

## **Decision of the European Ombudsman on complaint 1757/2003/(ADB)MF against the European Court of Auditors**

Decision

**Case 1757/2003/(ADB)MF - Opened on 14/11/2003 - Decision on 11/10/2004**

Strasbourg, 11 October 2004

Dear Mr X.,

On 19 September 2003, you made a complaint to me against the European Court of Auditors concerning the selection procedure for the recruitment of auxiliary/temporary typists/clerical assistants of C category organised by the European Court of Auditors. On 3 October 2003, you sent me a further e-mail related to your complaint.

On 20 October 2003, you sent me an e-mail in which you informed me that you had not received any reply to your letter to the European Court of Auditors dated 3 October 2003. You further asked me when I would deal with your complaint.

On 14 November 2003, I forwarded the complaint dated 19 September 2003 and the further e-mail dated 3 October 2003 to the President of the European Court of Auditors.

On 16 November 2003, you sent me an e-mail in which you asked me for information on the progress on your complaint.

The European Court of Auditors sent its opinion on 6 January 2004.

On 13 January 2004, you sent me a further e-mail related to your complaint.

On 16 March 2004, I forwarded the opinion of the Court of Auditors to you with an invitation to make observations, which you sent on 25 March 2004.

On 23 August 2004, you sent me an e-mail related to your complaint in which you asked me information on the progress on your complaint. On 10 September 2004, I informed you that your complaint was being dealt with and that a decision was foreseen to be taken by 15 October 2004.

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



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

## THE COMPLAINT

According to the complainant, the relevant facts are as follows:

### *The original complaint*

In February 2003, the European Court of Auditors organised a selection procedure for the recruitment of auxiliary/temporary typists/clerical assistants of C grade. An initial selection was organised on the basis of information submitted in the curricula vitae of candidates. Candidates were divided into groups according to their main language. Once the qualifications and work experience had been assessed, the candidates with the highest marks were invited to participate in the selection procedure for each of the main languages.

The complainant applied to take part in the initial selection procedure. On 5 June 2003, he was informed that, after an assessment of his diplomas and his professional experience, his name had not been included in the list of the best candidates invited to participate in the selection procedure. On 26 June 2003, the complainant asked the President of the Selection Board to reconsider his application. On 30 June 2003, the complainant was informed that the Selection Board had confirmed its decision not to admit him to the selection procedure.

On 10 September 2003, he asked the Selection Board to inform him of the minimum of points required to be admitted to participate in the selection procedure.

By letter dated 15 September 2003, the Court informed the complainant that the minimum of points was 20 and that following the assessment of his diplomas, professional experience and linguistic skills, he had been given 18.6 points.

On 19 September 2003, the complainant lodged a complaint with the European Ombudsman.

### *The complainant's letter of 3 October 2003 to the European Ombudsman*

In a letter dated 3 October 2003, the complainant requested the European Court of Auditors to send him the detailed marking scale which had led the Selection Board to give him 18.6 points.

On the same day, he sent a further e-mail to the European Ombudsman, enclosing a copy of the letter sent to the European Court of Auditors.

### *The complainant's allegations*

It resulted from the complaint of 19 September 2003 and the further e-mail of 3 October 2003 that the complainant wished to make the following allegations:

- The Selection Board had failed to put him on the list of the best candidates to be invited to participate in the selection procedure although the level of his diplomas was higher than that required in the notice of the selection procedure.
- There was a lack of transparency in the selection procedure because the Selection Board had failed to inform him of the selection criteria used in the selection procedure and of the detailed marking scale which enabled it to give him 18.6 points.



- He was discriminated against concerning his professional experience, compared to the candidates who were already working for the Court of Auditors.

The complainant claimed that the Selection Board should inform him of the selection criteria used in the selection procedure and of the detailed marking scale which had led it to give him 18.6 points.

## THE INQUIRY

### **The opinion of the European Court of Auditors**

The opinion of the European Court of Auditors on the complaint was in summary as follows:

As regards the diplomas required for the participation in the selection procedure for temporary or auxiliary typists/clerical assistants, the notice of the selection procedure stated that *"candidates must have completed a course of secondary education and obtained a recognised final diploma"*.

