

## Decision of the European Ombudsman on complaint 3738/2006/(SAB)TS against the European Commission

Decision

**Case 3738/2006/(SAB)TS - Opened on 30/01/2007 - Decision on 19/06/2008**

Strasbourg, 19 June 2008

Dear Mr X,

On 12 December 2006, you submitted a complaint to the European Ombudsman against the European Commission concerning your non-appointment to a position on the Training Programme for Junior Experts in the Commission Delegations.

On 30 January 2007, I forwarded the complaint to the President of the Commission. The Commission sent its opinion on 16 July 2007. I forwarded it to you with an invitation to make observations, which you sent on 9 August 2007.

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

### THE COMPLAINT

According to the complainant, the facts of the case are, in summary, as follows.

In February 2006, the complainant participated in the selection procedure for the Training Programme for Junior Experts in the European Commission Delegations. In late March 2006, he was called for an interview. He was subsequently informed that he had been placed on a reserve list and, in the event that the selected candidates were unwilling or unable to take up the positions, he would be offered a position.

On 22 September 2006 (Friday), an official at the Commission's Directorate-General for External Relations ("DG Relex") sent an e-mail to the complainant containing the following message:

*" Referring [ to ] our telephone conversation of this afternoon by which I've informed you that you are taking part of the Training Programme for JED in Delegations as one of the selected Irish candidates has withdrawn his application.*



*I propose to you the posting in Jerusalem (...).*

*The expected starting date in Brussels, which corresponds to the date of signature of the contract, is fixed on 6th November 2006 (or later). (...)*

*Please confirm Monday morning if you are still interested in the Programme and if you accept the duty station. For your information, I will also contact another candidate of the list of reserve.*  
"

On 25 September 2006, the complainant confirmed his interest by e-mail. In the afternoon of the same day, the same official who sent him the above-cited e-mail of 22 September 2006, informed the complainant that they " *have received a phone call [ that ] morning from the selected candidate and the Ministry of the Foreign Affairs has accepted to postpone the recruitment of the candidate after the JED Training programme* ". She thanked the complainant for his interest and informed him that the vacancy was no longer available. The complainant immediately requested " *a fuller elaboration on the reasoning behind why this offer is being withdrawn* ". He received the following reply: " (...) *in my e-mail of Friday, I've mentioned [ to you ] that the offer was also sent to another candidate (there is a reserve list with a classification. (...).* "  
"

The complainant was not satisfied with this reply, and sent three e-mails to DG Relex, in which he explained the situation and put forward several arguments in support of his request to receive an adequate explanation for the withdrawal of the offer for a position on the programme. He sent the first e-mail on 26 September 2006 and the two reminders on 28 and 29 September 2006. According to the complainant, he did not receive any reply to his e-mails.

On 30 January 2007, the European Ombudsman opened the present inquiry into the following allegation and claims:

The complainant alleged that the Commission failed to provide valid and adequate grounds for its decision to withdraw its offer to him for a position on the Training Programme for Junior Experts in the Commission Delegations. In this regard, the complainant noted that the Commission had not replied to his e-mails of 26, 28 and 29 September 2006, in which he requested certain explanations and information regarding the issue.

The complainant claimed that

- The Commission should adequately explain its actions regarding the withdrawal of the offer for a position on the Training Programme for Junior Experts in the Commission Delegations; and
- The Commission should appoint him to the position in its Delegation in Jerusalem, as offered to him on 22 September 2006.

## **THE INQUIRY**

### **The Commission's opinion**

In its opinion on the complaint, the Commission explained in some detail the nature of the JED



programme and the applicable procedures. The main objective of the JED programme is to provide concrete training to young talented graduates from the Member States. A pre-selection process is undertaken by each Member State. Once the selection of candidates has been completed for all Member States, DG Relex's relevant services proceed with the matching of each vacant JED post and the selected applicants' main characteristics, skills and interests.

In the present case, DG Relex sent a letter on 15 May 2006 to the Irish Permanent Representation in Brussels to communicate officially the list of selected candidates who were chosen for a job and the reserve list of candidates who would only be contacted in the event that some of the selected candidates included on the first list did not accept the offer made to them. The complainant was ranked eight in the reserve list, by order of results.

At one point, a post became vacant in the Commission's Delegation in Jerusalem. However, the "first" candidate on the list of selected candidates could not, for professional reasons, accept the post at the time. The Commission therefore contacted, through its above-quoted e-mail of 22 September 2006, the complainant and another suitable candidate from the reserve list, asking whether they would be interested in, and available for, the post. The "first" candidate on the list of selected candidates then informed the Commission that he was, after all, available for the post. The Commission therefore informed the complainant that the post was no longer vacant. However, shortly afterwards, the "first" candidate told the Commission, again, that he was not available. At that point, the Commission carried out an assessment of the complainant's profile and that of the other reserve list candidate, and decided to offer the post to the latter.

