

Decision of the European Ombudsman on complaint 1305/99/IP against the European Commission

Decision

Case 1305/99/IP - Opened on 24/11/1999 - Decision on 26/04/2000

Strasbourg, 26 April 2000 Dear X, On 19 November 1999 you lodged a complaint with the European Ombudsman against the European Commission concerning your exclusion from Competition EUR/B/136 because your diploma did not fulfil the conditions of the competition. On 24 November 1999, I forwarded the complaint to the President of the European Commission for its comments. The Commission sent the translation into Italian of its opinion on 21 February 2000 and I forwarded it to you with an invitation to make observations, if you so wished. On 7 March 2000, I received your observations on the Commission's opinion. I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

The complainant applied for competition EUR/B/136 (JO 1998 C 146 A/01) organised by the European Commission to constitute a reserve list for associated assistants (B5/B4) in Informatics/Telecommunications. On 14 June 1999 the complainant was notified by the Selection Board that after verification of his candidature, it had been rejected on the grounds that his qualifications did not comply with the notice of competition, namely the *"two years' further training in data processing and/or telecommunications"*, as established in point III.B.2. On 1 July 1999, the complainant, who considered this exclusion unfair and discriminatory, asked the Selection Board to re-examine the candidature. The complainant put forward that he had completed a course of advanced secondary education (five years) and obtained a *Diploma di Ragioniere perito commerciale e programmatore*, which required an in-depth study of computer science. He therefore asked the Commission to take into account that his diploma could be considered as inclusive of both a generic secondary diploma and the two years further training. By letter of 3 September 1999, the Chairman of the Selection Board informed the complainant that after having re-examined his application, there were no grounds for the Board to reverse its original decision. Since he was not satisfied with the verdict of the Selection Board, the complainant wrote an additional letter to the Commission on 14 September 1999, asking to be informed of any possible means to lodge a formal complaint against this decision. The Selection Board replied to the complainant by letter of 20 September 1999, in which it reaffirmed the contents of the previous correspondence. No reference was made to the complainant's request to know the possible means to appeal the Selection Board's decision. On 8 and on 28 October 1999, the complainant wrote further letters to the Commission underlining the urgency of the information requested, but no reply was given to him. Thus, he lodged a



complaint with the Ombudsman in which he made the following allegations: 1 The unfairness of his exclusion from competition EUR/B/136 organised by the European Commission. 2 The Commission's failure to inform him of possible means to contest the definitive decision of the Selection Board, despite his reiterate requests, prevented him to exercise his right.

THE INQUIRY

The Commission's opinion The comments from the European Commission on the complaint were in summary the following: The Commission referred to the background of the case, referring to the exchange of correspondence between its services and the complainant. It pointed out that the complainant was excluded from the competition because he did not hold the diploma required in the notice of competition. The notice provided in point III.B.2 that: "2.

Certificates, diplomas and experience Candidates must have completed a course of advanced secondary education (and obtained a certificate) as well as at least two years' further training in data processing and/or telecommunications (and obtained a diploma recognised by a competent body), and have at least two years' professional experience in the fields covered by the competition." As regards the alleged impossibility to attend such courses in Italy, the Commission indicated that it was in fact possible, giving examples of them. The institution also

enclosed to its opinion same information concerning the total number of applications received for competition EURO/B/136 and the number of candidates from each nationality which had been admitted to the tests. 165 out of a total of 1375 were of Italian nationality. The Commission underlined that the Selection board has correctly followed the notice of competition that it could not be derogated from. Moreover, the Commission stressed that, even if it recognised the relevant professional experience of the complainant, such experience could never be considered as substitutive of the requested diplomas. **The complainant's**

observations The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. As regard his exclusion from the competition, the complainant put forward his concerns regarding the fact that he was originally admitted and only in a further stage excluded from the competition. The complainant also pointed out that only part of his exchange of correspondence with the Commission has been mentioned by the institution. In fact, the Commission enclosed to its opinion to the Ombudsman only copies of the letters that its services had sent to him, but not of his faxes and letters addressed to the institution. Furthermore, the complainant claimed that in the letter of 20 September 1999 the Commission did not reply to all the points raised in the letter of 14 September 1999. In fact, the Commission informed the complainant of the possible means to appeal a negative decision of the Selection Board only in its correspondence of 7 December, that is after the Ombudsman opened an inquiry on the case. In this letter, the Commission referred to the complainant's letter dated 8 October 1999, informing him that the deadline to complain under article 90 of the Statute or to the Court of First Instance of the European Communities had already expired. He reaffirmed that he asked to be informed of the means of appeal for the first time on 14 September 1999, when it would still have been possible. He considered therefore that because of the Commission failure to deal with his request for information, he was denied the possibility to exercise his rights.

