

Decision of the European Ombudsman on complaint 1282/99/GG against the European Commission

Decision

Case 1282/99/GG - Opened on 17/11/1999 - Decision on 25/10/2000

Strasbourg, 25 October 2000 Dear Mr C., On 21 October 1999, you lodged a complaint with the European Ombudsman against the European Commission concerning your exclusion from competition COM/TA/2/98. On 3 November 1999, I informed you that I had taken the view that there were no grounds to open an inquiry in this case since the same arguments as those relied on by you also appeared to have been submitted to the Court of First Instance in Case T-117/99. On 15 November 1999, you informed me that Case T-117/99 had been withdrawn by the plaintiffs. On 17 November 1999, I forwarded the complaint to the Commission for its comments. The Commission sent its opinion on your complaint on 14 March 2000, and I forwarded it to you on 16 March 2000 with an invitation to make observations, if you so wished. On 30 April 2000, you sent me your observations on the Commission's opinion. On 19 May 2000, I asked the Commission to provide me with further information regarding your complaint. The Commission sent its reply on 28 July 2000, and I forwarded it to you on 2 August 2000 with an invitation to make observations, if you so wished. On 27 September 2000, you sent me your observations on the Commission's reply. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

The complainant, an engineer, was a grade A 4 member of the temporary staff of the European Commission. In 1998, he took part in internal competition COM/TA/2/98 held for serving temporary staff with a view to constituting a reserve of assistant administrators, administrators and principal administrators. Point VI of the notice of competition provided for two written tests and an oral test. The two written tests were to consist of: "(a) *an essay paper on a general topic* to assess the candidate's ability to communicate in writing in his/her main language and to develop ideas and formulate them in a clear, logical and structured manner (candidates will have a choice); (b) a drafting test involving a *case study* to assess the candidate's ability to analyse and summarise; an extra section for A5/4 candidates comprising the drafting of a memo, based on the case study, formulating the operational options and/or advising administrative or political authorities regarding a decision to be taken." In a letter of 3 March 1999, the complainant was informed that he had failed to achieve the necessary pass mark in each of the two written tests and that he could therefore not be admitted to the oral test. On 9 March 1999, the complainant asked the Selection Board to reassess his papers. In a further letter of 22 March 1999, the complainant stressed that there had been little choice with regard to



the first test and no choice at all in so far as the second test was concerned. He claimed furthermore that the Commission had not set tests by specialisation as had been done in previous internal competitions, and that the tests had by their very nature of form and subject been more suitable to candidates with certain professional profiles. On 19 April 1999, the Selection Board confirmed the marks that had been given to the complainant. In a letter of 18 May 1999, the complainant informed the Selection Board that its reply had not satisfied him and asked for a list of all candidates with their CVs who had sat the test for A4 grade officials, a list of those candidates who had been admitted to the oral examination and the names of the candidates who had been put on the reserve list. On 11 June 1999, the Selection Board rejected this request on the grounds of confidentiality. On 11 June 1999, the complainant submitted a complaint under Article 90 of the Staff Regulations to the Commission in relation to competition COM/TA/2/98. In a further letter to the Secretariat-General of the Commission of 29 July 1999, the complainant referred to the Commission Communication "Sustainable Urban Development in the European Union: A Framework for Action" that had been adopted by the Commission on 28 October 1998. He claimed that whilst there had been equality of treatment in so far as test (b) was concerned, there had not been equity of treatment. In a letter of 4 August 1999, the Commission informed the complainant that it had registered his complaint. In the absence of a further reply from the Commission, the complainant turned to the Ombudsman. The complainant claimed that he had been unfairly excluded from the oral examination of the above-mentioned competition. More specifically, he complained that the written tests had by their very nature of form and subject been more suitable to candidates with certain professional profiles.

