

Decision of the European Ombudsman on complaint 985/99/IP against the European Parliament

Decision

Case 985/99/IP - Opened on 20/09/1999 - Decision on 18/10/2000

Strasbourg, 18 October 2000 Dear Mr D., On 27 July 1999, you lodged a complaint with the European Ombudsman against the European Parliament. The complaint concerned your participation to open competition EUR/C/135 organised by the institution. On 20 September 1999, I forwarded the complaint to the European Parliament for its opinion. The Parliament sent its opinion on 27 January 2000 and I forwarded it to you with an invitation to make observations, if you so wished. On 2 May 2000, 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 2 May 1999, the Chairman of the Selection Board sent a letter to the complainant informing him that the marks he had obtained in test 3 a) was below the minimum required. He was therefore excluded from the next stage of the competition. On 11 May 1999, the complainant asked the Selection Board to reconsider his test, in view of some technical problems he had encountered during its execution because of the bad functioning of his computer. By letter of 9 July 1999, the competition services confirmed the Selection Board's decision to exclude the complainant from the competition. In his letter, the Chairman of the Selection Board stressed that when the complainant noticed the bad functioning of his computer, he should have informed the supervisors immediately. Furthermore, the institution stressed that no other candidates put forward such a grievance. The Parliament finally pointed out that the complainant had participated in a competition and had not passed a test. The Selection Board carried out a comparative assessment of all the candidates and only the best ones were admitted to the next stage of the competition. On 27 July 1999, the complainant therefore lodged a complaint with the Ombudsman. In his letter he made the following allegations: 1) Although in the notification letter the Selection Board had informed that for candidates who would take the test in Rome the software would be available in Italian, some of them had to work with a software available only in English. 2) Test 3 a) was organized over several days. Certain files had not been deleted from the computers after the first session. As a result, certain candidates who took the test later, had access to the test made by earlier candidates. 3) The contents of test 3 b) was not the same for all candidates.



THE INQUIRY

The Parliament's opinion In its opinion on the complaint the Parliament made the following comments: In the notice of competition it was established that during the tests candidates could use only one of the existing linguistic version of the software. In the notification letter addressed to all candidates, the Selection Board informed that for those who would take the test in Rome the software would be available in Italian. However, due to some unforeseen circumstances, the English version was the only one available for those candidates who had chosen to use the Word Perfect system. To make up for the inconvenience, candidates who had to work with the English software (around 10%) were given extra time to familiarize with the system and to ask for clarifications. Furthermore, the Parliament pointed out that the complainant had asked to work with the Word system, that was available in Italian. The complainant was therefore not affected at all by the above-mentioned circumstances. Regarding the allegation that some candidates had access to the test made by those who took it earlier, the Parliament did not challenge it. Nevertheless, according to the institution, this happened only in five cases. Furthermore, the Parliament argued that for the nature of the test, *"layout and typing of a hand-written text in Italian"*, the fact that somebody had access to the test made by another candidate could not be considered as a concrete advantage. Candidates were in fact requested to demonstrate their capacity to use the tools at their disposal and not to answer questions, in which case it could be an advantage to know the answers. As regards the fact that the contents of test 3 b) was not the same for all candidates, the Parliament put forward that three different texts of the same level of difficulties had chosen. Candidates were asked to reply to a letter, on the basis of a series of elements given by the Selection Board. Given the nature of the test, in this case candidates also had to demonstrate their capacity to use the tools at their disposal and they were not asked to give answers to questions. **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 made in summary the following comments: The Parliament infringed the principle of equal treatment of candidates in an open competition when some of them had to use an English software even though they had requested to work on an Italian version. To provide these candidates with extra-time could not be, in the complainant's view, a good solution to avoid the inconvenience. The complainant contested the Parliament's allegation that the fact that certain candidates had access to the test made by others who took the test earlier did not constitute an advantage due to the nature of the test. The complainant stressed that, if this was the truth, there would have been no reasons for the supervisors to delete the files concerned, as soon as they were informed accordingly. In the complainant's view, this shows that candidates who could see the solution of the test on their screen could have very probably been advantaged. Finally, also the fact that the contents of test 3 b) was not the same for all candidates breached the principle of equal treatment.

THE DECISION

1 Language version of the software 1.1 The complainant claimed that, although in the notification letter the Selection Board had informed that for candidates who would take the test in Rome the software would be available in Italian, some of them had to work with a software available only in English. 1.2 The Parliament pointed out that due to some unforeseen circumstances, the English version was the only linguistic one available for those candidates who had chosen to use the Word Perfect system. However, to make up for the inconvenience,



candidates who had to work with the English software (around 10%) were given extra time to familiarize with the system and to ask for clarifications. 1.3 The fact that some candidates were not offered the possibility to use a software in language they have chosen may appear as discriminatory. However, the Ombudsman takes note of the efforts made by the Parliament in order to solve this inconvenience, taking steps to limit the possible disadvantages of the use of an English software in a reasonable way. There is no evidence to affirm that candidates who had to work with an English version of the software suffered negative consequences or that the principle of equal treatment of candidates was infringed by the Selection Board. There appears therefore to be no maladministration in relation to this aspect of the case. **2 The alleged infringement of the principle of equal treatment**

2.1 The complainant complained that, since test 3 a) was organized over several days and since not all the files had been deleted from the computers, certain candidates who took the test later saw the test made by earlier candidates.

2.2 The Parliament pointed out that given the nature of the test, *"layout and typing of a hand-written text in Italian"*, the fact that somebody had access to the test made by another candidate could not be considered as a concrete advantage. Candidates were in fact requested to demonstrate their capacity to use the tools at their disposal and not to answer questions in which case could be an advantage to know the answers. 2.3 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 organized. As the Court of First instance (1) has held, selection boards enjoy a large margin of discretion as regard the details of the test to be held in a competition. 2.4 The principle of equality requires that written tests be conducted on the same date for all candidates. The Court (2) stated that such a condition cannot be imposed in the case of the oral tests which, by their nature, cannot take place at the same time for all candidates. As concerns this case, the Ombudsman considers that, although test 3 a) was a written test, its nature has to be taken into account. The high number of candidates and the necessity to have as many computers seem to make the Parliament's decision to organize the test over several days reasonable. 2.5 Organizers of open competitions have to guarantee that all participants could act under the same circumstances. The Ombudsman considers to be deplorable that during test 3 a) some candidates had access to the test made by earlier candidates since the files concerned were not been deleted from all the computers. It appears that the principle of equality among participants to an open competition was not been guaranteed by the Parliament in relation with this aspect of the case. A critical remark will therefore be addressed to the European Parliament. **3 The content of test 3 b) was not the same for all candidates**

3.1 The complainant claimed that the content of test 3 b) was not the same for all candidates. 3.2 The Parliament stressed that, as concerns the contents of test 3 b), three different texts of the same level of difficulties had been chosen. Candidates were asked to reply to a letter, on the basis of a series of elements furnished by the Selection Board. Given the nature of the test, candidates had to demonstrate their capacity to use the tools at their disposal and they were not asked to give answers to questions. 3.3 On the basis of the principle governing the activity of an appointing authority and of selection boards, recalled in point 2 of this decision, there is no evidence that the Selection Board has exceeded its legal authorities when assessing the test. 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, it appears necessary to make the following critical remark:



Organizers of open competitions have to guarantee that all participants could act under the same circumstances. The Ombudsman considers to be deplorable that during test 3 a) some candidates had access to the test made by earlier candidates since the files concerned were not been deleted from all the computers. It appears that the principle of equality among participants to an open competition was not been guaranteed by the Parliament in relation with this aspect of 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.

(2) See above.