

Decision of the European Ombudsman on complaint 475/2004/(MA)OV against the European Commission

Decision

Case 475/2004/(MA)OV - Opened on 27/02/2004 - Decision on 20/07/2004

Strasbourg, 20 July 2004

Dear Mrs K.,

On 16 February 2004, you made a complaint to the European Ombudsman against the Commission, concerning your participation in open competition EPSO/B/3/03.

On 27 February 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 16 April 2004. I forwarded it to you with an invitation to make observations, which you sent on 16 June 2004.

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 as follows:

The complainant, a Finnish citizen, participated in open competition EPSO/B/3/03 (Finnish proof-readers) organised by the European Personnel Selection Office (EPSO) on behalf of the Office for Official Publications (OPOCE). According to the complainant, the evaluation system of the open competition was unfair.

The competition consisted of three pre-selection tests, a), b) and c). For each correct answer one point was given in tests a) and c). However, for test b), which concerned knowledge of European affairs and foreign languages, each correct answer received only 0.67 points.

The complainant considers that the evaluation system was unfair, as it favours those who were not familiar with European affairs, or who did not have good knowledge of foreign languages.

On 9 February 2004, the complainant wrote to OPOCE to ask for copies of her own tests. OPOCE replied on behalf of the Selection Board on 11 February 2004 providing the complainant with her optical answer sheets, as well as the lists of correct answers. As the



complainant had obtained only 53.67 points for all the tests together (the minimum required was 54.33 points), her written test d) had not been corrected. OPOCE also explained that the value of 0.67 points per question for test b) was due to the fact that there were 30 questions whereas the maximum number of points was 20.

On 16 February 2004, the complainant made the present complaint to the Ombudsman, claiming that the evaluation system for competition EPSO/B/3/03 should be corrected so that one point is given for every right answer in tests a), b) and c).

THE INQUIRY

The complainant concerns open competition EPSO/B/3/03, organised by EPSO, but it was OPOCE which informed the complainant of her marks and conducted further correspondence with the complainant concerning the competition in question. As the complaint concerned the explanation given in this correspondence, the Ombudsman forwarded the complaint for an opinion to the Commission, which exercises certain powers of the appointing authority in relation to OPOCE (1). The opinion received from the Commission was presented as containing the joint views of EPSO and the Commission.

The Commission's opinion

The Commission observed that pre-selection test a) was marked from 0 to 40 points, and tests b) and c) from 0 to 20 points. The complainant obtained the minimum mark required for every pre-selection test, but was not among the 55 candidates who had obtained the best marks for all the tests. The complainant was informed by letter of 7 January 2004 of the marks obtained in the pre-selection tests.

The competition notice merely foresaw a mark for every test and that the Selection Boards have a large discretion with regard to the modalities and the exact content of the tests, particularly concerning the number of questions asked. Selection Boards cannot be obliged to establish an identical number of questions for each test.

In this case, the Selection Board decided that test b) - marked out of 20 points - would consist of 30 questions with each question having the same value, namely 20 divided by 30, which is 0.66666. After rounding, the value for a correct answer in test b) was thus 0.67 points.

As this was applied to all candidates, there was no discrimination nor any manifest error with regard to the correction of the complainant's tests. The complainant in fact never contested the content nor the calculation of her marks and never requested a revision of her marks. The correction of the complainant's test was completely in line with the competition notice, and therefore there was no maladministration.

The complainant's observations

The complainant maintained her complaint and her claim that the evaluation of test b) should be changed in order to correspond to the value per correct answer in tests a) and c).



THE DECISION

1 The alleged unfair evaluation system

1.1 The complainant participated in open competition EPSO/B/3/03. In pre-selection tests a), and c) one point was given for each correct answer, whereas for test b), which concerned knowledge of European affairs and foreign languages, each correct answer received only 0.67 points. According to the complainant, the evaluation system thus favoured those who were not familiar with European affairs, or who did not have good knowledge of foreign languages. The complainant alleges that the evaluation system was unfair and claims that it should be corrected so that one point is given for every right answer in tests a), b) and c).

1.2 The Commission observed that the Selection Board decided that test b) - marked out of 20 points - would consist of 30 questions with each question having the same value, namely 20 divided by 30 which is 0.66666. After rounding, the value for a correct answer on test b) for all candidates was thus 0.67 points. As this rule was applied to all candidates, there was no discrimination nor any manifest error with regard to the correction of the complainant's tests.

1.3 The Ombudsman notes that, according to established case-law, Selection Boards have considerable discretion as regards the arrangements and 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) . In the present case, the Ombudsman does not consider that the complainant has succeeded in demonstrating that the Selection Board stepped outside the limits of its legal authority by subdividing test b) into 30 questions with an equal mark value of 0.67 points per correct answer and applying this correction method equally to all candidates. No instance of maladministration was therefore found and the Ombudsman considers that the complainant's claim cannot be sustained.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European 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) Under Article 6 of Decision 2000/459/EC, ECSC, Euratom, of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions of 20 July 2000 on the organisation and operation of the Office for Official Publications of the European Communities (2000 OJ L 183/12) the Commission exercises certain powers of the appointing authority as regards the staff of OPOCE.



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

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