

Decision of the European Ombudsman on complaint 1191/2004/OV against the European Personnel Selection Office

Decision

Case 1191/2004/OV - Opened on 18/05/2004 - Decision on 04/10/2004

Strasbourg, 4 October 2004

Dear Mr F.,

On 9 April 2004, you made a complaint to the European Ombudsman against the European Personnel Selection Office (EPSO) concerning your non-admission to the oral test of open competition COM/A/3/02.

On 18 May 2004, I forwarded the complaint to the Director of EPSO. In its opinion of 23 August 2004, EPSO pointed out that you had made an appeal on the basis of Article 90 (2) of the Staff Regulations and sent a copy of the reply from the Appointing Authority of 12 August 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/3/02 (Administrators A7/A6 in the field of research) (1). On 23 December 2003, The European Personnel Selection Office (EPSO) informed the complainant that, although the marks he obtained on written test d) (a case study) were above or equal to the pass mark (20.6/40), they were not sufficiently high to admit the complainant to the oral test e), because point B.3 of the competition notice provided that only the 145 candidates with the highest marks in test d) would be admitted to the oral test. On 11 January 2004, the complainant asked to receive the examiners' evaluation of his test. On 4 February 2004, EPSO sent the complainant a copy of his own answer to the written test, as well as a copy of the evaluation sheet.

By letter of 11 February 2004, the complainant requested a review of written test d), on the grounds that the score he obtained on the first part of the test d) does not reflect the accompanying written comments on the evaluation sheet. On 27 February 2004, the Selection



Board replied explaining the correction method and confirming the complainant's mark of 20.6/40. On 11 March 2004, the complainant again requested a review of written test d). In support of his request, the complainant argued that the Selection Board's earlier letter constitutes only a general reply and had not addressed his specific questions. He also pointed out that the copy of his own answer to the written test which EPSO had sent him bears no signs of marking by the examiners. By letter of 22 March 2004, the Selection Board again confirmed its earlier decision, stating that, because of the confidentiality of the Selection Board's proceedings, it could not provide the complainant with further explanation concerning the evaluation criteria or the marking system in the written test.

On 9 April 2004, the complainant made the present complaint to the Ombudsman. He considers that EPSO has not provided appropriate answers to his questions. According to the complainant, a review process implies that an exam will be considered for a re-grade, which requires a second set of comments from the reviewers. Without this, any review process is meaningless. The Selection Board's rejection of the complainant's first request for review was not very different from what it would have said to anybody else requesting a review. The complainant wonders what proportion of requests for reviews filed with EPSO in the past have ended with an acknowledgement of inappropriate marking. There should be statistics about these figures.

The complainant's allegation is therefore that the Selection Board has not replied in an appropriate way to his requests for review of 11 February and 11 March 2004.

THE INQUIRY

EPSO's opinion

In its opinion, EPSO informed the Ombudsman that on 9 April 2004, the complainant had lodged an appeal on the basis of Article 90.2 of the Staff Regulations, with the same allegations as those set out in the complaint to the Ombudsman. On 19 August 2004, EPSO sent to the complainant a copy of the Appointing Authority's reply of 12 August 2004 to his appeal. EPSO equally sent a copy to the Ombudsman.

THE DECISION

1 The alleged inappropriate reply to the requests for review

1.1 The complainant alleges that the Selection Board has not replied in an appropriate way to his requests for review of 11 February and 11 March 2004.

1.2 EPSO pointed out that the complainant made an appeal on the basis of Article 90 (2) of the Staff Regulations, which contained the same allegations as those set out in the complaint to the Ombudsman. On 23 August 2004, EPSO sent a copy to the Ombudsman of the Appointing Authority's reply of 12 August 2004 to the complainant's appeal.

1.3 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 complainant has made an appeal on the basis of Article 90 (2) of the Staff Regulations at the same time as the complaint to the Ombudsman, 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 of 12 August 2004 to his Article 90 (2) appeal, 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 Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 2002 C 177 A.

(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.