

## **Decision of the European Ombudsman on complaint 1437/2003/(VJ)JMA against the European Commission**

Decision

**Case 1437/2003/(VJ)JMA - Opened on 05/09/2003 - Decision on 07/06/2004**

Strasbourg, 7 June 2004

Dear Mr R.,

On 1 and 5 August 2003, you lodged a complaint with the European Ombudsman, which you stated to be against the European Personnel Selection Office (EPSO) concerning the decision to exclude you from open competition COM/A/3/02.

On 5 September 2003, I forwarded the complaint to the Director of EPSO. Even though the request for an opinion was addressed to EPSO, the opinion on the complaint was sent by the Commission on 25 November 2003, as it appears that formally this competition was organised by the Commission. I have therefore treated your complaint as being against the Commission. I forwarded the Commission's opinion to you with an invitation to make observations. No observations appear to have been received from you.

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:

The complainant submitted an application to participate in open competition COM/A/3/02 for the establishment of a reserve list of administrators in the field of research. The pre-selection tests of the competition took place in Madrid on 20 March 2003. On 23 April 2003, the Selection Board informed him that, despite having passed each of the three individual tests, his total score of 68,667 points was below that of the 335 best candidates (69,167 points). As set out in the Notice of the Competition, he could therefore not be invited to the next stage of the competition. On 9 June 2003, the complainant sent a letter to the President of the Selection Board requesting that his result be re-assessed. In the absence of a reply, he faxed a copy of this letter to the responsible services on 10 July 2003.

In his complaint to the Ombudsman, the complainant alleged that he was interrupted in the



course of the first tests by one of the invigilators, who asked him to properly hide the exam papers from the view of the other candidates. The complainant argued that the interruption disturbed him a great deal and, as a result, he made some mistakes in the reply form.

The complainant stated that one of the questions concerning the Galileo system did not have a valid reply. He believed that none of the proposed options properly replied to the question. The complainant referred in support of his position to his academic and professional experience with the Galileo system.

The complainant claims that the Selection Board should allow him to take part in the next stage of the competition, considering that had it not been for both the interruption he was subject to and the misleading text of the question concerning the Galileo system, he would have reached the minimum score to be among the best 335 candidates.

In summary, the complainant alleges in his complaint to the Ombudsman that (i) he was interrupted in the course of the competition and this reflected on his performance; and (ii) one of the questions of the test concerning the Galileo programme did not have any valid answer. He therefore made the following claims: (iii) to be readmitted to competition COM/A/3/02, and (iv) to receive a reply to his fax of 10 July 2003.

## THE INQUIRY

### **The Commission's opinion**

In its opinion, the Commission first described the factual background of the case. It explained that the complainant submitted an application to participate in open competition COM/A/3/02 (OJ C 177a of 25.7.2002) for the establishment of a reserve list in the field of research. Among the possible options, he chose field 3, involving IT technologies. Although he reached the minimum score in each of the selection tests, his total score (68,667/100) was below that of the best 335 candidates. The Selection Board informed him on 23 April 2003 that he could not be invited to the next stage of the competition.

On 9 June 2003, the complainant submitted an appeal to the Selection Board, in which he alleged that he had been interrupted in the course of the exams, that the question concerning the Galileo programme did not have a valid reply, and that his personal situation had a negative influence on his performance during the exams. Notwithstanding the fact that the 20-day delay allowed for appeals had expired, EPSO replied to the complainant on 22 July 2003. In its letter, EPSO confirmed the decision of the Selection Board. Due to a mistake in the complainant's address, EPSO's reply was returned by the postal service. The Commission apologised for the mistake, and noted that the letter had been re-sent to the proper address. It pointed out, however, that its services have no trace of any fax from the complainant dated 10 July 2003.

The Commission noted that one of the tasks entrusted to the invigilators was to ensure that the instructions given at the beginning of the competition were effectively followed by all candidates, in particular as regards the way optical reader forms were to be filled out. As regards the alleged interruption occurred during the first exam, the institution noted that it was a reminder of these



instructions.

As regards question 8 of test (a) concerning the Galileo programme, the Commission explained that, having reviewed all the possible replies, it concluded that there was only one valid reply, namely option (c). It noted that, as a matter of fact, that was the option chosen by the complainant in his test.

