

Decision of the European Ombudsman on complaint 984/2004/OV against the European Commission

Decision

Case 984/2004/OV - Opened on 06/05/2004 - Decision on 08/09/2004

Strasbourg, 8 September 2004

Dear Mr X.,

On 29 March 2004 you made a complaint to the European Ombudsman against the Commission concerning your exclusion from open competition COM/A/2/02.

On 6 May 2004, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 6 July 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 participated in open competition COM/A/2/02 (assistant administrators in the fields of 'agriculture', 'fisheries' and 'environment') (1) . After successfully passing the pre-selection tests, the complainant was invited to submit his application and supporting documents. By letter of 6 June 2003, the Selection Board accepted the complainant's application and invited him to take part in the written tests on 11 July 2003. After having successfully passed the written tests, the complainant was invited to sit the oral test on 13 January 2004. By letter of 27 January 2004, the Selection Board however informed the complainant that he was excluded from the competition, because, contrary to point A.II.2 of the competition notice, he had not obtained a university degree after 27 September 1997. The complainant indicates that he obtained his degree on 13 April 1994. The complainant took knowledge of this letter, sent to his Greek address, only on 29 March 2004 when he returned to Greece from the West Bank-Gaza strip where he works.

On 29 March 2004, the complainant made the present complaint to the Ombudsman alleging that:



1. The Selection Board is bound by its earlier decision to admit the complainant to the competition and cannot therefore exclude him after he passed the written and oral tests. The complainant therefore claims that he should be put on the reserve list of successful candidates.

2. Condition A.II.2 of the competition notice, which allows participation of candidates who had obtained their university degree after 27 September 1997, constitutes age discrimination.

In his letter of 6 May 2004, the Ombudsman informed the complainant that he would open an inquiry into the first allegation but that he considered there to be no grounds to open an inquiry into the second allegation, as he had already dealt with a similar allegation in his decision on complaint 1536/2002/OV. The Ombudsman sent a copy of the latter decision to the complainant in English and Greek.

THE INQUIRY

The complainant indicated that his complaint was against the Commission. The Ombudsman therefore forwarded the complaint for an opinion to the Commission. The opinion received from the Commission was however presented as containing the joint views of EPSO (the European Personnel Selection Office) and the Commission.

The Commission's and EPSO's opinion

The Commission and EPSO brought to the Ombudsman's attention that the complainant made an appeal on the basis of Article 90 (2) of the Staff Regulations, which was registered on 11 May 2004 and which contains the same allegations as those set out in the complaint to the Ombudsman. The Commission and EPSO therefore informed the Ombudsman that, once an official reply is sent to the complainant, a copy of it will also be sent to the Ombudsman.

THE DECISION

1 The alleged withdrawal of the Selection Board's earlier decision

1.1 The complainant alleges that the Selection Board is bound by its earlier decision to admit the complainant to the competition and cannot therefore exclude him after he passed the written and oral tests. The complainant therefore claims to be put on the reserve list of successful candidates.

1.2 The Commission and EPSO pointed out that the complainant made an appeal on the basis of Article 90 (2) of the Staff Regulations, which was registered on 11 May 2004 and which contained the same allegations as those set out in the complaint to the Ombudsman.

1.3 It appears from the inquiry that, on 11 May 2004, the complainant has made an appeal on the basis of Article 90 (2) of the Staff Regulations. According to Article 2.8 of the Ombudsman's Statute, *"no complaint may be made to the Ombudsman that concerns work relationships between the Community institutions and bodies and their officials and other servants unless all the possibilities for the submission of internal administrative requests and complaints, in particular the procedures referred to in Article 90 (1) and (2) of the Staff Regulations, have been*



exhausted by the person concerned and the time limits for replies by the authority thus petitioned have expired" (2) .

1.4 Considering that the appeal which the complainant has lodged is still pending for a decision, and that therefore the possibilities for internal complaints have not been exhausted by the complainant, the Ombudsman has to terminate his inquiries into this complaint on the basis of Article 2.8 of the Ombudsman's Statute.

1.5 The Ombudsman however points out that, if the complainant is dissatisfied with the answer to his Article 90 (2) appeal, or in case no answer is received within the time limit, he has the possibility to make a new complaint to the Ombudsman.

2 Conclusion

The Ombudsman closes his inquiry into the present complaint on the basis of Article 2.8 of the Ombudsman's Statute.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 2002 C 177 A/13.

(2) Decision of the European Parliament on the Regulations and General Conditions governing the performance of the Ombudsman's duties, OJ 1994 L 113/15.