

Decision of the European Ombudsman on complaint 3347/2004/ELB against the European Parliament

Decision

Case 3347/2004/ELB - Opened on 07/12/2004 - Decision on 18/10/2005

Strasbourg, 18 October 2005

Dear Mrs C.,

On 5 November 2004 you made a complaint to the European Ombudsman against the European Parliament concerning your exclusion from competition A/94.

On 7 December 2004 I forwarded your complaint to the President of the European Parliament. The European Parliament sent its opinion on 14 February 2005. I forwarded it to you on 2 March 2005 with an invitation to make observations before 30 April 2005. No observations were received from you.

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 is an official of the European Parliament. She applied to take part in internal competition A/94 (for assistant administrators). Her application was rejected because she had failed to furnish evidence that she was working at the European Parliament when she registered for the competition.

On 3 June 2004, she requested that her application be reconsidered. In her view, it was not possible to furnish evidence of three years' continuous service completed by the closing date for applications because all the documents suggested in the notice of competition would inevitably have borne a date prior to the closing date, which was 4 March 2004. She also considered that she had been discriminated against because she had been subject to the same general conditions of admission as candidates who had not passed a competition.

On 8 June 2004 she lodged a complaint pursuant to Article 90 of the Staff Regulations of the European Communities against the Selection Board's decision to exclude her from the



competition. She reiterated the arguments that she had set out in her letter of 3 June 2004, adding that officials who had been on leave on personal grounds for three years could not take part in the competition.

On 1 July 2004 the Chairman of the Selection Board confirmed the decision to exclude the complainant from the competition. The Selection Board maintained that the most recent document that the complainant had attached to her application was dated April 2003, meaning that the Selection Board did not have any documentary evidence that the complainant was working for the European Parliament when she submitted her application.

On 6 July 2004 the complainant made a first complaint to the European Ombudsman (2096/2004/ELB) which was declared inadmissible because, at that time, she had not received a reply to her complaint under Article 90 of the Staff Regulations from the Appointing Authority and the period allowed for the authority to reply had not yet lapsed.

On 30 July 2004 the Appointing Authority replied to the complainant's complaint. It stated that there was no evidence in the complainant's file to show that she was working for the European Parliament when she applied to take part in the competition. It explained that the complainant should have attached to her application one of the documents mentioned in the notice of competition. It referred the complainant to the notice of competition, which stated that the Selection Board would rely exclusively on the supporting documents submitted by candidates in making its decisions and that candidates were not permitted to refer to documents already submitted upon previous applications or documents in their personal files. It concluded that the provisions of the notice of competition were not discriminatory. Lastly, as regards leave on personal grounds, the Appointing Authority explained that the complainant had never requested such leave and her claim was therefore not grounded.

On 5 November 2004 the complainant renewed her complaint (3347/2004/ELB) to the European Ombudsman, attaching the Appointing Authority's reply to her complaint under Article 90 of the Staff Regulations. She disagrees with that reply, considering it to be inconsistent.

The complainant takes the view that the Appointing Authority failed to respond to the argument that all the documents mentioned in the notice of competition which could demonstrate that she was working for the European Parliament when she applied for the competition could only be dated 4 March 2004 at the latest, the closing date for applications. Thus, no document could be provided which showed the candidate's continuous employment. She also considers that she is being discriminated against because, even though she is an official, she still has to furnish the same evidence as candidates who have never passed a competition. She claims that the Appointing Authority has failed to explain why the conditions for admission to an internal competition are the same for officials and other servants. As regards the comments concerning officials who have been on leave on personal grounds for three years prior to the competition, the complainant maintains that the Appointing Authority has not given a proper reply to that argument. Lastly, the complainant considers that the European Parliament should show more respect for its officials and conduct itself with greater transparency.



To summarise, the complainant takes the view that the Appointing Authority has failed to provide an appropriate reply to the arguments that she put forward in her complaint under Article 90 of the Staff Regulations of Officials of the European Communities. She claims that the competition should be cancelled and that the conditions for admission to the competition should comply with the Staff Regulations.

THE INQUIRY

The European Parliament's opinion

The opinion of the European Parliament can be summarised as follows:

The complainant applied to take part in internal competition PE/A/94 (for assistant administrators). She was notified of her exclusion from the competition by letter of 19 May 2004. By letter of 3 June 2004 she challenged that decision and requested that her application be reconsidered. The Selection Board reviewed her file at its meeting of 22 June 2004 and confirmed to her, by letter of 1 July 2004, its decision not to admit her to the competition. The complainant had already – by letter of 8 June 2004 – appealed against the decision pursuant to Article 90 of the Staff Regulations. The Appointing Authority sent its reply to her by letter of 30 July 2004.

