

Decision of the European Ombudsman on complaint 340/2003/MF against the European Court of Auditors

Decision

Case 340/2003/MF - Opened on 17/03/2003 - Decision on 09/06/2004

Strasbourg, 9 June 2004

Dear Mr X.,

On 19 February 2003, you made a complaint to the European Ombudsman concerning open competition CC/12/02.

On 17 March 2003, the Ombudsman forwarded the complaint to the President of the European Court of Auditors. The European Court of Auditors sent its opinion on 12 June 2003. I forwarded it to you with an invitation to make observations, which you sent on 26 August 2003. On 26 November 2003, I asked the Court of Auditors for further information in relation with your complaint. The latter sent its further opinion on 17 December 2003. On 16 December 2003, you sent by e-mail further correspondence concerning the object of your complaint. The further opinion of the European Court of Auditors was forwarded to you, with an invitation to make further observations, which you sent on 18 February 2004.

I apologise for the length of time it has taken to deal with your complaint.

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:

Competition CC/A/12/02, published in the OJ of 18 June 2002, was organised to draw up a reserve list of administrators in the field of information technology.

Point 2 of Section III (B) of the notice of competition provided that "*Candidates must have completed a course of university education and obtained a degree or diploma relevant to the duties described at section II Nature of duties.*"

The complainant applied to take part in the competition. He was informed by the Selection



Board that he was not admitted to the written tests of the competition.

On 6 February 2003, the complainant appealed to the Selection Board against the decision not to admit him to the written tests. On 10 February 2003, the Selection Board confirmed its decision, stating that *"the additional qualification held by the complainant was not sufficient"* and that his degree or diploma had to be *"additional to that required for admission to the competition, subsequent to it and of the same level as it, provided that it is directly related to the nature of the duties described at section II"*.

On 19 February 2003, the complainant lodged a complaint with the European Ombudsman. He alleged that his engineering diploma comprised five years of university studies, which was more than required by the notice of competition, and was directly related to the nature of the duties. He further alleged that candidates who have five years of university studies were disadvantaged compared with the ones whose diploma comprised four years of university studies plus an additional diploma.

The complainant claimed that the Selection Board should admit him to the competition.

THE INQUIRY

The Court of Auditors' opinion

The opinion of the Court of Auditors on the complaint was in summary as follows:

Contrary to the complainant's allegation, the notice of competition did not mention a minimum number of years of studies. The engineering diploma of the complainant was therefore not more than required by the notice of competition, but simply satisfied the special conditions under Point 2 of Section III (B) of the notice.

Concerning the selection procedure on qualifications, the Court of Auditors had decided to assess the qualifications of the candidates on the following basis: *"the qualifications will be awarded a maximum of 40 marks, allocated as follows: degrees or diplomas additional to that required for admission to the competition, subsequent to it and of the same level as it, provided that they are directly related to the nature of the duties described at section II: 10 marks. Professional experience additional to that referred to at section III (B) 3, of the same level and of the same nature as the latter: 30 marks"*. The 50 candidates with the highest marks were to be admitted to the written tests.

According to the case law of the Court of Justice, the Staff Regulations gave a large margin of discretion to the institutions in the organisation of competitions. This margin of discretion applied when, pursuant to Article 1 of the Annex III of the Staff Regulations, the Appointing Authority drew up the notice of competition and specified the different points of this article, namely *"the kind of competition (whether on the basis of either qualifications or tests, or on both qualifications and tests)"* (point 1.b). This power was only limited by the fact that it had to be exercised taking into account the interest of the service and the conditions linked to the vacant posts. The condition of an additional degree or diploma had been established in the interest of



the service as it aims to secure for the institution the services of officials of the highest standards of ability.

The selection procedure on qualifications had been carried out on the basis of objective criteria laid down in the notice of competition. There had not been an infringement of the principle of equality. This principle is infringed when two identical situations are treated in a different way, unless there are good reasons for doing so. The situation of the complainant, whose diploma had already been considered for the admission, and the situation of the candidates who had four years of university studies plus an additional diploma, were completely different, since the latter had two diplomas, and the complainant had only one degree.

The complainant's observations

The European Ombudsman forwarded the Court of Auditors' opinion to the complainant with an invitation to make observations. In his reply of 26 August 2003, the complainant maintained his complaint. He stated that the notice of competition did not mention the number of years of studies required to be admitted to the competition. The number of years to obtain a diploma corresponding to a "second cycle" vary according to each Member State. By awarding 10 points to the candidate who has an additional diploma other than the one requested by the notice of competition, without specifying the number of years for the "basic" university diploma, the candidate who has only one diploma is discriminated against, compared with the candidate who has two diplomas, even if the number of years studied by the first candidate is higher.

