

Decision of the European Ombudsman on complaint 31/2001/IP against the European Parliament

Decision

Case 31/2001/IP - Opened on 13/02/2001 - Decision on 05/09/2001

Strasbourg, 5 September 2001

Dear Mr X,

On 8 January 2001, you made a complaint to the European Ombudsman concerning your participation in open competition EUR/B/142/98, organised by the European Parliament.

On 13 February 2001, I forwarded the complaint to the President of the Parliament. The Parliament sent its opinion on 14 June 2001. I forwarded it to you with an invitation to make observations, which you sent on 25 July 2001.

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

THE COMPLAINT

The complainant took part in written tests in competition EUR/B/142/98 organised by the European Parliament. On 2 October 2000, X was informed that in test a) X failed to achieve the necessary mark to be admitted to the oral test. The complainant obtained 20,54 points whereas the minimum number of points requested was 24.

On 10 October 2000, the complainant wrote to the Parliament and asked to have access to all documents concerning the test he failed or, alternatively, to receive information on the criteria established by the Selection Board for the correction of the test. Moreover, the complainant asked the Selection Board to re-examine X's test with a view to possible readmission to the competition.

By letter of 20 December 2000, the Parliament sent its reply to the complainant, who considered it unsatisfactory. X therefore lodged a complaint with the Ombudsman, in which the following allegations were made:

- The Parliament should have granted the complainant access to X's marked examination papers concerning test a)



- The Parliament stressed that for technical reasons, it had to neutralise some questions. However, the institution failed to provide information on the reasons for and the modalities of this action.

The complainant claimed the reimbursement from the Parliament to cover the cost of the participation to the open competition.

THE INQUIRY

The Parliament's opinion

In its opinion, the Parliament made the following points:

Concerning the complainant's request to have a copy of his marked examination papers, the Parliament pointed out that it is setting up new rules in order to allow candidates, under certain conditions, to have a copy of them. These new rules are applied for competitions published from 1 January 2001.

They are therefore not applicable in the complainant's case, since the competition in which the complainant had participated was published in 1998. However, the Parliament forwarded to X a copy of the exam papers concerning test a). The test in question being a multiple choice test, there was no marked paper, but only an optical reader form filled by the complainant which is read by an optical reader programmed with the correct answers.

Concerning the assessment of test a) and the mark obtained by the complainant in this test, the Parliament explained why it was possible to achieve such a result. The Selection Board has in fact decided to neutralise two questions since it appeared that the proposed replies resulted in ambiguity in certain languages. The splitting up of the 40 points foreseen for this test has therefore been made among the remaining questions. By doing so, the Selection Board could assure equal treatment for all candidates.

Afterwards, the Parliament raised the point concerning the Selection Board's decision to annul test b) of this competition and to attribute the maximum score to all candidates. Candidates have been informed by letter of the decision to annul test b), following an opinion of the Legal Service of the European Parliament. The decision was taken because the time given to candidates to deal with test b) was not the same in all different places where the examination was carried out, in breach of the principle of equality. This solution was the only one that guaranteed the respect of the number of tests foreseen in the notice of competition.

The Parliament pointed out that since test a) was carried out without irregularities, an annulment of this test or of the whole competition, as supposed by the complainant, would be not justified.

The Parliament further commented on the complainant's claim for compensation for the expenses of his participation to the tests. According to the complainant, the place chosen for the tests was not easily accessible and since the tests started in the very early morning, candidates



have been obliged spend a night on the spot.

The choice of the place to carry out the tests of an open competition is made with the aim to reduce both the displacements of candidates from their place of residence and the amount of the Parliament's reimbursement for travelling expenses. Full information concerning conditions of reimbursement for travelling expensed were described in the letter sent to the complainant inviting to the written tests. The complainant was therefore aware of them and no compensation should be claimed. As regards the starting time of the tests, the Parliament pointed out that when it was decided, the Selection Board had to considered that the tests would be carry out in twelve European cities simultaneously.

The complainant's observations

On 25 July 2001, the complainant sent observations on the Parliament's opinion.

The complainant expressed dissatisfaction for the Parliament approach and argued that by forwarding only a copy of the test without any information concerning the mark obtained in each question should be considered as a further refusal by the Parliament of the original request.

The complainant argued that by decision to neutralise two questions, the Selection Board disadvantaged those candidates which have spent time in dealing with them and which have provided a correct answer.

Furthermore, the complainant underlined that the information given by the Parliament concerning the place where the tests have been carried out were incorrect. The place where the complainant was invited to make the test was not the city of Bologna, as indicated by the institution, but a small village in the outskirts of the town and very difficulty accessible by public transport.

THE DECISION

1 Access to the complainant's marked examination papers

1.1 The complainant, who participated in open competition EUR/B/142/98, was excluded by the selection procedure because failed one of the written tests. X therefore asked to the Parliament to have access to X's marked examination papers of the test failed, but the institution refused on the basis of the confidentiality of the work of the Selection Board. In the complaint to the Ombudsman, the complainant claimed that the Parliament should have granted access to the marked examination papers.

1.2 In its opinion, the institution stressed that it is setting up new rules in order to allow candidates, under certain conditions, to have a copy of their own marked examination papers. These new rules are applied only for competitions published from 1 January 2001.