The European Parliament would like to make it clear that, by her complaint to the European Ombudsman, the complainant will not be able to bring about the cancellation of the competition in question; she will be able to obtain no more than a possible declaration of maladministration in the activities of the European Parliament. However, the European Parliament has not infringed any rule or principle which is binding upon it.

The complainant's application had to be rejected by the Selection Board because she had not submitted the supporting documents necessary to prove that she was employed by the European Parliament on the closing date for applications, as required by the notice of the competition. The complainant merely sent a number of staff reports, the most recent of which was dated 4 April 2003. However, the closing date for applications was stipulated in the notice of competition as 19 February 2004, which means that the complainant had failed to provide proof in respect of ten months of employment with the Parliament. However, she could easily have done so by attaching to her application form her most recent salary slip, from February 2004. For that reason the Selection Board could not admit her to the competition. Moreover, it has been consistently held that the Selection Board may not derogate from the provisions of a notice of competition.

Parliament does not dispute that the Appointing Authority is required to understand and interpret complaints promptly or that the institutions' duty to comply with the provisions of the Staff Regulations corresponds to a public interest. However, it is also settled case-law that an official is not entitled to act in the interests of the law or of the institutions and may put forward only such claims as relate to him personally (1). Indeed, the complainant's criticisms of the provisions of the notice of competition in question do not concern her personally since she was not permitted to take part in that competition.



It is standard procedure in all the European institutions to choose the closing date for applications as the date on which candidates for an internal competition must be employed by the institution organising the competition. Moreover, it is easy for candidates to prove their status as such by attaching to their application forms salary slips covering the period in question. Choosing a different date, such as the date on which the individual candidates actually submitted their respective application forms, is unacceptable because in so doing the Appointing Authority would be introducing a non-objective date. It is essential to specify the same date for all candidates as the reference date.

Clearly, the condition relating to professional experience gained within the institution must be the same for all candidates, whether they are already officials or temporary staff. The Appointing Authority would have acted in a discriminatory manner if it had laid down a condition requiring a longer period of professional experience for other servants than for officials. The fact that officials may have already passed a competition prior to their taking part in the relevant internal competition is not an objective factor justifying conditions of admission which differ from those applying to temporary staff.

As regards the complainant's criticism that persons on leave on personal grounds are excluded from taking part in internal competitions, the European Parliament would like to point out that the Appointing Authority enjoys a broad discretion in laying down the conditions for admission to the competitions it organises and it may, therefore, limit admission to internal competitions to persons who are in active employment. However, persons who are on parental or family leave when an internal competition is organised will no longer be excluded from taking part in such competitions, the Parliament's internal rules on the recruitment of officials and other servants having been amended to that effect on 3 May 2004.

As the Appointing Authority pointed out to the complainant in its reply of 30 July 2004, she had not taken any leave on personal grounds and, therefore, her criticism in that regard had no bearing on her situation.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 Alleged failure to provide an appropriate reply to the complainant's arguments

1.1 The complainant, a European Parliament official, applied to take part in internal competition A/94 organised by the European Parliament with the aim of recruiting assistant administrators. Her application was rejected by the Selection Board.

The complainant requested that her application be reconsidered, then lodged a complaint under Article 90 of the Staff Regulations. In that complaint, the complainant claimed that it was not possible to furnish evidence of three years' continuous service with the European Parliament by the closing date for applications because all the documents suggested in the notice of competition would have borne a date prior to that closing date, which was 4 March 2004. She



also considered that she had been discriminated against because she had been subject to the same general conditions of admission as candidates who had not passed a competition. Lastly she maintained that officials who had been on leave on personal grounds for three years could not take part in the competition. The Appointing Authority rejected her complaint.

In her complaint to the European Ombudsman, the complainant takes the view that the Appointing Authority has failed to provide an appropriate reply to the arguments that she put forward in her complaint under Article 90 of the Staff Regulations of the European Communities.

