Europäische Ombudsstelle

Entscheidung in der Sache 2019/2009/OV - Angebliche Nichtberücksichtigung von Berufserfahrung

Entscheidung
Fall 2019/2009/OV - **Geöffnet am** 24/09/2009 - **Entscheidung vom** 13/10/2010

Der Beschwerdeführer, ein italienischer Staatsbürger, bestand erfolgreich die Zulassungsprüfung für das allgemeine Auswahlverfahren EPSO/AST/74/08, das vom EPSO für die Einstellung von Beamtinnen und Beamten im Bereich Sicherheit durchgeführt wurde. Am 16. Juni 2009 teilte ihm das EPSO mit, dass er nicht zur nächsten Phase des Auswahlverfahrens zugelassen worden war, weil seine Qualifikationen nicht den Anforderungen der Bekanntmachung des allgemeinen Auswahlverfahrens entsprachen. Der Beschwerdeführer verlangte eine Überprüfung seines Antrags. Am 22. Juli 2009 bestätigte das EPSO nach einer solchen Überprüfung seine Entscheidung. Doch dieses Mal teilte es dem Beschwerdeführer mit, dass er zwar die Anforderungen an die Qualifikationen erfüllte, jedoch keine Nachweise einer dreijährigen einschlägigen Berufserfahrung im Bereich Sicherheit gemäß den Anforderungen in der Bekanntmachung des allgemeinen Auswahlverfahrens beigebracht hatte.

In seiner Beschwerde beim Bürgerbeauftragten führte der Beschwerdeführer an, dass der Auswahlausschuss seiner Berufserfahrung nicht ordnungsgemäß Rechnung getragen hätte. Er führte ferner an, dass das EPSO die Ablehnung seines Antrags nicht ausreichend begründet hätte. Er beschwerte sich über die unterschiedlichen Gründe, die das EPSO in seinen Schreiben vom 16. Juni 2009 bzw. vom 22. Juli 2009 vorgebracht hatte, sowie darüber, dass das EPSO weder eine Erklärung beigebracht noch sich für einen möglichen Fehler entschuldigt hätte. Der Beschwerdeführer brachte vor, dass er zum Auswahlverfahren zugelassen werden oder ihm eine Entschädigung in Höhe von 10 000 EUR gewährt werden sollte.

In seiner Stellungnahme entschuldigte sich das EPSO dafür, dass es die Nichtzulassung des Beschwerdeführers zu dem Auswahlverfahren nicht ausreichend begründet hatte. Es erklärte, dass der Auswahlausschuss nach Erhalt des Antrags des Beschwerdeführers auf Überprüfung diesen erneut geprüft und eingesehen hatte, dass der Beschwerdeführer die Bedingung in Bezug auf die Bildungsabschlüsse erfüllte; es war jedoch der Auffassung, dass der Beschwerdeführer die Bedingung in Bezug auf die Berufserfahrung nicht erfüllte. Das EPSO erklärte, der Auswahlausschuss sei der Auffassung, dass nicht die gesamte Berufserfahrung des Beschwerdeführers für die vorliegende Ausschreibung von Belang war. Was die einschlägige Berufserfahrung betraf, war der Auswahlausschuss der Auffassung, dass die Aufgabenbeschreibung in den vom Beschwerdeführer eingereichten Belegen nicht detailliert genug war, um berücksichtigt zu werden oder um eine Entscheidung darüber zu ermöglichen,

ob sie dem gewünschten Profil tatsächlich entsprach.

