IV.

The inquiry

13. The complaint was lodged on 12 June 2009. On 15 July 2009, the Ombudsman asked the Commission for an opinion.



14. The Commission sent its opinion on 18 September 2009. This opinion was forwarded to the complainant, who sent his observations on 6 October 2009.

15. On 24 March 2010, the Ombudsman made a draft recommendation to the Commission. The Commission sent its detailed opinion on 9 July 2010. The detailed opinion was forwarded to the complainant, who sent his observations on 11 August 2010.

The Ombudsman's analysis and conclusions

A. Alleged incorrect refusal to recognise the document of 20 November 1996 as a diploma and the corresponding claim

Arguments presented to the Ombudsman

16. The complainant alleged that the Commission wrongly refused to recognise the document of 20 November 1996 with the title *Examenuitslag* as a diploma and failed to provide sufficient reasons for its negative decision of 6 May 2009. He therefore claimed that the Commission should review its decision of 6 May 2009 and classify him in grade 15 of Function Group IV.

17. In its opinion, the Commission rejected the complainant's allegation and claim. In doing so, it referred the Ombudsman to the three decisions dated 19 February, 6 May and 5 June 2009. In particular, the Commission pointed out that, contrary to the complainant's allegation, the decision of 6 May 2009 explained in detail the reasons why, in its view, the *Examenuitslag* dated 20 November 1996 did not constitute a university diploma.

18. In his observations, the complainant stated that he was very disappointed by the Commission's opinion, since he believed that it would re-examine his case in a thorough, independent and respectful manner. He emphasised that the relevant Dutch Law and Council Directive 89/48/EEC [\[8\]](#) [\[Linki\]](#) contained clear definitions of what a university diploma issued in an EU Member State is. Nevertheless, the Commission failed to apply these definitions, and used wrong, false and unprofessional arguments. Moreover, its translation and interpretation of the *Examenuitslag* of 20 November 1996 was wrong. The complainant pointed out that, according to Dutch Law, a university diploma can only be awarded by the Board of Examiners ("*Examencommissie*"). The *Examenuitslag* clearly mentioned that it had been issued by the Board of Examiners. The complainant further stated that, when arguing that the *Bakema* judgment was not applicable to his case, the Commission incorrectly changed the term "*qualification*", used by the Civil Service Tribunal in paragraph 42 of its judgment into "*diploma*".

19. The complainant stressed that the Technical University of Delft, which issued the 1996 diploma, had provided him with two letters containing very clear statements, which had however



been ignored.

The Ombudsman's assessment leading to a draft recommendation

20. In order to qualify for classification in grade 15 of Function Group IV, a candidate needs to have more than eight years of relevant professional experience. According to Article 7(3) of the GIP, only professional experience acquired after the date when a candidate fulfils the minimum qualifications for recruitment set out in Article 2 is relevant. Article 2(1)(d) of the GIP requires, for recruitment in Function Group IV, " *completed university studies of at least three years attested by a diploma and appropriate professional experience of at least one year* ". The decision concerning which document should be considered as a diploma under the terms of Article 2(1)(d) of the GIP was thus decisive for the period of professional experience that could be taken into account. The complainant's case was based on the assumption that, if the *Examenuitslag* of 20 November 1996 were to be considered as the diploma under the terms of Article 2(1)(d) of the GIP, his professional experience would exceed eight years. The Ombudsman noted that the Commission had not disputed this assumption.

21. The Ombudsman also noted that the Commission's decision not to recognise the complainant's *Examenuitslag* of 20 November 1996 as a diploma under the terms of Article 2(1)(d) of the GIP was based on two main arguments: (i) the Commission effectively argued that the complainant tried to split his degree of *Master of Science in Applied Physics* of 6 March 2001 into two diplomas; and (ii) the Commission argued that the *Examenuitslag* was not relevant, since it merely confirmed the successful completion of the first cycle of his studies and was not issued by the Board of Examiners, but by the Examination Administration.

22. As regards point (i) of the above arguments, the complainant did not propose that his Master's degree of 6 March 2001 should be considered as two separate diplomas. Instead, he relied on the *Examenuitslag* and argued that this document should be recognised as a diploma.