1.2 In its opinion the European Parliament explains that the complainant merely sent a number of staff reports, the most recent of which was dated 4 April 2003, in support of her application. However, the closing date for applications had been stipulated in the notice of competition as 19 February 2004, which means that the complainant had failed to provide proof in respect of ten months of employment with the Parliament. However, she could easily have done so by attaching to her application form her most recent salary slip, from February 2004. For that reason the Selection Board could not admit her to the competition. It is standard procedure in all the European institutions to choose the closing date for applications as the date on which candidates for an internal competition must be employed by the institution organising the competition.

Clearly, the condition relating to professional experience gained within the institution must be the same for all candidates, whether they are already officials or temporary staff. The Appointing Authority would have acted in a discriminatory manner if it had laid down a condition requiring a longer period of professional experience for other servants than for officials. There is no objective factor which can justify such discriminatory treatment. The fact that officials may have already passed a competition prior to their taking part in the relevant internal competition is not an objective factor justifying conditions of admission which differ from those applying to temporary staff.

As regards the complainant's criticism that persons on leave on personal grounds are excluded from taking part in internal competitions, the European Parliament would like to point out that the Appointing Authority enjoys a broad discretion in laying down the conditions for admission to the competitions it organises and it may, therefore, limit admission to internal competitions to persons who are in active employment. However, persons who are on parental or family leave when an internal competition is organised will no longer be excluded from taking part in such competitions, the Parliament's internal rules on the recruitment of officials and other servants having been amended to that effect on 3 May 2004.

1.3 The Ombudsman has closely examined the supporting documents available in the file. He notes that the reply to the complainant's complaint under Article 90 of the Staff Regulations is detailed and addresses the three points raised by the complainant in that complaint.

1.4 As regards the documents to be attached to the application form, the Ombudsman notes that the notice of competition clearly stated which documents could be attached to the application and referred *inter alia* to the salary slip. The Ombudsman therefore considers that



the European Parliament gave an adequate reply in explaining to the complainant in its reply to her complaint under Article 90 that she should have supplied one of the documents listed in the notice of competition. He further notes that the European Parliament, in the context of this inquiry, made it clear that the complainant should have attached to her application her most recent salary slip, from February 2004, as proof that she was working at the European Parliament on the closing date for applications for the competition.

1.5 As to the conditions of admission applying to officials and temporary staff, the Parliament stated in its reply to the complainant's complaint under Article 90 of the Staff Regulations that the Selection Board relied exclusively on the supporting documents submitted by candidates and that candidates were not permitted to refer to documents submitted upon previous applications or documents in their personal files. The Ombudsman considers that reply to be appropriate. Furthermore, in the opinion which it sent to the European Ombudsman, the European Parliament pointed out that the condition relating to professional experience gained in the institution had to be the same for all candidates, irrespective of their status, and that the fact that officials had already passed a competition prior to their taking part in the internal competition was not an objective factor justifying conditions of admission which differed from those applying to temporary staff.

1.6 With regard to the matter raised by the complainant concerning leave on personal grounds, the Ombudsman considers that the European Parliament was under no obligation to give a reply, in the context of her complaint under Article 90, since the complainant has not taken leave on personal grounds. He therefore considers that the European Parliament provided an adequate reply to the complaint under Article 90.

1.7 However, the Ombudsman notes that there is a difference between lodging a complaint under Article 90 of the Staff Regulations or bringing an action before a court and making a complaint to the European Ombudsman. He explains that complaints concerning an element of public interest may be referred to the European Ombudsman by a complainant who is not directly concerned (*actio popularis*) and the European Ombudsman may also conduct inquiries on his own initiative. In that respect, the Ombudsman takes note of the information provided by the European Parliament stating that Parliament's internal rules on the recruitment of officials and other servants were amended on 3 May 2004 and that persons on parental or family leave when an internal competition is organised are no longer excluded from taking part in that competition.

1.8 In conclusion, the Ombudsman considers that the points raised by the complainant in her complaint under Article 90 of the Staff Regulations have been sufficiently clarified and, therefore, there is no maladministration on the part of the European Parliament.

2 Claims

2.1 The complainant claims that the competition should be cancelled and that the conditions for admission to the competition should comply with the Staff Regulations of the European Communities.

2.2 In view of the above findings, the Ombudsman considers that the complainant's claims



cannot be sustained.

3 Conclusion

On the basis of his inquiries into the complaint in question, the European Ombudsman concludes that there has been no maladministration on the part of 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) See judgment of the Court of First Instance in Case T-163/89 *Sebastiani v. European Parliament*, [1991] ECR II-715.