

Decision of the European Ombudsman on complaint 1320/2003/(ADB)ELB against the European Commission

Decision

Case 1320/2003/(ADB)ELB - Opened on 05/09/2003 - Decision on 04/10/2004

The complainant applied for an auxiliary post as a driver at the European Commission and was invited to participate in a road test organised by a driving school. The complainant was informed that he had failed this test. He unsuccessfully asked for the disclosure of his results, because he was convinced that he had succeeded, taking into account his driving experience, his qualifications as well as information received from an employee of the driving school.

The complainant alleged that he received inconsistent replies from the Commission and that, although he was informed that he was not among the successful candidates, he was never informed about his actual results in the tests. The complainant claimed that the Commission should inform him of his results in the various tests as well as of the number of successful candidates and their results.

In its opinion, the Commission explained that the director of the driving school informed the Commission that the complainant and three other candidates had failed. It submitted that it did not receive the details of each evaluation, but only a general result and a statement as to whether the candidate had passed or failed each test.

In his observations, the complainant found discrepancies between the explanations given by the Commission in its opinion and the information that he obtained during a meeting with a responsible official. The official in question had informed him that the Commission had received results for each of the five tests of which the road test consisted. The Commission's official had this document with him at the meeting. However, since it contained the results for all the candidates, he had refused to give him a copy. The official had however orally informed him of his results.

The Ombudsman carried out an inspection of the Commission's file. The results of the inspection appeared to show that, contrary to the information provided by the Commission in its opinion, it had in fact received the details of each candidate's evaluation. The Ombudsman concluded that, although the Commission had legitimate reasons not to communicate the results of other candidates to the complainant, the Commission had not submitted any reasons as to why the complainant should not be given access to his own results.



The Ombudsman therefore proposed a friendly solution on the basis that the Commission had not submitted any reasons as to why the complainant should not be given access to his own results. He suggested that the Commission could reconsider the complainant's application for access to his own results obtained in the road test.

The Commission agreed to the friendly solution proposal and sent the Ombudsman the results obtained by the complainant in the various tests of the road test. The complainant informed the Ombudsman's services by telephone that he considered that a friendly solution had been achieved.

Strasbourg, 4 October 2004

Dear Mr C.,

On 10 July 2003, you made a complaint to the European Ombudsman concerning the recruitment of drivers by the European Commission.

On 5 September 2003, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 25 November 2003. I forwarded it to you with an invitation to make observations, which you sent on 20 January 2004.

On 6 February 2004, I wrote to the President of the Commission requesting access to the Commission's files regarding the recruitment procedure for drivers.

On 4 March 2004, my services carried out an inspection of the Commission's files.

On 7 April 2004, I wrote to the President of the Commission seeking a friendly solution to your complaint. On the same date, you were informed of the Ombudsman's proposal and you were sent a copy of the report of the inspection. The Commission sent its reply to the friendly solution proposal on 14 May 2004. On 5 July 2004, you informed my services by telephone that you considered that a friendly solution had been achieved.

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, as follows:

The complainant applied to work as a driver for the European Commission. The complainant's application was selected by the Office for Infrastructure and Logistics of the European Commission and he was invited to participate in a so-called "road test" on 16 December 2002.



The complainant took the test. In his complaint to the Ombudsman, he stated that, since January 2003, he had unsuccessfully asked for the disclosure of his results. The complainant learnt through a third party that four candidates had been recruited, that he had been unsuccessful and that he had been classified 10th among 12 candidates. The complainant successively applied to the person responsible for the recruitment procedure, the responsible Head of Unit and the responsible Director General. The complainant was dissatisfied with the replies and therefore decided to lodge a complaint with the European Ombudsman.

The complainant alleged that he received inconsistent replies from the Commission and that, although he was informed that he was not among the successful candidates, he was never informed about his actual results in the tests.

The complainant claimed that the Commission should inform him of his results in the various tests as well as of the number of successful candidates and their results.

THE INQUIRY

The Commission's opinion

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

The complainant applied for an auxiliary post as a driver within the Office for Infrastructure and Logistics. Given the particular nature of this type of position, a road test consisting of a series of tests was carried out by a driving school located in Nivelles. The complainant sat these tests, along with eight other candidates, on 16 December 2002. On 21 January 2003, the director of this school informed the Commission that the complainant had failed the road test. The Commission enclosed this document with its opinion. Three other candidates had also failed. The complainant was informed that, due to the results of these tests, it was not possible to consider his application.

Regarding the results of the test requested by the complainant, the Commission pointed out that *"candidates are evaluated according to the classification system applied by the driving school. The Commission does not receive the details of each evaluation, only a general conclusion and a statement of whether the candidate has passed or failed each test."*

With a view to improving transparency, the Commission would however henceforth require *"quantified results for each test"* and fix a level which will determine whether a candidate can be considered - or not - for a post of driver.

With regard to the complainant's claim that the Commission should disclose information concerning the number of successful candidates and their results, the Commission stated that it was under no legal obligation to provide the complainant with such information and rejected the claim.



The complainant's observations

In his observations, the complainant maintained his complaint and, in summary, stated the following:

The Commission's opinion contained false information. He was convinced that he had succeeded in the road test, taking into account his driving experience, his qualifications as well as information received from an employee of the driving school, according to whom he had been among the three best candidates. This person however wished to remain anonymous. The fact that the tests had been filmed should make it possible to verify these assertions.

It was surprising that the Commission, when it was asked for the results of the test, did not disclose a copy of the letter it had received from the driving school and which mentioned that the complainant had failed in the road test. Furthermore, the driving school's way of informing the Commission of the results of the tests, i.e. through an individual letter for each candidate, was doubtful. Further doubts were raised by the complainant as to the date mentioned on the letter (21 January 2003), the fact that the letter mentioned no address or addressee and that the letter ended with the expression "certifié sincère et exact" (certified true and correct).

There were discrepancies between the explanations given by the Commission in its opinion and the information obtained by the complainant during a meeting of 22 May 2003 with a responsible official. While the Commission stated in its opinion that it did not receive the details of each test but only a general result and a declaration indicating whether the candidate had succeeded or failed, the official in question had informed him that the Commission had received results for each of the five tests of which the road test consisted (driving, highway code, eyesight, braking, experience). The Commission's official had this document with him at the meeting. However, since it contained the results for all the candidates, he had refused to give him a copy. The official had however orally informed him of his results. According to this information, he had been third in the highway code test and first in the driving test. In view of these good results, his failure as well as the official's declaration according to which he was 7th among 9 candidates appeared surprising.

The complainant underlined that he was concerned about the lack of transparency and possible irregularities in the recruitment procedure rather than about the actual possibility of getting the post he had applied for.

Further inquiries

After careful consideration of the Commission's opinion and the complainant's observations, the Ombudsman considered that an inspection of the file relating to the recruitment procedure was necessary.

The inspection of the file

On 4 March 2004, the Ombudsman's services inspected the Commission's file relating to the



selection procedure in question. The inspected documents showed that the overall number of participants in the road test in question was nine. The inspection also showed, that for each candidate, the Commission had received a separate statement about whether the candidate had passed the road test or not.

The inspected file also contained a copy of an e-mail of 21 December 2002 sent to the Commission by the director of the driving school. This e-mail contained detailed results for each of the five tests that nine candidates had taken. It consisted of a table which, for each candidate, mentioned the ranking in each test and the number of points attributed for this ranking. The final column of the table showed the overall ranking based on the points awarded on the basis of the ranking and the weighting of each test.

THE OMBUDSMAN'S EFFORTS TO ACHIEVE A FRIENDLY SOLUTION

After careful consideration of the Commission's opinion, the complainant's observations and the results of the Ombudsman's inspection of the file, the Ombudsman did not consider that the Commission had responded adequately to the complainant's claim. In accordance with Article 3 (5) of the Statute (1) , he therefore wrote to the President of the Commission to propose a friendly solution on the basis of the following analysis of the issues in dispute between the complainant and the Commission.

Alleged inconsistency and failure to disclose the results of the road test

1 The complainant alleged that he received inconsistent replies from the Commission and that, although he was informed that he was not among the successful candidates, he was never informed of his actual results in the tests. The complainant claimed that the Commission should inform him of his results in the various tests as well as of the number of successful candidates and their results.

2 The Commission argued that nine candidates had taken part in the road test and that the director of the driving school had informed the Commission on 21 January 2003 that the complainant had failed the road test. Three other candidates had also failed. Regarding the results of the test requested by the complainant, the Commission pointed out that candidates were evaluated according to the classification system applied by the driving school. The Commission submitted that it did not receive the details of each evaluation, but only a general result and a statement as to whether the candidate had passed or failed each test.

