

Decision of the European Ombudsman on complaint 2174/2003/MHZ against the European Commission

Decision

Case 2174/2003/MHZ - Opened on 05/12/2003 - Decision on 19/07/2004

Strasbourg, 19 July 2004

Dear Mr G.,

On 7 November 2003, you made a complaint to the European Ombudsman against the European Commission concerning Open competition COM/A/3/02 for administrators in the field of "Research".

On 5 December 2003, I forwarded the complaint to the President of the European Commission. On 12 February 2004, the Commission sent an opinion, which was expressed as containing the joint views of the Commission and the European Personnel Selection Office (EPSO). I forwarded the opinion to you with an invitation to make observations.

On 1 April 2004, I received your observations.

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

THE COMPLAINT

On 20 March 2003, the complainant participated in the written examination of Open Competition COM/A/3/02 held in Madrid. During the examination, he detected irregularities in the procedure. On 25 April 2003, he addressed the European Commission pointing out the irregularities that he had observed and asking for the annulment of the examination. The Commission did not answer his letter.

On 7 November 2003, he lodged a complaint with the European Ombudsman.

He alleged that the Commission had not answered his letter of 25 April 2003.

He alleged that ten questions of the pre-selection tests were poorly translated into Spanish and/or not adequately formulated and that, as a consequence, the answers given would be incorrect. In particular, he alleged that for some questions no correct answer was possible and



that in some cases more than one answer was possible for the same question.

He also alleged that incorrect answers were not penalised and therefore the impact of random answers on the final test would be significant.

He alleged that the time allocated to tests "a" and "c" of the examination was not sufficient given that both tests aimed at evaluating knowledge of specific matters.

He also alleged that the errors in translation and/or formulation of ten questions meant that more time was required to interpret them and reduced the time available to deal with the other questions.

He claimed that the answers to the questions of the pre-selection tests should be made public.

He claimed that the entire examination should be annulled or partially annulled (referring to the ten questions inadequately formulated and/or translated).

In addition, he claimed that appropriate measures should be taken in order to formulate and translate the questions in future examinations correctly.

THE INQUIRY

The opinion of the Commission and EPSO

The Ombudsman forwarded the complaint to the Commission. The Ombudsman received an opinion from the Commission, which is expressed as containing the joint views of the European Personnel Selection Office (EPSO) and the Commission. The opinion can be summarized as follows.

The complainant participated in Open competition COM /A/3/02 published in the Official Journal C177A of 25 July 2002 and rectified by the Official Journal C228A of 25 September 2002 to constitute a reserve list of administrators (A7/A6) in the field of "Research". The complainant took part in the pre-selection tests on 20 March 2003. The pre-selection procedure consisted of three multiple choice answer tests: test "a" to evaluate the candidates' knowledge of research policy and development and their knowledge of their chosen field; test "b" to evaluate their general capacities, in particular in the area of capacity and verbal and numeric reasoning; test "c" to evaluate their knowledge of principal developments in European unification and Community policies in a second Community language.

On 23 April 2003, EPSO informed the complainant of his results in the pre-selection tests and that he had not been admitted to the other stages of the competition because in test "b" he had only obtained 18.667 points whereas the minimum required was 20 points.

On 25 April 2003 the complainant lodged a complaint with the Commission, Personnel and Administration Directorate, under Article 90(2) of the Staff Regulation.



On 5 November 2003, the Commission forwarded the decision of the Appointing Authority to the complainant rejecting his complaint (the translation into Spanish was sent on 20 November 2003).

As regards the complainant's allegation and claim made in his complaint to the European Ombudsman concerning the quality of translation, the Commission and EPSO consider that all possible measures were taken to ensure a high standard of formulation and translation of the examination tests. The tests were prepared by experts on the subject, checked by the Selection Board, translated by the Commission Translation Services into all Community languages and the translations were verified by members of the Selection Board and translator-reviewers. After having received the complainant's complaint under Art. 90 (2) of the Staff Regulations, the President of the Selection Board verified all the complainant's allegations as regards the contested questions and answers, while the Spanish member of the Selection Board verified the quality of translation. As a result of these verifications, the President of the Selection Board concluded that the remarks of the complainant were not founded and that the contested questions were valid and should be maintained.

