

Decision of the European Ombudsman on complaint 880/99/IP against the European Parliament

Decision

Case 880/99/IP - Opened on 21/07/1999 - Decision on 17/10/2000

Strasbourg, 17 October 2000 Dear Mr S., On 3 July 1999 you lodged a complaint with the European Ombudsman against the European Parliament. The complaint concerned your participation in competition EUR/C/135 organised by the institution. On 21 July 1999, I forwarded the complaint to the European Parliament for its opinion. The Parliament sent its opinion on 4 October 1999 and I forwarded it to you with an invitation to make observations, if you so wished. On 29 November 1999, I received your observations on the Parliament's opinion. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

The complainant participated in open competition EUR/C/135 which had as its object the constitution of a reserve list for recruitment of category C Italian-speaking typists. On 10 May 1999, the complainant wrote to the President of the Selection Board asking for the annulment of test 3 a). In his letter the complainant claimed that the content of the test did not correspond to the requirements of the Notice of competition, that some functions of the software used during the test had been deactivated and that, since the test was organized over several days, the secrecy with regards to the tests contents was not guaranteed. By letter of 10 June 1999, the Selection Board replied to the complainant, rejecting all his allegations. On 30 June he wrote a new letter to the institution expressing his dissatisfaction for the reply given to him and reiterated his request for annulment of test 3 a). On 16 July 1999, a further reply was sent to the complainant by the services of the European Parliament. The institution pointed out that, since the Selection Board had already concluded its works and the list of the 130 successful candidates was drawn up, there was no possibility for any other re-consideration of his tests. Against this background, the complainant therefore made a complaint to the Ombudsman, in which he made the following allegations: 1) Failure of compliance between the content of the test 3 a) and what was outlined in the notice of competition. 2) Candidates should have been informed in advance that some functions of the software used during the test would be deactivated. 3) Test 3 a) was organised over several days. Therefore, adequate secrecy with regards to the test's contents was not guaranteed and favoured those candidates who took the test later.

THE INQUIRY

The Parliament's opinion In its opinion on the complaint the Parliament made the following



comments: As concerns the alleged difference between the contents of the test and the requirements outlined in the notice of competition, the Parliament pointed out that the Chairman of the Selection Board gave an exhaustive response to the complainant, in his letter of 8 June 1999. The institution reaffirmed that the notice of competition indicated that test 3.a) would consist of the *"layout and typing of a hand-written text in Italian"*. The finality of the test was to enable the Selection Board to evaluate the candidates' competence in word-processing functions, e.g. creating a table, as well as mastery of the language in which official would have to work. Regarding the allegation that candidates should have been informed in advance that some functions of the software used during the tests would be deactivated, the Parliament pointed out that the complainant did not provide details of the functions supposedly deactivated. Thus, the institution could not provide an exhaustive answer to this aspect. However, the Parliament stated that the only deactivated function was the "spell-check", to ensure genuine test conditions regarding the candidates' knowledge of orthography, an essential part of a typist's work. Furthermore, the Parliament highlighted that all the candidates passed the test in equal conditions since they disposed of the same equipment with which to carry out the word-processing tests and all functions necessary to carry out the test were available. As to the allegation concerning the organisation of the tests over several days, the Parliament pointed out that it is normal practice, in selection procedures for typists, to organise the tests over several days. Due to the large number of candidates and of computers available to take the test, it was impossible to organize it at the same time. The Parliament also underlined that the complainant stressed that "any candidate in the first sitting could easily have told candidates in the subsequent sitting what the tests involved", without providing evidence that this actually happened. **The complainant's observations** The Ombudsman forwarded the Parliament's opinion to the complainant with an invitation to make observations. In his reply the complainant, who basically maintained his claims, argued that when he first wrote to the Selection Board on 10 May 1999, it had not finished its works. The complainant therefore considered the Parliament's explanation given by letter of 16 July 1999 to be unacceptable. In this letter the Parliament stated that, since the reserve list had already been drawn up, it was not possible anymore to re-examine the complainant's tests. Moreover, the complainant argued that he never asked for the re-examination of his own test, but for the annulment of test 3 a).

THE DECISION

1 Alleged failure of compliance between the content of the test and the notice of

competition 1.1 The complainant claimed that the contents of test 3.a) did not correspond to what was outlined in the notice of competition. 1.2 The Parliament rejected this allegation and pointed out that the finality of the test was to enable the Selection Board to judge the capacity of each candidate in word-processing functions as well as mastery of the language in which officials would have to work. 1.3 The essential purpose of a notice of competition is to give those interested the most accurate information possible about the conditions of eligibility for the post in question so as to enable them to judge whether they should apply for it. However, it has to be borne in mind that the appointing authority enjoys a wide discretion in deciding upon the abilities required for posts that are to be filled and in determining, on the basis of those abilities and in the interest of the service, the rules and conditions under which a competition is organised. As the Court of First Instance (1) has held, Selection boards enjoy a large margin of discretion as regards the details of the test to be held in a competition. However, test papers



must not exceed the limits set out in the notice of competition or conflict with the purpose of the test or the competition. Furthermore, Article 27 of the Staff Regulation of official of European Communities stipulates that "*Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity (...)*". 1.4 The complainant has not provided the Ombudsman with any evidence which would suggest that the European Parliament has infringed the above mentioned binding rules, or that the Selection Board has exceed its legal authority. Moreover, the Ombudsman has no element to affirm that the content of the test was in conflict with the purpose of the competition in question. There appears therefore to be no maladministration in relation to this aspect of the case. **2 Alleged lack of information on the deactivation of some functions of the software**

2.1 The complainant claimed that candidates should have been informed in advance that some functions of the software used during the test would be deactivated. **2.2** The Parliament pointed out that the complainant did not provide details of the functions supposedly deactivated. However, it stated that the only deactivated function was the "spell-check", to ensure genuine test conditions regarding the candidates' knowledge of orthography, an essential part of a typist's work. **2.3** It appeared from the Parliament's opinion, that the complainant had not rebutted, that all candidates took the test in equal conditions since they disposed of the same equipment with which to carry out the word-processing tests. The Ombudsman has found no evidence to doubt that the principle of equal treatment of candidates in an open competition was breached by the European Parliament. There appears therefore to be no maladministration in relation to this aspect of the case. **3 Organisation of the test over several days**

3.1 The complainant complained that, since test 3 a) was organised over several days, adequate secrecy with regards to the test's contents was not guaranteed and favored candidates who took the test later. **3.2** The Parliament pointed out that for the nature of the test, it is normal practice, in selection procedures for typists, to organise the test over several days. Moreover, although the complainant suggested that "any candidate in the first sitting could easily have told candidates in the subsequent sitting what the tests involved", he did not provide evidences that this actually happened. **3.3** The explanation given by the Parliament on the reasons why the test 3 a) was carried out over several days appears to be reasonable. Furthermore, the mere fact that candidates who took the test in a first sitting could have informed candidates who took the test later about the contents of it, does not prove that it actually happened. Based on the information submitted to him, the Ombudsman cannot conclude that the secrecy of the contents of test 3 a) was infringed by the Parliament. There appears therefore to be no maladministration in relation to this aspect of the case. **4 Conclusion**

On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Parliament. The Ombudsman has therefore decided to close the case. The President of the European Parliament will also be informed of this decision. Yours sincerely,
Jacob SÖDERMAN

(1) Case T - 132/89 *Vincenzo Gallone v. Council of the European Communities* , ECR [1990], page II - 0549.