

Decision of the European Ombudsman on complaint 2771/2005/MHZ against the European Personnel Selection Office

Decision

Case 2771/2005/MHZ - Opened on 21/09/2005 - Decision on 14/12/2005

THIS COMPLAINT WAS TREATED AS CONFIDENTIAL. THE DECISION HAS THEREFORE BEEN ANONYMISED. THE MASCULINE FORM HAS BEEN USED THROUGHOUT.

Strasbourg, 14 December 2005

Dear Mr X,

On 22 August 2005, you made a complaint to the European Ombudsman against the European Personnel Selection Office (EPSO) concerning Open competition EPSO/A/26/05 for administrators in the field of law. On 28 August, 5 September and 4 October 2005, you sent me additional information concerning your complaint.

You alleged that the requirement of the above competition concerning the candidates' second language is (a) discriminatory and (b) does not conform to Article 2 of Council Regulation (EC, EURATOM) 401/2004 of 23 February 2004 introducing, on the occasion of the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, special temporary measures for recruitment of officials of the European Communities.

You claimed that the wording of the notice of competition should be changed and that the requirement of the competition concerning the candidates' second language should refer to all the official languages of the Communities, including those of the new Member States.

On 21 September 2005, I forwarded your complaint to the Director of EPSO. On 3 November 2005, EPSO informed me that, subsequent to submitting your complaint to the Ombudsman, you have submitted to EPSO a complaint under Article 90.2 of the Staff Regulations, containing the same allegations as those in your complaint to the Ombudsman.

On 11 November 2005, my services contacted you by telephone and you confirmed the above information provided by EPSO. You also stated that, in case EPSO'S answer to your complaint is not satisfactory and indicates an instance of possible maladministration, you would consider renewing your complaint to the Ombudsman.

In determining the admissibility of complaints, the Ombudsman has consistently taken the view



that, when a complainant who is not a member of the staff of the European Communities chooses to exercise the possibility to make a complaint under Article 90.2 of the Staff Regulations, the condition laid down by Article 2.4 of the Statute of the Ombudsman (1) that a complaint must be preceded by the appropriate administrative approaches is not met until the institution or body concerned either replies to the Article 90.2 complaint, or the deadline for its reply has passed.

In the circumstances of the present case, in which you have made an Article 90.2 complaint to the institution or body concerned after making a complaint to the Ombudsman, I consider that, consistent with the above approach to the question of admissibility, no further inquiries into your complaint to the Ombudsman are justified. I have therefore decided to close the case.

Naturally you are free to renew your complaint to the Ombudsman if you are not satisfied by EPSO's reply to your Article 90.2 complaint, or if EPSO fails to reply in due time.

The Director of EPSO will be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Art. 2.4 Statute of the European Ombudsman (Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's duties, OJ L 1994 113) :

"The complaint (...) must be preceded by the appropriate administrative approaches to the institutions and bodies concerned."