



**Case Number:** D 0024/05

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 13 January 2006**

**Appellant:** N.N.

**Representative:** N.N.

**Decision under appeal:** Decision of the Examination Secretariat dated  
27 July 2005 refusing the application for  
enrolment for the EQE 2006.

**Composition of the Board:**

**Chairman:** P. Messerli  
**Members:** C. Holtz  
W. Kovac

## Summary of Facts and Submissions

I. An appeal with grounds of the appeal was filed on 26 August 2005 against the decision of the Examination Secretariat notified on 27 July 2005 that the appellant's application for enrolment for the European qualifying examination 2006 was refused. The ground for the refusal was that the appellant's period of professional activity required under Article 10(2) REE would be two (2) years and nine (9) months at the date of examination, whereas the required period was three (3) years.

II. The appellant has requested that he be allowed to sit papers A, B, C and D of the European qualifying examinations in March 2006.

III. The grounds of appeal may be summarised as follows:

Through his practical experience, the appellant is well qualified to sit the exam in question. The decision D 8/04 makes it clear that qualifications may differ not only with regard to titles of degrees but also to their substantive content. This makes it equally important to take into account the substantive content of a candidate's professional training when his training is approximately three years. The appellant will have gained approximately three years and 4 months of professional activity at the time of publication of the results of the examination. If his request is refused, he will have to wait until March 2007 to sit the examination, at which time he will have gained three years and nine months of professional activity. He will thus be put at a significant disadvantage in

relation to other candidates who may only have gained three years of professional activity in March 2007.

This would clearly be a situation of déni de justice. In the light of this, it is to be noted that the appellant could sit the UK Qualifying examinations once his or her supervisor considered the candidate to be ready to sit the examinations. The appellant would be sitting these examinations in November 2005.

- IV. In addition, the appellant gave a survey of his application/background details.
- V. Pursuant to Article 27 (4) of the Regulation on the European Qualifying Examination for professional representatives (OJ EPO 1994, 7) in connection with Article 12 of the Regulation on discipline for professional representatives (OJ EPO 1978, 91), the president of the EPO and the president of epi were given the opportunity to comment on this appeal. The latter did not respond, but the former commented in summary as follows, concluding that the appellants' request could not be granted:

For the 2006 examination, the courses concerned were listed under point II.4.2 of the Announcement of the European qualifying examination 2006 (2006 Announcement OJ 3/2005, p. 170). Only full-time study courses lasting at least one year are considered to fulfil the conditions of Article 10 of the Instructions concerning the qualifications required for enrolment for the European qualifying examination (Instructions) and thus to give rise to entitlement to a reduction in the training period pursuant to Article 10(2) REE. In

analogy with Article 10(3) of the Instructions, a reduction of six months (50% of the duration of the course) is granted for such courses. One of the courses followed by the appellant, at Queen Mary and Westfield College, lasted 13 weeks. This course is not listed under point II.4.2 of the 2006 Announcement, it cannot give rise to an entitlement to a reduction in the period of professional activity laid down in Article 11 REE. Moreover, this course was taken during the appellant's training period under Article 10(2) REE. The Secretariat has to assess whether the training period under Article 10(2) REE has lasted at least three years. It must evaluate the training by type, there being no possibility of ascertaining the quality of training in individual cases (see D 14/93, OJ EPO 1997, 561, reasons point 2.7).

### **Reasons for the decision**

1. The appellant's reference to decisions D 8/04 and D 15/04, arguing that the application of a provision in the REE does not only have to consider the formal requirements but must also look into the merits of the qualifications referred to by the applicant for the European Qualifying Examination (EQE) cannot be followed by the Board.

These decisions are not applicable to the factual and legal situation of the present case. Instead, they resolve the problem of a refusal of the application to sit the examination because the Examination Board did not recognise the level of technical education to set the required training period at three years as

- specified in Article 10(2)(a) REE, but prescribed an additional three years, see Article 3(b) and Article 4 of the Instructions concerning the qualifications required for enrolment for the European qualifying examination.
2. The Boards in the cited decisions summarised above noted that the name alone of an institution did not suffice to establish this level, but that one needed to examine the content of the applicant's degree, diploma or certificate. This point is not in any way connected to the circumstances of the present case, which concerns only the question whether the basic provision requiring three years of training or work can be applied flexibly to allow shorter practice periods in order for an applicant to be qualified to sit the EQE.
  3. In the present case, neither the quality nor the quantity of the appellant's training or work experience can alter the required length of this practice, ie three years by March 2006 when the European Qualifying Examination is to be held. Article 10(2)(a) REE must be read as implying a minimum requirement. The only situation where the quality of such practice may become relevant is if it does **not** meet the conditions set in subparagraphs (i) to (iii) of this Article, in which case the applicant will be denied access to the exam. These conditions are all of a formal nature, based on the qualifications of supervisors. No reference is made to the quality or quantity of the actual tasks allotted to an applicant during such training, nor is there room in the applicable legislation regarding the EQE for any flexibility as to the minimum length of practice.

4. The fact that there may only remain a short period of the training or work required by March 2006 is not a convincing argument, nor that the appellant claims to be disadvantaged by these facts if having to wait until the 2007 EQE to sit this exam. No discrimination can be discerned. There are surely many applicants for the EQE who must also wait to be qualified to sit the exam until long after their completion of three years of practice.
  
5. The arguments of the president of the EPO are relevant in so far as they relate to Article 10(2) REE. The board agrees to the opinion voiced in this connection, ie that there is no possibility for the examination secretariat to assess the quality of the undergone professional activity in question. This argument supports the conclusion drawn above, point 3, that the requirement relating to professional activity must be seen as a minimum requirement. It is also correct, as implied by the comments of the president of the EPO, that study courses lie outside of the training periods of professional activities under Article 10(2) REE and that therefore there is no room for any reduction of the time required for the latter type of qualification.

**Order**

**For these reasons, it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

P. Messerli