The complainant had a university degree in foreign languages and literature. This was indeed a diploma of a higher level than that required by the notice of the selection procedure.

However, the fact of having a university degree did not automatically make the complainant one of the best candidates for the post of typist/clerical assistant for which he had applied. In order to decide which candidates would be admitted to the selection tests, the Selection Board gave a certain number of points to each candidate, based on the following selection criteria: diplomas (maximum 5 points), work experience related to the duties to be performed (maximum 14 points), knowledge of Information Technology (maximum 1 point), knowledge of languages (maximum 10 points).

The complainant had received 3 points for his diploma of secondary education. Candidates could have been awarded 2 additional points for a second diploma on condition that the second diploma was directly related to the duties to be performed. That was not the case for the complainant's university degree because a degree in foreign languages and literature was not directly related to the duties to be performed by a typist/clerical assistant.

However, this did not mean that the Selection Board had failed to take into account the qualifications of the complainant in his field of studies. In fact, in the category "knowledge of languages", to which his university degree was related, the complainant had received almost the maximum marks, i.e. 9 points out of 10. In conclusion, the complainant's allegation that his diploma had not been properly taken into account by the Selection Board was unfounded.

It was true that in the letter of 5 June 2003 by which the Selection Board informed the complainant that he was not invited to participate in the selection tests, he was only told that his name was not amongst those of the best candidates. However, considering the high number of candidates participating in the Court of Auditor's selection procedures, it was standard practice that the letter informing the candidate that he/he was not admitted to take part in the selection



tests was rather short. However, if a candidate asked for a more detailed explanation, the Selection Board provided him or her with additional information.

The additional explanation was only given piecemeal, following the various requests made by the complainant. Nevertheless, in a letter of the President of the Selection Board dated 18 December 2003, the complainant had been given a detailed explanation of the marking scale which had led the Selection Board to give him 18.6 points.

In this letter, the complainant had been informed that he had received precisely 5 points out of 5 for English, 2 points out of 2 for French, 1 point out of 2 for German (of which he only has a basic knowledge) and 1 point out of 1 for Spanish. Furthermore he received the full marks for knowledge of Information Technology (1 point).

The complainant had been informed that he had been awarded 5.6 points out of a possible 14 under category "work experience". It was foreseen that the candidates would be awarded 1 point for every year of experience related to the duties to be performed. The complainant had a wide range of work experience in different areas (for example language teacher, tour guide etc.). However, as he had applied for a post of typist/clerical assistant, only the experience related to the tasks a typist/clerical assistant usually performs had been taken into account. The complainant had been informed that the Selection Board had given him 2 points for his job as a secretary and 3.6 points for the period spent as a typist in a European Institution.

Concerning the third allegation of the complainant following which he was discriminated against concerning his professional experience, compared to the candidates who were already working for the Court of Auditors, the President of the Selection Board had explained in his various letters to the complainant, especially in his last letter of 18 December 2003, that this suspicion was unfounded. Out of the 296 applications for the posts of typist/clerical assistant which fulfilled the formal requirements of the notice of the selection procedure, only 2 were applications by people already working at the Court. Those 2 candidates were indeed admitted to the selection tests. However, they were not amongst the 20 successful candidates and were therefore not offered a new contract by the court.

Furthermore, the complainant had not even been in competition with those candidates. As announced in the notice of the selection procedure, the candidates were divided into groups according to their main language before the best of each group, those who would be allowed to participate in the tests, were selected. Neither of the internal candidates for the posts of typist/clerical assistant had the main language that the complainant had. The complainant's competitors were thus all external candidates and therefore in the same situation as the complainant himself. In conclusion, the complainant's allegation that he was discriminated against was unfounded.

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

In his observations dated 25 March 2004, the complainant maintained his complaint and made the following further comments;

The Selection Board should have given to him 2 additional points for his degree in foreign



languages and literature because it should have been considered as a second diploma. Therefore, he should have been awarded 5 points out of 5 for his diploma, instead of 3 points attributed by the Selection Board.

Concerning the number of points for his professional experience, the notice of the selection procedure did not indicate a minimum of years of work experience. In addition, the Selection Board had failed to take into consideration a work experience related to a job of personal assistant in a firm. In the complainant's view, he should have been given 0,6 additional points, i.e. to say 6, 2 points instead of the 5, 6 points attributed by the Selection Board.

