

Decision of the European Ombudsman on complaint 174/99/(PD)OV against the European Commission

Decision

Case 174/99/(OV)(PD)OV - Opened on 31/03/1999 - Decision on 15/11/2000

Strasbourg, 15 November 2000 Dear X, On 22 February 1999 you made a complaint to the European Ombudsman concerning the reimbursement of your travel costs by the Commission for your participation in open competition COM/A/11/98. On 15 March 1999 you asked that your complaint would be dealt with as confidential. On 31 March 1999, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 21 June 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 9 August 1999, I received your observations on the Commission's opinion. On 7 February 2000, you wrote to me asking whether a decision had already been taken on your complaint. I informed you on 15 February 2000 that the inquiry of your complaint was still pending. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant, a Dutch citizen, participated on 14 September 1998 in Amsterdam in open competition COM/A/11/98. By letter of 30 September 1998 the Commission informed the complainant that the competition was annulled because of irregularities. On 20 October 1998 the complainant claimed the reimbursement of his travel expenses from The Hague to Amsterdam (39,50 Dutch guilders). After having sent reminder letters on 23 November and 21 December 1998, DG IX of the Commission replied on 22 January 1999 that the travel costs could not be reimbursed. The reply was in English and not in Dutch. The complainant complained against this decision by letter of 28 January 1999 stating that the consequences of the Commission's negligence should fall under the Commission's responsibility. By letter of 1 February 1999, the Commission confirmed its previous decision. This letter was again in English. The complainant claimed that there was no legal basis for the Commission to claim additional conditions for the reimbursement of the travel expenses, and that the criteria based on the place of residence were discriminatory. The complainant therefore wrote on 22 February 1999 to the Ombudsman alleging that the Commission had refused to reimburse the travel expenses he made for participating in the annulled pre-selection tests of 14 September 1998 and had treated him wrongly.

THE INQUIRY

The Commission's opinion In its opinion, the Commission observed that on 14 September 1998 the complainant had participated in the pre-selection tests of open competition



COM/A/11/98 in Amsterdam, which was the place most close to the complainant's place of residence. On 23 September 1998 the Commission decided to annul the pre-selection tests because there were sufficient suspicions concerning a leak in the tests. Therefore, and in order to guarantee equality of treatment between the candidates, the Commission organised new pre-selection tests on 6 February 1999 and convoked the complainant this time in Rotterdam. The Commission pointed out that it is not obliged, on whatever legal basis, to grant a financial participation in the travel costs of candidates to external competitions. It is only because of comprehension for the difficulties which candidates might have by having to travel, that the institutions decided to grant this financial contribution. The internal guideline of the Commission of 15 April 1996 sets out the modalities of financial participation in the travel and subsistence expenses of candidates who participate in the written tests of external competitions. The internal guideline of 19 March 1998 modifies the previous one by providing that *"no financial contribution to the travel and subsistence expenses is granted by the Commission to candidates in pre-selection tests of an open competition when those tests are dissociated from the actual written tests of the same competition"*. The Commission has however, considering the inconvenient effect of the annulment of the pre-selection tests of 14 September 1998, decided exceptionally to grant, under certain circumstances, compensation to candidates who participated in the pre-selection tests. For benefiting from this compensation, the candidate had to be present on the tests of 6 February 1999. The conditions for reimbursement were clearly set out in the annex to the convocation letter. For the candidates within the Union, the Commission decided to apply the internal guideline of 15 April 1996 (applicable to the written tests of competitions), namely, when the distance between the address mentioned in the dossier of the candidate on 14 September 1998 and the place of pre-selection was superior to 300 km, the candidate was entitled to a fixed compensation calculated in function of the kilometres. However no compensation is granted when this distance was inferior to 300 km. In the complainant's case, the distance between The Hague and Amsterdam was only 60 km. The Commission informed the complainant therefore by convocation letter of 14 December 1998 and by letters 22 January and 1 February 1999 that no compensation could be granted in his case. The Commission wanted moreover to inform the Ombudsman that it received 1375 requests for compensation, from which 895 were in conformity with the rules set out in the convocation letter of 14 December 1998. For those 895 requests the Commission proceeded with the payments of the amounts fixed in function of the kilometres. The Commission annexed to its opinion points A and D of the "guide to candidates" of competition COM/A/8-12/98, its internal guidelines of 15 April 1996 and 19 March 1998, as well as the letter convoking the candidates to the new pre-selection tests with the annex "information on the reimbursement of travel costs". **The complainant's observations** The complainant maintained his complaint that the Commission did not indicate the legal basis for the additional criteria and did not explain why the distinction made in function of the place of residence was not discriminatory. The complainant stated that he suffered damage as a result of the annulment of the pre-selection tests because of the negligence of the Commission. He stated that the Commission did not deny that the consequences of that negligence fall within its responsibility. The complainant observed that the Commission's statement according to which it is not obliged, on whatever legal basis, to grant a financial participation in the travel costs of candidates, was irrelevant, because in the present case it concerns the compensation of travel costs which later appeared to be unnecessary because of the annulment of the pre-selection tests. The complainant