The complainant further alleged that the Selection Board unfairly assessed his professional experience and failed to give him the number of points corresponding to it. He namely put forward that the Selection Board did not recognise his professional experience amounting to one hundred and thirty-two months:

- sixty months from 1990 to 1995 in a private firm
- fifty-four months from 1995 to 2000 in two private firms (thirty months from June 1995 to December 1997 and twenty-four months from January 1998 to December 2000)
- eighteen months at the European Commission

Further inquiries

After careful consideration of the opinion of the Court of Auditors and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman requested the European Court of Auditors to give him its opinion on the further allegation raised by the complainant in his observations, namely that the Selection Board had unfairly assessed his professional experience and had failed to give him the number of points corresponding to it.

The further opinion of the Court of Auditors

In its further opinion on the complainant's observations, the Court of Auditors made the following statements:

Point III.B.3 of the notice of competition stated that "*Candidates must have accumulated, subsequent to have obtained the degree or diploma required for admission to the competition, at least three years' graduate-level professional experience relating to the nature of duties (...)*". "*Details of studies, any training, research and professional experience must be given on the application form and numbered supporting documents must be provided*". *The supporting documents must state the dates when such activities began and finished, and describe the exact*



nature of the work carried out."

The complainant had failed to enclose with his application the supporting documents with sufficient details of his professional experience, namely the dates when such activities began and finished and the exact nature of the work carried out, as requested in several sections in the notice of competition.

The Selection Board had assessed the complainant's application on the basis of the conditions laid down in the notice of competition. The complainant had claimed that he had sixty months of professional experience from 1990 to 1995. However, given that only the professional experience accumulated after obtaining the degree or diploma required for admission to the competition was taken into account, that is to say, from June 1994, the Selection Board had only recognised twelve months of professional experience.

The complainant had claimed that he had eighteen months of professional experience at the European Commission. However, the complainant had only enclosed a payslip corresponding to July 2001 as a supporting document. The Selection Board therefore only recognised one month of professional experience at the Commission.

Concerning his experience as a consultant in a private firm in France from January 1998 to December 2000, the complainant had claimed that he had worked during twenty-four months, although he had submitted documents attesting thirty-six months of professional activities in his application form. The Selection Board recognised the twenty-four month period of professional activity, as claimed by the complainant. As far as the period from June 1995 to December 1997 was concerned, the complainant had claimed thirty months of professional experience. However, given that he had only enclosed a certificate dated 20 December 1996 as a supporting document, the Selection Board only recognised eighteen months of professional experience.

On the basis of the supporting documents provided by the complainant, the Selection Board recognised fifty-five months of professional experience, instead of the one hundred and thirty-two months stated by the complainant. Given that candidates must have accumulated at least three years' graduate-level professional experience, the Selection Board recognised nineteen months of additional professional experience and gave 6,79 points out of 30 to the complainant.

The Court of Auditors enclosed with its further opinion a table with details of the months of professional experience claimed by the complainant on one side, and accepted by the Selection Board, on the other side.

The complainant's further observations

In his further observations on the Court of Auditors' opinion, the complainant maintained his allegations, which can be summarised as follow:

As far as his period of activity at the Commission was concerned, the complainant argued that the Selection Board had wrongly recognised only one month of professional experience. Given



that he had filled in the box to be ticked only by officials, given his personnel number and enclosed a payslip corresponding to his first month of activity, he considered to have proven that he was still working for the Commission on the closing date for the submission of applications.

THE DECISION

1 The allegation that the complainant's engineering diploma comprised five years of university studies, which was more than required by the notice of competition, and was directly related to the nature of the duties

1.1 Competition CC/A/12/02, published in the OJ of 18 June 2002, was organised by the European Court of Auditors to draw up a reserve list of administrators in the field of information technology. In order to be eligible, candidates needed to have *"completed a course of university education and obtained a degree or diploma relevant to the duties described at section II Nature of duties"* (Section III (B) 2 of the notice of competition). Pursuant to Title VI ("Qualifications") of the notice of competition, *"the qualifications will be awarded a maximum of 40 marks, allocated as follows: degrees or diplomas additional to that required for admission to the competition, subsequent to it and of the same level as it, provided that they are directly related to the nature of the duties described at section II: 10 marks- professional experience additional to that referred to at section III (B) 3, of the same level and of the same nature as the latter: 30 marks .* Title VII ("Invitation to the written tests") of the notice of competition stated that *"Once the qualifications have been marked, the 50 candidates with the highest marks will be admitted to the written tests"* .