As regards the allegation concerning lack of time, the Commission and EPSO took the view that the time at the disposal of candidates during an examination should be organised by the candidates themselves.

As concerns the alleged lack of reply to the complainant's Art. 90 complaint, the Commission and EPSO apologised for the delay in replying. The Commission and EPSO also noted that when dealing with the complaint, the Selection Board had had to verify the quality of translation and formulation of those parts of the examination criticised by the complainant. The Commission and EPSO pointed out that a lack of reply is equivalent to an implicit, negative decision in terms of Art. 91 of the Staff Regulations.

As regards the allegation that incorrect answers were not penalised, the Commission and EPSO took the view that the Selection Board is bound by a notice of the competition and that, in the notice of the competition concerned, it was stated that incorrect answers would not be penalised.

As regards the complainant's claim regarding public access to the examination questions, the Commission and EPSO first pointed out that every candidate receives the copies of his optical reader form and the copy of correction grid upon request. However, the complainant did not ask for these documents. The Commission and EPSO attached his optical reader form and the correction grid to their opinion.

Finally, in the view of the Commission and EPSO, there are no reasons to justify the annulment of the competition.

The complainant's observations

In his observations on the Commission's and EPSO's opinion, the complainant disagreed with their argument that the questions of the examination tests were correct and well translated. He invoked his professional experience as a university professor to support his position. He took



the view that the Commission contested his allegations because of the complex legal and logistical problems which would arise from annulling the competition. In this context, he also stated that his intention was not to impugn the validity of the competition.

The complainant presented proposals in order to improve the technical quality of future tests in European competitions.

The complainant thanked the Ombudsman for having dealt with his complaint.

THE DECISION

1 Lack of reply to the complainant's Article 90 complaint within the four month time limit

1.1 The complainant participated in Open Competition COM/A/3/02. In accordance with Art. 90. 2 of the Staff Regulations, on 25 April 2003, the complainant lodged a complaint with the Commission concerning irregularities he had detected during the pre-selection tests. His complaint was registered by the Commission on 14 May 2003. In his complaint to the Ombudsman, the complainant alleged that he had not received any answer to his complaint addressed to the Commission.

1.2 In its opinion on the complaint, the Commission informed the Ombudsman that it had sent the decision of the Appointing Authority to the complainant almost two months after the statutory deadline. The Commission explained that the Selection Board had had to verify the quality of translation and formulation of those parts of the examination criticised by the complainant. The Commission apologised for the delay and pointed out that a lack of reply is equivalent to an implicit negative decision in terms of Art. 91 of the Staff Regulations.

1.3 As regards the Commission's remark that lack of reply to an Art. 90 complaint is equivalent to an implicit negative decision in terms of Art. 91 of the Staff Regulations, the Ombudsman recalls that in his decisions on complaints 1479/99/(OV)MM and 729/2000/OV, he considered that this provision aims at establishing the possibility of a legal remedy for a citizen even when the Appointing Authority does not comply with its legal obligation to answer. It does not authorise the Appointing Authority to neglect its obligation to act in accordance with the principles of good administration.

1.4 In the present case, the Ombudsman notes that the Commission has acknowledged the excessive delay in answering the complainant's claim of 25 April 2003, has apologised for it and that it has now sent a reply to the complainant. The Ombudsman therefore considers that no further inquiries into this aspect of the complaint are necessary.

2 The quality of the pre-selection tests

2.1 The complainant alleged that ten questions of the pre-selection tests were poorly translated into Spanish and/or not adequately formulated and that, as a consequence, the answers given would be incorrect. In particular, he alleged that for some questions no correct answer was possible and that in some cases more than one answer was possible for the same question.

He claimed that appropriate measures should be taken in order to formulate and translate the



questions in future competitions correctly.

2.2 The Commission and EPSO state, as a general point, that adequate measures are applied in order to guarantee the quality of examination questions, namely the preparation of the test by experts in the subject, an examination of the questions and corresponding answers by the Selection Board, translation of the test by the Translation Services into all official languages, a further collective check of the tests by members of the Selection Board together with translator-reviewers. As regards the specific allegation of the complainant, the Commission stated that, in dealing with the complainant's complaint under Article 90 (2) of the Staff Regulations, the President of the Selection Board had carefully checked the content and wording of every question and answer contested by the complainant and that the quality of translation into Spanish had been verified by the Spanish member of the Selection Board. Since no errors had been found, the President of the Selection Board decided that the questions noted by the complainant should not be annulled.

