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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: D 0015/04

D E C I S I O N
of the Disciplinary Board of Appeal
of 14 February 2005

Appellant: N.N.

Decision under appeal: **Decision of the Examination Secretariat dated 25 June 2004, refusing enrolment for the European qualifying examination in 2005.**

Composition of the Board:

Chairman: B. Schachenmann
Members: C. Holtz
C. Kalonarou

Summary of Facts and Submissions

I. By letter of 25 June 2004, the Examination Secretariat informed the appellant that his application for enrolment for the European qualifying examination in 2005 had been refused, for the reason that his degree was a list B qualification. His diploma did not fulfil Article 2 of the "Instructions concerning the qualifications required for enrolment for the European qualifying examination", because his qualification was accepted to be a degree from a vocational college as specified under Article 3(a). For that reason Article 3(b) was applicable, meaning that at least three year's experience was needed to be completed in the patent or other appropriate field in addition to the period of full-time training or work specified in Article 10, paragraph 2(a) of the REE. The appellant could therefore be admitted to the Examination at the earliest in 2008.

II. The appellant requests that the decision under appeal be set aside and that his application for enrolment for the European qualifying examination in 2005 be accepted.

III. The appellant's grounds for the appeal may be summarised as follows:

The appellant has a diploma from the "Ingeniørskolen i Arhus", Denmark, which is a state recognised Engineering College. The holder of this diploma has passed the examination for the degree of Bachelor of Science with honours. This degree requires three and a half years of full time study, including half a year of

practice. The total of European Credit Transfer Points (ECTS)earned is 180 points.

IV. In further support of the appeal, the appellant filed documentation regarding the details of the study curriculum.

Reasons for the Decision

1. The appeal is admissible.

2. The EPC and the provisions governing the European qualifying examination are both based on the rule of law, which forbids an institution to apply provisions that are not known beforehand by the parties. In addition, the applicable law must be transparent and its application predictable. It must also be capable of application in an equal manner.

3. Based on the problems identified in decision D 8/04 with regard to Articles 2 to 4 of the Instructions concerning the qualifications required for enrolment for the European qualifying examination as amended and published in OJ 2003, Supplement to OJ 12/2003, page 17, the Board is of the opinion that the law is not sufficiently precise and coherent to enable a fair comparison of educational qualifications for the purpose of establishing a candidate's right to sit the European qualifying examination.

4. The so-called list B, referred to by the Secretariat in its decision not to accept the appellant's enrolment, is the second of two such lists (A and B) which are

purported to divide institutions and qualifications into groups falling either under Article 2 or Article 3 of the Instructions, respectively, as required by Article 5(1) of the Instructions. These lists have however not been made publicly available. The secret conditions for enrolment in respect of the level and length of educations make it virtually impossible for appellants to give any sensible reasons why a decision under appeal should be overturned. This could lead to situations of déni de justice.

5. The mere reference to list B for refusing enrolment cannot serve as a reason for the decision, since the content of the list is not available. This means that the requirement that decisions from the Examination Secretariat must be reasoned has not been met, an infringement of Article 22(1) REE.

6. While the Board recognises the difficulties in comparing qualifications from different states, this is not a reason to apply parameters which are not objectively assessable nor available to the persons concerned. Article 5 of the Instructions does not require these lists to be secret. Further, through this secrecy, the appellate instance is excluded from examining whether or not these lists and the concept behind them are in conformity with basic legal principles. It is therefore the duty of the Examination Secretariat to set down such public rules and examples for the grouping into list A or B of different educations that are understandable to candidates and can be applied in a reasonably foreseeable manner. The lists must also be public.

7. Even disregarding the board's description in D 8/04 of the problematic wording of Articles 3 and 4 of the Instructions, the board in the present case must conclude that the listing of various qualifications according to the naming of institutions and/or degrees is precarious at best and probably contrary to basic principles in most instances. A more appropriate parameter would be the length of qualifications, combined with a provision which requires a more detailed description of the curriculum for each degree, as well as for single courses and for practice requirements, etc. The evaluation of educations by way of so-called ECTS-points (European Credits Transfer System) is one parameter among several that could be used for this purpose.

8. From D 8/04 it is clear that qualifications and their labelling may differ even within the same country, eg for historical reasons.

This makes it particularly important to examine not only titles of degrees but also their substantive content. So for example, it is not possible to conclude that a degree earned from a college, as in the appellant's case, is of a lower standard than a degree from a university, without having assessed the particular subjects studied.

9. An appeal shall lie from decisions of the Examination Board and the Secretariat only on grounds of infringement of the Regulation on the European qualifying examination for professional representatives, see Article 27 of the Regulation. This would mean that the Board only would have the power to set aside the

decision under appeal and refer the case back to the Examination Secretariat for further prosecution. Such an approach would however in all likelihood mean that the appellant would be prevented from sitting the 2005 examination. This limited result of the appeal would therefore not put the appellant in the same situation as if the Secretariat had accepted his enrolment. The Board must therefore go on to examine whether or not the appellant would be qualified under the applicable conditions to enrol. In this examination and in the absence of any rules regarding the grouping of degrees into list A or list B, the Board has to assume that as a rule a university or equivalent study curriculum exceeding three years of study would meet the conditions for a List A listing, cf. Article 10(1) of the Regulation, stipulating that candidates possessing a university - level scientific or technical qualification or an equivalent level of scientific or technical knowledge are entitled to enrol.

10. The above does not mean for an applicant that his technical degree automatically qualifies for enrolment as soon as it amounts to three years of study. Indeed, the details of the study curriculum must still be examined to assess whether the candidate is likely to be able to sit the examination with some chance of success. The conditions for enrolment are also laid down in the interest of presumptive candidates not to spend their efforts on futile attempts when their educational background is not sufficient.

11. Based on the certificate provided regarding the degree of Bachelor of Science with honours (Diplomingeniør) held by the appellant and the further information given

about the appellant's qualifications, eg that his degree amounts to 180 ECTS-points, corresponding to three years of study at a technical university or college, the Board concludes that the appellant is qualified under Article 2 of the Instructions to sit the examination without having to undergo further three years of training or practice as required under Article 3(b) of the Instructions.

12. In accordance with Article 27(4) REE, reimbursed of the appeal fee shall be ordered.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The appellant is qualified under Article 2, Instructions concerning the qualifications required for enrolment for the European qualifying examination, to enrol for the 2005 examination.

3. The appeal fee is reimbursed.

The Registrar: The Chairman:

P. Martorana B. Schachenmann