

## Decision of the European Ombudsman on complaint 3501/2005/ELB against the European Parliament

Decision

**Case 3501/2005/ELB - Opened on 05/12/2005 - Decision on 13/12/2006**

Strasbourg, 13 December 2006

Dear Mr J.,

On 21 October 2005, you made a complaint to the European Ombudsman against the European Parliament concerning your participation in Open Competitions PE/98/A and PE/99/A.

On 5 December 2005, I forwarded the complaint to the President of Parliament. Parliament sent its opinion on 31 March 2006. I forwarded it to you with an invitation to make observations, which you sent on 30 May 2006.

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

### THE COMPLAINT

*Background to the complaint Complaint 1029/2004/AJ*

The complainant took part in Open Competition PE/98/A (principal administrators (A5/A4) Engineers with telecommunications expertise) (1) organised by the European Parliament. The first step in the competition was the assessment by the Selection Board of the qualifications of candidates and the establishment of a list of the 15 best candidates to be admitted to the oral tests.

On 29 March 2004, the complainant was informed that his application had been rejected because he was not amongst the 15 best candidates.

On 31 March 2004, the complainant wrote to Parliament requesting the re-examination of his application. He also claimed damages for racial discrimination and lack of transparency. He sent a copy of this letter to the Ombudsman, which was registered as a complaint (1029/2004/AJ).

The Ombudsman declared the complaint inadmissible in accordance with Article 2(4) of his Statute, given that the complainant had not completed the appropriate administrative approaches to Parliament at the time of making his complaint.

*Complaint 1897/2004/ELB*



On 7 June 2004, the complainant renewed his complaint with the Ombudsman.

He explained that, on 21 April 2004, Parliament informed him that his application for Open Competition PE/98/A had been re-examined but that the decision excluding him from the competition had been confirmed. Parliament explained that the same criteria were applied to all candidates. These criteria were listed on the evaluation sheet. The complainant obtained 9.76 points out of 20 for his qualifications and his professional experience and was therefore ranked 25th out of 37 candidates. A copy of the evaluation sheet, as established by the Selection Board, was sent to the complainant.

The complaint was declared inadmissible because, according to Article 195 of the EC Treaty, there were insufficient grounds for opening an inquiry. The Ombudsman considered that Parliament's reply, dated 21 April 2004, appeared reasonable and that the complainant had not explained why this reply was incorrect.

*Complaint 3237/2004/ELB*

On 8 October 2004, the complainant lodged a new complaint with the Ombudsman against Parliament concerning his exclusion from Open Competition PE/98/A. The complainant alleged that Parliament had failed correctly to assess his professional experience because he was granted only 1.36 points for 20 years of professional experience. The complainant also argued that he was discriminated against on the basis of his race, because of a photograph that he attached to his CV.

The Ombudsman opened an inquiry into this complaint. On 20 July 2005, he closed the case with a finding of no maladministration. He made, in summary, the following remarks:

- as regards the complainant's allegation that Parliament failed correctly to assess his professional experience, the Ombudsman considered that Parliament had provided a reasonable explanation of the basis on which it assessed the complainant's professional experience and the points that were awarded to the complainant for his professional experience.
- as regards the complainant's allegation of discrimination on the basis of his race, the Ombudsman found no evidence to support it.

*The present complaint: complaint 3501/2005/ELB*

On 21 October 2005, the complainant sent a new letter to the Ombudsman.

As regards Open Competition PE/98/A, the complainant stated that he was surprised not to have obtained the maximum mark for his qualifications (he obtained 5.2 out of 6). He refers to diplomas obtained in 1981 ("DUT Electronique"), 1987 ("Maîtrise d'informatique"), 1988 (degree of engineer) and 1996 ("Mastère en sécurité des systèmes informatiques").

He argued that Parliament wrongly evaluated the length of his professional experience (3 years and 4 months more than the 11-year period required by the Notice of Competition). The actual length of his professional experience is 15 years and 9 months, because the relevant diploma to apply for the competition was the one that he obtained in 1987 and his last contract ended in 2003. Moreover, Parliament did not take into account vocational training periods subsequent to his diploma, that is, one year. He did not understand why points were granted only when the



candidate had more than 11 years of professional experience.

The complainant questioned the marks that he obtained for each specific area of experience (1.4 out of 5.2), quoting his professional experience in each area. He also argued that he was discriminated against. He explained that he had initiated legal proceedings before the French courts. The complainant would like to know how many coloured persons are working for Parliament. He also said that he was awarded the gold medal for long service in France.