2.3 The Ombudsman notes that, according to the established case-law, the Selection Board has a wide margin of discretion as regards the arrangements and 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) .

2.4 The Ombudsman takes the view that there was significant room for improvement in the linguistic quality of the Spanish version of a number of questions in the pre-selection tests. On the basis of the available information, however, the Ombudsman does not consider that the complainant has succeeded in demonstrating that the content of the test exceeded the limits laid down in the notice of competition or conflicted with the purposes of the test or of the competition. It cannot, therefore, be concluded that the Selection Board stepped outside the limits of its legal authority. The Ombudsman therefore finds no maladministration by the European Commission as regards this aspect of the complaint.

3 The allegation that incorrect answers were not penalised

3.1 The complainant alleged that incorrect answers were not penalised and therefore the impact of random answers on the final test would be significant.

3.2 The Commission and EPSO stated that the Selection Board was bound by the conditions laid down in the relevant notice of competition according to which incorrect answers would not be penalised in the pre-selection tests.

3.3 The Ombudsman recalls that, as mentioned in paragraph 2.3 above, the Selection Board has a wide margin of discretion as regards the arrangements and detailed content of the tests provided for within the framework of a competition. The Ombudsman does not consider that the complainant has succeeded in demonstrating that the Selection Board stepped outside the limits of its legal authority in deciding not to penalise incorrect answers. The Ombudsman also notes that the notice of competition said on this point: "Wrong answers made in the pre-selection tests will not be penalised" (3) . Furthermore, according to established case law, a Selection Board is bound by the conditions laid down in the notice of competition. The Ombudsman



therefore finds no maladministration as regards this aspect of the case.

4. The allegation that insufficient time had been allocated to complete the test

4.1. The complainant alleged that the time allocated to tests "a" and "c" of the examination was not sufficient given that both tests aimed at evaluating knowledge of specific matters. He also alleged that the errors in translation and/or formulation of ten questions meant that more time was required to interpret them and reduced the time available to deal with the other questions.

4.2. The Commission and EPSO argued that candidates should organise their own time in an examination and decide which questions should be answered (given that incorrect answers were not penalised) and in which order of priority. The Commission and EPSO also denied that the complainant lost time because of errors in translation/formulation given that no errors were discovered by the Selection Board.

4.3. The Ombudsman takes the view that the analysis in paragraph 2.4 above also applies to this aspect of the complaint.

5. The claim that the answers to the questions of the pre-selection test should be made public

5.1. The complainant claimed that the answers to the questions of the pre-selection tests should be made public.

5.2. The Commission and EPSO state that every candidate receives a copy of his optical reader form and of the correction grid upon request. The Commission and EPSO argue that neither in his Art. 90 complaint nor at a later date had the complainant requested the copy of the correction grid nor of his optical reader form.

5.3. The Ombudsman points out that the Commission annexed a copy of the correction grid to its opinion on the complaint, in the knowledge that the opinion and its annexes would be forwarded to the complainant as part of the Ombudsman's normal inquiry procedure. The Ombudsman concludes that the Commission has taken appropriate action to settle this aspect of the complaint, by informing the complainant of the correct answers to the questions of the pre-selection tests during the Ombudsman's inquiry. No further inquiries into this claim are therefore necessary.

6 The claim that the competition should be annulled

6.1 In his original complaint, the complainant claimed that the competition should be annulled either partially or in its entirety.

6.2 The Commission and EPSO stated that, in their view, there are no reasons to justify the annulment of the competition.

6.3 In view of the findings made in previous sections of this decision, the Ombudsman considers that the complainant's claim cannot be sustained. Moreover, the Ombudsman notes that the complainant appears to have withdrawn this claim in his observations by stating that his intention was not to impugn the validity of the competition.

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 case T-156/89, *Valverde Mordt v. Court of Justice* , (1991) ECR II-407, paragraph 121.

(3) Official Journal C177 A/28, 25/07/2002.