

Decision of the European Ombudsman on complaint 1546/2005/PB against the European Commission

Decision

Case 1546/2005/PB - Opened on 04/05/2005 - Decision on 09/12/2005

Strasbourg, 9 December 2005

Dear Mr J.,

On 14 April 2005, you made a complaint to the European Ombudsman concerning a European Commission recruitment procedure for the post of "Director-General Informatics".

On 4 May 2005, I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 26 July 2005, and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

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

THE COMPLAINT

The complainant stated that he had taken part in a recruitment procedure for the position of "Director-General Informatics at the European Commission". He had been invited to an interview in October 2004, and his name had been included on a shortlist of five candidates.

Following psychological tests by an external agency, additional interviews with the Commission had been conducted at the beginning of November 2004.

According to the complainant, he had been informed on 2 December 2004, by telephone, that he had been excluded from further participation in the recruitment procedure. He had subsequently made several written requests for information as to *why* he had not been accepted. He enclosed copies of e-mails that he had sent to a Commission official, Mrs MM., on 6 December 2004, 16 January and 3 March 2005. In these e-mails, he had asked for clarification regarding the status of his application.

The complainant alleged that the Commission (1) had failed to properly handle his application and (2) that it had failed to reply to his subsequent requests for information regarding the application.



The complainant claimed that he should be given information on the handling and on the outcome of his application.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission made, in summary, the following comments:

Following enlargement of the European Union in 2004, the Commission had published the following senior management vacancies for citizens from the new Member States: 8 Directors-General and Deputy Directors-General, as well as 22 Directors and Principal Advisers. More vacancies for senior management functions were to be published in 2005.

Senior official recruitment procedures for the ten new Member States had followed standard Commission recruitment procedures:

- Applications from candidates had been received by the Directorate-General for Personnel and Administration of the European Commission ("DG ADMIN").
- A pre-selection phase had been carried out by the recruiting departments (eligibility check, check against the selection criteria, pre-selection interviews).
- Interviews had been held by the Commission's Consultative Committee on Appointments ("CCA") after the candidates had undergone psychological tests at an assessment centre.
- The College had made the appointments following interviews with the relevant Commissioner(s).

An independent Rapporteur, holding at least the same grade and occupying a post of at least the same level as that of the vacant post, had been personally responsible for following an appointment from its initial publication to the final decision by the Commission. The Rapporteur had participated and acted as a full member of the CCA.

Advancing through the recruitment procedure, selected candidates had received written invitations for pre-selection interviews at directorate-general level, for the psychological tests at the assessment centres as well as for the interviews with the CCA. Candidates whose applications had not met the eligibility criteria or had not represented an adequate skills mix against the selection criteria (and hence had not been invited to the pre-selection interviews) had received letters informing them of the status of their application. All candidates who had been interviewed by the CCA had been informed about the outcome by telephone, usually on the same or the following day. Once the College had taken an appointment decision, all the applicants had been informed in writing about the conclusion of the recruitment procedure. The complainant had applied for the vacancy COM/070/04: Director-General DG Informatics, published 14 May 2004, for which 134 applications had been received. On 2 March 2005, the Commission had decided to close the procedure without appointing anyone to the post.

For the post here concerned, the complainant had been invited to a pre-selection interview in October 2004. In November 2004, he had participated in the assessment centre sessions and



had been interviewed by the CCA. Immediately after, the CCA, in line with normal practice and the Chairman's oral indications during the meeting, the complainant had been informed by telephone that the CCA had decided not to shortlist him for interviews with the Commissioners. Following the Commissioners' interviews with the shortlisted candidates, the Commission had finally decided not to make any appointment and to close the procedure.

It appeared that the complainant had tried on several occasions to make contact with the then CCA Permanent Rapporteur, Mrs MM. Throughout the procedure, the complainant had been in contact with the secretary of the pre-selection panel, Mr D., and his collaborator, Ms M., over questions regarding the reimbursement of travel expenses. Mr D.'s letter to the complainant of 13 September 2004 had referred to another contact person and had given her telephone number and her e-mail address. The Commission's letter to the complainant of 8 November 2004, inviting the complainant to the CCA interview, had referred to Mrs U. as an additional contact person, and had given this person's telephone and fax numbers, as well as her e-mail address.

