

Decision of the European Ombudsman on complaint 120/99/(PD)IP against the European Commission

Decision

Case 120/99/IP - Opened on 09/03/1999 - Decision on 28/03/2000

Strasbourg, 28 March 2000 Dear Mr R., On 6 February 1999 you lodged a complaint with the European Ombudsman against the European Commission concerning your exclusion from Competition EUR/B/136 because your diploma did not fulfil the conditions of the competition. On 9 March 1999, I forwarded the complaint to the President of the European Commission for its comments. The Commission sent the translation into Italian of its opinion on 21 May 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 26 July 1999, I received your observations on the Commission's opinion. Since part of the information enclosed with the Commission's opinion had been marked confidential, I requested additional information from the Commission on 9 June 1999, regarding the nature of this information and the reasons for it to be deemed confidential. I received the observations from the Commission dated 9 August 1999. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

The complainant applied for competition EUR/B/136 (JO 1998 C 146 A/01) organised by the European Commission to constitute a reserve list for associated assistants (B5/B4) in Informatics/Telecommunications. On 13 November 1998 the complainant was notified by the Selection Board that his candidature was rejected on the grounds that his qualifications did not comply with the notice of competition, namely the *"two years' further training in data processing and/or telecommunications"*, as established in point III.B.2 of the competition notice. On 4 December 1999, the complainant, who considered his exclusion unfair and discriminatory, asked the Selection Board to re-examine his candidature. He put forward that, having completed a course of advanced secondary education (five years) and therefore being in possession of a *Diploma di Maturità Tecnica Industriale*, it was not necessary or useful for him to follow a 2 year course of specialisation in order to apply to the competition. The complainant contested the fact that all kinds of secondary diploma were treated as the same consideration for the admission to the competition. In his opinion, it should have been taken into account that some kind of specialised diplomas, like his own, furnished an higher knowledge of the matter in comparison with other more general ones. He also pointed out that when he undertook his studies, no courses with the characteristics indicated in the Notice of competition could be followed in Italy. Furthermore, the complainant declared himself surprised that his work experience was not relevant enough to be admitted to the competition. By letter of 25 January



1999, the Selection Board informed the complainant that after having re-examined his application, there were no grounds for the Board to reverse its original decision. The complainant thereafter lodged a complaint with the Ombudsman, in which he put forward the unfairness of his non admission to competition EUR/B/136 organised by the European Commission.

THE INQUIRY

The Commission's opinion The comments from the European Commission on the complaint are in summary the following: The Commission pointed out that the complainant was not admitted to the written test because he did not hold the diploma required, as indicated in the notice of competition. The notice provided on point III.B.2: *"2. Certificates, diplomas and experience Candidates must have completed a course of advanced secondary education (and obtained a certificate) as well as at least two years' further training in data processing and/or telecommunications (and obtained a diploma recognised by a competent body), and have at least two years' professional experience in the fields covered by the competition."* As regards the alleged impossibility to attend such courses in Italy, the Commission indicated that it was in fact possible, giving various examples of them. Moreover, the Commission underlined that the professional experience was one of the requirements of the notice of competition, which could not however be a substitute for the requested diplomas. In a separate section of its reply, the Commission enclosed some information to the Ombudsman, marked as confidential. The information concerned the total number of applications received for competition EURO/B/136 and the number of candidates from each nationality which had been admitted to the tests. **The complainant's observations** The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. Concerning the diploma requested, the complainant alleged that from his interpretation of the competition notice, the important diploma was that of secondary education, as that is the basis of his knowledge, whereas the two years complementary studies was by no means necessary taking into account the complete courses he had already taken and his relevant professional experience.

