

Decision of the European Ombudsman on complaint 887/2007/(BM)JMA against the European Commission

Decision

Case 887/2007/(BM)JMA - Opened on 15/05/2007 - Decision on 04/03/2008

Strasbourg, 4 March 2008

Dear Mr F.,

On 27 March 2007, you submitted a complaint to the European Ombudsman against the European Commission. The complaint concerned the Commission's handling of your application for a vacancy position as a Contractual Agent (IT Managers) in its Delegation in Brazil. You sent me additional information on 20 and 26 April 2007.

On 15 May 2007, I informed the President of the Commission of your complaint and asked him to submit an opinion on it by 15 September 2007. On 11 October 2007, the Commission sent me its opinion in English. On 15 October 2007, the Commission sent me the translation of its opinion into Spanish, which was forwarded to you on 25 October 2007, with an invitation to make observations, if you so wished.

On 12 October 2007, I informed you that, for reasons of internal organisation, your complaint had been transferred to a different Legal Officer.

On 25 November 2007, you sent me your observations.

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:

At the end of 2006, the complainant took part in several selection procedures organised by the European Commission and designed to recruit Contractual Agents specialised in informatics (IT Managers) for its external Delegations. In September 2006, the complainant first applied for one of the positions with the Commission's Delegation in Luanda (Angola), ("Delegation in Angola"). Following the closure of this procedure, the complainant also applied, among others, for another IT Manager position in the Commission's Delegation in Brasilia (Brazil), ("Delegation in Brazil").



As regards the first selection procedure with the Delegation in Angola, the Commission selected the complainant for the vacancy. Its services therefore took the necessary administrative steps to have the complainant recruited. In this context, the complainant was invited to undergo a medical examination. By e-mail of 6 March 2007, the Commission informed the complainant that the medical examination revealed no problem and that the contract would be sent to him. The Commission also informed the complainant that the starting date of his contract had been set for 16 March 2007 and asked him to inform it whether this date suited him.

On 2 March 2007, however, the complainant obtained oral confirmation that he had also been selected for a similar position with the Delegation in Brazil. On 7 March 2007, he informed the responsible Commission services of the new situation. In his e-mail, the complainant noted that he would rather take up the position offered by the Delegation in Brazil. By letter of 8 March 2007, the Delegation in Brazil officially informed the complainant that he had been selected for the position and provided him with the required documents to conclude the recruitment process. The complainant was informed that the successful completion of the contract was subject to the results of a medical examination and that, as soon as possible, the Delegation in Brazil would contact him to confirm the procedure. By e-mail of 10 March 2007, the complainant accepted the position in Brazil. On 11 March 2007, the complainant addressed a letter to the responsible services, explaining his decision to reject the offer of the Delegation in Angola. A day later, that is, on 12 March 2007, the Delegation in Brazil informed the complainant that, according to the Delegation in Angola, in the absence of a formal withdrawal from him, the process for his recruitment in Angola had almost been completed. On 13 March 2007, the complainant again contacted the Commission, restating his position. On the same date, the Delegation in Angola informed the Commission services in Brussels that, for several months, it had assumed, based on his acceptance of the Delegation's offer, that the complainant would join them in the near future. The Delegation in Angola took the view that the complainant had not respected his undertaking.

On 16 March 2007, the Commission informed the Delegations in Angola and Brazil that the complainant had failed to make clear that he had applied for an identical position in both Delegations. It pointed out that, by e-mail of 18 February 2007, the complainant had formally informed the Delegation in Angola that he was ready to accept the vacancy in that country as of 16 March 2007, and that therefore he should take up the offer made by its Delegation in Angola.

On 20 March 2007, the complainant wrote to the Commission to underline that he had not signed any contract with the Delegation in Angola, and should therefore be free to choose what for him was the best offer. He underlined that, if he were to be compelled to accept the proposal made by the Delegation in Angola, he would refuse the offer. On 22 March 2007, the complainant wrote again to the Commission, repeating his arguments and asking whether or not he was entitled to accept offers from other Delegations.

By e-mail of 27 March 2007, the Commission informed the complainant that its position remained unchanged, in view of the fact that he had accepted the offer of the Delegation in Angola and that he had formally confirmed his acceptance in writing. The complainant was



informed that the Commission's offer to work in its Delegation in Angola still stood and that the Delegation in Brazil had accepted this solution, since the recruitment procedure for the vacancy with the Delegation in Angola was far too advanced. The complainant was asked therefore whether or not he wished to accept that offer.

In view of the position taken by the Commission, the complainant submitted a complaint to the European Ombudsman in which he argued that nothing in the vacancy notices of these positions prevented him from applying for other positions in different Delegations. In the complainant's view, even if he had submitted the required documentation for the position in Angola, he had not made any formal undertaking or signed any contract. The complainant underlined that, in spite of the fact that the Delegation in Angola appeared to be willing to allow him to take up the offer made by the Delegation in Brazil, the Commission had decided otherwise.