Finally, he stated that he had applied for Open Competition PE/99/A for which conditions were less strict, but that his application was not selected.

In summary, the complainant alleged that:

- Parliament should have granted him the maximum number of points for his qualifications;
- Parliament wrongly evaluated the length of his professional experience because the actual length of his professional experience is 15 years and 9 months. Relatedly, the complainant argued that he did not understand why points were granted only when candidates had more than 11 years of professional experience;
- Parliament should have granted him more points for each area of professional experience;
- Parliament discriminated against him on the ground of race;
- Parliament had wrongly decided not to select his application for Open Competition PE/99/A.

After careful examination of the part of the complaint concerning the complainant's participation in Open Competition PE/98/A, the Ombudsman decided that there were not sufficient grounds for opening an inquiry into the allegation concerning the granting of extra points only when candidates had more than 11 years of professional experience and into the allegation concerning racial discrimination, as these issues had been dealt with in his decision on complaint 3237/2004/ELB dated 20 July 2005. As regards the complainant's remark concerning the rejection of his application in the context of Open Competition PE/99/A, the Ombudsman considered that it was too vague to justify an inquiry.

The Ombudsman therefore opened an inquiry into the following allegations:

- Parliament should have granted him the maximum number of points for his qualifications;
- Parliament wrongly evaluated the length of his professional experience because the actual length of his professional experience is 15 years and 9 months;
- Parliament should have granted him more points for each area of professional experience.

The complainant and Parliament were informed accordingly.

## **THE INQUIRY**

### **The European Parliament's opinion**

Parliament's opinion can be summarised as follows:

As regards the complainant's qualifications, the Selection Board, as stated in the evaluation sheet, only assessed full university degrees. Moreover, the master's degree in Information



Technologies, allegedly obtained by the complainant in 1987, was not mentioned in his application.

As regards the length of the complainant's professional experience, the Selection Board assessed it as follows: 0 to 0.4 points were granted for each year of professional experience acquired after obtaining the degree giving access to the competition and beyond the 11-year period required in the Notice of Competition. The complainant obtained his engineering diploma on 29 June 1988; consequently, the Board could not take into account his professional experience before this date. The complainant's professional experience, beyond the minimum required for the competition, is therefore 3 years and 4 months. Certificates of non-university professional training were not taken into account.

As regards the number of points granted to the complainant for each specific area, the Selection Board based itself exclusively on the information provided by the complainant in his application, supported by the documents provided before the closing date for applications (that is, 16 March 2004). The Board could not take into account the information provided by the complainant in his CV and in his re-examination request because a CV is not a supporting document and information provided after the closing date for applications could not be taken into account. The complainant provided copies of three contracts, which did not specify in detail the nature of his duties, and mentioned overlapping dates for the beginning and end of the different contracts. On the basis of the information in the application form and the copies of the three contracts provided by the complainant, the Board considered that the complainant had an appropriate combination of ten areas. The assessment of this professional experience in the ten areas was only based on information in the application form as there was no supporting documentation. Consequently, the Board could only grant him 1.4 points.

Parliament took the view that the Selection Board acted in compliance with the applicable rules and that no irregularity had occurred.

#### **The complainant's observations**

In his observations, the complainant maintained his complaint. He attached to his observations a copy of a letter concerning his gold medal for long service and a copy of his master's degree ("*Maîtrise des sciences et techniques*"). He indicated that he had initiated legal proceedings before the French courts for racial discrimination. He requested information on his rights and indicated that he was in favour of a friendly settlement. He finally stated that these types of manipulations are common in the "*commission*". He requested "*the annual report for 2002*", the report on "*administrative irregularities [and] discriminatory treatment*" as well as the annulment of the selection procedure.

## **THE DECISION**

### **1 Preliminary remarks**

1.1 The Ombudsman notes that, in his observations, the complainant requested some documents, notably the annual report for 2002, as well as a report on administrative irregularities and discriminatory treatment. The Ombudsman advises the complainant to specify his requests and to address them directly to the institution concerned.



1.2 The Ombudsman recalls that, according to the established case-law of the Community courts, the Selection Board enjoys broad discretion when assessing the qualifications and relevant professional experience of the candidates. When a complainant candidate challenges the propriety of the Board's assessments in this context, the Ombudsman has no power to substitute his own judgment for that of the Board, and his review is limited to examining whether the exercise of the Board's discretion was vitiated by a manifest error (2) .