The complainant applied to take part in this competition but he was informed by the Selection Board that he was not admitted to the written tests. The complainant alleged that the Selection Board's decision was unfair because he had an engineering diploma which comprised five years of university studies. In the complainant's view, his diploma was more than required by the notice of competition and was directly related to the nature of the duties.

1.2 The European Court of Auditors stated that the notice of competition did not mention a minimum number of years of studies. The engineering diploma of the complainant was therefore no more than required by the notice of competition, but simply satisfied the special conditions under Point 2 of Section III (B) of the notice.

1.3 The Ombudsman notes that pursuant to Title VII of the notice of competition, candidates could be awarded a maximum of 10 marks on condition that they had a *"degree or diploma additional to that required for admission to the competition, subsequent to it and of the same level as it, provided that it is directly related to the nature of the duties described at section 2"*

1.4 In the present case, the complainant did not fulfil these conditions, given that he only possessed one diploma. The Ombudsman therefore considers that the Selection Board's decision 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 European Court of Auditors as regards this aspect of the case.

2 The allegation that candidates who have five years of university studies were disadvantaged compared with the ones whose diploma comprised four years of university studies plus an additional diploma

2.1 The complainant alleged that candidates who had five years of university studies were disadvantaged compared with the ones whose qualifications comprised four years of university studies plus an additional diploma.

2.2 The European Court of Auditors submitted that there had been no infringement of the principle of equality. The situation of the complainant, whose diploma had already been considered for the admission, and the situation of candidates whose qualifications comprised four years of university studies plus an additional diploma, were completely different, since the latter had two diplomas, and the complainant had only one degree.

2.3 The Ombudsman considers that the principle of equal treatment requires that comparable situations should be treated in the same way unless there are good reasons for not doing so. In the present case, the complainant had an engineering diploma which comprised five years of university studies. Such a situation is different from the one of candidates who had a diploma which comprised four years of university studies and another additional diploma. The European Ombudsman considers that the complainant has thus not established that there was an infringement of the principle of equality.

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

3 The allegation that the Selection Board had wrongly assessed the complainant's professional experience and had failed to give him the number of points corresponding to it

3.1 In his observations on the opinion of the Court of Auditors, the complainant alleged that the Selection Board had wrongly assessed his professional experience and had failed to give him the number of points corresponding to it.

3.2 In its reply, the Court of Auditors argued that the complainant had failed to enclose with his application the relevant supporting documents with sufficient details of his professional experience, namely the dates when such activities began and finished and the exact nature of the work carried out, as requested by the notice of competition. On the basis of the supporting documents provided by the complainant, the Selection Board had recognised 55 months of professional experience, instead of the 132 months claimed by the complainant, namely: for the period from 1990 to 1995, 12 months of professional experience; from June 1995 to December 1997, 18 months; for the period from January 1998 to December 2000, the Selection Board accepted the 24-month period of professional activity, as claimed by the complainant; and one month of professional experience at the Commission. Given that candidates had to have accumulated at least three years' graduate-level professional experience, the Selection Board recognised 19 months of additional professional experience and gave 6,79 points out of 30 to the complainant.



3.3 The Ombudsman notes that candidates were informed in the notice of competition that they had to enclose with their application form numbered supporting documents with details of their professional experience. The candidates were further informed that these supporting documents had to state the dates when such activities began and finished, and describe the exact nature of the work carried out (Section III B (3) of the notice). In view of the information available to him, the Ombudsman considers that the complainant does not appear to have enclosed with his application form documents with such details for all the periods of activity he was claiming. In these circumstances, the Ombudsman considers that the decision of the Selection Board to recognise only 55 months of professional experience instead of the 132 months claimed by the complainant appears to be reasonable.

3.4 In his observations, the complainant pointed out that he had filled in the box to be ticked only by officials, indicated his personnel number and enclosed a payslip corresponding to his first month of activity. He therefore considered to have proven that he was still working for the Commission on the closing date for the submission of applications. The Ombudsman notes that the Annex of the notice of competition which laid down conditions applicable to officials and other servants of the European Communities, did not contain anything to suggest that the obligation for candidates to enclose with their application form numbered supporting documents with details of their professional experience should not apply to officials.

3.5 In these circumstances, the Ombudsman considers that the decision of the Selection Board to recognise only one month of professional experience at the Commission appears to be reasonable, given that the payslip submitted by the complainant corresponded to only one month of professional activity.

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

4 The complainant's claim

4.1 The complainant claimed that the Selection Board should admit him to the competition.

4.2 In view of paragraphs 1.5 and 2.4 and 3.6 above, the Ombudsman considers that there is no need to pursue further inquiries into the complainant's claim.

5 Conclusion

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