further stated that he made his request for compensation before the additional conditions were communicated to him in the convocation letter of 14 December 1998. He also stated that the Commission had not weighted the interests of the parties in this case and that the Commission's decision of 22 January 1999 was not adequately reasoned. The complainant concluded that the Commission should pay him the financial compensation.

THE DECISION

1 The alleged refusal of the Commission to reimburse the complainant's travel expenses

1.1 The complainant alleged that the Commission had refused to reimburse the travel expenses he made for participating in the annulled pre-selection tests of 14 September 1998 and had treated him wrongly. He stated that there was no legal basis for the Commission to claim additional conditions for the reimbursement of the travel expenses, and that the criteria based on the place of residence were discriminatory. The Commission observed that, considering the inconvenient effect of the annulment of the pre-selection tests of 14 September 1998, it decided exceptionally to grant compensation to candidates who participated in these pre-selection tests. The Commission applied the internal guideline of 15 April 1996, according to which, when the distance between the address mentioned in the dossier of the candidate on 14 September 1998 and the place of pre-selection was superior to 300 km, the candidate is entitled to a compensation fixed in function of the kilometres. Given that the distance of the complainant's residence to the place of the competition was inferior to 300 km, the Commission could grant no compensation to the complainant.

1.2 The Ombudsman first notes that candidates were initially informed that their travel expenses would not be reimbursed. Point D.1 of the Guide to candidates (98/C 97 A/01) which accompanied the notice of open competition COM/A/11/98, clearly mentioned that *"travel and subsistence expenses for participation in the pre-selection tests will not be reimbursed"*.

1.3 The Ombudsman however notes that, considering the effects of the annulment of the pre-selection tests, the Commission took the decision not to apply this rule but to grant exceptionally a financial compensation to the candidates who participated in the pre-selection tests. The Ombudsman considers that, by having taken this decision, the Commission has shown that it took its responsibility for the negative effects of the annulment of the pre-selection tests. The Commission has honoured 895 of the 1375 request for reimbursement of the travel expenses.

1.4 The conditions for the reimbursement of the travel expenses made for attending the annulled pre-selection tests were set out in the annex to the new convocation letter which was sent to the candidates on 14 December 1998. The rule which was applied for that purpose was the one normally applicable to candidates who participate in the written tests of open competitions. It was contained in the Commission's internal guideline n° 002502 of 15 April 1996 which provides that, for being entitled to a compensation, the distance between the address mentioned in the dossier of the candidate on 14 September 1998 and the place of pre-selection had to be superior to 300 km.

1.5 In the present case now, it appears that the distance between the address mentioned in the dossier of the complainant (The Hague) and the place of the pre-selection tests (Amsterdam) was only 60 km. The decision of the Commission not to grant a financial compensation to the complainant was thus taken in conformity with the internal guideline n° 002502 of the Commission dated 15 April 1996. It appears that this rule is mainly aimed at compensating all the candidates who have to travel more than 300 km and who therefore have more expensive travel costs to bear than candidates who live within the (shorter) distance of 300 km. The Ombudsman therefore considers that the



condition which stipulates a minimum distance in order to be entitled to the reimbursement of the travel expenses can not be considered as unreasonable in this case. No instance of maladministration was thus found with regard to this complaint. **2 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. 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