The Commission insisted that no binding offer had ever been made to the complainant. It pointed out, in particular, that it had informed the complainant, in its e-mail of 22 September 2006, that " *[f]or your information, I will also contact another candidate of the list of reserve.* " It therefore considered that, his " *claim that the Commission should appoint him in [ sic ] its Delegation in Jerusalem* " was unfounded.

The Commission considered that DG Relex had clearly indicated to the complainant that (i) the initial indication of an available post had to be confirmed before it could become a formal offer; (ii) other candidates were being approached in the same way for the same post; and (iii) under any circumstances, it could not be interpreted as a firm offer for a JED position or a contract from the Commission at this stage.

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

The complainant noted that the Commission's opinion forwarded to him in the course of the Ombudsman's inquiry was " *the first full explanation [ he ] had received as to why the position was withdrawn* ". He appeared critical of this.

As to the Commission's alleged failure to reply to the complainant's three e-mails where he requested an adequate explanation for the withdrawal of the offer for a position on the programme, the complainant noted that " *I feel that the total lack of response from the Commission to my queries evidences a shocking lack of basic respect and courtesy, an issue, I note, that the Commission has completely failed to refer to in its opinion.* "



## THE DECISION

### **1 Allegation that the Commission failed to provide valid and adequate grounds for its decision to withdraw its offer to him for a position on the Training Programme for Junior Experts in the Commission Delegations**

1.1 The complainant participated in the 2006 selection procedure for Training Programme for Junior Experts in the European Commission Delegations and was called for an interview. He was informed that he was placed on a reserve list and that, in the event that the selected candidates were unwilling or unable to take up the positions, he would be offered a position. On 22 September 2006 (Friday), he received an e-mail from the Commission's Directorate-General for External Relations ("DG Relex"), containing the following message:

*" Referring [ to ] our telephone conversation of this afternoon by which I've informed you that you are taking part of the Training Programme for JED in Delegations as one of the selected Irish candidates has withdrawn his application. I propose to you the posting in Jerusalem (...). The expected starting date in Brussels, which corresponds to the date of signature of the contract, is fixed on 6th November 2006 (or later). (...) Please confirm Monday morning if you are still interested in the Programme and if you accept the duty station. For your information, I will also contact another candidate of the list of reserve. "*

The complainant confirmed his interest by e-mail on 25 September 2006. The same day, DG Relex informed him that the vacancy was no longer available, because the Commission had "*received a phone call [ that ] morning from the selected candidate and the Ministry of the Foreign Affairs has accepted to postpone the recruitment of the candidate after the JED Training programme*". The complainant immediately requested "*a fuller elaboration on the reasoning behind why this offer is being withdrawn.*" He received the following reply: "*(...) in my e-mail of Friday, I've mentioned [ to you ] that the offer was also sent to another candidate (there is a reserve list with a classification. (...)).*"

The complainant was not satisfied with this reply, and sent three e-mails (on 26, 28 and 29 September 2006) to DG Relex requesting an adequate explanation for the withdrawal of the offer, but he did not receive a reply.

In his complaint to the Ombudsman, the complainant alleged that the Commission had failed to provide valid and adequate grounds for its decision to withdraw its offer to him for a position on the Training Programme for Junior Experts in the Commission Delegations. In this regard, the complainant noted that the Commission had not replied to his e-mails of 26, 28, and 29 September 2006, in which he requested an adequate explanation regarding the issue.

The complainant claimed that the Commission should (1) adequately explain its actions regarding the withdrawal of the offer for a position on the Training Programme for Junior Experts in the Commission Delegations, and (2) appoint him to the position in the Delegation in Jerusalem, as offered to him on 22 September 2006.

1.2 In its opinion, the Commission primarily argued that it had never made a formal offer of a



post to the complainant. The Commission argued that DG Relex had only contacted the complainant on 22 September 2006 in order to assess his interest in and availability for a vacancy which had arisen unexpectedly and at the last minute. It had made clear to him at the time that this was merely a preliminary contact; that other candidates were also being contacted in connection with the same vacancy; and that this was not an offer of a position. The complainant could not, therefore, reasonably have understood that contact to amount to an offer of a position. Moreover, the Commission put forward that, at all times, DG Relex acted in accordance with the relevant selection procedures which were also made available in writing to all Member States' EU Permanent Representations. The Commission stated that no unfair preference or any sort of unfair advantage was given to anyone in particular for a JED position. When DG Relex approached the complainant informally by telephone and e-mail, it informed him of the particular context and the urgency of the situation.

