

## **Decision of the European Ombudsman on complaint 1537/2002/(PB)JMA against the European Commission**

Decision

**Case 1537/2002/JMA - Opened on 18/09/2002 - Decision on 22/07/2003**

Strasbourg, 22 July 2003

Dear Mrs M.,

On 29 August 2002, you lodged a complaint with the European Ombudsman, concerning the participation of spouses of Commission officials serving in delegations in the institution's recruitment competitions. You sent additional information on 11 September and 8 October 2002.

On 18 September 2002, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 9 December 2002. I forwarded it to you with an invitation to make observations, which you sent on 18 February 2003.

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

### **THE COMPLAINT**

According to the complainant, the facts of the case are, in summary, as follows:

The complainant took part in open competition COM/C/1/01 organized by the Commission for the recruitment of C grade officials. Having successfully passed the first stage of the competition, and being one of the best 250 candidates, she was invited to participate in the written tests which were to be held in Brussels, Belgium. The complainant's husband is an EU official working for the Commission. Since January 2002, he has been posted in the Commission's Delegation in Pretoria. The complainant, thus, was living in South Africa at the time.

In the complainant's view, she was not being treated in the same manner as EU officials as regards the reimbursement of travel cost derived from the participation in an open competition. Whilst EU officials taking part in open competitions have the right to have their travel expenses fully reimbursed, their spouses only receive a partial contribution. She noted that, in spite of the fact that her move to South Africa had been due to the need to join her husband who was



working with the Commission's delegation, the institution refused to fully pay her travel costs. The complainant considered this discriminatory. The complainant requested to be treated as Commission officials serving abroad when it comes to travel expenses pertaining to the participation in open competitions. The complainant therefore claimed full reimbursement of the travel costs that she incurred for the participation in open competition COM/C/1/01.

The complainant was expecting a child at that time. Because of the advanced stage of her pregnancy, she could not travel to Brussels where the competition's written tests were to be held. She requested to be allowed to take the tests at the Commission's Delegation in South Africa under the supervision of the Head of Delegation. The Commission services did not grant her request on grounds of budgetary constraints and organizational reasons. The complainant considered the unwillingness of the administration to accommodate her an abuse of equal opportunities for women. She claimed financial compensation in the event that the Commission would not change its position.

On 8 October 2002, the complainant wrote to the Ombudsman. She explained that the Commission had decided on 18 September 2002 to allow her to take the competition's written tests at its delegation in Pretoria. She therefore expressed her wish to drop the second claim of her complaint.

In her complaint to the Ombudsman, the complainant alleges, in summary, that she should be treated in the same way as Commission officials as regards reimbursement of travel expenses incurred for participation in competitions organized by the Commission. She claims this principle should be applied to the travel costs she incurred when participating in the first stage of competition COM/C/1/01.

## **THE INQUIRY**

### **The European Commission's opinion**

In its opinion, the Commission made, in summary, the following comments:

The Commission explained that open competition COM/C/1/01 was organized to constitute a reserve of clerical assistants in the field of financial management and accounting. The complainant applied for this competition and was invited to sit the pre-selection tests which took place in Brussels on 12 April 2002. As one of the top 250 candidates in the pre-selection tests, she was asked to complete the application form, in accordance with point 1.5 of the notice of competition. Her application was examined and she was admitted to the written tests on 20 September 2002. In view of the exceptional circumstances in connection with her pregnancy, the complainant was permitted to sit the written test at the Pretoria delegation under the personal authority and responsibility of the delegation head.

As regards travel and subsistence expenses, the Commission pointed out that the applicable conditions were explained to all potential applicants in the "Guide for Applicants" published with the Notice of the competition. This guide stated that no contribution should be provided towards any travelling and subsistence expenses associated with the pre-selection tests. The



Commission noted that, in the absence of any specific rules, each institution is at liberty to define its own basis for the reimbursement of travel expenses. All EU institutions agreed, however, to follow common principles which were defined by the Heads of Administration in their Conclusion 211/95 of 28 March 1996. In addition, the Commission has an internal directive giving effect to this agreed approach (Internal Commission Directive of 15 April 1996 - Administrative Notices of 22 April 1996).

On the basis of these rules, the Commission's policy has been not to make any financial contribution to the travel and subsistence expenses of candidates sitting the pre-selection tests of open competitions where these tests are held separately from the actual written tests. In the Commission's view, the request for the rules to be changed by a candidate who had been informed of those rules in the letter of invitation, could not possibly be accepted.

