

Decision of the European Ombudsman on complaint 685/2000/JMA against the European Parliament

Decision

Case 685/2000/JMA - Opened on 22/06/2000 - Decision on 07/06/2001

Strasbourg, 7 June 2001

Dear Mr R.,

On 18 May 2000 you lodged a complaint with the European Ombudsman against the European Parliament concerning the decision of the Selection Board of Parliament internal competition B/172 to exclude you from the tests since you had not provided relevant documents to prove your status as a EC official.

On 22 June 2000, I forwarded the complaint to the President of the European Parliament. The institution requested an extension for its reply on 29 September 2000. On 16 October 2000, the European Parliament sent its opinion. I forwarded it to you with an invitation to make observations, if you so wished, on 26 October 2000. No observations appear to have been received from you. Having considered the arguments of the case, a member of my Secretariat carried out an inspection of the relevant documents in the European Parliament's premises in Luxembourg on 8 May 2001.

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 applied to European Parliament's internal competition B/172. By letter of 3 April 2000, the president of the Selection Board informed him that his application had been refused on the grounds that he had not furnished the necessary documents in order to prove his studies and/or his seniority as EC official. The complainant contested this decision on 7 April 2000, and listed in his letter all the documents which had been enclosed with his original application regarding both, the studies he had followed, and his years of professional experience. These documents included, among others, two Parliament's salary slips, and copies of his appointment as a probationer official, and his final appointment as a C5 official by the Commission.



On 16 May 2000, the Selection Board confirmed its previous decision not to admit him to the written tests, on the grounds that it could only take into consideration documents enclosed with the original application. In its letter to the complainant, the Selection Board explained that having checked the enclosures of the original application, there was no trace of any relevant document which could prove his experience and seniority with the European Parliament, such as a salary slip. It stated that the only document found was a note from the Commission dated 27 October 1986 appointing the applicant as a probationer official.

In his letter to the Ombudsman, the complainant stressed that he had enclosed with his original application all necessary documents. In the complainant's view, the responsible Parliament services had probably misplaced his file. The complainant also considered it unreasonable for the Parliament to request professional information from its own employees, since the institution, as the employer, was in a better position to obtain that data.

In summary, the complainant contested the decision of the Selection Board for EP internal competition B/172 to exclude him from the tests, for the following reasons:

(i) all necessary documents were enclosed with his application form, and thus if the Selection Board could not find them, that was probably due to the fact that the responsible EP services mishandled his file, and

(ii) the EP had all necessary means to easily check the statute and seniority of its officials and thus, whether they were suitable to participate in an internal competition.

THE INQUIRY

The European Parliament's opinion

In its opinion, the Parliament explained the general background of the case.

The complainant had applied to the Parliament internal competition B/172. The Selection Board could not admit him to the tests because his application did not contain sufficient evidence concerning his studies and/or his seniority as a Community official. Joint with the complainant's appeal to the Selection Board's decision, he forwarded additional supporting documents. However, the Parliament considered that some of these documents which could have been very relevant in order to assess the complainant's seniority as a Community official, in particular the EP salary slip, had not been enclosed with the original application, and therefore that the Selection Board could not take these documents into account.

The Parliament referred to the conditions for admission set out in the Notice of Parliament Internal Competition B/172, in particular to the introductory remarks of the Notice which stated that " *This internal competition is open to staff who are officials or other servants of the European Parliament Secretariat [...] on the closing date for applications and meet the conditions for admission set out in Section II of this Notice* ". The Parliament quoted then Section II.A of the Notice concerning the Qualifications and Professional Experience: " *Candidates must hold a*



certificate of advanced secondary education and have completed five years and one month of service as an official, or temporary staff member, in European Community Institutions".

Moreover, as regards the examination of applications, the Parliament referred to Section III.2 of the Notice which stated that the Board's decisions had to be based " *exclusively on the information given on the application form and backed up by supporting documents enclosed with that application form.* " Accordingly, candidates were not allowed " *to refer to documents which are included in their personal files but which have not been submitted with their application form* ".

The institution explained that at the beginning of December 1999, its services responsible for Competitions and Selection Procedures held two informative meetings for potential candidates to this internal competition. In the course of the meetings, one of the aspects which was thoroughly explained was the supporting evidence which EC officials ought to enclose with their application form.