Der Bürgerbeauftragte prüfte die vom Beschwerdeführer beigebrachten Belege dahingehend sorgfältig, was der Beschwerdeführer für eine einschlägige sechzehnjährige Berufserfahrung hielt. Auf der Grundlage dieser Prüfung kam der Bürgerbeauftragte zu dem Schluss, dass der Auswahlausschuss bei der Entscheidung, den Beschwerdeführer nicht zur nächsten Phase des Auswahlverfahrens zuzulassen, keinen offenkundigen Fehler begangen hatte. Bezüglich der zweiten Behauptung stellte der Bürgerbeauftragte fest, dass das EPSO in seinen Schreiben vom 16. Juni 2009 bzw. vom 22. Juli 2009 in der Tat verschiedene Gründe angegeben hatte, weshalb es den Beschwerdeführer nicht zur nächsten Phase des Auswahlverfahrens zuließ. Doch angesichts der weiteren Erklärungen des EPSO während der Untersuchung und seiner Entschuldigung gegenüber dem Beschwerdeführer gelangte der Bürgerbeauftragte zu dem Schluss, dass keine weiteren Untersuchungen dieses Aspekts des Falls gerechtfertigt waren. Aufgrund dieser Schlussfolgerungen war er der Auffassung, dass die Forderung des Beschwerdeführers nicht aufrechterhalten werden konnte. Der Bürgerbeauftragte stellte daher fest, dass kein Missstand in der Verwaltungstätigkeit vorlag, und schloss den Fall ab.

The background to the complaint

1. The complainant applied to take part in open competition EPSO/AST/74/08 (Assistants of grade AST 3 in the field of security) which was published in the Official Journal C 289 A of 11 November 2008. A corrigendum was published in the Official Journal C 75 A of 31 March 2009.

2. Section I.A. of the notice of competition described the duties to be performed in the post as follows: " *Under the authority of the administrator in charge and on the basis of general instructions, to perform complex tasks involving management, implementation and control, such as:*

• *preparing and coordinating the deployment of human and physical resources to meet requirements with regard to the protection of persons, property and information,*

• *managing the security contract with the service provider, where necessary, in particular by supervising and following up the tasks set,*

• *keeping abreast of developments as regards security risks,*

• *coordinating investigations, where necessary, following incidents (for example, theft, loss, deterioration, damage of any kind),*

• *monitoring measures relating to the confidentiality of classified information and assisting with the security-awareness programme,*

• *managing technical security measures (CCTV, access passes, alarm systems, safes, security*

locks, etc.),

• providing administrative follow-up in relation to the tasks listed above (drafting reports, drawing up and updating instructions for the department, producing statistics, etc.).

3. Point I.B.2(a) of the notice of competition ("Qualifications") required candidates to have:

" *(i) a level of post-secondary education, attested by a diploma,*

OR

(ii) a level of secondary education attested by a diploma giving access to higher education, followed by at least three years' professional experience relevant to the nature of the duties.

NB: The minimum of three years' professional experience required under (ii) above forms an integral part of the above qualification and cannot be included in the professional experience required under (b) below. "

4. Point I.B.2 (b) of the notice of competition ("Professional experience") stated that candidates must:

" *since obtaining the qualification required under (i) above,*

OR

since obtaining the qualification and professional experience required under (ii) above,

have acquired at least **3 years'** *professional experience relevant to the nature of the duties. This professional experience should preferably have been gained in government organisations (e.g. the police, the military police, the security services) or in international organisations whose mission is related to security, defence or civilian crisis management (e.g. United Nations, the OSCE).* " (emphasis in the original).

5. According to Section II of the competition notice, "[t] *he appointing authority will admit you to the admission tests if your online registration shows that you meet the general and specific conditions in Section I.B* **on the closing date for online registration (17 December 2008)** " (emphasis in the original).

6. On 15 April 2009, EPSO informed the complainant that he had successfully passed the admission tests and invited him to submit his full application. On 23 April 2009, the complainant submitted his full application and enclosed 63 pages of supporting documents concerning his qualifications and professional experience.

7. By letter dated 16 June 2009, EPSO informed the complainant that he was not admitted to the next stage of the competition, because his " *educational qualifications or diplomas* [did] *not*

satisfy the requirements of Point I.B.2 of the notice of competition ".

8. By letter dated 19 June 2009, the complainant appealed against his non-admission to the competition and asked the Selection Board to review its decision. The complainant annexed to his letter four attachments, which he had already submitted with his full application of 23 April 2009 as proof of his secondary and university-level education, the latter consisting of three university-level certificates. The complainant recalled that he had a total of approximately ten years of post-secondary studies, and that he thus amply satisfied the requirements of point I.B.2 of the notice of competition.