23. In order to justify its position, the Commission referred to the judgment of the Civil Service Tribunal in the *Realì* case and argued that this judgment confirmed the principle of the indivisibility of diplomas.

24. It should be noted that the applicant in the *Realì* case obtained, upon completing four years of studies, a *Laurea in Scienze Agrarie* (a Degree in Agricultural Sciences) from the University of Florence. He argued that, in accordance with Italian legislation and on the basis of information he had received, this diploma was equivalent to a 'Laurea' (equivalent to a Bachelor's degree and obtained after completing three years of studies) plus a 'Laurea Magistrale' (equivalent to a Master's degree and obtained after completing two years of studies after being awarded a 'Laurea'). The situation in that case thus clearly differed from the facts of the present case. Whereas the applicant in the *Realì* case had obtained one single diploma that had been awarded after four years of studies, the complainant relied on what he considered to be two diplomas, each of which was awarded after four years of study [\[9\] \[Linki\]](#).



25. As regards point (ii) of the above arguments, the Commission's statement that the *Examenuitslag* was issued by the Examination Administration was factually incorrect. It appears that the *Examenuitslag*, although it contained the words " *examination administration* " on its top right, was issued and signed by the Board of Examiners of the Technical University of Delft. It was thus the Board of Examiners which certified that the complainant had successfully passed the " *Doctoral examination 1st part* ".

26. It was true that the title of the document on which the complainant relied (*Examenuitslag*) merely indicated that the document concerned the results of an examination. This title therefore did not suggest that the document could or should be considered as a diploma.

27. The Ombudsman considered, however, that it was not the title of a document, but rather its status under national law which was decisive. He recalled, in this context, the settled case-law according to which the evaluation of a university diploma for the purpose of admission to open competitions – and consequently for the purpose of grading – must be made according to the national legislation of the Member State where the diploma was obtained [\[10\] \[Linki\]](#). In this regard, the complainant had provided the Commission with copies of two declarations dated 23 October 2008 and 19 May 2009, which the Management Board of the University sent him regarding the qualification he obtained in 1996. In these letters, the Technical University of Delft unambiguously confirmed that the *Examenuitslag* of 20 November 1996 was a diploma (a " *Doctoraal I diploma* ") and that this diploma was equivalent to the current Bachelor's degree. The Commission failed to explain why it did not consider this information to be relevant.

28. In this respect, the present situation again differed markedly from the facts of the *Reali* case. In that case, the Civil Service Tribunal held that the evidence submitted by the applicant did not establish that his *Laurea* was equivalent to obtaining two degrees.

29. In view of the above, it appeared that the situation in which the complainant found himself was very similar to that of the applicant in the *Bakema* case. In that case, the applicant obtained a diploma from an Agricultural High School (*Landbouwhogeschool*) in the Netherlands in 1983, after having passed the *doctoraalexamen*. He had previously passed an intermediate examination, the *kandidaatsexamen*, after three years of studies. The Civil Service Tribunal criticised the Commission for not having examined whether the *kandidaatsexamen* was capable of corresponding to the qualification which is today referred to as a " *Bachelor's degree* " and could attest completed university studies within the meaning of Article 2(1)(d) of the GIP.

30. On the basis of the above, the Ombudsman concluded that the Commission had failed properly to examine whether the complainant's *Examenuitslag* of 20 November 1996 could be considered as a diploma under the terms of Article 2(1)(d) of the GIP. This constituted an instance of maladministration. The Ombudsman therefore made the following draft recommendation to the Commission:

" *The Commission should reconsider, for the purpose of calculating the complainant's*



professional experience, its decision not to recognise his Examenuitslag dated 20 November 1996 as a diploma allowing his recruitment in Function Group IV on the basis of Article 2(1)(d) of the GIP. The Commission should also explain, in this respect, its refusal to take into consideration the position expressed by the Technical University of Delft, which unambiguously confirmed that the Examenuitslag dated 20 November 1996 is a diploma (a "Doctoraal I diploma") and that this diploma is equivalent to the current Bachelor's degree ".

