

Decision of the European Ombudsman on complaint 1283/2004/OV against the European Parliament

Decision

Case 1283/2004/OV - Opened on 03/06/2004 - Decision on 11/11/2005

Strasbourg, 11 November 2005

Dear Mr K.,

On 23 April 2004, you made a complaint to the European Ombudsman concerning your exclusion from Open competition PE/134/C organised by the European Parliament.

On 3 June 2004, I forwarded the complaint to the President of the Parliament. Parliament sent its opinion on 20 July 2004. I forwarded it to you on 18 August 2004 with an invitation to make observations, if you so wished. No observations have been received from you.

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

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

THE COMPLAINT

According to the complainant the relevant facts are as follows:

The complainant, who works for the European Commission, applied for Open competition PE/134/C (clerical assistants (C5-C4) in the field of general security) (1) organised by the European Parliament. By letter of 18 September 2003, the Selection Board however rejected his application, because a) the complainant did not have recent professional experience of at least 5 years in the area of public or private general security (point III.B.1.b) of the notice of competition); and b) on the basis of the supporting documents, the complainant did not show that he had good knowledge of another official EU language (point III.B, 2 and 3 of the notice of competition).

On 6 October 2003, the complainant made a request for reconsideration of his application. The Selection Board rejected this request by letter of 11 November 2003, which the complainant received on 14 November 2003. The complainant alleged that this constituted an avoidable delay under Parliament's Code of Conduct. On the substance, the Board accepted the



complainant's argument concerning his knowledge of a second language. As regards the complainant's professional experience, the Board pointed out that the supporting documents he had sent in the original application did not show professional experience in the relevant tasks.

On 18 November 2003, the complainant made an appeal on the basis of Article 90 (2) of the Staff Regulations. By decision of 17 February 2004, the Appointing Authority rejected the appeal, referring to the conditions in the notice of competition, stating that none of the documents transmitted by the complainant referred to the precise character or the duration of his experience.

On 23 April 2004, the complainant made the present complaint to the Ombudsman. The complainant's allegations can be summarised as follows:

- The Selection Board has unjustifiably excluded the complainant from Open competition PE/134/C, without an objective and precise evaluation of his file.
- There has been avoidable delay in the reply to the complainant, which was sent allegedly after the 45 days mentioned in the decision of the Bureau of 10 July 1997 (2) . The complainant sent his letter on 6 October 2003 and received a reply only on 14 November 2003.

THE INQUIRY

Parliament's opinion

In its opinion, Parliament made the following comments:

As regards the first allegation, Parliament first recalled the provisions of the notice of competition concerning the conditions of admission to the competition.

After having examined the complainant's application, the Selection Board had decided not to admit him to the competition because he did not have 1) at least five years' professional experience in the area of public or private general security and 2) a good knowledge of a second official language. After reconsidering the application, the Board maintained its decision, accepting however the complainant's arguments concerning his knowledge of a second language, but stating that the supporting documents of the complainant's application did not demonstrate a professional experience concerning the tasks mentioned in the notice of competition.

Parliament had undertaken a new examination of the complainant's file and the supporting documents relating to his professional experience (these documents were annexed to Parliament's opinion). Like the Selection Board, Parliament was of the opinion that these documents were not in conformity with the requirements of point III.B.3 of the competition notice. The complainant should have enclosed employment contracts or certificates, recruitment letters or certificates, indicating the exact nature of the activities, accompanied by payment sheets indicating clearly the dates of beginning and, where applicable, end of professional experience. The complainant had produced documents concerning his professional experience and one salary sheet, but not any document indicating the exact nature and duration of his activity. The Appointing Authority had verified the decision of the Board and had not noticed any



illegality.

As regards the second allegation concerning alleged delay in the reply, namely that the complainant had to wait until 14 November 2003 to obtain a reply on his request of 6 October 2003, Parliament observed that the Selection Board did not meet every time it received a request, but dealt with all files in one single meeting. Once the decisions on the files had been taken, they needed to be prepared as letters which then needed to be translated. The time taken for the Board to reply appeared thus to be entirely reasonable.

It was true that point III.A.1 of Parliament's Code of Conduct foresees that written requests to an administrative department of Parliament must be answered within 45 days (in conformity with the decision of the Bureau of 10 July 1997). This decision however only concerns requests and not appeals against decisions of Selection Boards. Point III.A.1 of the Code of Conduct was thus not applicable in this case.

The complainant's observations

The Ombudsman sent Parliament's opinion to the complainant and invited him to submit observations, but no observations were received from the complainant.

THE DECISION

1 The allegedly unjustified exclusion from Open competition PE/134/C

1.1 The complainant alleged that the Selection Board had unjustifiably excluded him from Open competition PE/134/C, without an objective and precise evaluation of his file.

1.2 In its opinion, Parliament stated that, after having examined the complainant's application, the Selection Board decided not to admit him to the competition because he did not have 1) at least five years' professional experience in the area of public or private general security and 2) a good knowledge of a second official language. After reconsidering the application, the Board maintained its decision, accepting however the complainant's arguments concerning his knowledge of a second language. Parliament had undertaken a new examination of the complainant's file and the supporting documents relating to his professional experience. The complainant should have enclosed employment contracts or certificates, recruitment letters or certificates, indicating the exact nature of the activities, accompanied by payment sheets indicating clearly the dates of beginning and eventual end of professional experience. The complainant had not produced any document indicating the exact nature and duration of his activity. The Appointing Authority had verified the decision of the Selection Board and had not noticed any illegality.

1.3 The Ombudsman notes that, as regards professional experience, point III.B.1.b) of the notice of competition required *"at least five years' recent professional experience in the area of public or private general security"* and stated that *"(...) professional experience must be relevant to the job description in section II, described in detail on the application form and backed up by supporting evidence."*

Point II ("Job description") of the notice of competition described the duties as including



"performance of surveillance and protection duties, checking the organisation of rounds carried out by the security company staff, implementing internal protection measures, centralising and reporting any anomalies and information communicated by the private security staff."

Point III.B.3 of the competition notice stated that *"proof of the professional experience (...) must be provided by producing one or more of the supporting documents listed below for guidance:*

- employment contracts or certificates, letters or attestation of appointment, giving precise details of the type of work, which must be accompanied by salary slips that clearly show the dates when your professional experience started and (if appropriate) finished,*
- if you are still in relevant employment, your most recent payslip as proof of length of service,*
- proof of activity if you are self-employed (e.g. tax returns, VAT declarations, extract from the commercial register, social security, invoices)."*

Point XI.2 of the notice of competition provided that the application form and supporting documents had to be sent by registered post by 31 January 2003.

1.4 The Ombudsman has carefully analysed the documents which the complainant enclosed with his application and which Parliament had also annexed to its opinion (3) , and comes to the conclusion that those documents do not provide evidence that the complainant had at least five years' recent professional experience in the area of public or private general security relevant to the job description in section II.

1.5 On the basis of the above, the Ombudsman concludes that the Selection Board's decision not to admit the complainant to the competition because he did not provide evidence for at least five years' recent professional experience in the area of public or private general security appears to be correct. In those circumstances, the complainant's allegation that the Selection Board unjustifiably excluded him from Open competition PE/134/C cannot be upheld. No instance of maladministration was therefore found.

2 The allegedly avoidable delay

2.1 The complainant alleges that there has been avoidable delay in the reply to him, which was sent allegedly after the 45 days mentioned in the decision of the Bureau of 10 July 1997 (4) . The complainant sent his letter on 6 October 2003 and received a reply only on 14 November 2003.

2.2 Parliament observed that the Selection Board does not meet every time it receives a request, but deals with all files in one single meeting. The time taken by the Board to reply appears to be fully reasonable. Parliament also pointed out that point III.A.1 of Parliament's Code of Conduct, which foresees that written requests to an administrative department of Parliament must be answered within 45 days, only concerns requests and not appeals against decisions of Boards, and that therefore that point is not applicable in this case.

2.3 The Ombudsman notes from the file that the complainant sent his request for reconsideration of his application to the Selection Board on 6 October 2003 and that the latter replied to him on 12 November 2003 (5) . The complainant received that letter on 14 November 2003, which is one month and eight days after he sent his letter.



2.4 It appears therefore that the Selection Board sent its reply well within the time limit of 45 days set out in Parliament's Code of Conduct. No instance of maladministration by Parliament was therefore found. In these circumstances, the Ombudsman does not consider it necessary to address Parliament's argument that its Code of Conduct does not apply to this case.

3 Conclusion

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 2002 C 303 A.

(2) The complainant is referring to point IIIA.1 of the European Parliament's Code of Conduct (OJ 2000 C 97, p.1) which foresees that *"the reply shall be drafted in the official language of the Union used by the applicant and, in accordance with the Bureau decision of 10 July 1997, given within 45 days"*.

(3) The complainant annexed 20 documents to his application: 1) a CV, 2) a copy of his identity card, 3) a certificate of lower education, 4) a diploma of lower secondary education, 5) a certificate of technical secondary education, 6) a diploma of higher secondary education, 7) a brevet of employee-typist, 8) a military diploma "candidate sub-officer", 9) a student certificate "sub-officer Defence," 10) a military brevet "candidate vice sub-officer", 11) a military brevet "professional sub-officer", 12) a brevet "air fusilier", 13) a brevet "Air Commando", 14) a diploma of qualified rifleman, 15) a diploma of sharpshooter; 16) a military honorary sign "second class", 17) a certificate of training "AATTC (USA)", 18) publications, 19) a pay-slip of last employment dated July 1999, and 20) a pay-slip of current employment at the Commission of November 2002. As regards the period of five years preceding the 31 January 2003 deadline for the applications (thus the period from 31 January 1998 to 31 January 2003) the complainant mentions in his CV that, from May 1997 to October 1999, he was loadmaster on a C-130 Hercules transport plane where he was responsible for calculations on board the plane, for loading and unloading the plane, for administrative formalities, and he also performed duties concerning the security of the personnel on board, and that, since October 1999, he worked for the European Commission in the recruitment unit (now EPSO).

(4) The complainant is referring to point IIIA.1 of the European Parliament's Code of Conduct (OJ 2000 C 97, p.1) which foresees that *"the reply shall be drafted in the official language of the Union used by the applicant and, in accordance with the Bureau decision of 10 July 1997, given within 45 days"*.



(5) The Ombudsman notes that the letter from the Selection Board contains two dates: 11 November 2003 (typed) and 12 November 2003 (stamp).