9. As regards his professional experience, the complainant enclosed with his letter dated 19 June 2009 two documents (nos. 20-1 and 20-2), which were already submitted with his application of 23 April 2009, concerning his three years of experience in a contractual agent post (Function Group IV) at the Commission's Joint Research Centre (JRC) in Ispra. The complainant also referred to document no. 19-6 in his application of 23 April 2009 as proof of eight years of professional experience in a UN-related institution. The complainant stated that the document showed details of tasks performed such as " *handling security measures including CCTV cameras and seals ... Also, as part of his duties he had to handle classified documents during on-site inspections in accordance with the ... confidentiality procedures* ". The complainant pointed out that this job had been performed at P-3 level which, in the UN, is exclusively for civil servants with advanced university-level degrees. He further pointed out that one of his diplomas fell within the class of " *science of defence and security* ", which was the subject of the competition, and that another diploma had been issued by a military institution. On the basis of the above, the complainant concluded that he not only fulfilled the eligibility criteria of the competition, with regard to both qualifications and professional experience, but that he largely exceeded them.

10. By letter dated 22 July 2009, EPSO informed the complainant that the Selection Board confirmed its decision of 16 June 2009 not to admit him to the competition. The Selection Board referred to point I.B.2 (b) of the notice of competition. It stated that "[w] *hilst you do meet the requirements with regard to the qualifications stipulated (Masters degree), based on the information you submitted, you have not provided proof of 'professional experience relevant to the nature of the duties', which are described under point I.A of the notice of competition. The Selection Board does not consider that your relevant professional experience, which you detail again in your letter, is sufficient* ".

The subject matter of the inquiry

11. On 9 August 2009, the complainant submitted the present complaint to the Ombudsman. On 2 September 2009, he sent additional information. The Ombudsman summarised the complainant's allegations and claim as follows.

1) The Selection Board failed to take proper account of the complainant's professional experience. Its decision that the complainant had not provided proof of " *professional experience*

relevant to the nature of the duties ", as required by the notice of competition, was therefore incorrect and unfair and resulted in discrimination.

2) EPSO failed to provide sufficient information on the reason for the rejection of his application in its letter dated 16 June 2009. In its letter dated 22 July 2009, it indicated a reason for the rejection of his application that differed from the one mentioned in its letter dated 16 June 2009, without explaining its approach, or apologising for any mistake it might have made.

The complainant claimed that he should be admitted to the competition or granted compensation amounting to EUR 10 000.

12. In his letter dated 24 September 2009 to the complainant, the Ombudsman informed the complainant that, in the absence of further explanations or information concerning the alleged discrimination, there were insufficient grounds for an inquiry into that aspect of the case.

The inquiry

13. On 24 September 2009, the Ombudsman sent the complaint to EPSO with a request for an opinion, which it sent on 16 December 2009. On 17 December 2009, EPSO sent the Ombudsman a copy of its letter of the same date to the complainant in which it presented its apologies for the confusion that had arisen when communicating the reasons for the complainant's non-admission to the competition. EPSO's opinion was forwarded to the complainant, who sent his observations on 19 May 2010.

The Ombudsman's analysis and conclusions

A. Preliminary remarks

14. In his observations, the complainant again argued that the Selection Board had wrongly assessed his qualifications. The Ombudsman would like to point out that EPSO, in its letter dated 22 July 2009, accepted that the complainant did, in fact, meet the requirement concerning qualifications set out in point I.B.2(a) of the notice of competition. There is, therefore, no need to further investigate the initial rejection of the complainant's application on that ground.

