

Decision of the European Ombudsman on complaint 1724/2000/OV against the European Commission

Decision

Case 1724/2000/OV - Opened on 29/01/2001 - Decision on 10/10/2001

Strasbourg, 10 October 2001

Dear Mr B.,

On 22 December 2000, you made a complaint to the European Ombudsman concerning your participation in open competition COM/A/12/98.

On 29 February 2001, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 2 April 2001. I forwarded it to you with an invitation to make observations, which you sent on 31 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 are as follows:

The complainant, who is blind, participated in open competition COM/A/12/98 organised by the Commission for the recruitment of administrators. He obtained 61/100 for the written test and 37/50 for the oral test. He was not put on the reserve list, because his final mark fell 6 points below the minimum required. According to available information none of the 645 candidates on the reserve list had a handicap.

On 21 June 2000, the complainant made a request for re-examination to the Selection Board, alleging that he was victim of both direct and indirect discrimination. There was direct discrimination in that: there were graphical tests which were completely unfavourable to blind people; the transcription in Braille script of voluminous texts prejudiced the blind; he was completely dependent on the assistants to take the test; there was a complete absence of informatics adapted to his visual handicap. There was indirect discrimination in that: the whole structure of the competition was based on tests for which vision was a primordial element and the value of the written exams was double that of the oral exams in the final classification of candidates.



Vice-President Kinnock, who was not the competent authority, replied concerning the question of discrimination. The President of the Selection Board also replied, but not on the question of discrimination.

Neither response dealt with the substance of his allegations, but only mentioned in general terms that the recruitment division took all the necessary measures for his handicap and for facilitating his participation.

On 12 October 2001, the complainant wrote to the Commission again but received a reply from the head of the recruitment unit which added nothing to the previous replies.

On 22 December, the complainant lodged a complaint with the Ombudsman, alleging that:

1. the Vice-President of the Commission had no competence to reply to his complaint of 21 June 2000 lodged with the President of the Selection Board;
2. he was the victim of direct and indirect discrimination by the Commission, because the measures taken by the Commission to let him participate in the competition were not adequate;
3. the Vice-President of the Commission and the Head of the recruitment unit failed to state reasons in their replies to the allegations developed by the complainant in his complaints of 21 June 2000 and 12 October 2000.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first described the special measures it had taken to take into account the complainant's handicap:

As regards the pre-selection tests, which were organised in the candidate's place of residence, Paris, the following special measures were taken: instructions and tests in Braille, a prepared room and the personal assistance of a supervisor during the whole test, supplementary time for the tests: three hours for tests a) and c) (instead of one hour for the other candidates), 1 hour 40 minutes for test b) (instead of 35 minutes) and 1 hour 20 minutes for test d) (instead of 30 minutes).

As regards the written tests, the special measures were the following: tests and instructions in Braille, separated room, personal assistance during the whole test of a Francophone supervisor who wrote for the complainant, supplementary time for every test of 4 hours and a half instead of 3 hours. For the written tests, these measures had been taken after a meeting with a representative from the NGO "European Forum of the Handicapped" who was appointed by its Director and had a long work experience with handicapped people: it was on the advice of this representative that it had been decided to give 50 % supplementary time to the complainant next to the other measures taken.



For the oral test, the complainant was convoked in Brussels like all the other candidates. The complainant was received and accompanied by the secretary of the competition to the examination room.

As regards the complainant's first allegation, the Commission observed that on 21 June 2000, the complainant made a request for re-examination to the Selection Board, with a copy to President Prodi, Vice-President Kinnock and Commissioner Diamantopoulou. The same day, the complainant also addressed a separate letter to Mr Kinnock with a copy to the Commission President.

The Vice-President replied on 13 July 2000 after having taken information from the responsible service. By replying, he did not substitute himself for the Selection Board and he cannot be reproached for not having competence to reply to the candidate. He was obliged to reply to the complainant, as the latter had addressed to him a copy of his letter of 21 June to the Selection Board. The reply of 13 July 2000 is the result of the rules applicable since many years at the Commission concerning correspondence: every letter addressed to members of the Commission is answered after the necessary information is requested from the responsible services. The Vice-President therefore fulfilled his task to reply to a letter addressed to him, without thereby infringing the powers of the Selection Board.

From its side, the Selection Board replied to the complainant's re-examination request on 20 July 2000. In its reply, the Selection Board referred to Vice-President's letter, but only with respect to the Commission policy on the treatment of the handicapped and equality of opportunity. For the rest, the complainant's main allegation concerned his non-inscription on the reserve list. The Commission observed that, notwithstanding his handicap and with the measures taken, the complainant had obtained the minimum for each test. Not figuring on the reserve list of the 45 best candidates, the complainant was astonished by his mark on the oral test and said that he "could not understand the reasons which could have motivated the deduction of 13 points from the potential for the qualification of this test". The Selection Board replied on the points of his appeal, including the "specific" questions asked to him and its decision was therefore reasoned.