THE INQUIRY

The Commission's opinion In its opinion, the Commission pointed out that, according to the notice of competition, the aim of the internal competition had been "to establish that candidates are capable of carrying out the duties of a permanent official, which are more diverse than the tasks they have to perform as members of the temporary staff". The Commission claimed that the Selection Board had complied with all the provisions of the notice of competition, including those relating to the nature and content of the tests. A copy of the notice of competition and of the subjects proposed for the two written tests was submitted to the Ombudsman. According to this document, candidates had been able to choose among three topics in test (a). Test (b) required candidates to summarise the main points in a communication from the Commission that was entitled "Towards an urban agenda in the European Union" and that had been published on 6 May 1997, and to point out in what ways the Commission's proposals, as illustrated in that communication, could have an impact on how EU policies were conducted in the future. Candidates from career bracket A5/A4 were additionally required to prepare a short speech presenting the Commission's proposals to an audience opposing greater involvement by the EU in urban issues. **The complainant's observations** In his observations, the complainant maintained his complaint. He claimed that the Selection Board had failed to comply with the notice of competition. The complainant pointed out that candidates in that competition had a very varied range of professional qualifications and experience. The nature of the tests was discriminatory since these tests were directed towards candidates with highly developed drafting skills. According to him, there was no real choice as to test (a) since the questions were limited to specifically European, even institutional questions. For test (b), a file had been chosen that



was being actively treated by some of the Commission's services just prior to the test. In the view of the complainant, these tests were thus particularly suited to some candidates rather than others who, like himself, did not have or need to have the same level of excellence in the tested skills and areas as, for example, a political scientist or a lawyer working daily in the areas of Community policy or legislation.

FURTHER INQUIRIES

Request for further information In view of the above, the Ombudsman concluded that he needed further information in order to deal with the complaint. He therefore asked the Commission to comment on the complainant's claim that the choice of text for test (b) advantaged candidates whose duties in the Commission touched upon this subject. The Ombudsman also asked the Commission to specify which of its services had been in charge of the said subject and whether there were candidates from the service concerned who had taken part in the competition. *The Commission's reply* In its reply, the Commission stressed that each candidate had been given the same file. The purpose was not to test knowledge in a specific area but rather the candidate's ability to analyse and summarise on the basis of documentation provided. In accordance with point VI.1 of the competition notice, the aim of the test was to establish that candidates were capable of carrying out the duties of a permanent official, which are more diverse than the tasks they performed as members of the temporary staff. In the Commission's view, the choice of subject in relation to test (b) in no way favoured certain candidates, given the nature and aim of the test (to assess the candidate's ability to analyse and summarise). The Commission communication of 6 May 1997 had been drawn up by the Directorate-General for Regional Policy in close co-operation with several other Directorates-General concerned with the subject. According to the Commission, the communication had been the subject of an interdepartmental consultation involving over 20 Commission departments and services. The Commission explained that the origin and duties of candidates were not recorded in the Commission's computer application for management of competitions. A manual search had shown that only four of the total of 88 successful candidates were employed in the Directorate-General for Regional Policy. *The complainant's observations* In his observations, the complainant took the view that the Commission's implied claim that knowledge in a given area or topic did not improve a candidate's ability to analyse and summarise, in a test situation, a lengthy communication on that subject was clearly untrue and improper. He also pointed out that as a result of the involvement of over 20 services, many more than four candidates could have been aware or even familiar with the test topic, thus putting them in an advantaged position.

THE DECISION

1 Improper format of the competition 1.1 The complainant, an engineer, was a grade A 4 member of the temporary staff of the European Commission. In 1998, he took part in internal competition COM/TA/2/98 held for serving temporary staff with a view to constituting a reserve of assistant administrators, administrators and principal administrators. The complainant claims that the written tests in this competition were by their very nature of form and subject more suitable to candidates with certain professional profiles than to others who, like himself, did not have or need to have the same level of excellence in the tested skills and areas as, for example, a political scientist or a lawyer working daily in the areas of Community policy or