B. Alleged failure properly to take into account the complainant's professional experience

Arguments presented to the Ombudsman

15. The complainant alleged that the Selection Board failed to take proper account of his

professional experience. Its decision that he had not provided proof of " *professional experience relevant to the nature of the duties* " as required by the notice of competition was therefore incorrect and unfair. As regards his professional experience in the field of security, the complainant pointed out that documents nos. 20-1 and 20-2, enclosed with his application of 23 April 2009, came from the Commission's "SYSPER 2" internal system concerning his job at the JRC in Ispra, and that those documents clearly indicated in his job description that he had gained experience in "security" over a period of three years. The complainant further referred to document no. 19-6 enclosed with his application, an official letter of reference, signed by his former supervisor at the UN-related institution, which clearly stated that for more than eight years he had performed the tasks of an " *inspector … handling security measures including CCTV cameras and seals … Also, as a part of his duties he had to handle classified documents during on-site inspections in accordance with the … confidentiality procedures* ". The complainant stated that, as an inspector at that institution, he had had to draft more than 40 classified reports related to security. The complainant further pointed out, referring to the condition in the notice of competition that "[y] *ou should be able to work … , both on your own and on a team, … and adjust to a multicultural working environment* ", that his eight years of experience at the institution had been gained in a team. Referring to the condition in the notice of competition that "[t] *this professional experience should preferably have been gained in government organisations (e.g. the police, the military police, the security services) or in international organisations whose mission is related to security, defence of civilian crisis management (e.g. United Nations, the OSCE)* ", the complainant pointed out that he had more than five years' proven experience as an air force cadet and officer in the Armed Forces, respectively more than 5 years and eight years of security experience at a UN-affiliated organisation. In his letter dated 2 September 2009, the complainant pointed out that he had a total of 29 years of worldwide professional and academic experience as a civil servant and as a member of the military forces.

16. In its opinion, EPSO stated that the Selection Board re-examined the matter and concluded that the complainant satisfied the condition relating to the level of qualifications. The Selection Board then examined the relevance of his professional experience in relation to the nature of the duties described in the notice of competition on the basis of the supporting documents he submitted with his application.

17. EPSO stated that the Selection Board examined the various supporting documents accompanying the complainant's application and concluded as follows:

• The mere fact that he had worked in a military environment did not necessarily mean that the conditions in the notice of competition were fulfilled. The supporting documents concerning this period of activity did not actually prove that the tasks carried out in the field of aviation bore any relation to the nature of the duties to be performed in the field of security.

• With regard to the other tasks in the field of 'process technologist' and as a 'commercial engineer', the description of the tasks performed by the complainant did not allow the Selection Board to conclude that they were related to the duties to be performed. According to the supporting documents, the candidate was, in fact, responsible for developing 'distribution' of the company brand and performing the duties of a 'process officer', which was not relevant to the

field of the competition in question.

• The employment reference from the UN-related institution concerning the complainant's inspection tasks stated that he carried out various duties: " *his duties had ranged from full technical audit of industrial plants worldwide, monitoring chemical analysis, and handling security measures including CCTV cameras and seals…. Also, as part of his duties he had to handle classified documents during on-site inspections in accordance with the … confidentiality procedures* ". The Selection Board took the view that such tasks concerning the handling of classified documents may be expected from any member of staff working in the institutions. As regards the other tasks carried out by the complainant, the Selection Board considered that the description of the tasks was not sufficiently detailed to allow it to take them into consideration, or to determine whether they actually matched the required profile.

• With regard to the complainant's experience at the JRC in Ispra, the detailed description of the duties did not include security-related work. Instead, the profile corresponded to the 'normal' tasks of a project officer (" *plan and carry out scientific research and development work as a member of a project team; write scientific publications …, prepare proposals for external projects; supervise and monitor progress and fulfilment of objectives; …* ") rather than to the very specific profile required by the notice of competition.

18. EPSO further argued that, in accordance with the relevant case-law, the type of professional experience required from candidates in a competition must be interpreted exclusively in the light of the purpose of the competition, as stated in the general description of duties set out in the notice of competition. In the present case, the Selection Board complied with the condition relating to professional experience stipulated by the notice of competition and decided, without any error of assessment, that the complainant did not satisfy the eligibility requirement laid down in point I.B.2(b) of the notice of competition. EPSO pointed out that, according to the case-law, candidates are responsible for providing the Selection Board with all the information and documents which it requires in order to check that the conditions laid down in the notice of competition are fulfilled. Considering that one of the conditions for admission to the competition was not fulfilled, the complainant could not, therefore, be admitted to the next stage of the competition.