FURTHER INQUIRIES

In order to clarify the reasons which had led the Commission to consider part of its opinion as confidential, the Ombudsman wrote to the institution on 9 June 1999. The reply from the institution of 9 August 1999 explained that the statistical information on the results of the competition which had been marked as confidential had been forwarded to the Ombudsman with a view to furnishing him with all relevant aspects of the case, as is done in similar cases before the Community courts. The Commission added that neither the candidates nor third persons have access to this statistical information, since it is closely linked to the selection procedure carried out by the Selection Board, which has to be confidential in order to avert any external influence. Part of this statistical information is included in triennial reports which the Commission forwards to the Parliament and to the Council as required by Article 2 of Annex IX of the Staff Regulations.

THE DECISION

1 Alleged unfair exclusion from competition 1.1. The complainant alleged that the Selection Board's rejection of his application to participate in competition EURO/B/136 on the grounds



that he did not hold the diplomas requested by the notice of competition was unfair. 1.2. The Commission stated that the Selection Board based its decision exclusively on the pre-requisites mentioned in the notice of competition. Since the complainant did not fulfil them, his application could not be accepted. 1.3. As the Court of Justice has consistently held, although the Selection Board for a competition based on qualifications and tests has a discretion in evaluating the qualifications and practical experience of the candidates, it is nevertheless bound by the wording of the notice of competition. The basic function of a notice of competition, according to the Staff Regulations, is to give to those interested the most accurate information possible about the conditions of eligibility for the post, in order to enable them to judge whether they should apply for it and what supporting documents are important for the proceedings of the Selection Board and must therefore be enclosed with the application (1) . Furthermore, when the Selection Board decides not to admit a candidate to the tests, it is required to indicate precisely which conditions in the notice of competition are considered not to have been satisfied by the candidate (2) . 1.4. The notice of competition EURO/B/136 indicated all the necessary conditions to be met by the applicants. One of the conditions foreseen under Title III B.2 of the notice was to have completed a course of advanced secondary education, as well as at least two years' further training in data processing and/or telecommunications, obtaining a diploma recognised by a competent body. The complainant provided no evidence that he possesses such a qualifications. 1.5. The Ombudsman notes that, from the information submitted by the complainant and by the Commission, it appears that the Selection Board had acted in accordance with the notice of competition when deciding that the complainant's application could not be accepted on the ground that he did not fulfil the requirement requested. 1.6. As concerns the obligation of the Selection Board to indicate precisely which conditions in the notice of competition are considered not to have been satisfied by the candidate, the Ombudsman notes that in its letters of 25 January 1999 and of 2 March 1999, the Selection Board specifically referred to point III.B 2 and gave the complainant reasons for his exclusion from the competition. **2 Conclusion** The European Ombudsman's inquiries into this complaint has revealed no evidence of no maladministration by the European Commission. The Ombudsman therefore closes the case.

FURTHER REMARKS

In order to clarify the reasons which had led the Commission to consider part of its opinion as confidential, the Ombudsman wrote to the institution. In its reply, the Commission stated that all the information had been forwarded to the Ombudsman with a view to furnishing him with all the relevant aspects of the case. The Commission added that neither the candidates nor third persons have access to this statistical information, since it is closely linked to the selection procedure carried out by the Selection Board, which has to be confidential in order to avert any external influence. As the Ombudsman has already stated in cases 1108/98/BB and 1276/98/(PD)JMA, in the light of the contents of the information supplied by the Commission, he cannot comprehend the reasoning which led the Commission to such classification. The Ombudsman does not share the Commission's view that public disclosure of statistical information on the number of candidates who were accepted to the competition or those finally included in the reserve list could impinge on the secrecy of the work of the Selection Board, or any influence on its choice of candidates. The President of the European Commission will be also informed of this decision. Yours sincerely, Jacob SÖDERMAN



(1) Case T - 158/89 *Van Hecken v Economic and Social Committee* [1991] ECR II-1341

(2) Joined cases 4, 19 and 29/78 *Salerno and Others v Commission* [1978] ECR 2403 Case T
-108/84 *De Santis v Courts of Auditors* [1985] ECR 947