

## **Decision of the European Ombudsman on complaint 218/2000/GG against the European Commission**

Decision

**Case 218/2000/GG - Opened on 18/02/2000 - Decision on 02/10/2000**

Strasbourg, 2 October 2000 Dear Mr M., On 8 February 2000, you lodged a complaint with the European Ombudsman against the European Commission concerning your exclusion from competition COM/A/12/98. On 18 February 2000, I forwarded the complaint to the Commission for its comments. The Commission sent its opinion on your complaint on 19 April 2000, and I forwarded it to you on 27 April 2000, with an invitation to make observations, if you so wished. On 27 May 2000, you sent me your observations on the Commission's opinion. On 8 June 2000, I sent a request for further information to the Commission. The Commission replied on 14 July 2000, and I forwarded this reply to you on 25 July 2000, with an invitation to make observations. On 31 August 2000, I received your observations. I am now writing to you to let you know the results of the inquiries that have been made.

### **THE COMPLAINT**

The complainant took part in competition COM/A/12/98 organised by the Commission. In part 7 of the application form, candidates were requested to indicate whether they had "a physical handicap requiring special arrangements to be made at tests". If that was the case, candidates were invited to give details on a separate sheet and to indicate the nature of the special arrangements that they believed to be necessary. The explanations regarding this point that were provided in the 'Guide to Candidates' (1) read as follows: "Put a cross in the box if you suffer from a physical handicap that might make it difficult for you to do the tests. This will help us make whatever arrangements are necessary." The complainant claims that his handwriting is highly illegible handwriting, that this was caused by dyslexia when he was younger and that as a result his writing, especially in examination situations, is excessively hard to read. The complainant passed the preselection tests. In a letter of 8 June 1999, he was invited to take part in the written tests to be held on 16 July 1999. About one week before that date, the complainant telephoned the Commission's Directorate-General Personnel and Administration in order to request that a typewriter/keyboard should be made available to him during the examination. The Commission thereupon asked the complainant immediately to send a medical certificate, attesting his physical handicap. On 13 July 1999, the complainant wrote to the Commission in order to reiterate his request for a keyboard. He enclosed some reports from his schooling that according to the complainant clearly demonstrated the range and scale of the learning difficulties that he had experienced. The copy of this letter that the complainant submitted to the Ombudsman was marked "by hand". In the event, the complainant had to sit



the examination without any special provisions. On 30 July 1999, the complainant wrote to the Commission in order to request that arrangements should be made for his examination papers to be presented to the examiners in a typed format. The complainant did not receive any reply to his two letters to the Commission. The competition notice stipulated that only the 190 candidates with the highest marks in the written tests were to be admitted to the oral test. In a letter of 13 December 1999, the complainant was informed that he had passed the written tests but that the result achieved had not been sufficient to place him among the 190 best candidates. On 10 January 2000, the complainant asked the Commission to re-assess his papers, taking into account his handicap. He also pointed out that the Commission had failed to reply to his letters. In its reply of 20 January 2000, the Commission confirmed that it was an equal opportunities employer. It pointed out that special arrangements had been made at the preselection tests for all the handicapped candidates who had been present and who had previously contacted the Commission after having received the invitation to sit the examination. The Commission further explained that since the complainant had passed the preselection tests without special arrangements, he had not been contacted by the Commission before the written test, as was the case for the five handicapped candidates who were present on 16 July 1999. According to the Commission, a medical certificate had been necessary, given the impossibility for the administration to check merely on the basis of a declaration made in the application form. The five handicapped candidates mentioned before had already sent such a document when they submitted their application form in 1998. According to the Commission, no such certificate had been received from the complainant by 16 July 1999. Finally, the Commission claimed that the complainant's letter of 13 July was only received on Monday, 19 July 1999, after the written tests had taken place, and that this explained why no reply had been sent. The letter of 30 July 1999 had not been received by the Commission's service in charge at all. In his reply to that letter of 7 February 2000, the complainant took the view that it would have been up to the Commission to contact him and to ask him to produce a medical certificate. In his complaint to the Ombudsman, the complainant made the following allegations: 1) The Commission failed to take steps to take account of his handicap 2) The Commission failed to reply to his letters of 13 and 30 July 1999

## THE INQUIRY

The complaint was sent to the Commission for its comments. **The opinion of the Commission** In its opinion, the Commission repeated the views it had already expressed in its letter to the complainant of 20 January 2000. In addition to that, it made the following comments: The words 'by hand' did not figure on the original letter dated 13 July 1999. This letter had *not* been delivered by hand to DG Personnel and Administration. The Commission provided a copy of this document. The documents that had been submitted with this letter were school reports and were not of an official nature. They were apparently drafted by a school teacher and dated back to 1977 or before. The teacher concerned mentioned among other things that the complainant had "a lot of difficulty with writing of figures and letters". No further documents had been provided that would have indicated the subsequent development of the candidate. Further to the complainant's letter of 10 January 2000, the Selection Board had re-examined his written tests and had come to the conclusion that the quality of his handwriting had not had any negative influence on the results the complainant had obtained. The Selection Board had therefore decided not to transcribe the complainant's written tests and to maintain the results



that had already been communicated to him. **The complainant's observations** In his observations, the complainant maintained his complaint. He added that the Selection Board had not been in a position to judge whether he had had to spend an undue amount of effort and concentration on his handwriting rather than on the content of his papers. **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 provide a copy of the application form submitted by the complainant and of the separate sheet mentioned in point 7 thereof. *The Commission's reply* The Commission provided a copy of the complainant's application form. It regretted, however, that it was unable to provide a copy of the separate sheet destined to give details of the specific handicap since the complainant had failed to include this in his application. *The complainant's observations* In his observations, the complainant claimed that he had enclosed an identical letter concerning his disability when he applied to take part in a competition organised by the European Parliament, and that the latter had taken adequate measures to accommodate his disability.