With regard to the rules governing the reimbursement of mission expenses for officials, the Commission pointed out that in accordance with the Heads of Administration's Conclusion 215/97 and, as set out in its Internal Commission Directive No 1006 of 25 September 1997, officials whose place of employment is outside the Community receive, for the purposes of participation in the tests of open competitions, the same treatment as officials on mission, to the exclusion of any other reimbursement.

The Commission considered that the complainant did not have the status of an official, and therefore the rules governing the reimbursement of travel and subsistence expenses for external candidates had to be applied in her case. Her request for preferential treatment over all the other external candidates for an open competition had no statutory basis. The Commission noted that the entitlements derived from family links with an official are clearly established and are relevant when determining the actual official's family situation in matters such as household allowances or annual travel expenses.

#### **The complainant's observations**

In her observations, the complainant repeated the allegations made in her original complaint.

## **THE DECISION**

### **1 Discrimination in the reimbursement of expenses related to the pre-selection tests in open competitions**

1.1 The complainant alleges that she should be treated in the same way as Commission officials as regards reimbursement of travel expenses incurred for participation in competitions organized by the Commission. She claims this principle should be applied to the travel costs she incurred when participating in the first stage of competition COM/C/1/01.

1.2 The Commission argues that the conditions applicable to its open competitions were explained to all potential applicants in the "Guide for Applicants". On the basis of existing rules, the Commission's policy has been not to make any financial contribution to the travel and subsistence expenses of candidates sitting the pre-selection tests of open competitions.

With regard to the rules governing the reimbursement of mission expenses for officials, the



Commission notes that in accordance with the Heads of Administration's Conclusion 215/97 and, as set out in its Internal Commission Directive No 1006 of 25 September 1997, officials whose place of employment is outside the Community receive, for the purposes of participation in the tests of open competitions, the same treatment as officials on mission, to the exclusion of any other reimbursement.

The institution points out that the complainant did not have the status of an EU official, and therefore that her request for preferential treatment over all the other external candidates had no statutory basis.

1.3 The Ombudsman notes that the Guide for applicants published with the Notice of open competition COM/C/1/01 (1) , refers to the conditions for the reimbursement of travel and subsistence expenses applicable to all candidates to the competition. Point III.3 establishes that:

*"[Candidates] will be entitled to a flat-rate contribution towards travelling and subsistence expenses, and [...] will be notified of the applicable rates and the procedure to follow [...]. However, no contribution will be provided towards any travelling and subsistence expenses associated with the pre-selection tests."*

1.4 The complainant alleges that this system unfairly discriminates against spouses of Commission officials who, unlike officials themselves, are not entitled to the full reimbursement of the travelling and subsistence expenses derived from their participation in open competitions.

The principle of non discrimination and of equal treatment is one of the fundamental principles of Community law. As consistently held by the Community Courts, it requires that comparable situations should not be treated in a different manner and different situations should not be treated alike unless such treatment is objectively justified (2) . In order to ascertain whether there has been discrimination, the treatment of two categories of persons whose factual and legal circumstances disclose no essential difference must be compared (3) .

1.5 The Ombudsman notes that officials and their spouses are two categories of persons whose factual and legal circumstances are not identical for all purposes. The principle of equal treatment does not therefore preclude differences in their treatment. Officials, for instance, are paid a salary, whereas their spouses are not.

The Ombudsman is not aware of any legal basis for the Commission to pay the travelling expenses of spouses of officials who take part in open competitions. The Ombudsman therefore finds no maladministration in the Commission's refusal to pay the relevant travel expenses of the complainant.

In reaching that conclusion, the Ombudsman does not need to consider whether the Commission's arguments to justify the reimbursement of travelling expenses to officials who take part in open competitions have a proper legal basis.

## **2 Conclusion**



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

The President of the Commission will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ C 251A of 11.9.2001, p. 1.

(2) Case 203/86 *Spain v Council* [1988] ECR 4563, paragraph 25, and Case C-15/95 *EARL de Kerlast* [1997] ECR I-1961, paragraph 35- Case C-150/94 *United Kingdom v Council* [1998] ECR I-7235, paragraph 97.

(3) Case T-225/95 *Fotini Chiou v Commission* [1997] ECR SC IA- 00423; II-01135 , p. 48; joined cases T-18/89 and T-24/89 *Harissios Tagaras v Court of Justice* [1991] ECR II-00053, p. 68.