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Staff Matters

Legal News from Union Syndicale

This issue of **Staff Matters** will focus on diplomas for EPSO competitions.

You can continue to send us your suggestions for new subjects or your questions and comments :
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Recognition of qualifications,
EPSO competition notice, diploma,
open competition, full legal
education

**What is a “full legal
education”?**

Case C-728/17 P, Commission / Brouillard,
of 7 March 2019

Case T-572/16, Brouillard / Commission,
of 13 October 2017

Waiver

Although this newsletter is accurately prepared, it cannot replace individual legal advice. Legal situations are manifold and require both complex analysis and strategic action. You should therefore not rely on general presentations or former case-law alone to draw conclusions for your concrete situation. Please turn to us timely, should you require individual legal advice and/or representation.



This newsletter discusses a case very recently decided by the European Court of Justice on the preconditions of technical capacity in an open EPSO competition, namely whether a French diploma fulfils the term of “full legal education”. That diploma had been acquired by a procedure in which French authorities declared experience of the applicant equivalent to a diploma in law.

The Court of Justice in its judgment in Case C-728/17 P, *Commission / Brouillard*, confirmed the decision of the General Court (T-572/16, *Brouillard / Commission*) in which it had to interpret the term “full legal education” within the meaning of an EPSO competition notice. The Court annulled the EPSO decision in that it had not admitted the applicant to the next stage of the competition. EPSO had erred in law when setting aside the applicant’s Master degree in law as allegedly not fulfilling the technical capacity requirements of the competition.

Facts and arguments:

The applicant had participated in an open competition for lawyer-linguists (AD 7) at the Court of Justice of the European Union. The EPSO publication notice of this competition required a diploma at a level of education corresponding to a full legal education obtained in a Belgian, French or Luxembourg higher education establishment where courses are taught in French and attested by a diploma corresponding to a minimum at the level of the master’s degree in French law (four years of study) or the degree in Belgian law (five years of study) and, for diplomas obtained after entry into force of the 2004 reform harmonizing educational degrees, at Master 2 level (five years of study).

The applicant stated that he had obtained the Master 2 degree in law at the University of Poitiers following the procedure of a “validation of experience” foreseen by the French Education Act, according to which validation has the same effects as success in the test or in the tests of the knowledge and skills it replaces.

The EPSO selection board decided not to admit the applicant to the next phase of the competition procedure on the ground that it did not justify “a level of education corresponding to a full legal education followed in a Belgian, French or Luxembourg higher education establishment”. The applicant argued against this that the decision of the national examination jury to award a diploma can only be questioned by an administrative body with corresponding competences granted by the French state.

Court decision

The selection board of EPSO has got to respect the terms of the competition notice. The court judgment confirms that EPSO was not entitled to interpret the criterion of a “full legal education” (**formation juridique complète**) within the meaning of the notice of the EPSO competition as a wide requirement in the sense that it covers a full legal studies course or a general law degree course, i.e. a whole legal education covering several legal disciplines. Where the candidate has a diploma attesting that he has passed the required tests and attains “a level of education corresponding to a complete cycle of university studies” within the meaning of Article 5 (1) 3 (c) (i) of the Staff Regulations, that diploma must be regarded as being sufficient to justify admission. The court applied this conclusion to the applicant and stated that he has attained at least four years of study and, therefore, possesses the requisite skills and knowledge.

Such an interpretation is based on the principle that the presence of the diploma required constitutes in itself

sufficient proof that the candidate has fulfilled all the requirements referred to in those provisions, including that of the existence of a “full legal education”.

The Court held that EPSO by applying its extensive interpretation also disregarded the scope of the relevant provisions of the French Code of Education, which the selection board was required to take into consideration when interpreting the competition notice. The Court held that in the absence of specific Union law rules to the contrary, the requirement of possession of the diploma and the question whether the diploma fulfils the conditions of the competition notice must be interpreted in the light of the relevant national provisions.

Contrary to the Commission’s opinion, the applicant was not required to provide EPSO with an act recognizing the equivalence of his various diplomas to a Belgian license, a French master’s degree or a master’s degree 2 proving five years of study and awarded by a competent authority.



Comments

The judgment is interesting for three reasons: first, the applicant could base his argument on the national procedure of a “validation of experience” that declared his experience equivalent to a diploma. Secondly, he was not required to provide EPSO with any other act evidencing the equivalence of his various diplomas to a Belgian license, a French master’s degree or a master’s degree 2 with five years of study. Thirdly, the selection board had to take into consideration relevant provisions of the French Code of Education when interpreting the scope of the text of the competition notice. This conclusion of the Court can bring EPSO into a difficult situation because on the one hand, the selection board is required to accept declarations of equivalence by national authorities without being able to put them into question, on the other hand it might find itself in a situation where it has to interpret its own terms in the light of national provisions.