

## Decision of the European Ombudsman on complaint 1450/99/OV against the European Parliament

Decision

**Case 1450/99/OV - Opened on 04/01/2000 - Decision on 28/11/2000**

Strasbourg, 28 November 2000 Dear Mr D., On 25 November 1999 you made a complaint to the European Ombudsman concerning your exclusion from open competition EUR/A/127 organised by the European Parliament. On 4 January 2000, I forwarded the complaint to the President of the European Parliament. The Parliament sent its opinion on 10 March 2000 and I forwarded it to you with an invitation to make observations, if you so wished. You made no observations on the Parliament's opinion. I am writing now to let you know the results of the inquiries that have been made.

### THE COMPLAINT

According to the complainant, the relevant facts were as follows: The complainant participated in open competition for informatics EUR/A/127 organised by the European Parliament. The pre-selection tests took place on 27 January 1999. From May to September 1999, the complainant then phoned and sent several letters by registered mail to the Competition's Unit of the Parliament to obtain information on the results obtained. However, he received no reply from the Parliament. In his telephone conversation of 28 May 1999 with the Competition's Unit, the complainant was informed that he was excluded from the competition because of violation of the rule of anonymity of the tests, but that he could make an appeal against this decision if he wanted. The complainant had however to wait for the official letter informing him about this exclusion before lodging an appeal. The complainant then phoned several times the Competition's Unit in June, July and August 1999, and was told that the letter would soon be sent. On 2 September 1999, the Competition's Service then left a message asking the complainant to contact them. On 3 September 1999 the complainant was informed by phone that his appeal had been rejected by the Selection Board. The complainant however observed that he had never lodged an appeal, because he had not yet received the official letter informing him about his exclusion. Finally, it was only on 23 September 1999, i.e. 8 months later and 2 weeks after the second selection had already taken place, that the complainant was officially informed that he had been excluded from the competition, because he had mentioned his name on the exam papers which made an objective and anonymous correction impossible. Given that the second tests had already taken place, the complainant could therefore not make an appeal under Article 90 of the Staff Regulations, and made the present complaint to the Ombudsman:

1. The complainant firstly alleged that he was only informed on 23 September 1999, i.e. 8 months after the first selection tests, and two weeks after the second tests had already taken



place, about his exclusion from the competition, which made the lodging of an appeal under Article 90.2 of the Staff Regulations in order to be admitted to the second stage of the competition practically impossible. The complainant also observed that the Parliament had failed to reply to his various faxes and letters sent on 25 May 1999, 5 July 1999, 25 and 26 August 1999 in which he explicitly asked for his results of the competition. 2. The complainant secondly alleged that the instructions which were distributed to the candidates (DOC\_NE\DV\370\370067) did not give indications to the candidates as regards the mentioning or not of the name on the exam papers.

## THE INQUIRY

**The Parliament's opinion** In its opinion, the Parliament firstly observed that it is a fact that it was only by letter of 23 September 1999 that the complainant was officially informed of his exclusion from the competition. In his letter of 28 September 1999, the Director of Personnel regretted this delay which changed however nothing to the situation in fact. The complainant was excluded from the competition because of the violation of the rule anonymity of test b) and not because he failed the test. Therefore his test could not be re-examined, what would have been possible if he had just failed the test. The Parliament stated that it is true that the guidelines concerning the anonymity were not mentioned in the instructions distributed to the candidates. However, the instructions on the answer papers of the test did mention clearly that one should not sign any page. The annexed page indicated "*do not sign any page/ne signer aucune page*". It appears more logical to mention this instruction on the document itself to which it refers than on a separate document. The Parliament observed that, as regards the only use of French and English for the instructions, the competition notice stated that, for functional reasons, the knowledge of the English or French language is desirable. Moreover, the complainant had chosen to pass test b) (knowledge of a second official Union language) in English. The complainant's details mentioned on the first page of the test were covered before the transmission of the test to the correctors, so that only a number corresponding to a secret code remained. However, the complainant wrote his name on the second and third page of his test. Given thus that the anonymity of the candidate was not guaranteed anymore, the Selection Board could not correct the test and the complainant was excluded from the competition. The Parliament finally recalled the case law from the Court of First Instance (case T-91/92, *Dormen v. Commission*, [1993] ECR II-1491) which confirmed the decision of exclusion of a candidate who has violated the instructions concerning the anonymity of the tests. **The complainant's observations** The complainant made no observations on the Parliament's opinion.

## THE DECISION

**1 The alleged failure of information and failure to reply** 1.1 The complainant alleged that he was only informed on 23 September 1999, i.e. 8 months after the first selection tests, and two weeks after the second tests had already taken place, about his exclusion from the competition, which made the lodging of an appeal under Article 90.2 of the Staff Regulations in order to be admitted to the second stage of the competition practically impossible. The complainant also observed that the Parliament had failed to reply to his various faxes and letters sent on 25 May 1999, 5 July 1999, 25 and 26 August 1999 in which he explicitly asked for his results of the competition. The Parliament observed that the complainant was informed on 23 September 1999 about his exclusion from the competition. In another letter of 28 September the Parliament



expressed its regrets for not having notified the complainant earlier about his exclusion. 1.2 Principles of good administration require that applicants to open competitions be informed in writing as soon as possible of the decisions taken by the administration with regard to their participation in those competitions. The same principles require that the administration reply to the letters of citizens. 1.3 In the present case it appears that the pre-selection tests of the open competition took place on 27 January 1999. However, it is only on 23 September 1999, namely 8 months later, that the complainant was informed that he had been excluded from the competition because of the violation of the anonymity of the tests. The Ombudsman therefore considers that the Parliament failed to inform the complainant about its decision in due time. The Ombudsman also notes that the Parliament has failed to reply to the various requests for information of the complainant sent in May, July and August 1999. This constitutes an instance of maladministration and the Ombudsman therefore makes the critical remark below. **2 The alleged failure of information concerning the instructions as regards the anonymity** 2.1

The complainant alleged that the instructions which were distributed to the candidates (DOC\_NE\DV\370\370067) did not give indications to the candidates as regards the mentioning or not of their name on the exam papers. The Parliament stated that it is true that the guidelines concerning the anonymity were not mentioned in the instructions distributed to the candidates. However, the instructions on the answer papers of the test did mention clearly that one should not sign any page. The exam paper indicated "do not sign any page/ne signer aucune page".

2.2 The Ombudsman notes that the instruction not to sign the exam paper, together with other instructions, was clearly mentioned on the top left of the document distributed to the candidates which served as exam paper. Candidates were therefore informed that they should not write their name on their exam papers. The Ombudsman therefore found no maladministration with regard to this aspect of the complaint. **3 Conclusion** On the basis of the European

Ombudsman's inquiries into part 1 of this complaint, it appears necessary to make the following critical remark: Principles of good administration require that applicants to open competitions be informed in writing as soon as possible of the decisions taken by the administration with regard to their participation in those competitions. The same principles require that the administration reply to the letters of citizens. In the present case, it appears that the pre-selection tests of the open competition took place on 27 January 1999. However, it is only on 23 September 1999, namely 8 months later, that the complainant was informed that he had been excluded from the competition because of the violation of the anonymity of the tests. The Ombudsman therefore considers that the Parliament failed to inform the complainant about its decision in due time. The Ombudsman also notes that the Parliament has failed to reply to the various requests for information of the complainant sent in May, July and August 1999. This constitutes 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 Parliament will also be informed of this decision. Yours sincerely Jacob Söderman