

Decision of the European Ombudsman on complaint 3411/2005/BU against the European Commission

Decision

Case 3411/2005/BU - Opened on 15/12/2005 - Decision on 12/12/2006

Strasbourg, 12 December 2006

Dear Mr O.,

On 1 November 2005, you submitted a complaint to the European Ombudsman against the European Commission concerning the appointment of a Director for Culture and Communication (1) in the Commission's Directorate-General for Education and Culture. You supplemented your complaint by e-mail of 15 November 2005.

On 15 December 2005, I forwarded your complaint to the Commission and asked it to submit an opinion.

On 20 February 2006, the Commission submitted its opinion in French, and supplied the English translation thereof on 27 April 2006, which I forwarded to you with an invitation to make observations. You sent your observations on 10 May 2006.

By letter of 7 June 2006, I informed you that, after a preliminary examination of your complaint file, it seemed that no further inquiries were necessary.

By letter of 26 October 2006, I informed you that the analysis of your complaint had been completed and my services were doing their utmost to enable me to take a decision on your complaint by the end of the year.

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

THE COMPLAINT

The complainant, a Polish national, applied for recruitment procedure COM/2005/1800, organised under Article 29(2) of the Staff Regulations for the purpose of appointing a Director for Culture and Communication in the European Commission's Directorate-General for Education and Culture.



By letter of 19 October 2005, the Commission informed the complainant that the pre-selection panel, chaired by the Director-General for Education and Culture, (i) concluded that other candidates offered a better combination of skills and experience as specified in the notice of vacancy, and (ii) therefore did not intend to invite the complainant for a selection interview. On the same day, the complainant requested more detailed information on the reasons for this decision.

By letter of 21 October 2005, the Commission replied that it received 86 applications for the above post, of which nine were shortlisted for an interview. Although the complainant's application was assessed as good in respect of "knowledge in the field of culture and communication" and "aptitude and experience / budgetary instruments", his experience in Community policies and EU legal instruments was considered not to be as developed as that of other candidates.

Between 21 October 2005 and 24 October 2005, the complainant sent further e-mail correspondence to the Commission, in which he basically referred to his previous professional experience in his home country (Poland) and abroad, and argued that he met all the published criteria for the post. He also stated that the criterion of knowledge of Community policies and EU legal instruments was not among those stated in the notice of vacancy. He finally claimed that he should be invited for a selection interview in order to be able to prove his suitability for the above post.

In its reply, sent by e-mail of 24 October 2005, the Commission stated that, in establishing the shortlist of candidates invited for an interview, it focused on those who best fulfilled all of the criteria specified in the notice of vacancy. The Commission explained that, for a post of considerable responsibility, it must ensure that the selected candidate can be immediately operational under all of the criteria, and added that it considers good knowledge of Community policies and legal instruments essential in this context. On the basis of the above, the Commission confirmed the content of its previous letter of 21 October 2005 to the complainant.

On 26 October 2005 and 27 October 2005, the complainant addressed to the Commission further requests to be invited for an interview. By e-mails of 27 October 2005 and 28 October 2005, the Commission confirmed its position, as explained in its previous correspondence with the complainant.

On 1 November 2005, the complainant submitted his complaint to the European Ombudsman. He alleged that the Commission unfairly rejected his application for the above post, and claimed that it should invite him to an interview.

In support of his allegation, the complainant emphasised that knowledge of the Community policies and EU legal instruments was not part of the selection criteria set out in the notice of vacancy for the above post.

THE INQUIRY



The opinion of the Commission

The Ombudsman forwarded the complaint to the Commission and asked it to submit an opinion.

The Commission's opinion can be summarised as follows:

The Commission took the view that, during the selection procedure, it dealt with all applications consistently and transparently, in accordance with the different stages thereof. It repeated that, out of the 86 eligible applications, nine were shortlisted for an interview before the selection panel chaired by the Director-General for Education and Culture.

As regards the complainant's application, the Commission stated that it was not shortlisted for an interview because other applicants offered a better combination of skills and experience, as required in the published notice of vacancy. The Commission referred to its explanations provided to the complainant in its previous correspondence, copies of which it attached. It further repeated that, although the complainant's application was assessed as good in respect of "knowledge in the field of culture and communication" and "aptitude and experience with budgetary instruments", his experience in Community policies and EU legal instruments was considered to be less extensive than that of other candidates.

The Commission concluded that it had acted fairly in handling the complainant's application and in answering his correspondence, and that there thus had been no grounds for inviting him for a selection interview.

The complainant's observations

In his observations of 10 May 2006, the complainant expressed his disagreement with the Commission's opinion. He repeated that knowledge of Community policies and EU legal instruments was not part of the selection criteria set out in the notice of vacancy for the above post. The complainant further took the view that the selection panel could not have assessed his knowledge of EU instruments.

THE DECISION

1 Alleged unfair rejection of the complainant's application

1.1 The complainant, a Polish national, applied for recruitment procedure COM/2005/1800 , organised under Article 29(2) of the Staff Regulations for the purpose of appointing a Director for Culture and Communication in the European Commission's Directorate-General for Education and Culture. Given that the pre-selection panel concluded that other candidates offered a better combination of skills and experience as specified in the notice of vacancy, the complainant was not invited for a selection interview.

By letter of 21 October 2005 to the complainant, the Commission specified that, although the complainant's application was assessed as good in respect of "knowledge in the field of culture and communication" and "aptitude and experience / budgetary instruments", his experience in Community policies and EU legal instruments was considered not to be as developed as that of other candidates.



In his complaint to the European Ombudsman, the complainant alleged that the Commission unfairly rejected his application for the above post, and claimed that it should admit him to an interview.