1.3 In his observations, the complainant noted that the Commission's opinion forwarded to him in the course of the Ombudsman's inquiry was "*the first full explanation [ he ] had received as to why the position was withdrawn*". He appeared to be critical of the Commission's initial failure to give an adequate explanation as to why the position in question had become unavailable to him.

As to the Commission's alleged failure to reply to the complainant's three e-mails in which he requested an adequate explanation for the withdrawal of the offer for a position on the programme, the complainant noted that "*I feel that the total lack of response from the Commission to my queries evidences a shocking lack of basic respect and courtesy, an issue, I note, that the Commission has completely failed to refer to in its opinion.*"

1.4 The Ombudsman recalls that the Commission's (e-mail) letter to the complainant of 22 September 2006 stated the following:

" *Referring [ to ] our telephone conversation of this afternoon by which I've informed you that you are taking part of the Training Programme for JED in Delegations as one of the selected Irish candidates has withdrawn his application.*

*I propose to you the posting in Jerusalem (...).*

*The expected starting date in Brussels, which corresponds to the date of signature of the contract, is fixed on 6th November 2006 (or later).*

*(...)*

*Please confirm Monday morning if you are still interested in the Programme and if you accept the duty station. For your information, I will also contact another candidate of the list of reserve.*  
"

The complainant confirmed his interest by e-mail on 25 September 2006. On the same day, a Commission official informed the complainant that they had "*received a phone call [that]*



*morning from the selected candidate and the Ministry of the Foreign Affairs has accepted to postpone the recruitment of the candidate after the JED Training programme ". She thanked the complainant for his interest and informed him that the vacancy was no longer available. The complainant immediately requested " a fuller elaboration on the reasoning behind why this offer is being withdrawn. " He received the following reply: " (...) in my e-mail of Friday, I've mentioned [ to you ] that the offer was also sent to another candidate (there is a reserve list with a classification. (...)). "*

1.5 The Ombudsman notes the Commission's point that it had never made an offer to the complainant. It stated that the complainant could not reasonably have understood the Commission's contact of 22 September 2006 to amount to an offer of a post.

1.6 With respect to this argument, the Ombudsman, first, remarks that the Commission's e-mail of 22 September 2006 referred to a relevant telephone conversation which had apparently taken place on the same day between the Commission's case-handler and the complainant. The Ombudsman has not received any specific information and supporting documents about the exact content of this conversation, which could be useful in allowing him to gain a better understanding of the meaning of the above-mentioned e-mail. Relatedly, it is important to note that the meaning of the e-mail in question, standing alone, is not sufficiently clear. In particular, it is not clear what the sentence " *you are taking part of the Training Programme for JED in Delegations as one of the selected Irish candidates has withdrawn his application* " should mean when read in conjunction with the following phrases: " *I propose to you the posting in Jerusalem* "; " *[t]he expected starting date in Brussels, which corresponds to the date of signature of the contract, is fixed on (...) "*"; and " *[p]lease confirm Monday morning if you are still interested in the Programme and if you accept the duty station* ". The Ombudsman wonders whether the above sentences suggest that (i) an offer (even informal or tentative/conditional) of a post was made to the complainant or (ii) rather simply indicated a development in the complainant's situation as a candidate on the reserve list, which would lead to a decision on whether an offer of a post in the Commission's Delegation in Jerusalem would be made to him, taking into account whether he would be willing to accept a formal offer of the post. Moreover, it is not clear what the sentence " *[f]or your information, I will also contact another candidate of the list of reserve* " implied, in relation to the previous parts of the e-mail, since the purpose of this contact was not specified. For example, the sentence could be considered as implying that the Commission would also contact another candidate, because the complainant might not be interested in the position in the Delegation in Jerusalem, or might not reply on time to the Commission's request for a confirmation. In light of the above, the Ombudsman will make a further remark at the end of the present decision.

1.7 While the Commission's e-mail in question was not sufficiently clear, the Ombudsman also recognises that the e-mail does not contain any explicit, formal and definitive offer. Under these circumstances, and since the exact content of the preceding telephone conversation is unknown, the Ombudsman takes the view that it has not been established that the e-mail in question could reasonably be deemed to constitute a formal, definitive offer of a post on the part of the Commission. Further, the e-mail did not contain any precise and clear assurances that such an offer would be made in case the complainant gave the confirmation requested in this



e-mail.

