

## **Decision of the European Ombudsman on complaint 1110/2003/ELB against the European Personnel Selection Office**

Decision

**Case 1110/2003/ELB - Opened on 10/07/2003 - Decision on 07/05/2004**

### *Summary of the decision on complaint 1110/2003/ELB against the European Personnel Selection Office*

The complainant was excluded from competition COM/A/3/02 because her marks in a multiple-choice pre-selection test were insufficient. She contested the Selection Board's response as regards three questions. She alleged that EPSO failed to provide her with a reasoned explanation of the correct answers to the contested questions.

According to EPSO, the Selection Board carefully and conscientiously examined the complainant's comments on the contested questions, as well as the content and the wording of the questions and decided to maintain them.

The Ombudsman noted that the complainant was informed of the mark that she had been awarded, that she received a copy of her own marked test and that she was informed of what the Selection Board considered to be the correct answers to the contested questions. The Ombudsman also noted that the complainant did not accept the Selection Board's view of the correct answers to the contested questions. The Ombudsman recalled, however, that communication of the marks obtained in the various tests constitutes, according to the case law [1], an adequate statement of the reasons on which a Selection Board's decisions are based. Moreover, the Ombudsman did not consider that the complainant had supplied evidence in the course of the inquiry that could tend to show that the Selection Board acted unreasonably, or otherwise acted outside the limits of its legal authority, in determining the correct answers to the contested multiple-choice questions. The Ombudsman therefore found no maladministration.

[1] See Case C-254/95, *Parliament v. Innamorati*, [1996] ECR I-3423.

Strasbourg, 7 May 2004

Dear Mrs L.,

On 16 June 2003, you made a complaint to the European Ombudsman concerning your exclusion from competition COM/A/3/02 because of your results in test a).



On 10 July 2003, I forwarded the complaint to the Director of the European Personnel Selection Office (EPSO). As this competition was formally organised by the Commission, EPSO transmitted your complaint to the Commission. On 24 October 2003, the Commission sent an opinion, in which EPSO's comments were included. I forwarded the opinion 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**

According to the complainant, the relevant facts are, in summary, the following:

The complainant took part in competition COM/A/3/02 (administrators in the field of Research) organised by the Commission. She failed in test a) where she obtained only 17.436 points out of 40. Consequently, her application was rejected.

At the complainant's request, EPSO informed her of the correct answers to the questions in the test. The complainant disagreed with the answers to four questions. On 10 May 2003, therefore, she wrote to the President of the Selection Board asking for the re-examination of her test. At the same time, she lodged a complaint 898/2003/ELB with the European Ombudsman. This complaint was declared inadmissible because the complainant had not completed the appropriate administrative approaches by giving the Selection Board sufficient time to reply.

On 28 May 2003, she received a reply from the President of the Selection Board, maintaining both the initial decision to exclude her from the competition and the Selection Board's position on the four contested questions.

The complainant now renews her complaint to the Ombudsman. She accepts the Selection Board's explanation of the response as regards one of the four contested questions, but rejects the explanation of the answers to the three other questions.

In summary, therefore, the complainant alleges that EPSO failed to provide her with a reasoned explanation of the correct answer to questions 23, 29 and 40 of pre-selection test a) of competition COM/A/3/02.

## **THE INQUIRY**

### **The opinion**

The Ombudsman forwarded the complaint to the Director of the European Personnel Selection Office (EPSO). As the competition in question was formally organised by the Commission, EPSO transmitted the complaint to the Commission, which sent an opinion, in which EPSO's comments were included. The opinion can be summarised as follows:



Competition COM/A/3/02, published in the Official Journal C 177 A of 25 July 2002 was organised with a view to drawing up a reserve list of administrators (A7/A6) in the research area. Candidates could choose one of the following fields: life sciences and technologies, sustainable development, technologies for the information society and industrial technologies, socio-economic and ethical aspects of research and technological development activities.

The complainant applied for this competition and took part in the preselection tests on 20 March 2003. She chose the field "sustainable development". There were three multiple-choice tests which aimed at assessing:

- test a): knowledge in Community research and development policy as well as knowledge relating to the field chosen.
- test b): general ability, in particular verbal and numerical reasoning capacity.
- test c): main developments in European integration and Community policies in a second Community language.

By letter of 23 April 2003, the complainant was informed that her results in test a) were insufficient (17.436 out of 40 points) and that she had been excluded from the competition.

At her request, copies of her answers and of the correct answers were sent to her on 14 May 2003.

On 15 May 2003, the complainant informed the President of the Selection Board that she had problems with some questions, notably questions 8, 23, 29 and 40.

On 28 May 2003, EPSO, on behalf of the Selection Board, wrote to the complainant and gave her the address of an Internet site where she would find the reply to question 8. For the other questions, the Selection Board examined her comments, as well as the content and the wording of the questions and decided to maintain these questions.

Each question challenged by the complainant was examined carefully and conscientiously by the Selection Board before informing her of the decision to maintain these questions.

According to established case law, Selection Boards enjoy a wide margin of discretion as regards the arrangements for and the detailed content of the tests provided for within the framework of a competition. The content of a test can only be criticised if it is not within the limits laid down in the notice of competition or is not consistent with the purposes of the test or of the competition. Neither of these conditions applies in the present case. Moreover, a Selection Board is not obliged to specify which of the candidates' answers were considered insufficient or why. The fact that a candidate is not satisfied with the reply of the Selection Board does not mean that the Selection Board failed to give reasons.

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



No observations were received from the complainant.

## THE DECISION

### 1 Alleged lack of reasoned explanation

1.1 The complainant was excluded from competition COM/A/3/02 because her marks in a multiple-choice pre-selection test were insufficient. She contests the Selection Board's response as regards three questions (questions 23, 29 and 40: hereafter, "the contested questions"). She alleges that EPSO failed to provide her with a reasoned explanation of the correct answers to the contested questions.

1.2 According to EPSO, the Selection Board carefully and conscientiously examined the complainant's comments on the contested questions, as well as the content and the wording of the questions and decided to maintain them.

1.3 The Ombudsman notes that the complainant was informed of the mark that she had been awarded, that she received a copy of her own marked test and that she was informed of what the Selection Board considered to be the correct answers to the contested questions.

1.4 The Ombudsman also notes that the complainant does not accept the Selection Board's view of the correct answers to the contested questions. The Ombudsman recalls, however, that communication of the marks obtained in the various tests constitutes, according to the case law, an adequate statement of the reasons on which a Selection Board's decisions are based. Moreover, the Ombudsman does not consider that the complainant has supplied evidence in the course of the present inquiry that could tend to show that the Selection Board acted unreasonably, or otherwise acted outside the limits of its legal authority, in determining the correct answers to the contested multiple-choice questions. The Ombudsman therefore finds no maladministration.

### 2 Conclusion

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

The Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS