

Decision of the European Ombudsman on complaint 1187/2003/JMA against the European Commission

Decision

Case 1187/2003/JMA - Opened on 24/07/2003 - Decision on 05/05/2004

Strasbourg, 5 May 2004

Dear Mr A.,

On 24 June 2003, you lodged a complaint with the European Ombudsman against the European Commission, concerning the decision of the Selection Board in competition COM/TB/99 not to include your name among the 60 best candidates.

On 24 July 2003, I forwarded the complaint to the President of the European Commission. I received the Commission's opinion on 6 October 2003, and forwarded it to you with an invitation to make observations. I received your observations on 5 December 2003.

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

THE COMPLAINT

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

On 5 July 1999, the Commission published the Notice of internal competition COM/TB/99 for the establishment of a reserve list for, among others, a number of assistants of B3/B2 grade. The complainant submitted his application for the competition, which was registered under number 00458. In his application and curriculum vitae, the complainant mentioned that his mother tongue was Spanish and that he also had a good knowledge of English and Portuguese. As set out in the Notice, candidates who had been successful in the written tests would have to go through an oral interview, from which the Selection Board would select the 60 best candidates to be included in the competition's reserve list.

Having passed the written test, the complainant was invited to the oral interview with the Selection Board, which took place on 29 June 2000. On 19 July 2000, the complainant was informed that his score in the oral test had been 23 out of 50. As the minimum score to pass the test was 25 points, the Selection Board informed him that his name could not be included in the competition's reserve list.



On 8 August 2000, the complainant submitted an appeal to the Selection Board. He argued that the criteria for the evaluation of his linguistic skills were unknown to him, and pointed out that no question in Portuguese had been addressed to him during the oral exam. On 12 September 2000, the Selection Board confirmed its decision of 19 July 2000.

The complainant then lodged a formal appeal with the Commission on 14 November 2000. The Commission's reply of 25 June 2001 confirmed the position taken by the Selection Board, and dismissed the appeal. It pointed out that all candidates had been evaluated on the same basis. Since the competition was not aimed at the selection of linguists, the Selection Board decided to test all the candidates on their mother tongue as well as on their second Community language.

The complainant alleges that in the selection of candidates, the Selection Board applied a number of restrictive criteria which did not belong to the Notice. He mentioned in particular the limited number of languages to be tested in the course of the oral exam. The Notice of the competition referred to the linguistic skills of candidates as one of the relevant criteria, and therefore the knowledge of languages should have been taken into account by the Selection Board. By not doing so, the Selection Board disregarded the principle of equal treatment, since it did not properly assess the knowledge of additional languages by a number of candidates.

In his complaint to the Ombudsman, the complainant alleges, in summary, that the Selection Board did not comply with the terms of the Notice of the competition since, in the course of the oral interview, its members did not ask him any question to assess his linguistic skills.

THE INQUIRY

The European Commission's opinion

In its opinion, the Commission recalled the factual background of the case.

The institution described the efforts made by the Selection Board to ensure respect for the principle of non-discrimination. It noted that, prior to the test, the criteria for the evaluation of candidates had been set.

As regards the assessment of the candidates' linguistic knowledge, the Selection Board decided to interview all candidates first in their mother tongue and then, to test the knowledge of the second language mentioned in their application form. Since the Notice of the competition did not furnish any further details as regards the assessment of languages, the Selection Board applied the criteria set out in the Staff Regulations whereby candidates must have a thorough knowledge of a Community language and a satisfactory knowledge of another Community language, to the extent necessary for the performance of their duties.

The questions put to candidates by the Selection Board sought to assess their expression and oral skills, and more generally their ability to carry out their future duties as Community officials.

The Commission explained that the curriculum vitae, which candidates had to submit with their



application form, was not for the use of the Selection Board, but rather was meant to be forwarded to the Commission services, in the event that the candidate's name were to be included in the reserve list of the competition.

The complainant's observations

In his observations, the complainant repeated the allegations made in his complaint. He underscored that, even though the Selection Board had justified its assessment of the candidates' linguistic skills on the basis of Article 28 of the Staff Regulations, this provision only sets out minimum conditions which Community officials must meet. According to the complainant, by limiting itself to those minimum requirements, the Selection Board had not properly assessed the merits of each candidate on the same basis. He concluded that the principle of equality had not been preserved, since the merits of candidates with a linguistic knowledge beyond the minimum criteria set out in the Staff Regulations had not been taken into account.

THE DECISION

1. Assessment of the candidates' knowledge of languages

1.1 The complainant alleges that the Selection Board did not comply with the terms of the Notice of the competition since, in the course of the oral interview, its members did not ask him any question to assess his linguistic skills. The complainant argued that the Selection Board limited its assessment of the candidates' linguistic skills to only two languages, in breach of the Notice of the competition.

1.2 The Commission argues that, in the absence of clearer wording in the Notice of the competition concerning the assessment of languages, the Selection Board applied the criteria set out in the Staff Regulations whereby candidates must have a thorough knowledge of a Community language and a satisfactory knowledge of another Community language, to the extent necessary for the performance of their duties.

1.3 The Ombudsman notes that it is established case law that the Selection Board enjoys 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 (1) . The detailed content of a test is not open to review, unless it exceeds the limits laid down in the notice of competition or conflicts with the purposes of the test or of the competition (2) .

1.4 In view of the information available in the course of the Ombudsman's inquiry, it appears that the aim and content of the oral test of the competition as set out in Section IV of the Notice was to be as follows:

"The oral test will consist of an interview carried out by the Selection Board with the candidates admitted to this stage of the competition.

This interview will seek to assess the oral expression and capability of candidates (including linguistic skills) to exercise the functions referred to in Section I of the Notice [...]."



Section I of the Notice described the nature of the tasks to be performed by Community officials of grade B5/B4 (Secretarial Assistant), B3/B2 (Administrative Assistant) and B1 (Principal Administrative Assistant). No reference is made in this provision to the need for specific linguistic conditions based on the interests of the service.

In order to exercise the functions generally performed by a Community official, the knowledge of languages required by the Staff Regulations are set out in Article 28 (f) which provides that he (or she) must possess:

"[A] thorough knowledge of one of the languages of the Communities and of a satisfactory knowledge of another language of the Communities to the extent necessary for the performance of his duties."

1.5 Having reviewed the different provisions included the Notice of the competition, the Ombudsman is mindful of the fact that nowhere in the text does there appear to be a reference to either the candidates' knowledge of languages or to particular linguistic requirements to be taken into account due to the nature of the vacant posts.

In view of the wording of the Notice of the Competition, the Ombudsman considers that the Selection Board did not exceed its legal authority by deciding that, as regards the assessment of the linguistic skills of the candidates, the criteria set out in the Staff Regulations should be applied by analogy, whereby candidates were only required to show a thorough knowledge of a Community language and a satisfactory knowledge of another Community language. The Ombudsman therefore finds no maladministration by the European Commission.

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) See case T-132/89, *Gallone v. Council*, [1990] ECR II-549, paragraph 27.

(2) See joined cases 64, 71 to 73 and 78/96, *Sergio and others v. Commission*, [1988] ECR 1399, paragraph 22 and case T-156/89, *Valverde Mordt v. Court of Justice*, [1991] ECR II-407, paragraph 121.