19. In his observations, the complainant pointed out that military officials all over the world perform security tasks which are related to internal and external threats. The complainant referred to EPSO's statement that his tasks, concerning the handling of classified documents, could be expected of any staff member working in the institutions. He pointed out that, if this were true, it would mean that any staff member working for an institution could claim admittance to the competition. He underlined that the letter of reference from the UN-related institution referred to his handling of classified documents in line with the institution's confidentiality procedures. The complainant also stated that this institution is a UN-affiliated organisation. He concluded that the major part of his professional experience was security-oriented, namely, five years in the Armed Forces, eight years at the UN-related institution, and three years at the JRC in Ispra, accounting for a total of 16 years of the more than 20 years of his career. The complainant stated that the notice of competition required only three years, whereas he could

offer 16 years of experience.

The Ombudsman's assessment

20. The notice of competition stated in point IV.3 (" *How to apply, Submitting a full application* ") that candidates should enclose " *employers' references clearly indicating the starting and finishing dates and* **the level and exact nature of the duties carried out** " (emphasis added). The complainant's application shows that he enclosed various documents relating to his professional experience, which covered a period of 28 years from 4 September 1980 to 30 September 2008. However, all that needs to be examined by the Ombudsman in the framework of the present inquiry is whether the complainant provided proof of at least three years of professional experience relevant to the nature of the duties of an assistant in the field of security which were described in point I.A of the notice of competition. The Ombudsman notes in this regard that the notice of competition specified that the " *professional experience should preferably have been gained in governmental organisations (e.g. the police, the military police, the security services) or in international organisations whose mission is related to security, defence or civilian crisis management (e.g. United Nations, the OSCE)* ".

21. The Ombudsman would first like to point out that, according to settled case-law, Selection Boards in competitions based on qualifications and tests enjoy a broad discretion [1] when determining whether a candidate's diplomas or professional experience correspond to the level required by the Staff Regulations and the notice of competition. The Ombudsman can thus only find an instance of maladministration in such a case if the Selection Board made a manifest error in its assessment. The Ombudsman verified whether, in the present case, the Selection Board committed a manifest error by deciding that the complainant did not provide proof of at least three years' professional experience relevant to the nature of the duties.

22. The complainant argued that 16 years of his professional experience were relevant for the purposes of point I.B.2 (b) of the notice of competition and should thus have been taken into account by the Selection Board, namely, in chronological order - (i) five years of military service in the Armed Forces, respectively, (ii) eight years as an inspector at a UN-related institution, and (iii) three years as a scientific officer at the JRC. The Ombudsman therefore examined the documents which the complainant provided as proof of this professional experience.

23. First, as regards the complainant's five years of military service, the Ombudsman notes that the documents the complainant enclosed with his application of 23 April 2009 do not refer to duties specifically linked to security. The complainant himself did not refer to any mention of security-related duties in these documents. He merely pointed out in his observations that military officials all over the world perform security tasks. It appears obvious, however, that merely working for the military forces of a given country does not necessarily mean that the professional experience thus gained must be considered as relevant for a competition such as the one at hand. In the absence of any specific information to prove that the complainant's work covered security-related duties, the Ombudsman considers that the Selection Board did not make a manifest error when it decided that merely working in a military environment did not

necessarily mean that the complainant fulfilled the condition of the notice of competition.

24. Second, as regards the eight years of experience as an inspector at a UN-related institution, the Ombudsman notes that one of the documents enclosed by the complainant with his application of 23 April 2009 was a reference dated 1 December 2008 from that institution. According to that reference, the complainant was employed as an Inspector from 28 June 1997 [2] until September 2005. As regards the complainant's duties, the reference stated that "[h] *e has participated in numerous inspections …. He has, on occasions, been appointed as Acting Team Leader for certain missions … During the eight years with the* [institution] *, his duties ranged from full technical audit of industrial plants worldwide, monitoring chemical analysis, and handling security measures including CCTV cameras and seals.* [The complainant] *also completed refresher training on detection and monitoring of live agents, in a contaminated environment. This training is essential for field operations …. Also, as part of his duties, he had to handle classified documents during on-site inspections in accordance with … confidentiality procedures* ".

