



Decision of the European Ombudsman on complaint 68/2001/ME against the European Monitoring Centre on Racism and Xenophobia

Decision

Case 68/2001/ME - Opened on 25/01/2001 - Decision on 30/11/2001

Strasbourg, 30 November 2001

Dear Mr D.,

On 13 January 2001, you made a complaint to the European Ombudsman concerning your unsuccessful job-application to the European Monitoring Centre on Racism and Xenophobia.

On 25 January 2001, I forwarded the complaint to the Chairman of the Centre's Management Board. The Centre sent its opinion on 16 March 2001 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

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

THE COMPLAINT

The complainant lodged a complaint with the Ombudsman in January 2001. Her complaint concerned the European Monitoring Centre on Racism and Xenophobia. On 27 October 1998, the complainant wrote to the Centre to apply for a job. She was informed by the Centre that it would soon initiate a recruitment procedure of which the complainant would be informed. On 17 December 1998, the Centre informed the complainant that its recruitment procedure had started and sent her the notice of competition. The purpose of the recruitment procedure was to create a reserve list for the recruitment of temporary staff in different categories. On 22 January 1999, the complainant applied to take part in the selection for the post of administrator (A8/6) in Unit 3, Information and Communication.

By letter of 6 April 1999, the Centre informed the complainant that her application had been unsuccessful. No further reasons for her exclusion were provided. On 16 September 2000, the complainant wrote to the Centre to ask why she had not been selected and which the criteria for the selection were. She never received a reply to her letter and then chose to lodge a complaint with the Ombudsman.

In her complaint to the Ombudsman, the complainant made the following claims:

- (i) The complainant requested that her application be re-examined.



(i) The complainant requested to find out the reasons for the rejection of her application. **THE INQUIRY The European Monitoring Centre on Racism and Xenophobia's opinion** In its opinion, the European Monitoring Centre on Racism and Xenophobia initially apologised for not having replied to the complainant's letter of 16 September 2000 and stated that for unknown reasons it was not to be found in its files.

The Centre confirmed that the complainant had applied for the post of administrator (A8/6) in Unit 3, Information and Communication and stated that her application had been registered as No 1. By letter of 6 April 1999, the Centre informed the complainant that her application had not been successful. No further explanation or justification was provided. The Centre moreover referred to the case law of the Court of Justice in the Innamorati case. In the Innamorati case, the court stated that the obligation to state reasons must be reconciled with the observance of the secrecy surrounding the selection boards and further that the communication to the candidates of the marks obtained in the various tests constitute an adequate statement of reasons.

In relation to the complainant's application, the Centre provided the following reasons why the complainant's application was unsuccessful. In total, 347 applications had been received for the post the complainant applied for. Each candidate was given a maximum of 10 points (5 points maximum for years of experience and 5 points maximum for professional experience in the areas of racism and xenophobia). Out of the 10 points, the complainant had been granted 4 points. Only candidates who received 6 points were invited for interviews. 2 candidates had been chosen for the reserve list. As regards the re-examination of the complainant's application, the Centre stated that there was no reasons to re-examine the application since there were no reasons to believe that the decision would be different if the selection were to be repeated.

The complainant's observations

The Centre's opinion was forwarded to the complainant who was invited to provide comments. No comments appear to have been received by the complainant.

THE DECISION 1 The re-examination of the complainant's application

1.1 The complainant requested that her application be re-examined.

1.2 The Centre stated that there was no reason to re-examine the application since there were no reasons to believe that the decision would be different if the selection were to be repeated.

1.3 The Ombudsman notes that the Centre did not comply with the request to re-examine the complainant's application. The Centre provided the reason that "there were no reasons to believe that the decision would be different if the selection were to be repeated".

1.4 It is good administration to reply to letters and requests. It is normal practice among the European institutions and bodies to comply with requests for re-examinations following open competitions. It is also common that notices of competitions contain information on requests for clarification and how to appeal. In order to respect principles of good administration, the Centre should have complied with the complainant's request to re-examine her application. A failure to do so constitutes an instance of maladministration.



The Ombudsman will therefore address a critical remark to the Centre.

2 The reasons for the rejection of the application

2.1 The complainant requested to find out the reasons for the rejection of her application.

2.2 The Centre provided the following reasons: Each candidate was given a maximum of 10 points (5 points maximum for years of experience and 5 points maximum for professional experience). Out of the 10 points, the complainant had been granted 4 points. Only candidates who received 6 points were invited for interviews. 2 candidates had been chosen for the reserve list.

2.3 The Ombudsman notes that following the Ombudsman's inquiry, the Centre provided the reasons for the rejection of the complainant's application.

2.4 It appears from the Centre's comments that the Centre has taken steps to settle the matter and has thereby satisfied the complainant.

3 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark:

It is good administration to reply to letters and requests. It is normal practice among the European institutions and bodies to comply with requests for re-examinations following open competitions. It is also common that notices of competitions contain information on requests for clarification and how to appeal. In order to respect principles of good administration, the Centre should have complied with the complainant's request to re-examine her application. A failure to do so constitutes an instance of maladministration.

Given that this aspect of the case concerns procedures relating to specific events in the past, and considering that the complainant did not put forward further objections in any observations, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The Chairman of the Centre will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN