

Decision of the European Ombudsman on complaint 1182/2003/IP against the European Parliament

Decision

Case 1182/2003/IP - Opened on 30/07/2003 - Decision on 29/07/2004

Strasbourg, 29 July 2004

Dear Mr X.,

On 24 June 2003, you made a complaint to the European Ombudsman against the European Parliament, concerning your exclusion from open competition EUR/A/158.

On 30 July 2003, I forwarded the complaint to the President of the Parliament. The Parliament sent its opinion on 24 November 2003 and I forwarded it to you with an invitation to make observations. On 9 January 2004, I received your observations.

I am writing now to let you know the results of the inquiries that have been made. On the basis of your message of 8 October 2003 in which you informed me that you did not need any translation into Italian of the documents concerning your complaint, I send you this decision in English.

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

THE COMPLAINT

X took part in the written tests of open competition EUR/A/158 (1) for administrators of Italian language which had been jointly organised by the European Parliament, the Council of the European Union and the Court of Justice. By letter of 17 July 2002, X was informed that in written test A.1.e) (2) he had obtained 8 points out of 20. Since the minimum required to pass the test was 10 points, X was excluded from the open competition.

On 31 July 2002, he wrote to the Selection Board and asked it to forward to him a copy of both his test A.1.e) and of the correction grid. He also asked to be informed about the criteria of correction followed by the Selection Board and the global and analytical score that he had obtained for each criterion.

On 5 August 2002, the Parliament sent X copies of his test A.1.e) and of the correction grid to



X. X replied to this letter on 13 August 2002. He stated that the decision of the Selection Board to exclude him from the competition was unfair since he had sat test A.1. e) on the basis of the relevant instructions given to candidates. Furthermore, X stated that from the global comment made by the Selection Board on his test, it emerged that he had replied to all the questions of the test, which meant that he had understood the content of the questions. He took the view that his test should have been judged positively by the Selection Board. He therefore asked the institution for a re-examination of his test.

On 4 October 2002, X informed the institution that on 2 October 2002 he had made a complaint under article 90 (2) of the Staff Regulations.

On 21 October 2002, the Parliament replied to X's letter of 13 August 2002. In this letter, the Parliament stressed that X's test had been re-examined by the Selection Board at its meeting of 11 October 2002. The aim of test A.1. e) being not only to examine the comprehension of a text, but also the drafting capacity of candidates, the Selection Board considered that X had not shown a sufficient capacity in this field. It therefore confirmed its decision to exclude X from the competition.

On 6 November 2002, the Parliament wrote again to X. The institution informed X that, following a control, it had emerged that the letter of 21 October 2002 had been erroneously forwarded to the Italian address indicated by X in his application, and not to his principal address in Luxembourg. The Parliament apologised for the inconvenience and sent a copy of the relevant letter to the Luxembourg address of X. X considered that this constituted a case of violation of his private life, since other persons had become aware of the fact that he had been excluded from the competition.

On 3 December 2002, X sent a fax to the Selection Board. He acknowledged receipt of the Parliament's reply of 6 November 2002 and expressed his disappointment at the relevant decision. X took the view that the points he had raised in his previous communications had not been taken into account. He therefore renewed his request to be informed about the criteria of correction followed by the Selection Board and the global and analytical score that he had obtained for each criterion on the basis, *inter alia*, of the note concerning the right of access of candidates to open competitions to their marked written test, which was distributed to all candidates during the concerned open competition.

The Parliament replied on 11 December 2002 and invited X to wait for the decision of the Appointing Authority which was dealing with his complaint under Article 90 (2) of the Staff Regulations. According to X, the tone of this letter was threatening.

On 20 January 2003, the Parliament informed X that having concluded that the Selection Board's decision to exclude him from the competition was well-founded, his complaint under Article 90 (2) had been rejected.

In his complaint to the Ombudsman, X alleged that his exclusion from the competition was unfair and that, despite several requests, the Parliament had failed to provide him with all the



information he had requested.

THE INQUIRY

The European Parliament's opinion

In its opinion on the complaint, the Parliament made in summary the following comments:

X had been excluded from open competition EUR/A/158 because he failed test A.1.e) which was, according to point VII A.1 of the notice of competition, an eliminatory test. The Selection Board's decision had been communicated to X on 17 July 2002.

On 31 July 2002, X asked to have access to the test which he had failed and to the correction grid elaborated by the Selection Board. The Parliament forwarded the requested documents to X on 5 August 2002. In this regard, it had to be considered that, as held by the Community courts, the Selection Board enjoys a wide discretion as regards the arrangements for and the detailed content of the tests provided for in the framework of a competition. The correction grid had been set up by the Selection Board as part of its work of assessment of candidates. It was therefore not for the administration of the European Parliament to check whether the correction grid was well-founded.

The powers of the Selection Board implied that the scope of a possible judicial control was limited to ascertaining whether a manifest error or misuse of powers had occurred in the exercise of the Selection Board's discretion or whether the limits of its discretion had been manifestly exceeded.

As regards X's request for the re-examination of his test, the Selection Board had done so and had confirmed the mark given to X. It was not possible for the Appointing Authority, without putting into question the principle of independence of the Selection Board, to verify the appraisal of the Selection Board as such. The Appointing Authority had to limit itself to controlling whether the Selection Board had respected the applicable rules and criteria which had been fixed.