25. According to its website, the institution in question is an independent, autonomous, international organisation which has entered into a working relationship agreement with the United Nations. The Ombudsman concludes, on the basis of the task of the institution, and its link with the United Nations, that there can be little doubt that the institution corresponds to the category of international organisations described in the notice of competition as being one of those in which professional experience should preferably have been gained, namely, " *international organisations whose mission is related to security, defence or civilian crisis management (e.g. United Nations, the OSCE).* "

26. As regards the complainant's duties as an Inspector at the institution which could be considered as relevant for point I.B.2 (b) of the notice of competition, the Ombudsman notes that the reference mentioned that they included (i) handling security measures including CCTV cameras and seals, and (ii) as part of his duties, he had to handle classified documents during on-site inspections in accordance with the confidentiality procedures. These kinds of duties are explicitly mentioned in the list of duties in Section I.A of the notice of competition. As regards the second of these duties, the Ombudsman is not convinced that tasks involving the handling of classified documents may be expected of any member of staff working in the institutions, as EPSO suggests. In any event, it is not easy to see why experience in carrying out such tasks should be considered irrelevant when determining whether a candidate has the necessary professional experience for the competition at hand. However, the Ombudsman also notes from the reference that the duties mentioned above at (i) and (ii) were not the complainant's only duties. In fact, the complainant's work for the UN-related institution also covered a range of other duties, which involved carrying out full technical audits of industrial plants. The said reference does not contain information about the balance between the complainant's various tasks, nor about how long the complainant carried out the tasks which might possibly have been security-related. In this context, the Ombudsman notes that the penultimate paragraph of the reference, which contains an evaluation of the complainant's work, refers to his inspection activities, but it does not mention security duties. On the basis of the above, the Ombudsman considers that it was not unreasonable for the Selection Board to find that the description in the

reference of the other tasks was not sufficiently detailed to allow it to take them into consideration, or to determine whether they actually matched the required profile.

27. Third, as regards the complainant's experience as a scientific officer at the JRC, the Ombudsman notes that the complainant's contract of employment was with the Commission. However, the contract itself merely mentioned that the complainant was appointed to carry out technical tasks (research) as set out in the table in Article 80(2) of the Conditions of Employment of Other Servants of the European Communities. According to the job description form, the complainant's job title was " *scientific/technical project officer* " and the " *overall purpose* " of his job consisted of carrying out and coordinating scientific and technical tasks concerning toxic substances, and developing a new methodology for addressing the security of hazardous installations and their protection from threats arising from intentional adversary acts. The complainant's " *functions and duties* " involved laboratory and scientific work, as well as management and planning. EPSO described some of these tasks in greater detail in its opinion. The Ombudsman is not convinced that the Selection Board was correct in finding that the complainant's detailed job description did not include security-related work. On the contrary, the complainant's task, which was to develop a new methodology for addressing the security of hazardous installations and protecting them from threats would, at first sight, appear to be security-related. However, here again, it is not obvious from the job description how important this task was in comparison to the complainant's other tasks, and how much of the complainant's time was spent on this duty out of the total of nearly three years he worked at the JRC. The Ombudsman therefore considers that the Selection Board does not appear to have made a manifest error by concluding that the complainant's professional experience at the JRC did not satisfy the condition in point I.B.2(b) of the notice of competition. It may be useful to add that the complainant appears to have worked for the JRC for just under three years. Even if this experience were to be considered relevant, therefore, it would not suffice to establish that the complainant had at least three years of relevant professional experience.

28. On the basis of the above considerations, the Ombudsman concludes that the Selection Board did not make a manifest error when it decided that the complainant had not provided sufficient evidence to prove that he had at least three years of professional experience relevant to the nature of the duties. No instance of maladministration is therefore found with regard to the complainant's allegation.

B. Alleged failure to sufficiently reason the rejection of the complainant's application

Arguments presented to the Ombudsman

29. The complainant alleged that in its letter dated 16 June 2009, EPSO failed to provide sufficient reasons for rejecting his application. In its letter dated 22 July 2009, the reason given for rejecting his application differed from the one it gave in its letter dated 16 June 2009, without explaining its approach or apologising for any mistake it might have made. The complainant

argued that this contradiction misled him in relation to his request for review. In the letter dated 16 June 2009, EPSO indicated that the reason for the complainant's non-admission to the next step of the competition was related to his qualifications, whereas in its letter dated 22 July 2009, it explained that the rejection was due to the lack of relevant professional experience.

