

Decision of the European Ombudsman on complaint 76/2000/ADB against the European Commission

Decision

Case 76/2000/ADB - Opened on 28/01/2000 - Decision on 01/06/2001

Strasbourg, 1 June 2001

Dear Mrs B.,

On 14 January 2000, you lodged a complaint with the European Ombudsman concerning the organisation of competition COM/C/2/99.

On 28 January 2000, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 30 March 2000 and I forwarded it to you with an invitation to make observations, if you so wished. I received your observations on 4 May 2000.

I am now writing to let you know the results of the inquiries that have been made.

I apologise for the length of time it has taken to deal with your complaint.

THE COMPLAINT

The complainant participated in competition COM/C/2/99 organised by the European Commission to establish a reserve list for French speaking typists. Despite good results at the pre-selection tests she was not among the best 1200 candidates accepted to participate in the next stage of the procedure. Considering that her average mark was quite close to the one obtained by the last successful candidate, she asked for her marks to be reconsidered. She also alleged that the organisation of the competition did not ensure the Selection Board's impartiality.

The Selection Board confirmed its decision. On 14 January 2000, the complainant decided to lodge a complaint with the European Ombudsman and made following allegations :

- The recruitment procedure was delayed. The Commission did not follow the timetable for the procedure as indicated in the Official Journal.
- The shortlisted candidates were informed one month later than those who failed to pass the first part of the selection procedure. This delay was unnecessary.
- Examining the files after the pre-selection test creates unnecessary expectations for the



candidates who from the beginning did not fulfil the selection criteria.

- Some unemployed candidates had to bear travel expenses.
- The anonymity of the candidates during the selection procedure is not respected given that the identity of the candidate is openly mentioned on the examination scripts. With this indication the Selection Board can have access to all the information concerning the candidate and might thereby make biased decisions.

THE INQUIRY

The European Commission's opinion

The opinion of the European Commission on the complaint was in summary the following :

- The timetable mentioned in the Notice of Competition (OJ C 27 A of 2 February 1999) is intended as a rough guide (1) and has no binding character. The actual timetable very much depends on the workload which is closely linked to the number of participants (over 5700 in the present case). In the present case the tests took place on 2 July 1999 while the indicative timetable foresaw May/June 1999.
- Among the 5500 candidates who were invited to attend the shortlisting tests, 4250 actually participated. Informing all those candidates, even with the help of automated means, is not an easy task. This part of the work is subject to judicial review and cannot be carried out with haste. Further to correction of the tests, over 1300 candidates had not reached the average mark and had to be informed accordingly. This was not carried out by totally automated means and was therefore time consuming. Candidates, like the complainant, which had reached the average mark, were informed on 29 September 1999 that the Selection Board would decide upon their admission to the next stage of the recruitment procedure.
- The Commission considers that the procedure to examine the candidates' files in detail only after the pre-selection tests and only for shortlisted candidates does not create false expectations. The candidates were informed of this procedure through the notice of competition and by handing in their application they have accepted it in principle. The aim of this procedure is to avoid excessive delays in selection procedures which in the early 1990s sometimes lasted more than two years.
- The candidates had been informed whether they would receive a compensation for travel expenses and were free to decide upon their participation in the selection procedure. The decision to limit the reimbursement of travel expenses is based on an internal directive of 19 March 1998 (2) . This directive aimed at respecting budgetary appropriations in accordance with the Financial Regulation. The Commission also noted that to its knowledge, no reimbursement of travel expenses further to public recruitment procedures is foreseen in the complainant's home country.
- The anonymity of candidates in Commission selection procedures is respected. The correction of the pre-selection test is carried out by an optical character reader. To reassure the candidates against any possible mistake regarding their exam-papers and results, the candidates' name is put on the form which is later corrected by automatic means. The Selection Board checks the consistency of the correction and the marks to decide whether a candidate passed the test. The Selection Board however, is only communicated a list with the candidate's reference number and marks. There cannot be any biased decision by the Selection Board, nor should the honesty of the staff in charge of dealing with the candidate's data be put in question



so rashly.

Finally, the Commission points out that it is good administrative practice to respect the anonymity in selection procedures and that it is committed to do so even though it is not required by the Staff Regulations.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. In her reply the complainant maintained her doubts as to the organisation of the recruitment procedure. She in summary made the following observations:

- 1.&2. The complainant organises recruitment procedures for officials at the national level. The number of candidates indicated by the Commission is not extraordinary to her. In the year 2000 she participated in the organisation of a competition with 14.959 candidates (all the stages are described). The whole procedure should last less than ten months.
3. The complainant still fails to understand why the candidates' files are only examined after the pre-selection test.
4. The complainant understands that the Commission's aforementioned internal directive is not aimed at creating a discrimination based on the candidates' financial resources. However, people in a difficult financial situation have only one choice, which is to stay at home.
5. The complainant fails to understand the Commission's point of view. She considers that there is a discrepancy between the Commission's commitment to anonymity and the enclosure of the corrected exam papers in the file which contains all the information relating to the complainant.