In support of his allegation, the complainant emphasised that knowledge of Community policies and EU legal instruments was not part of the selection criteria set out in the notice of vacancy.

1.2 In its opinion, the Commission confirmed its position as regards the complainant's suitability for the above post and referred, in general terms, to the relevant notice of vacancy. In particular, the Commission repeated that the complainant's experience in Community policies and EU legal instruments was considered not to be as developed as that of other candidates, and concluded that there were no grounds for inviting him for a selection interview.

1.3 The Ombudsman recalls that, according to the settled case-law of the Community Courts, the Appointing Authority is obliged to respect the notice of vacancy which it has adopted, since such notice of vacancy determines the conditions giving access to the post in question. Thus, the function of a notice of vacancy is (i) to inform the candidates, as accurately as possible, of the nature of the conditions required to fill the post in question so as to enable them to assess whether to apply for that post, and (ii) to set the legal limits within which the Institution envisages to proceed to the comparative examination of the candidates' merits. The Appointing Authority fails to respect these legal limits if, during the examination of the applications, it takes into account conditions other than those contained in the notice of vacancy (2) .

1.4 The Ombudsman notes that, according to the announcement of the recruitment procedure in the Official Journal, "*[t]he senior official will be selected and appointed by the Commission according to its selection and recruitment procedures.*" (3)

1.5 Further, the Ombudsman points out that the procedures for selection and appointment of the Commission's senior management staff, applicable to recruitment procedure COM/2005/1800, were contained in the *Guidelines for Directorates General - Senior Management Selection and Appointment Procedures* , dated August 2003 and updated in September 2004 (the "Guidelines") (4) .

According to section 3.1 of the Guidelines, "*[t]he Directorate General should set up a pre-selection panel to examine all the applications received within the stated deadline and to determine a list of best qualified for the post with reference to the published criteria.*"

According to second indent in section 3.3(b) of the Guidelines, "*[t]he assessment should be based on the CVs and a letter of motivation (if this was required) of applicants (...). The panel must carry out a qualitative analysis of each application in relation to the job specific competencies specified in the vacancy notice.*"

According to section 3.5 of the Guidelines, "*[c]andidates retained after the initial assessment of their applications (section 3.3 above) (...) should be invited for an interview with the pre-selection panel (...).*"



1.6 The Ombudsman has, furthermore, carefully studied the notice of vacancy COM/2005/1800 (5) , and noted that the job-specific competencies for the post of Director for Culture and Communication were listed on page 2 of the notice, according to which " *[t]he successful candidate will have a series of qualities and skills including:*

- *a sound capacity for the development of Community policies;*
- *a good knowledge of the fields concerned, aptitude for and professional experience of managing instruments of a budgetary and legal nature; (...)* ".

The Ombudsman considers that, in substance, the condition of having " *experience in Community policies and EU legal instruments* " falls within the framework defined by the above conditions of the notice of vacancy, although the wording used therein is not literally the same.

1.7 On the basis of the above analysis, the Ombudsman takes the view that (i) the Commission's assessment of the complainant's application for the post in question followed the procedures for selection and appointment of the Commission's senior management staff contained in the Guidelines (point 1.5 above), and (ii) the reasons given by the Commission for not inviting the complainant for an interview are based on the relevant notice of vacancy (point 1.6 above).

1.8 Therefore, the Ombudsman considers that the Commission's decision not to invite the complainant for an interview on the ground that his " *experience in Community policies and EU legal instruments was not as developed as that of other candidates* " (6) was not unfair.

1.9 As regards the additional point, raised by the complainant in his observations, that the selection panel could not have been able to assess his knowledge of EU instruments, the Ombudsman refers again to section 3.3(b) of the Guidelines cited in point 1.5 above. According to that provision, " *[t]he assessment should be based on the CVs and a letter of motivation (if this was required) of applicants (...). The panel must carry out a qualitative analysis of each application in relation to the job specific competencies specified in the vacancy notice.* "

The Ombudsman considers that it clearly follows from the above provision that the selection panel's assessment of all the conditions required for the post of the Director for Culture and Communication, including the condition of having " *experience in Community policies and EU legal instruments* ", should have been based exclusively on the applicants' letters of motivation and curricula vitae. The Ombudsman also notes that the complainant has not advanced any argument or evidence showing that the selection panel did not respect that provision.

1.10 In light of the above findings, the Ombudsman considers that the Commission's position is reasonable. The Ombudsman therefore finds no instance of maladministration as regards the complainant's allegation and considers that his claim cannot be sustained.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, the Ombudsman concludes that



the inquiry has not revealed an instance of maladministration. The Ombudsman therefore closes the case.

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

- (1) Recruitment procedure COM/2005/1800, OJ 2005/C 138 A, p. 3.
 - (2) Case T-240/01 *Cougnon v Court of Justice* [2003] ECR-SC I-A-263 and II-1283, paragraphs 112 and 113.
 - (3) The recruitment procedure was announced in Official Journal 2005/C 138 A, p. 3.
 - (4) The Guidelines were available on the Commission's website (http://ec.europa.eu/dgs/personnel_administration/documents/guidelines_senior_mgt_en.pdf [Link]). As far as the Ombudsman is aware, this version is no longer available on the Internet.
- The Ombudsman notes that the version currently available on the Commission's website is dated 8 June 2006. Given that the closing date for registration for the recruitment procedure COM/2005/1800 was 7 July 2005, the Ombudsman does not quote that version in the present decision.
- (5) The notice of vacancy was published on the Commission's website (http://ec.europa.eu/dgs/personnel_administration/managers_en.htm [Link]).
 - (6) Commission's letter of 21 October 2005 to the complainant.