31. As regards the other aspect of the complainant's allegation, namely, that the Commission failed to provide sufficient reasons for its decision of 6 May 2009, the Ombudsman considered that, in view of his findings on the main issue, it did not appear necessary to inquire further into this point.

32. In light of the above, the Ombudsman considered that the Commission should also reassess the complainant's claim to be reclassified.

The arguments presented to the Ombudsman after his draft recommendation

33. In its detailed opinion, the Commission stated that, as suggested by the Ombudsman, it had re-examined the question whether the complainant's *Examenuitslag* of 20 November 1996 gave him access to recruitment in Function Group IV. On the basis of this re-examination, the Commission submitted the following arguments:

34. According to Article 82(2)(c) of the CEOS and Article 2(1)(d) of the GIP, recruitment as a contract agent in Function Group IV requires a level of education which corresponds to " *completed university studies of at three years attested by a diploma* ". The Commission submitted that the *study-phase Doctoral examination 1st part* ("*Studiefase: Doctoraal examen 1e gedeelte*") did not constitute evidence of *completed* university studies. In other words, and as the wording of the *Examenuitslag* quite clearly indicated, the complainant had, on 20 November 1996, completed the first part of the Doctoral study phase, which consisted of two phases in total. The complainant's studies were *completed* only after he had passed the second part of the Doctoral examination, for which he was awarded a diploma (*Getuigschrift*) confirming that he had passed the final examination concluding the studies./p>

35. The Commission further pointed out that the difference between the *Examenuitslag* and the *Getuigschrift* also appeared from the provisions of the Dutch Law which was in force when the complainant was studying in Delft. Article 7.11(2)(f) of this Law opened the possibility for universities to limit the validity of successfully passed examinations to a certain period of time, after which, in case the content of the studies had changed in the meantime, students could be obliged to repeat these examinations. In other words, if the complainant had not continued with the second part of his studies culminating in the *Getuigschrift* , the examinations he had passed for the first part of the Doctoral study phase could have run the risk of eventually losing their validity.



36. For the above reasons, the Commission maintained its position that the diploma giving the complainant access to recruitment in Function Group IV was the *Getuigschrift* dated 6 March 2001.

37. The Commission further dismissed the complainant's argument that, if his *Examenuitslag* of 20 November 1996 were to be accepted as the relevant diploma, all the subsequent years of study would have to be taken into account as professional experience, amounting to more than the eight years of experience needed in order to be classified in grade 15.

38. The Commission argued that, even if the complainant's *Examenuitslag* of 20 November 1996 were deemed to be the diploma giving access to recruitment in Function Group IV, the professional experience obtained by the complainant after this diploma would not be sufficient to allow classifying him in grade 15. According to Article 7(4) of the GIP, in the case of qualifications other than a PhD, the statutory duration of the studies shall be taken into account. At the relevant time, the statutory duration of the study *Applied Physics* was five years in total. If one were to follow the complainant's reasoning that the *Examenuitslag* of 20 November 1996 was actually a Bachelor's degree, this would give rise to the following hypothetical results as regards his professional experience:

- Master's studies (1996-1997): one year;
- From 1997 to 1 December 2000: no professional experience. The Commission pointed out that the complainant had worked for Shell from July 1999 to October 2000 but that this was part of his studies for the Master's degree and could thus not be taken into account as professional experience;
- 1 December 2000 to 1 December 2001: one year of experience (calculated in the complainant's favour as he was in fact working part-time until 1 November 2001);

In accordance with Article 2(1)(d) of the GIP, the complainant had to demonstrate an appropriate professional experience of one year to be recruited in Function Group IV. The professional experience to determine the grade thus started to run on 1 December 2001:

- 1 December 2001 to 30 November 2004 (scientific fellow): three years;
- 1 December 2004 to 31 March 2005 (auxiliary agent): four months;
- 1 April 2005 to 31 March 2006 (*idem*): one year;
- 1 April 2006 to 15 April 2007 (*idem*): one year and 15 days.