As regards the second allegation, the Commission observed that, considering the measures taken in favour of the complainant, the results obtained by him and the answers given by the Vice-President, it had not to add other comments to reject the complainant's allegation of discrimination which seemed not to be founded.

As regards the third allegation, the Commission observed that the answer of the Vice-President of 13 July 2000 replied to all the arguments developed by the complainant on the question of the policy for the handicapped and the direct or indirect discrimination. This letter also replied to the arguments concerning the inequality of treatment with regard to the results obtained, the specific conditions for the complainant and the general conditions applied to the other candidates for the same tests.



The letter from the head of the recruitment unit of 31 October 2000, which replied to the complainant's letter of 12 October 2000, confirmed both the letter of the Vice-President of 13 July 2000 and the letter of the Selection Board of 20 July 2000, because the Head of the Recruitment Unit could not substitute herself for the Selection Board.

The complainant's observations

The complainant maintained his complaint and submitted very detailed comments (14 pages). As regards his first allegation, the complainant maintained that the Commission's Vice-President had no competence to adopt a decision on his appeal addressed to the President of the Selection Board. The complainant stated that, from legal point of view, his letter to the Vice-President dated 21 June 2000 was merely an informative letter, as his appeal had been made directly to the President of the Selection Board. However, the Vice-President's reply of 13 July 2000 was, from a legal perspective and according to the case law, a negative decision relating to the written tests (the second point of his appeal). The first point of his appeal relating to the oral test had been replied in the letter of 20 July 2000 from the President of the Selection Board. The complainant concluded that the decision of the Vice-President of 13 July 2000 had infringed upon the exclusive competence of the Selection Board to decide on appeals.

As regards the second allegation of discrimination, the complainant observed that it was not appropriate for the Commission to have made a joined comment on the direct and the indirect discrimination, as they constitute two different issues.

As regards the direct discrimination, the complainant observed firstly that the pre-selection graphical test b) was completely disadvantageous for blind people and that the measures taken by the Commission were inadequate. The measures taken for the written tests e) and f) were not adequate either, because the documents transcribed in Braille were very voluminous (one of them was more than 30 pages) and the tempo of reading in Braille is much less quick than visual reading. The complainant observed that the extra time given was not a sufficient compensation and did not allow him to participate in equal conditions with the other candidates.

The complainant also rejected the existence of a relation - which the Commission suggested in its opinion - between the marks obtained by the complainant and the absence of discrimination.

As regards the indirect discrimination, the complainant observed that the Commission did not specifically reject this allegation. He pointed out that merely mentioning the measures which had been taken does not constitute proof that there had been no indirect discrimination.

The complainant observed that the obligation incumbent on the Commission was a "result" obligation and not a "means" obligation. To fulfil this obligation, it was therefore not sufficient for the Commission to adopt certain measures or to make an effort to take adequate measures. What the Commission had to do was taking measures to obtain the result which was to exclude any possible discrimination.

As regards the third allegation (failure to state reasons), the complainant stated that the Vice-President's letter of 13 July 2000 did not address the substance of the allegation's made in his appeal of 21 June 2000. The letter, without explaining why, just mentioned that the



measures which had been taken were adequate. The complainant therefore concluded that the letter did not duly state reasons. Similarly, the Commission's reply of 31 October 2000 to the complainant's memorandum of 12 October 2000 merely referred to the Vice-President's letter without replying to the complainant's new arguments developed in the memorandum. The complainant equally observed that the President of the Selection Board failed to state reasons as regards his marks on the oral test, because its reply only contained general observations applicable to any candidate lodging an appeal. The complainant concluded that the reply of the President of the Selection Board was abstract, not precise and general.

THE DECISION

1 The alleged incompetence of the Vice-President to reply

1.1 The complainant alleged that the Vice-President of the Commission had no competence to reply to his complaint of 21 June 2000 lodged with the President of the Selection Board. The Commission observed that the complainant had sent a copy of his request of 21 June 2000 to the Selection Board to the President and the Vice-President of the Commission. The same day, the complainant also addressed a separate letter to the Vice-President. The latter replied on 13 July 2000 after having taken information from the responsible service. The Vice-President did not substitute himself to the Selection Board and cannot be reproached for not having competence for replying to the candidate.