The only supportive evidence furnished by the complainant to demonstrate his seniority, was his appointment as a C5 official by the Commission dated 16 April 1987. This document was, in view of the Parliament, not sufficient to prove the conditions set out in the introductory section of the Notice of the competition. Furthermore, the institution explained that it was under no obligation to make inquiries into the personal file of the complainant, as recognized by the Community courts (Case T-54/91, *Almeida Antunes v. Parliament*, [1992] ECR II, p. 1739).

The complainant's observations

The Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. No observations appeared to have been received from the complainant.

Further inquiries

Since there appeared to be a certain divergence between the arguments given by the Selection Board in its letter to the complainant of 16 May 2000, and those employed by the European Parliament in its opinion, the Ombudsman wrote to the institution on 15 March 2001, requesting an inspection of the file. The inspection was carried out by a member of the Ombudsman's Secretariat at the Parliament's premises in Luxembourg on 8 May 2001.

THE DECISION

1. Alleged mishandling of documents enclosed by the complainant with his application form

1.1 The complainant explained that all necessary documents which could prove his studies, as well as his seniority as a Community official were enclosed with his application form, including two Parliament's salary slips, and copies of his appointment as a probationer official, and his final appointment as a C5 official by the Commission. Therefore, if the Selection Board could not find this supportive evidence, that was probably due to the fact that the responsible EP services had mishandled his file.

1.2 The Parliament pointed out that the only supportive evidence furnished by the complainant to demonstrate his seniority, was his appointment by the Commission as a C5 official dated 16 April 1987.



1.3. The Ombudsman notes that no conclusive evidence has been revealed in the course of the inquiry which could prove that the additional documents allegedly sent by the complainant with his application were in fact misplaced by the Parliament responsible services. Following the inspection of the file carried out by the Ombudsman's Secretariat on 8 May 2001, it appears that the only documents received by the Parliaments and included with the complainant's original application which related to his professional experience within the Community institutions, were his appointment by the Commission both as a probationer official dated 27 October 1986, and as a C5 official dated 16 April 1987.

On the basis of the evidence, the Ombudsman cannot conclude, that the European Parliament's services mishandled the file.

The Ombudsman considers therefore that there appears to be no maladministration as regards this aspect of the case.

2. Suitability of the evidence submitted by the complainant; verification by the EP

2.1 The complainant alleged that the EP had all necessary means to easily check the statute and seniority of its officials, and thus whether they were suitable to participate in an internal competition.

2.2 The Parliament has replied that the only supportive evidence furnished by the complainant to demonstrate his seniority, namely his appointment by the Commission as a C5 official dated 16 April 1987, was not sufficient to prove the conditions set out in the introductory section of the Notice of the competition. Moreover, the institution explained that it was under no obligation to make inquiries into the personal file of the complainant, as Community courts have held.

2.3 According to Section II of the Notice, the complainant was required to submit supportive documents in order to show that he had completed seven years' service in Category C as an official in European Community Institutions.

2.4 Having inspected all the documents received by the Parliaments and included with the complainant's original application, the Ombudsman finds that only the copy of his appointment by the Commission as a C5 official dated 16 April 1987 might have been relevant in order to consider whether he met the criteria of Section II of the Notice. However, this single document is not sufficient to prove that the complainant had completed seven years' service in Category C as an official in European Community Institutions, because his service could have been terminated since April 1987 by one of the different causes foreseen in Art. 47 of the Staff Rules.

2.5 Under present rules, the Parliament administration did not have an obligation to check whether the complainant had the necessary qualifications and professional experience to participate in the internal competition. As Community courts have held, the function of the personnel service of the Commission is not to send to selection boards the complete file of candidates to competitions, since this would impose a heavy burden and run counter to the principle of proper administration (1) .



The Ombudsman considers therefore that there appears to be no maladministration as regards this aspect of the case.

3. Conclusion

On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Parliament. The Ombudsman therefore closes the case.

The President of the European Parliament will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) Case T-133/89, *Jean-Louis Burban v. Parliament* [1990], ECR-II-245, par. 31.