39. The Commission concluded that, if one were to consider the *Examenuitslag* of 20 November 1996 as the relevant diploma, the complainant's total professional experience thus amounted to five years, four months and 15 days. If one added to this the one year of experience between the complainant's "virtual" Bachelor's degree and his Master's degree, the



total would be six years, four months and 15 days of professional experience. Even if one were to count two years for the complainant's final diploma or 'Master's degree', given that under the current rules the Master's phase of the *Applied Physics* studies lasts two years, the complainant's professional experience that is relevant for present purposes would, after deducting the one year that is required for recruitment in Function Group IV, amount to seven years, four months and 15 days and would thus still not add up to " *more than 8 years* ".

40. With regard to its refusal to take into consideration the position expressed by the Technical University of Delft, the Commission pointed out that, in its first letter of 23 October 2008, the University had not used the term "diploma", but had simply stated that the *Doctoral I* of the old programme was equivalent to the current Bachelor's diploma. In its second letter of 19 May 2009, the University referred to a " *Doctoraal I diploma* " (underlining added by the Commission). However, the Commission still could not agree with the University that an *Examenuitslag* was equal to a diploma. Moreover, the University did not specify that the completion of the *Doctoraal I* phase of the examinations represented the termination of a complete cycle of university studies. The Commission could therefore not accept that the first part of a cycle consisting of two parts could be deemed to be equal to completed university studies.

41. For the above reasons, the Commission concluded that the complainant's classification in grade 14 of Function Group IV was correct.

42. The complainant argued that the Commission's detailed opinion was "ridiculous and shameful" and that it contained many mistakes and false arguments. He stated that the Commission had completely disregarded and not even mentioned the judgment in Case F-68/06.

43. The complainant submitted that the Commission's argumentation concerning the Dutch Law was simply not true. He pointed out, firstly, that the Dutch Law describes what needs to be mentioned on the *Getuigschrift* whenever there is more than one body involved in the examination; secondly, that it does not distinguish between " *Examenuitslag* " and " *Getuigschrift* " as alleged by the Commission; and, thirdly, that the relevant provision did not even exist at the time when he studied in Delft. The passage of the Dutch Law to which the Commission referred was only introduced on 4 February 2010. The Commission had thus acted incorrectly when applying the latest version of the Dutch Law. The complainant further submitted that, on the basis of Article 7.11 of the Dutch Law applicable in 1996, it was obvious that only the Board of Examiners could deliver a *Getuigschrift* /diploma after a certain number of examinations had been passed.

44. The complainant protested against the fact that, whereas the Commission had initially never questioned that he had the required number of years of professional experience in order to be reclassified in grade 15 if the *Examenuitslag* of 20 November 1996 were deemed to be the relevant diploma, it now argued that this was not the case. The Commission should have known that the complainant had already asked its Directorate-General Personnel and Administration (DG ADMIN) about the calculation of his years of professional experience in an



e-mail sent on 7 May 2009, but that he had never received a reply. The complainant also found it disturbing that the Commission forgot to add one year of experience between 1 December 2000 and 1 December 2001 in its 'hypothetical' calculation. In his view, this calculation was in any event wrong. The complainant included a table with an overview of his professional experience, on the basis of which he concluded that he had a total of nine years and almost four months of professional experience after the *Examenuitslag* of 20 November 1996.

45. With regard to the Commission's position on the letters from the Technical University of Delft, the complainant stated that the Commission's arguments offended both the University and the Member State concerned. It was nevertheless interesting that the Commission concluded that his *Doctoraal I* diploma was equivalent to the current Bachelor diploma.

46. The complainant stated that it was impossible to prove whether there had been 'dishonesty' or mere 'blundering'. He underlined, however, that even though the Commission had informed the Ombudsman twice that his case had been re-assessed, the outcome had each time been a simple repetition of its earlier position with a few ridiculous arguments added. The complainant found it unacceptable that the Commission interpreted the law of a Member State incorrectly and ignored parts of it that were pleading in his favour. He wondered whether the European Parliament should be informed about this case.

The Ombudsman's assessment after his draft recommendation

47. The Ombudsman is pleased to note that the Commission has, as he requested in his draft recommendation, reconsidered its decision not to recognise the complainant's *Examenuitslag* dated 20 November 1996 as a diploma allowing his recruitment in Function Group IV. However, he also notes that the Commission continues to believe that its original decision was correct. The Ombudsman is unconvinced by the arguments the Commission put forward in this context, for two reasons.

