

Decision of the European Ombudsman on complaint 974/99/GG against the European Commission

Decision

Case 974/99/GG - Opened on 07/09/1999 - Decision on 27/03/2000

Strasbourg, 27 March 2000 Dear Mr L., On 20 July 1999 you lodged a complaint with the European Ombudsman against the Commission of the European Communities concerning your exclusion from the written tests in competition COM/A/10/98. On 7 September 1999 I forwarded the complaint to the Commission for its comments. The Commission sent its opinion on your complaint on 12 November 1999, and I forwarded it to you on 15 November 1999 with an invitation to make observations, if you so wished. On 23 November 1999, you sent me your observations on the Commission's opinion. In a letter of 2 December 1999, I asked the Commission for further information in relation to your complaint. The Commission sent its reply on 24 January 2000. On 28 January 2000, I forwarded this reply to you with an invitation to make observations, if you so wished. On 15 February 2000, you sent me your observations. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

On 20 July 1999, the complainant complained against the refusal of the Commission to allow him to take part in the written tests of competition COM/A/10/98 organised by the Commission for which he had applied. In a letter of 27 April 1999, the Selection Board had informed the complainant that he could not be admitted to the written tests since he had failed to achieve the minimum number of points in one of the four preselection tests. According to the Commission, the complainant had achieved 8.069 points in test (c) whereas the minimum number of points required had been 10. On 7 May 1999, the complainant wrote to the Commission to query this result and to ask for details as to the appraisal of the tests. He pointed out that, on the basis of the number of questions to be answered and the points given or deducted for correct or wrong answers, it was not possible to arrive at the figure notified to him by the Commission. In its reply of 17 June 1999, the Selection Board claimed that the result notified to the complainant was to be explained by the fact that some questions which had proved to be ambiguous had been eliminated, and that the points given or deducted for each answer had been adjusted accordingly. The Selection Board added that for reasons of confidentiality the detailed evaluation of the tests could not be communicated to the complainant. The complainant thereupon lodged a complaint with the European Ombudsman in which he raised several issues which may be summarised as follows: 1) The decision of the Commission to "neutralise some questions" arbitrarily changed the results of the tests and was liable to favour some candidates over others; 2) The Commission refused to transmit in detail the appraisal of his tests.



THE INQUIRY

The Commission's opinion In its opinion, the Commission pointed out that the Selection Board had decided to eliminate question no. 66 from preselection test (c) for all candidates since it had proved to be ambiguous. As a result of this change, the value given for each correct answer had been 0.690 and the value deducted for each wrong answer 0.228 points. The Commission took the view that the principle of equality of treatment had been respected in doing so. With regard to the second claim of the complainant, the Commission referred to the position which it had taken on that matter in previous cases and according to which it was not customary to allow candidates to inspect their marked examination scripts. **The complainant's observations** In his observations, the complainant maintained his complaint. He claimed that on the basis of the modified values for correct and wrong answers that the Commission had set out in its opinion, it was arithmetically impossible to reach the result of 8.069 points which had been given to him in test (c). Neither was it possible to explain the results that he had achieved at the three other tests on the basis of the information provided by the Commission. The complainant asked the Ombudsman to inspect his file. He also took the opportunity to thank the Ombudsman for the Special Report on recruitment procedures that the latter had submitted to the European Parliament, a copy of which had been sent to the complainant for his information.

FURTHER INQUIRIES

Having received the complainant's observations on the opinion of the Commission, the Ombudsman came to the conclusion that he needed further information in order to be able to deal with the complaint. He therefore asked the Commission to explain how exactly it had arrived at the result of 8.069 points for test (c). The Ombudsman also asked the Commission to specify whether questions had been eliminated in the other preselection tests and, if so, how many and how this had affected the values given to correct and wrong answers. In its reply, the Commission provided a table setting out the information requested. According to this table, the elimination of one question from test (c) had resulted in the value of each correct answer being 20/29, and the value to be deducted for a wrong answer being a third thereof. It also emerged that three out of 40 questions had been eliminated from test (b) whilst tests (a) and (d) had not been affected. In his observations on the Commission's reply, the complainant admitted that the explanations provided solved his arithmetical doubts. He stressed, however, that the elimination of one question from test (c) and the elimination of three questions from test (b) showed that the results of all candidates had been arbitrarily changed.

THE DECISION

1 Elimination of a question from a preselection test 1.1 The complainant claims that the elimination of question no. 66 from preselection test (c) in competition COM/A/10/98 arbitrarily changed the results of the tests and was liable to favour some candidates over others. In the course of the proceedings, the complainant extended this criticism to the elimination of questions from test (b). 1.2 The Commission replies that the Selection Board decided to eliminate question no. 66 from preselection test (c) for all candidates since it had proved to be ambiguous. It took the view that the principle of equality of treatment had been respected in doing so. 1.3 According to the information provided to the Ombudsman, the preselection test at which the complainant failed comprised 30 questions one of which proved to be ambiguous.



The Ombudsman considers that in such a case the decision to eliminate this question from the test is reasonable, provided that this elimination is carried out in a way such as to ensure that the interests of candidates are not negatively affected. On the basis of the evidence submitted to him, the Ombudsman takes the view that there is nothing to suggest that this condition was not complied with in the present case, given that the Commission appears to have eliminated the relevant question for all the candidates. The Ombudsman considers that there is not enough evidence to prove the complainant's claim that this way of proceeding resulted in an arbitrary change in the results of all candidates that was liable to favour some candidates over others.

1.4 In his complaint and in his observations on the Commission's opinion, the complainant claimed that the information provided by the Commission was insufficient to explain how the Commission arrived at the result given to him for test (c). The complainant has however informed the Ombudsman that these doubts have been resolved by the information supplied by the Commission in response to the Ombudsman's request for further information. 1.5 On the basis of the above, there appears to have been no maladministration on the part of the Commission in so far as the first allegation put forward by the complainant is concerned. **2**

Refusal to transmit in detail the appraisal of his tests 2.1 The complainant claims that he was wrongly denied access to his examination papers. 2.2 The Commission takes the view that it was not customary to give candidates access to their marked examination scripts. 2.3 18 October 1999, the Ombudsman submitted a Special Report (1) to the European Parliament. In this report, the Ombudsman expressed the view that the Commission's refusal to give candidates the possibility to inspect their own marked examination scripts constituted maladministration. In view of this, the Ombudsman considers that there is no need further to inquire into the complainant's allegation in the present case. (2) **3 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

(1) Report following the own-initiative inquiry into the secrecy which forms part of the Commission's recruitment procedures.

(2) The Commission has meanwhile announced that it will give candidates access to their own marked examination scripts from 1 July 2000 (cf. Press Release no. 16/99 of the Ombudsman of 15 December 1999).