The Commission had not yet informed all applicants about the College's decision to close the procedure, as it was the Commission's intention to inform candidates about a possible decision by the College to republish the vacancy. However, given that a decision on the future of the post was likely to be postponed until later in 2005, all candidates would be informed that the procedure had been closed.

With regard to the complainant's allegations in this case, the Commission had no indication that the application submitted by the complainant had not been handled in accordance with the existing rules and procedures. As announced by the CCA Chair during the interview, oral feedback via telephone had been given to the complainant without delay after the CCA interview.

Concerning the complainant's allegation that the Commission had failed to respond to his requests for information, it should be noted that none of the complainant's e-mails had reached Mrs MM., because the complainant had unfortunately used an incorrect e-mail address.

While Mrs MM. would have been a possible source of feedback, the complainant had also been informed, during his time at the assessment centre, of the possibility of obtaining feedback on his performance during the assessment by the external human resource consultants. It would appear that the complaint had not requested such feedback.

In conclusion, the Commission assured the complainant that his application had been handled in accordance with the standard procedures. Indeed, he had been informed by telephone that the CCA had decided not to shortlist him for interviews with Commissioners. Moreover, the Commission had not failed to reply to the complainant's e-mails, given that the intended addressee, Mrs MM., had never received those e-mails.

The Commission regretted that the complainant had not pursued further his question to Mrs MM. via telephone, and that he had not contacted one of the other Commission officials with



whom he had previously been in contact, or those other officials whose contact details had been communicated to him.

The Commission was, however, aware that the sending of the closing letters to candidates was overdue, and confirmed that those letters would be sent without delay.

The complainant's observations

The Commission's opinion was forwarded to the complainant, from whom the Ombudsman received no observations.

THE DECISION

1 Alleged failure properly to handle application

1.1 The complainant had taken part in a recruitment procedure for the position of "Director-General Informatics at the European Commission". He had been invited to an interview in October 2004, and his name had been included on a shortlist of five candidates. Following psychological tests by an external agency, additional interviews with the Commission had been conducted at the beginning of November 2004. On 2 December 2004, the complainant had been informed by telephone that he had been excluded from further participation in the recruitment procedure. He had subsequently made several written requests for information as to why he had not been accepted. He enclosed copies of e-mails that he sent to a Commission official, Mrs MM., on 6 December 2004, 16 January and 3 March 2005. In these e-mails, he had asked for clarification regarding the status of his application. The complainant alleged that the Commission had failed properly to handle his application.

1.2 In its opinion, the Commission explained in some detail the procedures applied in respect of the post for which the complainant had applied. It stated that the complainant had been invited to a pre-selection interview in October 2004. In November 2004, he had participated in the psychological tests at an assessment centre and had been interviewed by the Consultative Committee on Appointments ("CCA"). Immediately after the interview with the CCA, and in line with normal practice and the Chairman's oral indications during the meeting, he had been informed by telephone that the CCA had decided not to shortlist him for interviews with the Commissioners. Following the Commissioners' interviews with the shortlisted candidates, the Commission had finally decided not to make any appointment and to close the procedure. The Commission concluded in its opinion that it had no indication that the application submitted by the complainant had not been handled in accordance with the existing rules and procedures.

1.3 The Ombudsman received no observations from the complainant on the Commission's opinion.

1.4 The Ombudsman notes that the Commission enjoyed a wide discretion in assessing the complainant's qualifications. The Ombudsman's review in this context is thus limited to whether the assessment made by the Commission is vitiated by a manifest error of appraisal (1). In the present case, the complainant has neither invoked, nor provided evidence of, manifest errors in the assessment of his application. The Ombudsman can therefore find no maladministration regarding the Commission's substantive assessment of that application.



1.5 With regard to the procedure of handling the complainant's application, it appears that the Commission informed the complainant by telephone on 2 December 2004 that he had been excluded from further participation in the recruitment procedure. It also appears that at the time of the complaint, that is, 14 April 2005, the complainant had received no written confirmation of his exclusion from the recruitment procedure. It furthermore emerges from the Commission's opinion that no such written confirmation had been sent to the complainant at the time of that opinion, that is, 27 July 2005.