48. Firstly, the Commission's argument that the *Examenuitslag* did not attest that the complainant had *completed* university studies as required by Article 2(1)(d) of the GIP is overly formalistic, and indeed constitutes circular reasoning. At the time the complainant studied in Delft, the two cycles of his programme (Doctoraal I and Doctoraal II) formed part of a whole leading to the award of a Master's degree. Seen from this perspective, the *Examenuitslag* could obviously not attest that the complainant had already completed " *university studies of at least three years* " within the meaning of Article 2(1)(d) of the GIP. However, and as already pointed out by the Ombudsman in his draft recommendation, the Management Board of the Technical University of Delft unambiguously confirmed, in its letters dated 23 October 2008, and 19 May 2009, that the *Examenuitslag* of 20 November 1996 was a diploma (a " *Doctoraal I diploma* "), and that it was equivalent to the current Bachelor's degree.

49. Secondly, the Ombudsman recalls that he explicitly asked the Commission to reconsider the above statements made by the Technical University of Delft. In its reply, the Commission basically stated that it could not agree with the University's view that an *Examenuitslag* was the



equivalent of a diploma. The Ombudsman finds the Commission's repeated refusal to take into consideration the clear position expressed by the Management Board of the Technical University of Delft to be very troubling. The Commission's attitude shows a deplorable lack of respect for a reputable university. It also suggests that the Commission considers itself to be better placed to interpret national law than the authorities of the Member State concerned. This is manifestly not the case. The Ombudsman is, therefore, at a loss to understand the Commission's approach. At the very least, the Commission could have been expected to contact the authorities of the Member State concerned in order to verify whether it had interpreted the rules of that Member State correctly. However, no such efforts seem to have been made in the present case.

50. The Ombudsman notes that the Commission also argued that the complainant would not have the professional experience required for a grade 15 classification, even if the *Examenuitslag* of 20 November 1996 were to be considered as the diploma which would give him access to recruitment in Function Group IV.

51. In his final observations, the complainant submitted that this was a new argument. He pointed out that previously the Commission had not disputed that he would have the professional experience that was needed for a classification in grade 15, if the *Examenuitslag* of 20 November 1996 were to be considered as the relevant diploma. The Ombudsman considers that the complainant's statement is correct. He notes, however, that, in the past, the Commission calculated the length of the complainant's professional experience only on the assumption that the professional experience had to be acquired after his Master's degree of 6 March 2001. Although it would clearly have been preferable if the Commission had already raised at an earlier stage the arguments it put forward in the context of its detailed opinion, the Ombudsman does not consider that these arguments should be considered as inadmissible at this stage. In fact, it was only in its detailed opinion on the draft recommendation that the Commission started to consider the possibility that the complainant's professional experience would need to be examined as from 20 November 1996, the date of his *Examenuitslag*.

52. The Ombudsman notes that the Commission and the complainant agree that the complainant's relevant professional experience, as from 1 December 2000, amounted to six years, four months and 15 days. It is, therefore, the period between 20 November 1996 and 1 December 2000 that needs to be considered here.

53. As regards this period, the Ombudsman notes that the information the complainant provided in his final observations differs somewhat from that previously submitted by him. In cases concerning work relationships between the EU administration and its staff, the Ombudsman can only deal with complaints if a complainant has exhausted the possibilities for internal remedies beforehand. It follows that the Commission's decision in the present case must be assessed in light of the information that the complainant submitted to it before the Institution reached a decision on the complainant's internal complaint. In his e-mail of 9 April 2009 to the administrator dealing with this internal complaint, the complainant gave an overview of the periods of professional experience which he wished to be taken into account. For the period up until 30 November 2000, the complainant claimed that his Master's degree studies,



which started on 20 November 1996, were the equivalent of two years' professional experience. Overall, the complainant concluded that, as of 20 November 1996, he had gained eight years, four months and 15 days of professional experience.