THE DECISION

1. Alleged unfair exclusion from competition 1.1. The complainant alleged that the Selection



Board's rejection of his application to participate in competition EURO/B/136 on the grounds that he did not hold the diplomas requested by the notice of competition was unfair. 1.2. The Commission stated that the Selection Board based its decision exclusively on the requisites mentioned in the notice of competition. Since the complainant did not fulfil them, his application could not be accepted. 1.3. As the Court of Justice has consistently held, although the Selection Board for a competition based on qualifications and tests has a discretion in evaluating the qualifications and practical experience of the candidates, it is nevertheless bound by the wording of the notice of competition. The basic function of a notice of competition, according to the Staff Regulations, is to give to those interested the most accurate information possible about the conditions of eligibility for the post, in order to enable them to judge whether they should apply for it and what supporting documents are important for the proceedings of the Selection Board and must therefore be enclosed with the application (1) . Furthermore, when the Selection Board decides not to admit a candidate to the tests, it is required to indicate precisely which conditions in the notice of competition are considered not to have been satisfied by the candidate (2) . 1.4. The notice of competition EURO/B/136 indicated all the necessary conditions to be met by the applicants. One of the conditions foreseen under Title III B.2 of the notice was to have completed a course of advanced secondary education, as well as at least two years' further training in data processing and/or telecommunications and have obtained a diploma recognised by a competent body. The complainant provided no evidence that he possesses such a qualification. 1.5. The Ombudsman notes that, from the information submitted by the complainant and by the Commission, it appears that the Selection Board has acted in accordance with the notice of competition when deciding that the complainant's application could not be accepted on the ground that he did not fulfil the requisites. 1.6. As concerns the obligation of the Selection Board to indicate precisely which conditions in the notice of competition are considered not to have been satisfied by the candidate, the Ombudsman notes that in its letters of 14 June, 3 and 20 September, and 7 December 1999, the Selection Board specifically referred to point III.B 2 and gave the complainant reasons for his exclusion from the competition. 1.7 Furthermore, it has to be born in mind that candidates could be excluded from a competition at any stage of it, in accordance with point IV.6 of the notice of competition EURO/B/136: *"should the Selection Board discover at a later stage in the procedure that the information on the application form is incorrect or does not tally with the supporting documents, the candidate will be disqualified"* . 1.8 In view of the above, the Ombudsman considers that there appears to have been no maladministration by the European Commission in this aspect of the case. **2 The Commission's failure to inform the**

complainant of possible means of appeal 2.1 The complainant pointed out that, by letter of 14 September 1999, he asked the Commission to be informed of possible means to contest the Selection board's decision to exclude him from competition EURO/B/136. Nevertheless, in its of 20 September 1999, the Commission only confirmed his exclusion, without any reference to the complainant's request concerning the possible means to appeal the Selection Board's decision. 2.2 In its opinion on the complaint on the Ombudsman, the Commission did not consider this claim. 2.3 The Ombudsman has carefully examined all the correspondence between the Commission and the complainant. It appears from the supported documents that in his letter of 14 September 1999 (sent by fax and by normal mail), the complainant has asked the Commission to be informed on the possible means to contest the Selection Board's decision, with the aim to lodging a complaint to the competent authorities: *"...fa presente che è intenzione*



del sottoscritto ricorrere ad un'autorità ... in grado di esprimersi sull'oggetto del contenzioso. Il sottoscritto richiede quindi gentilmente che gli vengano fornite, nel più breve tempo possibile, informazioni il più possibile dettagliate sull'organo al quale presentare istanza, sulla procedura e tempestività dell'intervento".

2.4 Since in its letter of 20 September 1999 the Commission did not reply to the complainant's request, he wrote a further letter to the institution the same day (also sent by fax and by normal mail), when it would have still been possible to lodge a complaint with the competent authority. In fact the deadline, as later indicated by the Commission in its letter of 8 December 1999, was the 28 of September 1999. 2.5 Principles of good administrative behaviour require the administration to properly reply to the citizens' queries and give them the most accurate information. In the present case it is unquestionable that the Commission did not reply to the specific request made by the complainant in both letters of 14 and of 20 September 1999, to which the Commission should have answered. By informing the complainant of any means of appeals only when the deadline was already expired, and despite two requests, the Commission did not give him the possibility to lodge a complaint against the Selection Board decision, if he so wished. This behaviour of the Commission constitutes therefore an instance of maladministration. **3 Conclusion** On the basis of the Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remarks: Principle of good administrative behaviour require the administration to properly reply to the citizens' queries and give them the most accurate information. In the present case is unquestionable that the Commission did not replied to the specific request made by the complainant in both letters of 14 and of 20 September 1999, which the Commission should have answered. By informing the complainant on any means of appeals only when the deadline was already expired, and despite two requests, the Commission did not give him the possibility to lodge a complaint against the Selection Board decision, if he so wished. This behaviour of the Commission constitutes therefore an instance of maladministration. Given that this aspect of the case concerns procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. 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) Case T - 158/89 *Van Hecken v Economic and Social Committee* [1991] ECR II-1341

(2) Joined cases 4, 19 and 29/78 *Salerno and Others v Commission* [1978] ECR 2403 Case T -108/84 *De Santis v. Courts of Auditors* [1985] ECR 947