As far as the number of points for his knowledge of languages was concerned, given that his knowledge of Spanish was better than the one of German, he should have been awarded 2 points out of 2 for Spanish (instead of 1 point out of 1 for Spanish) and 1 point out of 1 for German (instead of 1 point out of 2 for German). In total, the Selection Board should have awarded him 10 points out of 10 for his knowledge of languages, instead of the 9 points it actually awarded him.

In conclusion, he should have been awarded a total of 22, 2 points and his name should have been put on the list on the best candidates to be invited to participate in the selection procedure. Finally, as he was a former temporary agent, he should be have been given an additional point.

## THE DECISION

### 1 The scope of the Ombudsman's inquiry

1.1 On 19 September 2003, the complainant lodged a complaint with the European Ombudsman against the European Court of Auditors. In a letter dated 3 October 2003, the complainant sent a further e-mail related to his complaint. It resulted from the complaint of 19 September 2003 and the further e-mail of 3 October 2003 that the complainant wished to make the following allegations:

- The Selection Board had failed to put his on the list on the best candidates to be invited to participate in the selection procedure although the level of his diplomas was higher than that required in the notice of the selection procedure.
- There was a lack of transparency in the selection procedure because the Selection Board had failed to inform him of the selection criteria used in the selection procedure and of the detailed marking scale which enabled the Selection Board to give him 18.6 points.
- He was discriminated against concerning his professional experience, compared to the candidates who were already working for the Court of Auditors.

1.2 In his observations dated 25 March 2004, the complainant put forward that the Selection Board had failed to take into consideration his work experience related to a job of personal assistant in a firm. In the complainant's view, he should have been given 0,6 additional points, i.e. to say 6, 2 points instead of the 5, 6 points awarded by the Selection Board. He further stated that as a former temporary agent, he should be have been given an additional point. The complainant thus appeared to make new allegations.



1.3 The Ombudsman notes that, in its opinion, the European Court of Auditors stated that the complainant had a wide range of work experience in different areas (for example language teacher, tour guide etc.). However, as he had applied for a post of typist/clerical assistant, only the experience related to the tasks a typists/clerical assistant usually performs had been taken into account. According to the Court of Auditors, the complainant was informed that the Selection Board had given him 2 points for his job as a secretary and 3.6 points for the period spent as a typist in a European Institution.

1.4 On the basis of the information available to him, the Ombudsman considers that the complainant has not submitted sufficient evidence to show that the assessment of his work experience by the Court of Auditors was wrong. As regards the additional point the complainant claimed an account of the fact that he was a former temporary agent, the Ombudsman is not aware of any rule which would have enabled the Selection Board to give the complainant an additional point for this reason.

1.5 Pursuant to Article 195 of the Treaty establishing the European Community, *"the European Ombudsman shall conduct inquiries for which he finds grounds"*. In view of the above, the Ombudsman considers that there are insufficient grounds to extend his inquiry so as to cover the complainant's further allegations.

**2 The failure of the Selection Board to put the complainant on the list of the best candidates to be invited to participate in the selection procedure despite the fact that the level of his diplomas was allegedly higher than that required in the notice of the selection procedure**

2.1 In February 2003, the European Court of Auditors organised a selection procedure for the recruitment of auxiliary/temporary typists/clerical assistants of C grade. An initial selection was organised on the basis of information submitted in the curricula vitae of candidates. Candidates were divided into groups according to their main language. Once the qualifications and work experience had been assessed, the candidates with the highest marks were invited to participate in the selection procedure for each of the main languages. The complainant applied to take part in the initial selection procedure.

By letter dated 15 September 2003, the Court informed the complainant that the minimum of points was 20 and that following the assessment of his diplomas, professional experience and linguistic skills, he had been given 18.6 points.

The complainant alleged that the Selection Board had failed to put him on the list of the best candidates to be invited to participate in the selection procedure although the level of his diplomas was higher than that required in the notice of the selection procedure.