54. However, it should be recalled that Article 2(1)(d) of the GIP stipulates the requirement for recruitment in Function Group IV to be " *completed university studies of at least three years attested by a diploma and appropriate professional experience of at least one year* ". It should also be noted that a grade 15 classification required a further eight years of professional experience. This means that candidates needed to have a total of at least nine years of professional experience in order to be eligible for a grade 15 classification. However, and as noted above, the complainant himself considered, at the relevant time, that he had only eight years, four months and 15 days of professional experience.

55. On the basis of the above, it appears that, even if the *Examenuitslag* of 20 November 1996 were to be considered as a diploma which would give access to recruitment in Function Group IV, the Commission's decision to classify the complainant in grade 14 and not in grade 15 would be correct.

56. In view of the above, the Ombudsman concludes that the Commission has done what he asked it to do in his draft recommendation, namely, (i) to reconsider its decision not to recognise the complainant's *Examenuitslag* dated 20 November 1996 as a diploma allowing his recruitment in Function Group IV on the basis of Article 2(1)(d) of the GIP, and (ii) to explain its refusal to take into consideration the position expressed by the Technical University of Delft concerning the said *Examenuitslag* . However, and as mentioned above, the arguments put forward by the Commission in this context are unconvincing. The Ombudsman, therefore, considers that he cannot conclude that the Commission accepted his draft recommendation.

57. On the other hand, the Ombudsman has found that, on the basis of the arguments put forward for the first time in its reply to the draft recommendation, the Commission's decision to classify the complainant in grade 14 and not in grade 15 is correct.

58. In these circumstances, the Ombudsman takes the view that there are no grounds for further inquiries into this case.

B. Conclusions

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

There are no grounds for further inquiries.

The complainant and the Commission will be informed of this decision. In view of his findings in paragraph 49 above, the Ombudsman, moreover, considers it appropriate to send a copy of the present decision to the Permanent Representation of the Netherlands to the EU.



P. Nikiforos Diamandouros

Done in Strasbourg on 20 December 2010

[1] [\[Linki\]](#) According to the complainant, this stands for " *Doctoral examination 1st part* " and " *Doctoral examination 2nd part* ", the latter of which is also known as the " *closing examination* " or " *engineer examination* ".

[2] [\[Linki\]](#) In his observations on the Commission's detailed opinion on the draft recommendation, the complainant pointed out that, in his draft recommendation, the Ombudsman had erroneously suggested that both cycles of these studies lasted four years. It appears useful to point out that the relevant statement was based on the fact that the complainant had mentioned that he studied from 1992 to 2000 and that he was awarded the *Examenuitslag* in November 1996 and the Master's degree in March 2001. It was only in the said observations that the complainant clarified that statutory duration of the relevant course was three and two years respectively.

[3] [\[Linki\]](#) Case F-68/06 *Bakema v Commission* , judgment of 3 April 2008, not published in the ECR.

[4] [\[Linki\]](#) Case F-136/06 *Realì v Commission* , judgment of 11 December 2008, not published in the ECR. An appeal against this judgment was dismissed by the General Court on 27 October 2010 (Case T-65/09 P).

[5] [\[Linki\]](#) In Dutch " *College van Bestuur* ".

[6] [\[Linki\]](#) In the original Dutch: " ... *het Doctoraal I van de oude opleiding Technische Natuurkunde zoals door u is gevolgd voor de invoering van de bachelor-masterstructuur, equivalent is aan het huidige bachelorgetuigschrift van deze opleiding.* "

[7] [\[Linki\]](#) In the original Dutch: " *Ik verklaar hierbij dat het aan u uitgereikte Doctoraal I diploma van de oude doctoraalopleiding Technische Natuurwetenschappen equivalent is aan het huidige bachelordiploma Met andere woorden, indien de Bachelor-Masterstructuur reeds in 1996 had bestaan, zou dit diploma zijn uitgereikt als bachelordiploma.* "

[8] [\[Linki\]](#) Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16).

[9] [\[Linki\]](#) See point 1 and footnote 2 above.

[10] [\[Linki\]](#) Case T-299/97 *Morales v Commission* [1999] ECR-SC IA-249 and II-1227 ,



paragraph 60.