3 The Ombudsman noted that the complainant referred to information about his results that was provided by the Commission directly and to information he received from a third party. The information which, according to the complainant was given to him by the third party, did not appear to be inconsistent with the information contained in the file inspected by the Ombudsman's services. The only possible discrepancy concerned the overall number of candidates (12) and the complainant's classification (10th out of 12). However, given that the



inspection had confirmed that there were only nine candidates, there appeared to have been a mistake. Since the complainant had not submitted any more concrete evidence, it could not be excluded that the mistake stemmed from a misunderstanding. The Ombudsman therefore considered that there was no need to pursue the inquiry into this aspect of the case.

4 Regarding the disclosure of the results of the road test, the Ombudsman noted that the Commission had at its disposal a separate document from the driving school for each candidate, stating whether the candidate had passed the road test or not. It further had at its disposal a table mentioning the ranking of each candidate in each test of the road test. This table also mentioned the weighting assigned to each test and the points assigned for the ranking as well as the overall points obtained and the corresponding overall ranking.

5 In the framework of the present inquiry, the Commission provided the Ombudsman and the complainant with information as to the number of successful candidates, i.e. five out of nine, and disclosed the document from the driving school stating that the complainant had not passed the test. The Commission however refused to communicate to the complainant his own detailed results.

6 Although the Commission has legitimate reasons not to communicate the results of other candidates to the complainant, the Commission had not submitted any reasons as to why the complainant should not be given access to his own results.

7 In these circumstances, the Ombudsman took the preliminary view that the Commission's refusal to inform the complainant of his own results could be an instance of maladministration.

The proposal for a friendly solution

The European Ombudsman suggested that the Commission could reconsider the complainant's application for access to his own results obtained in the various tests of the road test.

The Commission's response

The Commission agreed to the friendly solution proposal and sent the Ombudsman the results obtained by the complainant in the various tests of the road test.

The complainant's observations

On 5 July 2004, the complainant informed the Ombudsman's services by telephone that he considered that a friendly solution had been achieved.

THE DECISION

1 Alleged inconsistency and failure to disclose the results of the road test



1.1 The complainant applied to work as a driver for the European Commission and took part in a so-called "road test", which comprised various separate tests. In his complaint to the Ombudsman, the complainant alleged that, although he was informed that he was not among the successful candidates, he was never informed of his actual results in the various tests and that he received inconsistent replies from the Commission. The complainant claimed that the Commission should inform him of his results in the various tests as well as of the number of successful candidates and their results.

1.2 According to the Commission, nine candidates took part in the road test and the director of the driving school informed the Commission on 21 January 2003 that the complainant and three other candidates had failed. Regarding the results of the test requested by the complainant, the Commission pointed out that candidates were evaluated according to the classification system applied by the driving school. The Commission submitted that it did not receive the details of each evaluation, but only a general result and a statement as to whether the candidate had passed or failed each test.

1.3 The Ombudsman carried out an inspection of the Commission's file. The results of the Ombudsman's inspection appear to show that, contrary to the information provided by the Commission in its opinion, it had in fact received the details of each candidate's evaluation. These inquiries led the Ombudsman to the preliminary conclusion that the Commission had not responded adequately to the complainant's claim and that, although the Commission had legitimate reasons not to communicate the results of other candidates to the complainant, the Commission had not submitted any reasons as to why the complainant should not be given access to his own results.

1.4 The Ombudsman therefore wrote to the President of the Commission to propose a friendly solution in accordance with Article 3 (5) of the Statute. He suggested that the Commission could reconsider the complainant's application for access to his own results obtained in the various tests of the road test.

1.5 The Commission accepted the Ombudsman's proposal for a friendly solution and sent the results obtained by the complainant in the various tests of the road test.

1.6 The complainant informed the Ombudsman that he considered that a friendly solution to the present complaint had been achieved.

2 Conclusion

Following the Ombudsman's initiative, it appears that a friendly solution to the complaint has been agreed between the Commission and the complainant. The Ombudsman therefore closes the case.

Enclosed with this decision, the complainant will find the results that he obtained in the road test.



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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

Enclosure: - copy of the complainant's results in the road test

(1) "As far as possible, the Ombudsman shall seek a solution with the institution or body concerned to eliminate the instance of maladministration and satisfy the complaint."