## **2 Relevant provisions of the Notice of Competition**

The Notice of Competition provides, in relevant part, the following:

### *" B. SPECIFIC CONDITIONS*

#### *1. Qualifications and professional experience required*

*(a) Officially recognised university degree, preferably in information and communications technologies.*

*The selection board will take account of the different education systems (see Annex I)*

*AND*

*(b) At least 11 years' multidisciplinary professional experience in information and communication technologies, acquired after obtaining the degree giving access to the competition. This experience must include a logical combination of at least eight of the following areas:*

*(...)*

*Only professional experience acquired after the training required in Section III.B.1 (a) will be taken into account.*

*Half the time spent on the following, up to a maximum of one year, will also be taken into consideration as professional experience:*

- any period of further study in one of the areas of the competition,*
- any period of specialist or vocational training, with certificate, after completing the education described in Section 1(a) above.*

*If a period of specialist or advanced vocational training, as referred to in Section III.B.1(b), coincides with a period of professional activity, the selection board will take account only of the period of professional activity.*

*You must give details of your professional experience, education, training and studies on the application form and back this up with supporting documents.*



(...)

### *3. Supporting documents required*

*You must enclose with your application form supporting documents concerning your studies, professional experience and knowledge of languages.*

*In order to supply the required proof of the professional experience referred to in Section III.B.1, please produce one or more of the supporting documents listed below for guidance:*

- employment contracts or certificates, letters of attestations of appointment, indicating the nature of the activity performed, which must be accompanied by salary slips clearly showing the dates on which such periods of professional experience began and, where relevant, ended,*
- in the case of current professional activity, your most recent salary slip as proof of the duration of that activity,*
- proof of professional activity as a self-employed person (e.g. tax returns, VAT declarations, an entry in the trade register, social security documents, invoices).*

*A curriculum vitae will not be regarded as a supporting document. "*

### **3 Alleged failure to grant points for qualifications**

3.1 The complainant took part in Open Competition PE/98/A, which was organised by the European Parliament. His application was excluded from the competition because he was not amongst the 15 best candidates. He obtained 5.2 points out of 6 for his qualifications. The complainant alleged that Parliament should have granted him the maximum number of points for his qualifications.

3.2 In its opinion, Parliament explained that the Selection Board, as stated in the evaluation sheet, only assessed full university degrees. Moreover, the master's degree in Information Technologies, allegedly obtained by the complainant in 1987, was not mentioned in his application.

3.3 The Ombudsman recalls that, under the provisions of the Notice of Competition mentioned above (see point 2), the candidates should give details of their education on the application form and back this up with the relevant supporting documents. Hence, in light of these provisions, of the principle of equal treatment of candidates (3) and the relevant case-law of the Community courts (4), the Selection Board could take into account only the information (and relevant supporting documentation) provided in the applications submitted by the candidates, regarding their qualifications. The Ombudsman notes that, in its opinion, Parliament explained, in the relevant section, that the complainant's diploma obtained in 1987 was not mentioned in his application. He further notes that the complainant does not appear to have questioned the factual accuracy of this argument. In light of the above, the Ombudsman considers that it has not been established that the Board committed a manifest error concerning the points it granted



to the complainant for his qualifications. He finds therefore no maladministration as regards this aspect of the complaint.

#### **4 Alleged wrongful evaluation of the length of professional experience**

4.1 The complainant alleged that Parliament wrongly evaluated the length of his professional experience because the actual length of his professional experience is 15 years and 9 months and not 3 years and 4 months. Moreover, Parliament did not take into account vocational training periods subsequent to his diploma, that is, one year.

4.2 In its opinion, Parliament stated that the Selection Board assessed the complainant's professional experience as follows: 0 to 0.4 points were granted for each year of professional experience acquired after obtaining the degree giving access to the competition and beyond the 11 years required. The complainant obtained his engineering diploma on 29 June 1988; consequently, the Selection Board could not take into account his professional experience before this date. The professional experience of the complainant, beyond the minimum required for the competition, is therefore 3 years and 4 months. Certificates of non-university professional training were not taken into account.