The new rules are therefore not applicable in the complainant's case, since the competition to which the complainant had participated was published in 1998. However, the Parliament forwarded to the complainant a copy of the exam papers concerning test a). The test in question being a multiple choice test, there is no marked paper, but only an optical reader form filled by



the complainant which is read by an optical reader programmed with the correct answers.

1.3 The complainant expressed dissatisfaction for the Parliament approach and argued that by forwarding only a copy of the test without any information concerning the mark obtained in each question, this should be considered as a further refusal by the Parliament to the original request.

1.4 Access to their own marked examination papers on request of candidates who have participated in a competition has been the subject of several inquiries carried out by the Ombudsman during the last few years. In July 2000, as result of four inquiries opened on this matter against the Parliament, the Ombudsman made a draft recommendation to the institution. The Ombudsman stated that the refusal to allow candidates to have access to their own marked examination papers constituted an instance of maladministration. In its detailed opinion the Parliament explained that the institution accepted the principle to allow candidates to have a copy of their own marked examination test, in conformity with the respect of the obligation of confidentiality consistently established by case law of Communities Courts.

However, due to the arrangements necessary to put into practice the new policy would enter into force for competitions published from 1 January 2001.

1.5 Furthermore, the Ombudsman notes that, as established by Community case-law, in assessing the results of tests, Selection Boards enjoy a discretion, which can only be reviewed to ascertain whether its exercise has been vitiated by a manifest error or by a misuse of powers, or whether the Selection Board has manifestly exceeded the limits of its discretion (1) . Moreover, communication to the candidates of the mark obtained in the various tests which reflect the assessment made of them by the Selection Board, constitutes an adequate statement of the reasons on which the decision is based (2) . In view of the information in his possession, the Ombudsman considers that there are no evidences which might question the judgement made by the Selection Board or that the Selection Board did not act within the limits of its legal authority.

1.6 On the basis of the above, there appears to have been no maladministration as regards this aspect of the case.

2 The decision to annul two questions from a preselection test

2.1 The complainant pointed out that, according to the Parliament, for technical reasons it had to neutralise some questions. However, the institution failed to provide information on the reasons for and the modalities of this action.

2.2 The Parliament explained that the Selection Board decided to eliminate two questions in test a) since it appeared that the concerned replies resulted in ambiguity in certain languages. The splitting up of the 40 points foreseen for this test has therefore been made among the remaining questions, resulting in a decimal mark. By doing so, the Selection Board could assure equal treatment for all candidates.

2.3 Principles of good administration require that candidates at an open competition should not



be asked questions that are ambiguous. The institutions should therefore carefully check that the questions which are going to be put to candidates are free from ambiguity. In this case, the Selection Board has discovered after the test was carried out that the replies proposed for two questions were not clear in all language. The Selection Board therefore decided to neutralise the two concerned questions as an appropriate step to ensure that the result of the test would not be affected by these questions.

2.4 The complainant observed that by decision to neutralise two questions, the Selection Board disadvantaged those candidates which have spent time in dealing with them and which have provided a correct answer.

2.5 The Ombudsman considers that where the institution proceeds to eliminate a question which has proved to be ambiguous, the principle of equal treatment requires that this is done with effect for all candidates. It is true that the elimination of such a question affects those candidates who have spent some of their time trying to answer these questions. However, it has to be noted that neutralisation of two questions by the Selection Board was due to the impossibility to give a correct reply in certain languages.

The Ombudsman considers that the approach adopted by the institution in the present case appears to have been reasonable and that the Parliament gave reasons of its action.

2.5 On the basis of the above, there appears to have been no maladministration from the Parliament in this aspect of the case.

3. The claim for compensation

3.1 The complainant pointed out that the place chosen for the tests was not easily accessible and that the tests started in the very early morning, obliging people to spend a night on the spot. The complainant claimed reimbursement from the Parliament to cover the cost of the participation to the open competition.

3.2 In its opinion the Parliament pointed out that the choice of the place to carry out the tests of an open competition is made with the aim to reduce both the displacements of candidates from their place of residence and the amount of the Parliament's reimbursement for travelling expenses. Full information concerning conditions of reimbursement for travelling expenses were described in the letter sent to the complainant inviting to the written tests. The complainant was therefore aware of them and no compensation should be claimed.

3.3 The complainant pointed out that the information given by the Parliament on this point to the Ombudsman were incorrect. The place where the complainant was invited to make the test was not the city of Bologna, as indicated by the institution, but a small village in the outskirts of the town and practically inaccessible by public transport.

3.4 The Ombudsman notes that candidates were given information about the place and the conditions of reimbursement for travelling expenses in the letter of invitation. The decision to take part to the test is to consider as an acceptance of all the rules governing the competition, including those on reimbursement for travelling expenses.



3.5 On the basis of the above, there appears to have been no maladministration from the Parliament in this aspect of the case.

4. Conclusion

On the basis of the 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) See, case T-46/93, *Fotini Michäel-Chiou v. Commission* [1994] ECR I-A-0297; par. 48; case 40/86, *Georges Kolivas v. Commission* [1987] ECR 2643; par. 11.

(2) See, case C-254/95 P *European Parliament v A. Innamorati* [1995] ECR I-2707; case T - 157/96, *Affatato v. European Commission* [1997] ECR - I - Á - 41; II - 97.