

Decision of the European Ombudsman on complaint 1768/2001/IP against the European Parliament

Decision

Case 1768/2001/IP - Opened on 11/01/2002 - Decision on 24/07/2002

Strasbourg, 24 July 2002

Dear Mr G.,

On 26 November 2001, you made a complaint to the European Ombudsman concerning the handling of your application to open competition EUR/A/158/2000 by the European Parliament. On 29 December, you sent a further letter to supplement your complaint.

On 11 January 2002, I forwarded the complaint to the President of the European Parliament. The Parliament sent its opinion on 12 April 2002. I forwarded it to you with an invitation to make observations, which I received on 23 May 2002.

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

THE COMPLAINT

On 28 June 2000, the complainant applied to participate in open competition EUR/A/158/2000 organised by the European Parliament and published in Official Journal C 147 A7 01 of 26 May 2000.

By letter of 17 October 2001, the competition services of the Parliament informed the complainant that he was not admitted to the competition because of lack of professional experience. A reason was given with a reference to point III.B.2.b) and c) of the competition notice. It requests that candidates must have obtained a university degree and have successively completed at least two years' professional experience of a level equivalent to one corresponding to the nature of duties foreseen in title II of the competition notice.

On 2 November 2001, the complainant, who considered that his candidature was not properly assessed, asked the Selection Board to re-examine it. In its reply of 14 December 2001, the Selection Board stated that a re-examination of the complainant's candidature was carried out and reaffirmed the decision not to admit the complainant to the open competition.



In his complaint to the Ombudsman, the complainant alleged that (i) the Parliament failed to reply to a fax he sent on 18 January 2001; (ii) by replying in French to his further faxes of 25 April and 6 September 2001, although they were addressed in Italian, the Parliament's services breached the principle of good administration that every person may write to the institution of the Union in one of the languages of the Treaties and must have an answer in the same language; (iii) the Selection Board's statement that he did not justify the 2 years professional experience was not founded, since he provided a copy of his letter of engagement with the "Banca popolare di Bergamo", as well as a copy of his first and last salary slip, as foreseen in the competition notice.

THE INQUIRY

The Parliament's opinion

The complaint was forwarded to the European Parliament for an opinion.

As regards the alleged lack of reply to the complainant's fax of 18 January 2001, the Parliament stated that on 17 January 2001, its services sent an acknowledge of receipt of the complainant's application of 28 June 2000. In the Parliament's opinion, this letter should therefore be considered as a reply to the fax of 18 January 2001.

As regards the use of the French language in the reply to the complainant's faxes of 25 April and 6 September 2001, the Parliament put forward that there was only one Italian speaking official in the competition services. Some replies to phone calls or faxes written in Italian were therefore given in another language among those known by candidates, according to the information given in their application form. The complainant indicated that he had a good knowledge of French. The competition services therefore replied to his faxes in French. The Parliament underlined that these replies were not official letters, but only short notes by which the competition services informed the complainant that no information was available concerning the examination of the applications and concerning the calendar of the competition. The Selection Board started its works on 7 June 2001 and concluded the examination of the application in October 2001. In view of the large number of applications received, it was decided not to send any formal letter to all candidates until the Selection Board would examine all the applications. On 17 October 2001, the Selection Board sent the official letter to the complainant about the decision not to admit him to the competition. This letter was written into Italian.

As regards the rejection of the complainant's candidature to the open competition, the Parliament firstly pointed out that the documents concerning his professional experience which the complainant enclosed to his complaint to the Ombudsman had not been sent to the Parliament. Secondly, it stated that following the complainant's request by letter of 2 November 2001, the Selection Board reviewed his file. It appeared that the complainant had provided only the engagement letter by the Banca Popolare di Bergamo, dated 8 January 1998, which concerned a temporary contract for a replacement. No further evidences about the length of his contract or salary slip had been provided. The Selection Board had therefore had to exclude the complainant from the competition, in conformity with the provisions of the competition notice.

The complainant's observations



In his observations, the complainant stated that he sent a large number of documents to support his candidature. Because of the size of the dossier, he sent it partially by registered mail and partially by normal letter. This was possible according to Title X.2 of the notice of competition which foresees that the application form, the optical reader and a copy of all supporting documents must be sent, preferably by registered mail, no later than 7 July 2000. The complainant pointed out that it could happen that normal letters do not reach the addressee. In case of incomplete files, all candidates concerned should be informed thereof and given the possibility to send the missing documents again.