4.3 First, the Ombudsman notes that, according to the Notice of Competition, the professional experience required was "*at least 11 years' multidisciplinary professional experience in information and communication technologies, acquired after obtaining the degree giving access to the competition*". Hence, it was reasonable for the Selection Board to grant points for the complainant's professional experience only to the extent that this experience was going beyond the 11-year minimum required by the Notice. As the degree giving access to the competition was obtained in 1988, as the minimum professional experience required was 11 years, and as the closing date for the competition was 16 March 2004, the Ombudsman does not accept the complainant's argument that extra points should have been granted for 15 years and 9 months of professional experience. Moreover, the Ombudsman notes that Parliament considered that, in view of the supporting documents provided by the complainant, his professional experience beyond the 11-year period required by the Notice of Competition was 3 years and 4 months. The complainant has not contested, on the basis of specific arguments and references to the content of his application and to the documents attached thereto, that his experience beyond 11 years exceeded 3 years and 4 months.

4.4 As regards the complainant's vocational training periods corresponding to one extra year of professional experience, the Ombudsman notes that Parliament stated that certificates of non-university professional training were not taken into account. He recalls that, under the Notice of Competition: "*Half the time spent on the following, up to a maximum of one year, will also be taken into consideration as professional experience:*

(...)

*- any period of specialist or vocational training, with certificate, after completing the education described in Section 1(a) above.*

*If a period of specialist or advanced vocational training, as referred to in Section III.B.1(b),*





*coincides with a period of professional activity, the selection board will take account only of the period of professional activity. "*

Taking into account this last provision, the Ombudsman notes that the complainant has neither argued nor shown on the basis of specific references to the content of his application and documents attached thereto that his vocational training periods referred to in his application did not coincide with a period of professional activity.

4.5 In light of the above, it has not been established that the Selection Board made a manifest error as regards the evaluation of the length of the complainant's professional experience. The Ombudsman thus concludes that there is no maladministration as regards this aspect of the complaint.

### **5 Alleged failure to grant points for each area of professional experience**

5.1 The complainant alleged that Parliament should have granted him more points for each area of professional experience. He questioned the propriety of the points (1.4 out of 5.2) awarded for his professional experience in each area.

5.2 According to Parliament, the Selection Board based itself exclusively on the information provided by the complainant in his application, supported by the documents provided before the closing date for applications. The Board could not take into account the information provided by the complainant in his CV and in his re-examination request. The complainant provided copies of three contracts, which did not specify in detail the nature of his duties, and mentioned overlapping dates for the beginning and end of the different contracts. The Board considered that the complainant had an appropriate combination of ten areas and granted him 1.4 points.

5.3 The Ombudsman, first, recalls that, pursuant to the provisions of the Notice of Competition mentioned above (see point 2), candidates were required to submit, as proof of their professional experience, "*employment contracts or certificates, letters of attestations of appointment*, indicating the nature of the activity performed ". From the evaluation sheet of the complainant, the Ombudsman understands that 0 to 0.4 points were granted for each area of professional experience. He notes that, after the examination of the supporting documents provided by the complainant with his application, the Selection Board considered that he had an appropriate combination of ten areas and granted 1.4 points in total (0.1 or 0.2 for each of the ten areas). He also notes Parliament's remark that the documents provided by the complainant were not sufficiently detailed about the nature of his professional experience. Under these circumstances, it has not been established that the Board committed a manifest error as regards the points awarded to each area of professional experience. Therefore, the Ombudsman finds no maladministration as regards this aspect of the complaint.

### **6 Claim**

6.1 The complainant claimed, in his observations, that the selection procedure should be annulled.

6.2 In light of his findings in points 3.3, 4.5 and 5.3 above, the Ombudsman considers that the claim cannot be sustained.

### **7 Conclusion**





On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by Parliament. The Ombudsman therefore closes the case.

The President of Parliament will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 2004 C 38 A.

(2) Cf. Decision on complaint 2126/2003/PB, point 2.4; Case F-12/05 *Tas v Commission*, judgment of 11 July 2006, not yet reported, paragraph 39.

(3) Cf. Case T-173/99 *Elkaïm and Mazuel v Commission* [2000] ECR-SC I-A-101 and II-433, paragraph 87; Case T-5/04 *Scano v Commission*, judgment of 13 July 2005, not yet reported, paragraph 45.

(4) Cf. Case T-214/99 *Carrasco Benitez v Commission* [2000] ECR-SC I-A-257 and II-1169, paragraph 77.