## THE DECISION

**1 Failure to take into account the complainant's handicap** 1.1 The complainant claims that the Commission failed to take steps to take account of his handicap in the context of his participation in competition COM/A/12/98. 1.2 The Commission points out that it was only contacted by the complainant about one week before the written tests, that on that occasion the complainant was asked to provide documentary evidence regarding his handicap and that no such evidence was received by the Commission prior to the written tests. 1.3 It is good administrative practice for an administration organising recruitment procedures to take steps in order to ensure that handicapped persons can take part and compete in such competitions on equal terms with other candidates who do not suffer from a handicap. 1.4 The application form to be used by candidates requested the latter to indicate whether they had a physical handicap requiring special arrangements to be made at tests. In its 'Guide to Candidates', the Commission furthermore expressed its readiness to make "whatever arrangements are necessary." 1.5 The first question to be addressed is thus whether, as the Commission appears to believe, handicapped candidates had to contact the Commission and to provide documentary evidence attesting their handicap in order to ensure that such arrangements were made. The Ombudsman considers that neither the application form nor the 'Guide to Candidates' provide for such an obligation on the part of candidates. The only formal obligation that was imposed on handicapped candidates who wished to obtain special arrangements was to cross the box in part 7 of the application form. It is true that candidates were also invited to provide more specific information regarding their handicap on a separate sheet. However, there was no indication that such information was obligatory. In these circumstances the Ombudsman considers that it would indeed have been for the Commission, once it had learnt from the application form that the complainant considered special arrangements to be necessary, to contact the complainant in order to find out what special arrangements would have to be made. 1.6 It should be noted, however, that the complainant has himself explained that due to the special nature of these tests, he was able to take the preselection tests without any need for special arrangements. As to the written tests, the Commission was informed of the special arrangements that the complainant considered necessary when the latter called the Commission about one week before the written tests. There is no evidence to suggest that such arrangements could not have



been made in the remaining time before the tests were due to take place. The Ombudsman considers, therefore, that the Commission's failure to contact the complainant ultimately did not harm the complainant's interests. However, the Ombudsman considers it useful to make a further remark in relation to that issue. 1.7 The Commission explains that its failure to make the special arrangements was due to the fact that the complainant did not submit a medical certificate regarding his handicap. The Ombudsman considers that it is legitimate for the Commission to make the provision of special arrangements dependent upon the production of such evidence in order to preserve the equality of chances of the candidates participating in a competition. The Commission claims that the complainant's letter of 13 July 1999 was only received by it on 19 July 1999 and thus after the written tests had been held. On the basis of the evidence available, this appears to be in conformity with the facts. The Ombudsman takes the view that in any event the Commission's view that the documents which the complainant submitted were not sufficient to prove the fact that the complainant suffered from a handicap appears reasonable. 1.8 The Ombudsman considers that a different conclusion would have had to be drawn if it had been impossible for the complainant to produce the medical certificate. However, there is no evidence to suggest that such a certificate could not have been obtained and submitted to the Commission in the time that remained until the written tests were due to take place. 1.9 On the basis of the above, there appears to have been no maladministration on the part of the Commission in so far as the first allegation put forward by the complainant is concerned. **2 Failure to reply to letters** 2.1 The complainant claims that the Commission failed to reply to his letters of 13 and 30 July 1999. 2.2 The Commission replies that the letter of 13 July 1999 was not answered since it only arrived on 19 July 1999 and thus after the written tests and that it never received the letter of 30 July 1999. 2.3 It has not been established that the complainant's letter of 30 July 1999 did indeed reach the Commission. In these circumstances, the Commission cannot therefore be criticised for not having replied to this letter. 2.4 It has however been established that the Commission received the complainant's letter of 13 July 1999. It is good administrative practice for the administration to reply to the letters that it receives from citizens. There may be exceptional cases where it is clear that for example due to the lapse of time a reply to the contents of a letter is no longer of interest to the citizen. It has to be noted that this was not the case with the complainant's letter of 13 July 1999. The Ombudsman considers that even if the administration had been right in assuming that the complainant was no longer interested in a reply as to the substance of his letter, it should have sent a short letter to that effect to the complainant. 2.5 In these circumstances, the Ombudsman concludes that the failure by the Commission to react to the complainant's letter of 13 July 1999 constitutes an instance of maladministration. The Ombudsman therefore considers it necessary to make a critical remark in this regard. **4 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark: It is good administrative practice for the administration to reply to the letters that it receives from citizens. The failure by the Commission to react to the complainant's letter of 13 July 1999 thus 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 therefore closes the file. The President of the European Commission will also be informed of this decision.

## FURTHER REMARKS



In the present case, the Commission expected handicapped candidates to contact it in order to ensure that special arrangements could be made. However, neither the application form nor the 'Guide to Candidates' clearly specify this requirement. The Ombudsman therefore suggests that the steps to be taken by handicapped candidates be clarified in future competitions. Your sincerely, Jacob SÖDERMAN

(1) OJ 1998 No. C 97 A, page 1 (8).