1.6 According to principles of good administration, enshrined in the European Code of Good Administrative Behaviour, decisions which affect the rights or interests of individual persons shall be communicated in writing to the person or persons concerned as soon as the decision has been taken (2) . This requirement is aimed primarily at ensuring that the person concerned is formally made aware of the decision made, and receives proof of its existence and of its full content. Hence, as a matter of principle, decisions which affect the rights or interests of an individual must be communicated in writing, without undue delay, to the person concerned, even where the content of the decision has been orally conveyed to this person by a competent official.

1.7 In the present case, the complainant was informed by telephone on 2 December 2004 that he had been excluded from the recruitment procedure here concerned. Neither at the time of his complaint to the Ombudsman, nor at the time of the Commission's opinion on that complaint (27 July 2005), had any such written decision been communicated to the complainant. The Commission has given no justification for this omission in its opinion.

1.8 In light of the foregoing, the Ombudsman considers that the Commission's failure to communicate the complainant in writing of the decision to exclude him from the recruitment procedure constituted an instance of maladministration, and a critical remark is made below.

2 Failure to reply to information requests

2.1 The complainant alleged that the Commission had failed to reply to his requests for information regarding the application.

2.2 In its opinion, the Commission has explained that none of the complainant's e-mails reached the official concerned because the complainant had unfortunately used an incorrect e-mail address.

2.3 As noted above, the Ombudsman has received no observations from the complainant.

2.4 In light of the Commission's explanation that it had received none of the complainant's e-mails because the complainant had used an incorrect e-mail address, and in the absence of any statements from the complainant contesting this, the Ombudsman finds that there appears to have been no maladministration by the Commission.

3 Claim for information on the handling and the outcome of his application

3.1 The complainant claimed that he should be given information on the handling and on the outcome of his application.



3.2 In its opinion, the Commission gave information on the handling and the outcome of the complainant's application. It also stated that it was about to send a closing letter to all applicants, including the complainant.

3.3 As noted above, the Ombudsman has received no observations from the complainant.

3.4 In light of the explanations and information given by the Commission in its opinion, and its statement that it was about to send a closing letter to all the applicants (which the Ombudsman trusts the Commission to have done), the Commission appears to have adequately addressed the complainant's claim.

4 Conclusion

On the basis of the Ombudsman's inquiries into the complainant's first allegation, it is necessary to make the following critical remark:

According to principles of good administration, enshrined in the European Code of Good Administrative Behaviour, decisions which affect the rights or interests of individual persons shall be communicated in writing, as soon as the decision has been taken, to the person or persons concerned (3) . This requirement is aimed primarily at ensuring that the person concerned is formally made aware of the decision made, and receives proof of its existence and of its full content. Hence, as a matter of principle, decisions which affect the rights or interests of an individual must be communicated in writing, without undue delay, to the person concerned, even where the content of the decision has been orally presented to this person by a competent official.

In the present case, the complainant was informed by telephone on 2 December 2004 that he had been excluded from the recruitment procedure here concerned. Neither at the time of his complaint to the Ombudsman, nor at the time of the Commission's opinion on that complaint (27 July 2005), had any such written decision been communicated to the complainant. The Commission has given no justification for this omission in its opinion.

In light of the foregoing, the Ombudsman considers that the Commission's failure to inform the complainant in writing of the decision to exclude him from the recruitment procedure constituted an instance of maladministration.

Given that this aspect of the case concerns procedures relating to specific events in the past, and in light of the remarks in point 3 above, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

With regard to the complainant's second allegation, the Ombudsman has found no maladministration.

With regard to the complainant's claim, the Ombudsman considers that this has been adequately addressed by the Commission.



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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Cf. the Ombudsman's Decision on complaint 446/2001/(BB)MF (point 1.11) . Regarding the review of the Community Courts, cf. Case 589/93 *Susan Ryan-Sheridan v European Foundation for the Improvement of Living and Working Conditions* [1996] ECR-SC IA-27, paragraph 75.

(2) Article 20 of the European Code of Good Administrative Practice (<http://www.ombudsman.europa.eu/code/en/default.htm> [Link]): " *The official shall ensure that decisions which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.* "

(3) Article 20 of the European Code of Good Administrative Practice (<http://www.ombudsman.europa.eu/code/en/default.htm> [Link]): " *The official shall ensure that decisions which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.* "