

## Decision of the European Ombudsman on complaint 687/98/BB against the European Commission

Decision

**Case 687/98/BB - Opened on 22/07/1998 - Decision on 21/10/1999**

Strasbourg, 21 October 1999 Dear Mr L., On 23 June 1998 you made a complaint to the European Ombudsman concerning Internal Competition COM/T/A/98 and the Selection Board's refusal to allow you to retake the oral exam in which you had participated although you were under medication on doctor's orders due to an accident. On 22 July 1998, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 9 November 1998 and I forwarded it to you with an invitation to make observations, if you so wished. On 7 December 1998, I received your observations on the Commission's opinion. I am writing now to let you know the result of the inquiries that have been made.

### THE COMPLAINT

The complainant had participated in Internal Competition COM/T/A/98. He had passed the two written exams. On 27 April 1998 he took the oral exam. On 2 April 1998, he had sustained an accident which one week later led to a serious thrombosis in his leg. Thus, the complainant was not able to work for more than three weeks up until the day of the oral exam. In order to be able to participate in the exam he returned to work. He had not asked for a postponement of the exam date as the invitation letter unambiguously stated that it was not possible. He was under medication on doctor's orders when he took part in the oral exam. The medication made him unusually tired, a state he tried to compensate with a corresponding consumption of coffee. During the oral exam he experienced that this had increased his nervousness. On 15 May 1998, the Selection Board sent the complainant a letter informing him of the results and explaining that he had not passed as he had obtained only 88.33 points whereas the minimum required was 90. On 25 May 1998, the complainant appealed requesting for a review of his exam results. On 10 June 1998, the Selection Board confirmed that his marks corresponded exactly to those given by the Board. The Board sympathised with the complainant's situation and explained that he could have contacted the competition secretary to explain his problem when he returned to work on 14 April 1998 or, alternatively, he could have spoken with the Members of the Selection Board at the beginning of the oral exam; this would have enabled them to take whatever measures they felt necessary, for example they could have postponed his oral exam to a later date. On 23 June 1998, the complainant wrote again to the President of the Selection Board. He pointed out that he only resumed work on 27 April 1998 the day of his oral exam and that it was only during the oral exam that he became aware of the abnormal reaction of his body under stressful conditions.



## THE INQUIRY

**The Commission's opinion** In its opinion the Commission made the following points: - The complainant appeared at the oral exam in the normal way, making no mention of any health problems either prior to or on the day of the exam. - Only after having been informed of his results did the complainant inform the Selection Board of his accident and health problems. The candidate had neither contacted the secretary responsible for organising the competition, nor mentioned the matter to the members of the Selection Board during the oral exam so that steps might have been taken to rearrange the date of the exam. - The Commission pointed out that it was unable to offer a candidate the possibility of a second oral exam, nor could it re-open a procedure once the competition was finished. - The Commission pointed out that, if informed by candidates, both the Recruitment Unit and the selection boards take all possible steps which might be necessary for the correct running of the oral exams, if exceptional circumstances prevent a candidate from attending on the day indicated in the invitation. - For organisational reasons, it is not possible to include a clause in the invitations to attend the oral exam which could allow candidates to alter the date and time of their interview as they see fit. If this were the case, candidates would be encouraged to produce all sorts of reasons (family or otherwise, including, for example, marriage, birth, holidays, etc.) as they already do, for rearranging the date and time of their interview. - The Commission is of the view that whenever a genuine problem arises, all possible steps are taken when candidates give due notice or where a genuine problem is perceived which was not the case in this matter. **The complainant's observations** The complainant maintained his complaint. He stressed that the letter of invitation stated that it is not possible to alter the date of the oral exam. If he had known about the possibility to change the date of his oral exam he would have asked for it. Furthermore, the Board had assumed that he had returned to work two weeks earlier than the actual date. According to the complainant, the medical problem first presented itself during the oral exam and, therefore, he was not in a position to notify anybody in advance.

## THE DECISION

**1 Exceptional circumstances in connection with the oral exam** 1.1 The complainant claims that during the oral exam of internal competition COM/T/A/98 he was under medication on doctor's orders due to a recent accident. It was only during the oral exam that he became aware of the abnormal reaction of his body under medication. He had not asked for a postponement of the exam date as the invitation letter unambiguously stated that it was not possible. 1.2 In its letter of 10 June 1998 the Commission explained to the complainant that he could have contacted the competition secretary or, alternatively, he could have spoken to the members of the Selection Board at the beginning of the oral exam as this would have enabled them to take whatever measures they felt necessary, i.e., postponing his oral exam to a later date. Furthermore, in its opinion the Commission pointed out that, if informed by candidates, both the Recruitment Unit and the selection boards take all possible steps which might be necessary for the correct running of the oral exams, if exceptional circumstances prevent a candidate from attending on the day indicated in the invitation. 1.3 The European Ombudsman notes that the candidate's letter of invitation states the following: "*Je précise par ailleurs que l'organisation des épreuves ne permet pas de changer l'horaire qui vous a été indiqué.*" However, as has been pointed out in paragraph 1.2 of this decision, the Commission has both in its letter of 10 June



1998 and in its opinion expressed its willingness to take into consideration exceptional circumstances. 1.4 The Ombudsman's inquiry has indicated that in practice the Commission is prepared to take all possible measures for the correct running of the oral exams, if exceptional circumstances prevent a candidate from attending on the day indicated in the invitation. The Ombudsman therefore considers that, as a matter of good administrative behaviour, the Commission should include a clause in the invitations to the oral exam informing the candidates of this possibility. **2 Refusal to let the candidate retake the oral exam** 2.1 The complainant who had taken part in the oral exam although he was under medication on doctor's orders, later requested that the Selection Board should allow him to retake the oral exam after he learned that he had failed the competition. 2.2 A competition has to be conducted in accordance with the principle of equal treatment of candidates. Violation of this principle may lead to the annulment of the competition. That may entail considerable financial and administrative costs for the administration. 2.3 It appears from the Commission's opinion that the Commission considered that it was unable to offer a candidate the possibility of a second oral exam. The Ombudsman notes that there are no elements at hand which indicate that the decision of the Commission to refuse to let the candidate retake the oral exam has been taken in violation of any rule or principle binding upon the Commission. 2.4 Therefore, the Ombudsman finds that there is no instance of maladministration in relation to this aspect of the case. **Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark: Ombudsman's inquiry has indicated that in practice the Commission is prepared to take all possible measures for the correct running of the oral exams, if exceptional circumstances prevent a candidate from attending on the day indicated in the invitation. The Ombudsman therefore considers that, as a matter of good administrative behaviour, the Commission should include a clause in the invitations to the oral exam informing the candidates of this possibility. Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman has therefore decided to close the case. The President of the European Commission will also be informed of this decision. Yours sincerely Jacob Söderman