2.2 The European Court of Auditors stated that the complainant's allegation that his diploma had not been properly taken into account by the Selection Board was unfounded. The complainant had received 3 points for his diploma of secondary education. It was foreseen that candidates should be awarded 2 additional points for a second diploma on condition that the second diploma was directly related to the duties to be performed, which was not the case for the complainant's university degree. However, this did not mean that the Selection Board had



failed to take into account the qualifications of the complainant in his field of studies. In fact, in the category “knowledge of languages”, to which his university degree was related, the complainant received almost the maximum number of marks, i.e. 9 points out of 10.

2.3 The Ombudsman notes that in its letter to the complainant dated 18 December 2003, the Court of Auditors explained that the Selection Board had given 2 additional points to candidates who had a second diploma on condition that the second diploma was directly related to the duties to be performed.

2.4 The Ombudsman notes that the complainant's second diploma is a university degree in foreign languages and literature. In these circumstances, the view of the European Court of Auditors appears to be reasonable. The European Ombudsman therefore concludes that there appears to have been no maladministration by the European Court of Auditors as regards this allegation.

### **3 The alleged lack of transparency in the selection procedure**

3.1 The complainant alleged that there was a lack of transparency in the selection procedure because the Selection Board had failed to inform him of the selection criteria used in the selection procedure and of the detailed marking scale which enabled the Selection Board to give him 18.6 points.

3.2 The Court of Auditors argued that it was true that in the letter of 5 June 2003 by which the Selection Board informed the complainant that he would not be invited to participate in the selection tests, he had only been told that his name was not amongst those of the best candidates. However, considering the high number of candidates participating in the Court of Auditors' selection procedures, it was standard practice that the letter informing the candidate that he/she was not admitted to take part in the selection tests was rather short. However, if a candidate asked for a more detailed explanation, the Selection Board provided him or her with additional information. In the present case, the additional explanation had only been given piecemeal, following the various requests made by the complainant. Nevertheless, in a letter of the President of the Selection Board dated 18 December 2003, the complainant had been given a detailed explanation of the marking scale which led the Selection Board to give him 18.6 points.

3.3 The Ombudsman notes that on 13 January 2004, the complainant sent him the reply of the European Court of Auditors dated 18 December 2003 to his letter of 3 October 2003 in which he had asked to be given the detailed marking scale which had enabled the Selection Board to give him 18.6 points. In its letter dated 18 December 2003, the European Court of Auditors provided the complainant with detailed information on the selection criteria used in the selection procedure, namely the candidates' diploma, their knowledge of languages and of Information Technology, and their work experience. In this letter, the European Court of Auditors also indicated the maximum number of points available for each of the selection criteria and gave detailed explanations as to the marking scale which had led the Selection Board to give the complainant 18.6 points. The Court of Auditors thus appears to have informed the complainant of the selection criteria used in the selection procedure and of the detailed marking scale which had led the Selection Board to give him 18.6 points.





3.4 In these circumstances, the Ombudsman considers that there is no need to pursue his inquiry into the complainant's allegation.

#### **4 The alleged discrimination concerning the complainant's professional experience**

4.1 The complainant alleged that he had been discriminated against concerning his professional experience, compared to the candidates who were already working for the Court of Auditors.

4.2 The Court of Auditors stated that, out of the 296 applications for the posts of typists/clerical assistants which fulfilled the formal requirements of the notice of the selection procedure, only 2 had been applications by people already working at the Court. Those 2 candidates had indeed been admitted to the selection tests. However, they had not been amongst the 20 successful candidates and had therefore not been offered a new contract by the court. The complainant had not even been in competition with those candidates since neither of the internal candidates for the posts of typist/clerical assistant had the main language that the complainant had. The complainant's competitors had thus all been external candidates and therefore in the same situation as the complainant himself.

4.3 On the basis of the documents submitted to him, the Ombudsman considers that the complainant has not established that he was discriminated against compared to candidates who were already working for the Court of Auditors.

4.4 From the above, the European Ombudsman concludes that there appears to have been no maladministration by the European Court of Auditors as regards this allegation.

#### **5 The complainant's claims**

5.1 The complainant claimed that the Selection Board should inform him of the selection criteria used in the selection procedure and of the detailed marking scale which enabled the Selection Board to give him 18.6 points.

5.2 In view of the above conclusions, the Ombudsman considers that there is no need to pursue his inquiry into these claims.

#### **6 Conclusion**

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

The President of the European Court of Auditors will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS