

## **Decision of the European Ombudsman on complaint 2076/2004/OV against the European Personnel Selection Office**

Decision

**Case 2076/2004/OV - Opened on 29/07/2004 - Decision on 27/10/2004**

Strasbourg, 27 October 2004

Dear Mr X.,

On 23 June 2004, you made a complaint to the European Ombudsman against the European Personnel Selection Office (EPSO) concerning your participation in open competition COM/A/3/02.

On 29 July 2004, I forwarded the complaint to the Director of EPSO. In their joint opinion of 24 September 2004, the Commission and 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 5 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 organised by the European Personnel Selection Office (EPSO) and was informed by letter of 23 April 2004 that his name was not included in the reserve list. The complainant argues that there has been the following maladministration by EPSO:

Firstly, the complainant considers that there are serious indications that there have been administrative irregularities by the Selection Board concerning his test d). By letter of 23 December 2003, EPSO informed the complainant that he was excluded from participating in the oral test e) because his mark of 23.2/40 on written test d) was insufficient (not among the 145 best candidates). The complainant therefore did not study for test e). However, further to a letter in which the complainant asked for copies of his tests, the Selection Board informed him by letter of 27 January 2004 - which he received on 3 February 2004 - that it had reconsidered his



test and decided to invite him for the oral test e) which was to take place on 18 February 2004. The complainant thus had only two weeks to prepare. When the complainant finally received EPSO's letter of 23 April 2004 informing him that he could not be included in the reserve list, he found out that he had obtained 25.5/40 for test d). The complainant therefore thinks that irregularities took place and wonders what exactly happened and whether the examiners have made mistakes in the correction.

The complainant secondly observes that, having received the invitation for the oral test e) on 3 February 2004, he had less time to prepare compared to the other candidates who received the invitation in December 2003. If the complainant had been informed at that time, he would have obtained a higher score. The complainant wrote several times to the Selection Board concerning those matters, but the Selection Board maintained its decision.

On 23 June 2004, the complainant thus made the present complaint to the Ombudsman alleging that:

- 1) there have been administrative irregularities in the correction of the complainant's written test d), which is evidenced by the differing marks communicated (23.2/40 versus 25.6/40);
- 2) the complainant has not been treated reasonably and equally with the other candidates because he received the invitation to the oral test only on 3 February 2004 and thus had less time in which to prepare.

The complainant claimed a re-evaluation of his test d) and the possibility to take again test e) with the necessary preparation time.

## THE INQUIRY

### **The Commission's and EPSO's opinion**

In their joint opinion, the Commission and EPSO informed the Ombudsman that on 3 May 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 10 August 2004, the Commission sent to the complainant a copy of the Appointing Authority's reply of 5 August 2004 to his appeal. A copy of the reply was enclosed with the opinion to the Ombudsman.

## THE DECISION

### **1 The allegations concerning competition COM/A/3/02**

1.1 The complainant alleges that there have been administrative irregularities in the correction of his written test d), which is evidenced by the differing marks communicated (23.2/40 versus 25.6/40). The complainant also alleges that he has not been treated reasonably and equally with the other candidates because he received the invitation to the oral test only on 3 February 2004 and thus had less time in which to prepare. The complainant claims a re-evaluation of his test d) and the possibility to take again test e) with the necessary preparation time.



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 contained the same allegations as those set out in the complaint to the Ombudsman. On 24 September 2004, the Commission sent the Ombudsman a copy of the Appointing Authority's reply of 5 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"* (1) .

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 5 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 President of the Commission and the Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

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