As regards the point made by X that, in his view, the Parliament had violated his private life by sending the letter of 21 October 2002 to an address other than his permanent residence, the Parliament recognised that a mistake had occurred when the above-mentioned letter had been sent to the Italian address indicated by X in his application to be used in case of absence, and not to his principal address in Luxembourg. The Parliament's services had therefore promptly sent a further letter to the correct address and apologised for what had occurred. Furthermore, the Parliament pointed out that the letter of 21 October 2002 had not been sent to a random address, but to an address that X himself had indicated in his application. The Parliament stated that X's point of view that this constituted a case of violation of his private life could not be sustained.

As regards the content of the letter of 3 December 2002, which X had considered to be intimidating, the Parliament stressed that it had never intended to threaten X. Its intention had only been to point out that, in view of the fact that he had introduced a complaint under Article



90 (2), neither the competition services nor the Selection Board could reply to his questions concerning test A.1. e). X had therefore been invited to wait for the decision of the Appointing Authority on his complaint.

The complainant's observations

In his observations on the Parliament's opinion, X maintained his position that the Parliament had failed to provide him with the information he had requested. X referred to the fact that he based his request, already made by letter of 3 December 2002, on the note concerning the right of access of candidates to open competitions to their marked written tests, which had been distributed to all candidates during open competition EUR/A/158.

He furthermore reaffirmed that the Parliament had violated his privacy by sending the letter of 21 October 2002 to an address other than his principal residence, and that the tone of the Parliament's letter of 11 December 2002 was threatening.

THE DECISION

1 Preliminary remark

1.1 In his letter to the Parliament opening the inquiry in the present case, the Ombudsman did not explicitly refer to the points raised by X concerning the alleged violation of his privacy and to the allegedly intimidatory tone of the Parliament's letter of 3 December 2002, given that he considered that X had not submitted any allegations or claims regarding these points. X did not object to this interpretation of his complaint.

1.2 In these circumstances, the Ombudsman will not deal with these points in his decision which is limited to the allegations set out in his opening letter to the Parliament. X is however free to lodge a new complaint on these points, if he so wishes.

2 The complainant's exclusion from the open competition

2.1 X, who took part in the written tests of open competition EUR/A/158, failed test A.1.e) and was therefore excluded from the competition. In his complaint, he alleged that his exclusion was unfair.

2.2 The Parliament explained that test A.1.e) was, according to point VII A.1 of the notice of competition, an eliminatory test. Since X had failed this test, he had to be excluded from the competition.

Following X's request of 13 August 2002, his test A.1.e) had been re-examined by the Selection Board. The aim of test A.1.e) being to examine not only the comprehension of a text, but also the drafting capacity of candidates, the Selection Board had considered that X had not shown a sufficient capacity in this field. It had therefore confirmed its decision to exclude X from the competition.

It was not possible for the Appointing Authority, without putting into question the principle of the independence of the Selection Board, to verify the appraisal of the Selection Board as such. The Appointing Authority had to limit itself to controlling that the Selection Board had respected the applicable rules and criteria which had been fixed.



2.3 As established by the case-law of the Community courts, Selection Boards enjoy a wide discretion as regards the arrangements for and the detailed content of the tests in the framework of a competition. The Ombudsman considers that in the present case no elements have been brought to his attention that would show that the Selection Board has exceeded its powers when deciding to exclude X from the competition.

2.4 The Ombudsman therefore finds that there appears to be no maladministration in relation to this aspect of the case.

3 The complainant's request for information

3.1 Following his exclusion from competition EUR/A/158, X had asked the Selection Board to forward him a copy of both his test A.1.e) and the correction grid. He had also asked to be informed about the criteria of correction followed by the Selection Board and the global and analytical score that he had obtained for each criterion.

In his complaint, X alleged that, despite several requests, the Parliament had failed to provide him with all the information requested.

3.2 The Parliament stated that the Selection Board had forwarded to X a copy of X's test and a copy of the correction grid set up by it.

3.3 The Ombudsman notes that, following his request, X received a copy of his test A.1.e) and a copy of the correction grid. Having analysed both documents which were forwarded to him in the course of his inquiries, the Ombudsman notes that X's test had not been annotated. The correction grid consisted in one sheet which indicated the name of the candidate, the code of the language (English in this specific case) in which the test had been carried out and the fact that the comprehension of the text and the drafting capacity of the candidates would be evaluated. The grid further consisted of a table which indicated the mark assigned by the Selection Board to each of the five questions of the test. The global mark and the Selection's Board global assessment of the test were also indicated on the grid.

3.4 The Ombudsman also considers that, as pointed out by the Parliament in its opinion, establishing such a grid is part of the Selection Board's work in assessing the merit of candidates and that it is not for the administration to check whether the correction grid is well-founded.

3.5 The Ombudsman notes that the correction grid forwarded by the Parliament to X contained information concerning the evaluation criteria which had been taken into account by the Selection Board when assessing the test, as well as the mark given by the Selection Board to the replies provided by X to each question of the test and the global comment on X's test.

In view of the above, the Ombudsman considers that the European Parliament appears to have provided to X all the information that was available.

3.6 The Ombudsman therefore finds that there appears to be no maladministration in relation to



this aspect of the case.

4 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,

P. Nikiforos DIAMANDOUROS

(1) OJ C 147 A of 26 May 2000, pp. 10-16.

(2) Test 1.A. e) was the test of foreign language; X chose to sit the test in English.