legislation. 1.2 The Commission points out that the aim of the internal competition was, according to the notice of competition, "to establish that candidates are capable of carrying out the duties of a permanent official, which are more diverse than the tasks they have to perform as members of the temporary staff". The Commission claims that the Selection Board complied with all the provisions of the notice of competition, including those relating to the nature and content of the tests. 1.3 According to established case-law, the selection board in a competition has a wide discretion with regard to the contents of the tests, and the selection board's choice of tests cannot be criticised unless that choice is not confined within the limits laid down in the competition notice or is not consonant with the purposes of the test or of the competition (1) . The competition in which the complainant took part served the purpose of establishing that candidates were capable of carrying out "the duties of a permanent official, which are more diverse than the tasks they have to perform as members of the temporary staff". In order to achieve this purpose, candidates were inter alia required to sit two written tests that were meant to assess "the candidate's ability to communicate in writing in his/her main language and to develop ideas and formulate them in a clear, logical and structured manner" (test (a)) and "the candidate's ability to analyse and summarise" (test (b)). The Ombudsman considers that the complainant has not established that the choice of these tests was not consonant with the purpose of the competition. It is true that these tests favoured candidates with good drafting skills. However, the complainant has not shown why the Commission ought to have chosen other tests that would have been more favourable to candidates who did not have such skills. As mentioned above, selection boards enjoy a wide margin of discretion in this field, and it is not for the Ombudsman to substitute his own judgement of the appropriateness of tests to that of the selection board. 1.4 On the basis of the above, there appears to have been no maladministration on the part of the European Commission in so far as the first allegation put forward by the complainant is concerned. **2 Choice of topics for written tests** 2.1 The complainant claims that the choice of topics for the written tests was unfair, particularly in so far as test (b) was concerned. This test required candidates to summarise the main points in the Commission's communication "Towards an urban agenda in the European Union" that had been published on 6 May 1997 and to point out in what ways the Commission's proposals, as illustrated in that communication, could have an impact on how EU policies were conducted in the future. However, on 28 October 1998 the Commission adopted a communication on "Sustainable Urban Development in the European Union: A Framework for Action" (2) . The complainant claims that several other candidates may therefore have had special knowledge regarding the relevant topic and that such knowledge could improve a candidate's ability to analyse and summarise a lengthy communication on that subject in a test situation. 2.2 The Commission claims that the choice of subject in relation to test (b) in no way favoured certain candidates, given the nature and aim of the test which was to assess the candidate's ability to analyse and summarise. 2.3 It has to be pointed out that the principle of equality is extremely important in competition procedures. The selection board therefore has to ensure that the tests display substantially the same degree of difficulty for all the candidates (3) . 2.4 The Ombudsman notes that test (a) gave candidates a choice between three different topics. The complainant has not established that the choice of these topics was unfair. 2.5 Test (b) required candidates to summarise the main points of a communication that had been published by the Commission in May 1997. Given that the purpose of this test was to assess the candidate's ability to analyse and summarise, the Selection Board was thus in principle free to



use any text it considered suitable, including the said communication. However, account needs to be taken of the fact that this communication pointed out that a wider debate on urban issues was to be undertaken on its basis and that the results of this dialogue were to be brought before an Urban Forum that the Commission intended to convene in 1998. On 28 October 1998, the Commission adopted a communication on "Sustainable Urban Development in the European Union: A Framework for Action" that was based on the previous communication and the results of the debate that had been led in the meantime. Since this new communication was published only five days after the written tests in competition COM/TA/2/98, it cannot be excluded that some of the candidates taking part in that competition were particularly well acquainted with the subject-matter of the previous communication because they had been working on the new communication. The Commission has confirmed that some of the candidates who passed the competition came from its Directorate-General Regional Policy that had drawn up the communication of 6 May 1997 and, it may be assumed, also the communication of 28 October 1998. 2.6 The complainant's view that previous knowledge of a subject is an advantage in a test situation where candidates are confronted with the task of summarising a lengthy communication does not appear to be unreasonable. The Ombudsman therefore considers that it would have been preferable if another text had been chosen for text (b). 2.7 The Ombudsman nevertheless takes the view that the Selection Board's choice does not constitute an instance of maladministration. The text chosen for test (b) had been published already in May 1997. Every candidate could thus in theory have advance knowledge of the contents of this text. The decisive element is however presented by the fact that the aim of the test was a formal one, namely to assess the candidate's ability to analyse and summarise a text. In the Ombudsman's view, the complainant has not established that to that extent candidates who may have worked on the second communication published in 1998 enjoyed an advantage over other candidates that would have substantially affected the equality of candidates. 2.8 On the basis of the above, there appears to have been no maladministration on the part of the European Commission in so far as the second aspect of the complaint is concerned. **3 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration on the part of the European Commission. The Ombudsman therefore closes the file. The President of the European Commission will also be informed of this decision.

Yours sincerely Jacob Söderman

(1) See for example Case T-156/89 *Valverde Mordt v. Court of Justice* [1991] ECR II-407, paragraph 121.

(2) Both these texts are available on the Website of the Commission's Directorate-General Regional Policy (http://ec.europa.eu/regional_policy [Link]).

(3) Cf. the judgment of the Court of First Instance in Case T-156/89, loc. cit., paragraph 123.