

Decision of the European Ombudsman on complaint 324/2003/MF against the European Commission

Decision

Case 324/2003/MF - Opened on 10/03/2003 - Decision on 30/09/2003

Strasbourg, 30 September 2003

Dear Sir,

I would first like to inform you that Mr Jacob Söderman, with whom you have previously corresponded concerning your complaint, has retired and that, from 1 April 2003, I am his successor as European Ombudsman.

On 7 February 2003, you made a complaint to the European Ombudsman concerning access to your marked examination paper in competition COM/C/1/01.

On 10 March 2003, I forwarded the complaint to the President of the European Commission. The European Commission sent its opinion on 9 April 2003 and I forwarded it to you with an invitation to make observations, if you so wished, by 31 May 2003. 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

According to the complainant, the relevant facts are as follows:

The complainant is an official of the European Commission working in Directorate General Enterprise. The complainant took part in competition COM/C/1/01 published in the Official Journal No C 251A of 11 September 2001 and organised by the European Commission in order to constitute a reserve list of clerical assistants in the field of financial management and accounting. He passed the pre-selection tests and participated in the written tests. In a letter dated 13 December 2002, the Commission informed the complainant that he was not admitted to the oral examination because he had obtained only 17 out of 40 points in test d) when the minimum required was 20 points.

By e-mail dated 18 December 2002, the complainant requested from the Commission the copy



of his marked examination paper and the corrected version of the written examination in order to know the errors he had made. On 10 January 2003, the Commission sent to the complainant the copy of his written paper without any corrections together with the evaluation sheet.

By e-mail dated 16 January 2003, the complainant informed the Commission that he had requested the copy of his marked exam paper and that he only received the copy of his written tests without any corrections. By letter of 29 January 2003, the Commission replied that it had disclosed all the information relating to the written tests that was accessible to the candidates.

On 7 February 2003, the complainant lodged a complaint with the European Ombudsman. He alleged that the European Commission had failed to disclose his own marked examination paper concerning competition COM/C/1/01. He further alleged that the documents sent by the European Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable him to know the errors he had made.

THE INQUIRY

The European Commission's opinion

The opinion of the European Commission on the complaint was in summary as follows:

The Commission admitted that, in a letter from President Prodi dated 7 December 1999 sent to the European Ombudsman, it had committed itself to give candidates access to their own marked examination scripts on request, in competitions published after 1 July 2000 (1). The Commission argued that the access to the marked examination scripts had been made possible only after the adoption of legal and administrative arrangements.

The procedure adopted consisted in the drafting of a provisional evaluation sheet containing the remarks and the proposed marking of each examiner for each part of the tests. The Selection Board then set the final mark, added its own assessment on the evaluation sheet and signed it. Such an evaluation sheet could be disclosed to candidates on request.

Test d) of competition COM/C/1/01 consisted of a case study to assess the specialised knowledge and organisational and administrative skills of the candidates in the field of financial management and accounting. Following the written tests, all the examinations scripts were corrected anonymously by two examiners at least, in accordance with criteria established beforehand by the Selection Board. The latter then checked the correct application of these criteria and reviewed the remarks and assessments made by the examiners. The Selection Board finally set the final marks which were communicated to the candidates.

Concerning the allegation of the complainant that the documents sent by the Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable him to know the errors he had made, it must be stated that the examination scripts of the candidates who had sat the written tests did not contain any annotations. Such annotations made by the examiners were written down in the provisional evaluation sheet in accordance with the procedure described above. The Selection Board could consult this provisional



evaluation sheet when preparing the assessment of the candidates. Given that this provisional evaluation sheet did not contain the assessment of the Selection Board but only formed part of its deliberation, it was not communicated to the candidates.

The assessment of the Selection Board only appeared on the evaluation sheet which was communicated to the complainant. In addition to the indication of the mark given to the complainant, the Selection Board also wrote its comments on this evaluation sheet. The aim of such comments was to inform the complainant of the reasons why the Selection Board decided to give him a mark lower than the pass mark so as to help the complainant, should he decide to participate in another competition in the future.

The complainant's observations

The European Ombudsman forwarded the Commission's opinion to the complainant with an invitation to make observations. No observations were received from the complainant.

THE DECISION

1 The Commission's alleged failure to disclose to the complainant his marked examination paper

1.1 The complainant alleged that the European Commission had failed to disclose his own marked examination paper in competition COM/C/1/01.

1.2 The European Commission argued that it had disclosed all the information relating to the written tests that was accessible to the candidates. It also pointed out that the examination scripts of the candidates who had sat the written tests did not contain any annotations. Such annotations made by the examiners were written down in the provisional evaluation sheet in accordance with the current procedure. The Selection Board could consult this provisional evaluation sheet when preparing the assessment of the candidates. Given that the provisional evaluation sheet did not contain the assessment of the Selection Board but only formed part of its deliberation, it was not communicated to the candidates.

1.3 On 18 October 1999, the European Ombudsman sent a special report to the European Parliament following the own-initiative inquiry into the secrecy which formed part of the Commission's recruitment procedure (2). The special report included a formal recommendation that in future recruitment competitions, the Commission should give candidates access to their own marked examination scripts on request. On 7 December 1999, the President of the European Commission wrote to the European Ombudsman to inform him that:

"The Commission welcomes the recommendations you made in this report and will propose the necessary legal and organisational arrangements to give candidates access to their own marked examination papers, upon request, from 1 July 2000 onwards." (3)

1.4 The European Ombudsman notes that the complainant asked the Commission to disclose his own marked examination paper. On 10 January 2003, the Commission sent to the complainant copies of his written paper and of the evaluation sheet. The Selection Board wrote its comments relating to its assessment of the examination paper of the complainant on this



evaluation sheet. The European Ombudsman is not aware of any rule that would oblige the Selection Board to write its comments relating to the assessment of a candidate on the examination paper. The European Ombudsman therefore considers that the position adopted by the Commission appears to be reasonable.

1.5 In these circumstances, the European Ombudsman considers that there appears to have been no maladministration on the part of the Commission.

2 The allegation that the documents sent by the Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable the complainant to know the errors he had made.

2.1 The complainant alleged that the documents sent by the European Commission, namely the evaluation sheet and the examination paper without any corrections, did not enable him to know the errors he had made.

2.2 The European Commission stated that the assessment of the Selection Board appeared on the evaluation sheet which was communicated to the complainant. In addition to the indication of the mark given to the complainant, the Selection Board also wrote its comments on this evaluation sheet.

2.3 The European Ombudsman notes that, from the copy of the evaluation sheet which has been submitted to him by the Commission, the evaluation sheet appears to contain specific remarks concerning the assessment by the Selection Board of the examination paper of the complainant relating to test d) of the competition. In this evaluation sheet, the Selection Board also highlighted what it seems to have considered to be mistakes or weaknesses in the examination paper. The European Ombudsman therefore considers that the information provided to the complainant appears to be detailed enough to enable him to understand the errors he had made.

2.4 From the above, the European Ombudsman concludes that there appears to have been no maladministration by the Commission in this aspect of the case.

3 Conclusion

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Press release no. 16/99 of the European Ombudsman of 15 December 1999.

(2) *Special Report of the European Ombudsman to the European Parliament following the*



own-initiative inquiry into the secrecy which forms part of the Commission's recruitment procedure: <http://www.ombudsman.europa.eu/special/en/default.htm> [Link].

(3) See press release no. 16/99 of the European Ombudsman of 15 December 1999.