1.2 The Ombudsman notes that on 21 June 2000 the complainant wrote two letters: one to the President of the Selection Board (with a copy to the Commission's Vice-President and President and also to Commissioner Diamantopoulou) and one to the Vice-President himself. In his letter to the President of the Selection Board, the complainant requested a re-examination of his marks obtained on the various tests. In his letter to the Vice-President, the complainant observed that if the principle of equality of treatment would have been respected, he would probably have figured on the reserve list. The complainant stated that he could trust the Vice-President that the principle of equality of treatment and the policy on integration of the handicapped would be respected and applied in this case.

1.3 Two replies were sent to the complainant: On 13 July 2000, the Vice-President replied to the complainant's letters of 21 July 2000 addressed to him. On 20 July 2000, the Commission's competition unit replied on behalf of the President of the Selection Board and maintained its decision. As regards the pre-selection tests and the written tests, the letter of 20 July referred to the reply given by the Vice-President.

1.4 The Ombudsman notes that the Vice-President of the Commission has duly replied to the letter addressed to him by the complainant. This was in line with principles of good administration which require that letters from citizens to Community institutions and bodies receive a reply within a reasonable deadline. On the other hand, by referring to the Vice-President's answer, the Selection Board merely confirmed that its judgement coincided with the latter's analysis of the question. There is no evidence that the Selection Board failed to exercise its own judgement on the complainant's appeal. No instance of maladministration was therefore found with regard to this aspect of the case.



2 The alleged direct and indirect discrimination

2.1 The complainant alleged that he was victim of direct and indirect discrimination by the Commission, because the measures taken by the Commission to let him participate in the competition were not adequate. In its opinion, the Commission described the special measures which it had taken to take into account the complainant's handicap. Considering these measures, the results obtained by the complainant and the answer given by the Vice-President, the Commission rejected the allegation of discrimination.

2.2 The Ombudsman notes that, according to the case-law of the Court of First Instance, it is the duty of the Selection Board to ensure strict observance of the principle of equal treatment - a fundamental principle of Community law - in the conduct of a competition (1) . In the Ombudsman's view, the Commission should therefore make reasonable adjustments to the conditions under which handicapped people take tests in recruitment competitions, so as to ensure that they are not treated less favourably than candidates who are not handicapped.

2.3 Having been informed of the complainant's handicap, and before deciding which measures had to be taken for the written tests, the Commission had a meeting and took advice from the representative of the NGO "European Forum of the Handicapped" which had been appointed by its Director. Further to this advice, the Commission gave 50 % supplementary time to the complainant next to the other measures taken. The other measures taken were: instructions and tests in Braille, a separate room, the personal assistance of a supervisor during the tests. For the oral tests, the complainant was received and accompanied to the examination room by the secretary of the competition.

2.4 The evidence available to the Ombudsman is that the Commission made reasonable adjustments to the conditions under which the complainant took the tests and thereby ensured that the complainant was not treated unfavourably as compared to candidates who were not handicapped. No instance of maladministration was therefore found with regard to this aspect of the case.

3 The alleged failure to state reasons

3.1 The complainant alleged that the Vice-President of the Commission and the Head of the recruitment unit failed to state reasons in their replies on the allegations developed by him in his complaints of 21 June 2000 and 12 October 2000. The Commission stated that the answer of the Vice-President of 13 July 2000 replied to all the arguments developed by the complainant on the question of the policy for the handicapped and the direct or indirect discrimination. The letter from the head of the recruitment unit of 31 October 2000 confirmed both the letter of the Vice-President of 13 July 2000 and the letter of the Selection Board of 20 July 2000.

3.2 The Ombudsman notes that, after having received the letters of 13 July and 20 July 2000, the complainant wrote again to the Commission requesting the reconsideration of his file and expressing dissatisfaction with the nature of the measures which had been taken. This time, for obvious reasons, the Commission's reply of 31 October 2000 merely referred to the Vice-President's letter of 13 July 2000 and the letter of the President of the Selection Board of 20 July 2000.



3.3 The Ombudsman has carefully examined the answers which were sent to the complainant. It appears that the Vice-President's reply of 13 July 2000 of more than 2 pages explained in detail to the complainant why the measures taken by the Selection Board were considered to be adequate to deal with the his handicap. The complainant was thus duly informed of the reasons why his request for reconsideration was rejected.

3.4 On basis of the above, the Ombudsman considers that the Commission has duly stated the reasons why the complainant's request for reconsideration was rejected. No instance of maladministration was therefore found with regard to this aspect of the case.

4 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 Commission will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) Case T-43/91, Hoyer v. Commission, [1994] ECR II-297, § 47.