1.8 However, as explained above, the e-mail, at the very least, meant that, following the withdrawal of the application of a selected candidate, there had been a substantial change in the complainant's situation as a candidate who had been included on the reserve list, and that the Commission would soon make a decision on the relevant vacancy and, in this context, it would decide whether to offer the post to the complainant. Subsequently, in its (first) e-mail reply of 25 September 2006, the Commission stated that there was no longer a vacancy, indicating that the above-mentioned, initially selected, candidate had revoked the withdrawal of his application. It was, thus, reasonable for the complainant to ask for a sufficiently detailed explanation in this regard, especially about the other candidate's possibility of retracting his withdrawal declaration to the Commission, after the latter had contacted the complainant about the vacancy. This is what the complainant did by his e-mail of 25 September 2006. Under these circumstances, the Commission was required to provide adequate explanations in support of its decision (which was unfavourable to the complainant's legitimate interests) to consider the initially selected candidate's application to be still valid, after the latter had withdrawn his application, and, as a result, the relevant vacancy no longer existed.

1.9 In its (second) e-mail reply of 25 September 2006, the Commission's case-handler stated the following in reply to the complainant's e-mail requesting an adequate explanation for why the Commission had considered the initially selected candidate's application to be still valid: "*(...) in my e-mail of Friday, I've mentioned [ to you ] that the offer was also sent to another candidate (there is a reserve list with a classification. (...)).*" It is clear that, by making this statement, the Commission did not properly discharge its above duty to provide adequate explanations for its decision to consider the initially selected candidate's application to be still valid after the withdrawal of his application. Indeed, by this reply, the Commission referred to the information it had previously given to the complainant about its having contacted, at the same time as it contacted the complainant, another candidate on the reserve list. It did not clarify how this information related to its above decision to consider the application of the initially selected candidate still valid and it did not make reference to another decision on the matter. The complainant was, thus, justified in requesting additional explications and information about the situation in his e-mail of 26 September 2006, which followed by relevant reminders sent by e-mail on 28 and 29 September 2006. The Commission was required to reply adequately to these e-mails, but failed to do so. This was an instance of maladministration. Taking into account his remarks in point 1.11 below, the Ombudsman will make a relevant critical remark.

1.10 In its opinion on the present complaint, the Commission provided, in summary, the following explanations about its decision not to proceed to the recruitment of the complainant. The Commission's final recruitment decision was in fact made only after 26 September 2006, when the candidate who was initially selected and ranked first on the reserve list had informed it that, in the end, he could not accept the post. It then reached the conclusion that the other candidate on the reserve list, who had equally been contacted on 22 September 2006, was more suitable for the post than the complainant, and consequently, this other candidate was offered the post, which he subsequently accepted.





1.11 The Ombudsman notes that the complainant does not seem to have contested, in his observations, the validity or adequacy of the above explanations given by the Commission concerning his non-recruitment. He rather noted that the Commission's opinion gave him the "*the first full explanation (...) as to why the position was withdrawn*" and he appeared to be critical of that. It, thus, appears that the complainant considers that the Commission's shortcoming mentioned in point 1.9 above has been remedied, since he received, in the course of the inquiry, the information and explanations he sought as to why he was not recruited. The Ombudsman therefore finds that that no further inquiry into and consideration of this matter would be justified.

## **2 Claims**

2.1 The complainant claimed, first, that the Commission should adequately explain its actions regarding the withdrawal of the offer for a position on the Training Programme for Junior Experts in the Commission Delegations, and second, that the Commission should appoint him to the position in the Delegation in Jerusalem, as offered to him on 22 September 2006. In its opinion, the Commission did not accept these claims.

2.2 In light of his relevant remarks in points 1.9 and 1.11 above, the Ombudsman does not consider it justified further to inquire into the above claims.

## **3 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, it is necessary to make the following critical remark.

The Commission was required to provide adequate explanations in support of its decision not to recruit the complainant, which was made after the Commission had sent him its e-mail of 22 September 2006. The Commission failed to comply with this requirement, before the submission of the complaint to the Ombudsman. This was an instance of maladministration.

In light of the above, the Ombudsman closes the case.

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

## **FURTHER REMARK**

In the context of recruitment procedures, principles of good administration require that the Commission communicate with candidates in an accurate and sufficiently clear manner. This is particularly important in situations where the Commission contacts a successful candidate in order to verify whether he or she would be willing to accept a job offer that the Commission might decide to address to him or her. In such cases, the Commission is encouraged to inform the candidate, in clear and unequivocal terms, about the exact nature of its communication to him or her, especially clarifying that the communication does not constitute a job offer.

Yours sincerely,





P. Nikiforos DIAMANDOUROS