In view of the above arguments, the Commission confirmed the decision taken by the Selection Board of the competition.

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

The Ombudsman has not received any observations from the complainant.

## **THE DECISION**

### **1 Interruption by one of the invigilators in the course of the exams**

1.1 The complainant alleges that he was interrupted by one of the invigilators in the course of the competition and that this reflected on his performance. He argues that the interruption disturbed him a great deal and, as a result, he made some mistakes in the reply form.

1.2 The Commission states that one of the tasks entrusted to the invigilators was to ensure that the instructions given to candidates at the beginning of the competition were effectively followed, in particular as regards the way optical reader forms were to be filled out. It argues that the alleged interruption was a reminder of these instructions.

1.3 The Ombudsman notes that selection boards enjoy a considerable margin of discretion in defining the specific arrangements for an open competition. As the Community courts have established, the arrangement for the conduct of a test fall under the discretionary power of the Selection Board, except to the extent necessary to ensure that the candidates are treated equally and that the choice made from among them by the Selection Board is objective (1) .

1.4 In view of the information submitted in the course of his inquiry, the Ombudsman considers that there appears to be no evidence which may lead one to believe that the arrangements put in place by the Selection Board in this case, in particular as regards the work of the invigilators, resulted in an unequal treatment of the candidates.

The Ombudsman has therefore concluded that there appears to be no maladministration as regards this aspect of the case.

### **2 Contents of one of the questions of the test**

2.1 The complainant alleges that a question concerning the Galileo programme did not have any valid answer, and refers in support of this position to his academic and professional experience with this programme.

2.2 The Commission argues that having reviewed all the possible replies regarding question 8 of test (a) concerning the Galileo programme, it concluded that there was only one valid reply, namely option (c). It notes that, as a matter of fact, that was the option chosen by the



complainant in his test.

2.3 The Ombudsman notes that it is established case law that the Selection Board enjoys a wide margin of discretion as regards the detailed content of the tests provided for within the framework of a competition (2) . 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 (3) .

2.4 In the present case, no elements have been brought to the attention of the Ombudsman to make him conclude that in the formulation of a particular question the Selection Board of the competition could have exceeded its discretion. The Ombudsman therefore finds that there is no evidence of maladministration in relation to this aspect of the case.

### **3 Reversal of the decision taken by the Selection Board**

3.1 The complainant claims that, in the light of his allegations, he should be readmitted to competition COM/A/3/02.

3.2 The Ombudsman, having concluded in the previous sections of his decision that there appears to be no maladministration on the part of the Commission as regards the allegations made in the complaint, finds that the complainant's claim that he should be readmitted to the competition cannot be sustained.

### **4 Commission's failure to reply to the complainant**

4.1 The complainant claims that the Commission should reply to his fax of 10 July 2003 to the President of the Selection Board requesting that his result be re-assessed.

4.2 The Commission argues that on 22 July 2003, its services replied to a letter sent by the complainant on 9 June 2003. Due to a mistake in the complainant's address, the reply was returned by the postal service.

The Commission apologises for the mistake, and notes that its letter was re-sent to the proper address. It points out, however, that its services have no trace of any fax from the complainant dated 10 July 2003.

4.3 From the available information, it appears that the complainant appealed to the Selection Board by letter dated 9 June 2003, which he also sent by fax to the responsible services on 10 July 2003.

4.4 Principles of good administration require that the institution should reply to letters from citizens in a reasonable time. The Commission accepted that, even though its services replied to the complainant's letter of 9 June 2003, its reply never reached the complainant as a result of it being mailed to an outdated address, and was thus returned by the postal service.

The Ombudsman points out, however, that the Commission has subsequently sent its reply to the correct address and has apologised for the mistake of its services.

4.5 As regards the complainant's fax of 10 July 2003, the Ombudsman notes that, in the light of



the available evidence, it cannot be established whether or not the Commission services did in fact receive this communication from the complainant.

4.6 In these circumstances, the Ombudsman does not consider it necessary to inquire further into this aspect of the case.

## **5 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 supra *Gallone* , case-law referred to in paragraph 27.

(3) 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.