30. In its opinion, EPSO stated that its letter dated 16 June 2009, sent on behalf of the Selection Board, notified the complainant of the Selection Board's conclusions. Subsequently, following the complainant's request for a review, the Selection Board re-examined his application and recognised that the candidate did indeed satisfy the condition relating to the level of post-secondary education. However, it concluded that he did not satisfy the second specific condition relating to professional experience. When EPSO notified the complainant on 22 July 2009 of the Selection Board's review decision, it acknowledged that he did indeed have the level of qualifications required. EPSO stated that it wanted to offer him its sincere apologies, and those of the Selection Board, for the problem that had arisen during the Selection Board's examination of his file, which resulted in an incomplete notification of the reasons for his exclusion from the competition. EPSO pointed out that the purpose of the request for review is precisely to give the Selection Board the opportunity, where it is within its remit, to review its decision in the light of the candidate's position, which is what happened in the present case. EPSO concluded by stating that it also intended to write to the complainant in order to apologise. On 17 December 2009, it sent the Ombudsman a copy of its letter to the complainant of the same date.

31. In his observations, the complainant argued that EPSO, by giving two different reasons for rejecting his application, had misled him and that, as a result, he had been unable to submit a proper request for review. He stated that he did not ask for, or need a letter of apology from EPSO.

The Ombudsman's assessment

32. The Ombudsman notes that the letters dated 16 June and 22 July 2009 contained different explanations regarding the reasons for rejecting the complainant's application, namely, by referring to the non-fulfilment of the *qualification* condition (point I.B.2(a)), and then the *professional experience condition* (point I.B.2(b)) of the notice of competition. The Ombudsman also notes that the reasoning in the letter dated 16 June 2009 was very brief and would not have allowed the complainant, even if it had been correct, to understand why exactly his qualifications did not meet the requirement of point I.B.2(a) of the notice of competition. Similarly, the reasoning in the letter dated 22 July 2009 was very brief and did not allow the complainant to understand why his professional experience was not considered relevant to the nature of the duties. The Ombudsman notes, however, that, in its opinion on the complaint, EPSO clarified the reasons for rejecting the complainant's application. In view of these further explanations, and given that EPSO apologised to the complainant in both its opinion and its letter to the complainant dated 17 December 2009, the Ombudsman considers that no further inquiries into this aspect of the complaint are justified.

33. As regards the complainant's argument that he was misled, the Ombudsman considers that EPSO's initial failure to indicate its ultimate reason for rejecting his application did indeed prevent the complainant from addressing this issue in his request for review. However, EPSO subsequently clarified the matter, and the complainant was given ample opportunity to submit his arguments in the course of the present inquiry concerning the actual reason for the rejection of his application. In view of these circumstances, the Ombudsman does not see any need for further inquiries into this issue.

D. The claim for compensation

34. The complainant claimed that he should be admitted to the competition or granted compensation amounting to EUR 10 000 for (a) the missed chance of going ahead in the competition, despite high chances of success, and (b) the time spent in studying for the competition and in preparing the 63 pages of supporting documents and translations, namely, 30 working days.

35. In its opinion, EPSO argued that any payment by the administration can only be based on a right recognised by the Staff Regulations or by the courts. It pointed out that the fact that a candidate is included on a reserve list does not constitute a right to be recruited, only a possibility. *A fortiori* , there is no pecuniary right or any other right justifying financial compensation for a person whose application is rejected, as in the complainant's case.

36. In his observations, the complainant reiterated his claim to be admitted to the competition or to receive compensation.

37. Considering the conclusion in points 28 and 32 above, the complainant's claim cannot be sustained.

E. Conclusion

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

There has been no maladministration by EPSO.

The complainant and EPSO will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 13 October 2010

[1] Case F-53/07, *Iordanova v Commission* , not yet published.

[2] The date indicated by the complainant in his application was 23 June 1997 and not 28 June 1997.