The complainant made no observations concerning the other points of his complaint.

THE DECISION

1 The alleged lack of reply

1.1 The complainant alleged that the Parliament failed to reply to a fax he sent on 18 January 2001.

1.2 In its opinion, the Parliament stated that on 17 January 2001, its services sent an acknowledgement of receipt of the complainant's application of 28 June 2000. In the Parliament's opinion, this letter should therefore be considered as a reply to the fax of 18 January 2001.

1.3 In his fax of 17 January 2001, the complainant asked to be informed about the situation of his candidature. This information seems to have been the content of the acknowledgement of receipt.

1.4 In these circumstances, there appears to be no maladministration on the part of the Parliament as regards this aspect of the case.

2 The alleged language discrimination

2.1 The complainant pointed out that by replying in French to his faxes of 25 April and 6 September 2001, although they were addressed in Italian, the Parliament's services breached the principle of good administration that every person may write to the institution of the Union in one of the languages of the Treaties and must have an answer in the same language.

2.2 In this regards, the Parliament put forward that there was only one Italian speaking official in the competition services. Some replies to phone calls or faxes written into Italian were therefore given in another language among those known by candidates, according to the information given in their application form. The complainant indicated that he had a good knowledge of French. The competition services therefore replied to his faxes in French. The Parliament underlined that these replies were not official letters, but only short notes by which the competition services informed the complainant that no information was available concerning the examination of the applications and concerning the calendar of the competition.

2.3 According to the content of Article 21 of the Treaty establishing the European Community and Article 41 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice



in December 2000, every person may write to the institutions of the Union in one of the languages of the Treaties and must receive an answer in the same language.

2.4 The Ombudsman notes that in this case, the use of a different language by the competition services from that chosen by the complainant for his correspondence, was made with the aim of providing the complainant with a prompt reply and only for short explanatory notes. All the official correspondence with the complainant was maintained in Italian.

2.5 In these circumstances, there appears to be no maladministration on the part of the Parliament as regards this aspect of the case.

3 The assessment of the complainant's candidature

3.1 The complainant alleged that the Selection Board's statement that he did not justify the 2 years professional experience was not founded, since he provided a copy of his letter of engagement with the "Banca popolare di Bergamo", as well as a copy of his first and last salary slip, as foreseen in the competition notice.

3.2 The Parliament pointed out that the documents concerning his professional experience which the complainant enclosed to his complaint to the Ombudsman had not been sent to the Parliament. The Selection Board had therefore had to exclude the complainant from the competition, in conformity with the requirement of the competition notice.

3.3 The complainant stated that, because of the size of the dossier, he sent it partially by registered mail and partially by normal letter. Furthermore, he pointed out that it could happen that normal letters do not reach the addressee. In case of incomplete files, all candidates concerned should be informed thereof and given the possibility to send the missing documents again.

3.4 As the Court of Justice has consistently held, although the Selection Board for a competition based on qualifications and tests has a discretion in evaluating the qualifications and practical experience of the candidates, it is nevertheless bound by the wording of the competition notice. According to the Staff Regulations, the basic function of a competition notice is to give to those interested the most accurate information possible about the conditions of eligibility for the post, in order to enable them to judge whether they should apply for it and what supporting documents are important for the proceedings of the Selection Board and must therefore be enclosed with the application (1) .

3.5 The notice of competition EUR/A/158/2000 indicated all the necessary conditions to be met by the applicants and concerning how to present the applications.

From the information available to the Ombudsman, it appears that there is no evidence that the Selection Board exceeded his powers when assessing the complainant's candidature or that it has not acted in accordance with the notice of competition when deciding that the complainant's application could not be accepted on the ground that he did not fulfil the requisites.

3.6 The Ombudsman considers that the explanations provided by the European Parliament are



reasonable and that the complainant has not provided sufficient evidence to establish his allegation.

In these circumstances, there appears to be no maladministration on the part of the Parliament as regards this aspect of the case.

2 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) Case T - 158/89 Van Hecken v. Economic and Social Committee [1991] ECR II-1341