THE DECISION

1 Failure to respect the timetable

1.1 According to the complainant, the recruitment procedure was delayed. The Commission did not follow the timetable for the procedure as indicated in the Official Journal.

1.2 The Commission argued that the timetable indicated in the Official Journal was intended as a rough guide. Moreover, the discrepancy between the indicated timetable for the pre-selection and the actual dates was trifling.

1.3 The timetable for the selection procedure in the Official Journal appears under the section "Calendrier indicatif". The Commission is not legally bound to the indicative timetable. However, as a matter of good administration it should follow the timetable that it has announced unless there is an objectively justifiable reason to depart from it. In this case, the Commission has referred to the number of candidates as the reason for the small delay compared to the announced timetable. This appears to be a reasonable explanation and the Ombudsman therefore concludes that there is no evidence of maladministration as regards this aspect of the case.

2 Delays in the procedure



2.1 The shortlisted candidates were informed one month later than those who failed to pass the first part of the selection procedure. The complainant considers that this delay was unnecessary.

2.2 The Commission argued that recruitment procedures are sensitive ones. Despite the large number of candidates, the tasks are not all carried out by automated means and should not be carried out with haste.

2.3 Taking into consideration the workload caused by the large number of participants, the explanations given by the Commission as to the delay mentioned by the complainant do not seem to be unreasonable. The Ombudsman therefore concludes that there is no evidence of maladministration as regards this aspect of the case.

3 Unnecessary expectations due to the examination of the files after the pre-selection

3.1 According to the complainant, examining the files after the pre-selection test creates unnecessary expectations for the candidates who from the beginning did not fulfil the selection criteria.

3.2 The Commission argued that the candidates were informed of and had accepted the procedure presented in the notice of competition. The procedure could therefore not generate expectations. Furthermore, examining the files after the pre-selection tests significantly shortens the selection procedure.

3.3 The Ombudsman notes that section V of the notice of competition (3) ("Admission à concourir") describes the procedure followed by the Commission. Point 2 of this section expressly informs the candidates that the only criteria checked prior to the pre-selection is the age limit. Other decisive criteria (Titles, diplomas, professional experience, .) are checked for candidates who have passed the pre-selection. The explanations given by the Commission as to the necessity and benefits of this procedure in terms of workload appear to be reasonable.

3.4 Given the information contained in the notice of competition, there is no obvious reason to consider that participating in the pre-selection could create expectations among candidates as to their participation in the next stages of the procedure. The Ombudsman therefore concludes that he has found no instance of maladministration as regards this aspect of the case.

4 Discrimination through travel expenses

4.1 The complainant considers that the refusal to reimburse travel expenses is a source of discrimination. Unemployed candidates would for instance have to bear travel expenses.

4.2 The Commission argued that candidates had been informed that travel expenses would not be reimbursed. The decision not to reimburse travel expenses originates in budgetary reasons and is established in an internal directive.

4.3 The Ombudsman notes that the number of potential participants in an open competition cannot be easily evaluated. The costs for the reimbursement of travel expenses is closely linked to that number. In that context, the Commission's decision to refuse the reimbursement of travel expenses for pre-selection procedures appears to be objectively justified by the necessity to



respect budgetary appropriations, and cannot thus be considered as a discrimination by the Commission against some categories of candidates. The Ombudsman has found no instance of maladministration in relation to this aspect of the case.

5 Anonymity in selection procedures

5.1 According to the complainant the anonymity of the candidates during the selection procedure is not respected given that the identity of the candidate is openly mentioned on the examination scripts. With this indication the Selection Board can have access to all the information concerning the candidate and might thereby make biased decisions.

5.2 The Commission argued that the names of the candidates are mentioned on the exam paper of the pre-selection tests to reassure the candidates. The document is then corrected by an optical reader. The Selection Board only receives a document with the reference numbers of the candidates and their marks.

5.3 The Commission has explained the purpose of requiring candidates' names to be included on the test papers and that the marks received by the Selection Board are anonymous. The complainant has not supported her allegations with any evidence showing that the anonymity of candidates had actually been breached by the Administration or the Selection Board. The Ombudsman's inquiry did not therefore reveal any instance of maladministration in relation to this aspect of the case.

6 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) Page 11 : "Calendrier indicatif"

(2) Published in the internal administrative information on 27 March 1998

(3) OJ C 27 A of 2 February 1999