In light of these arguments, the Ombudsman asked the Commission to provide an opinion on the following allegation and claim made by the complainant:

The complainant alleges, in summary, that the Commission refused to offer him a position as Contractual Agent (IT Manager) in its Delegation in Brazil, despite the fact that he had already been selected, on grounds that were not foreseen in the relevant vacancy notice.

He claims that the Commission should offer him this position.

THE INQUIRY

The Commission's opinion

In its opinion, the Commission first explained the background to the case. It noted that, in mid-2006, the complainant had applied for a vacant IT position in its Delegation in Angola. In early December 2006, the Delegation in Angola contacted the complainant to inform him of his selection for the position. At the time, the complainant confirmed his interest in the position, and, in mid-January 2007, the Delegation in Angola started the necessary procedure. In February 2007, the Delegation in Angola and the complainant agreed that the starting date of his contract would be 16 March 2007. Upon the complainant's acceptance of that offer, the responsible Commission services prepared the recruitment file and training arrangements.

On 13 December 2006, despite the fact that he had already accepted the offer of a position in Angola, the complainant also applied for a vacant IT position with the Delegation in Brazil. He was interviewed in February 2007. The complainant failed to inform the Delegation in Brazil however that he had already accepted a similar position with the Delegation in Angola. On 2 March 2007, the Delegation in Brazil informed the complainant orally of his selection for the position. It confirmed its decision in writing on 8 March 2007.

On 6 March 2007, the Commission services informed the complainant that, having received the results of his medical examination, his contract with the Delegation in Angola was ready for signature. A day later, that is, on 7 March 2007, the complainant informed the Commission of



his intention not to take up the offer from the Delegation in Angola, but the one made by the Delegation in Brazil instead. On 16 March 2007, the Commission came to the conclusion that, at that stage of the procedure, it could not accept a change in the complainant's place of employment and, consequently, that he should accept the contract offered by the Delegation in Angola. On 27 March 2007, the complainant confirmed by e-mail that he was not willing to accept the contract offered by the Delegation in Angola. On the same day, the Commission informed the complainant of its decision not to offer him the vacant position in the Delegation in Brazil. The Commission explained that, on the basis of the complainant's acceptance of the offer made by its Delegation in Angola, the responsible services had done a great deal of preparatory work. The Commission added that, while pursuing the recruitment process with the Delegation in Brazil, the complainant had failed to inform it that he had already accepted a position with another Delegation. The Commission noted that the complainant informed the services concerned of his intention not to accept the offer of its Delegation in Angola only after he received the proposal from the Delegation in Brazil on 7 March 2007. The Commission therefore considered that, in doing so, the complainant misled its services, showing no consideration for the needs of the Delegations. The Commission pointed out that, in his e-mail to the Commission of 20 March 2007, the complainant referred to his freedom of choice, as though the two offers had been presented to him at the same time.

The Commission noted that, in March 2007, the recruitment file had been finalised and, based on the complainant's acceptance of the offer made by the Delegation in Angola, a proposal for a contract with that Delegation was ready for signature. In the Commission's view, it was too late for the complainant to take a different view just a few days before the signature of the contract. In refusing to accept the position in Angola, despite the fact that the procedure was well advanced, the complainant's behaviour was considered to be detrimental to the functioning of the Delegation in Angola.

The complainant's observations

In his observations, the complainant repeated the arguments made in his complaint. He underlined however that, at the time the Delegation in Brazil made its offer, he had not signed any contract with the Delegation in Angola. He did not inform all the services concerned of his different applications because he considered that these recruitment procedures were separate and independent from each other.

THE DECISION

1 Commission's refusal to offer the complainant a position

1.1 The complainant alleges that the Commission refused to offer him a position as Contractual Agent (IT Manager) in its Delegation in Brazilia (Brazil), ("Delegation in Brazil") despite the fact that he had already been selected for that position. The complainant argues that the refusal was based on grounds that were not foreseen in the relevant vacancy notice.

The complainant explains that he took part in several selection procedures organised by the Commission and designed to recruit Contractual Agents specialised in informatics (IT Managers) for its external Delegations. Accordingly, in September 2006, the complainant first applied for an IT Manager position with the Delegation of the Commission in Luanda (Angola),



("Delegation in Angola"), and thereafter, once this selection procedure was closed, he also submitted another application for an identical IT Manager position with the Delegation in Brazil. On 7 March 2007 and after having been selected by both Delegations, he informed the Commission that he preferred to accept the position in the Delegation in Brazil. On 16 March 2007, the Commission informed its services that, since a contractual proposal had already been prepared by its Delegation in Angola, the complainant should accept it. By e-mail of 27 March 2007, the Commission informed the complainant that its offer to work in the Delegation in Angola still stood and that the Delegation in Brazil had accepted the compromise, thereby preventing him from taking up the latter's offer.

1.2 The Commission argues that, in March 2007, as a result of the commitment made by the complainant in December 2006, the Delegation in Angola had completed the complainant's recruitment file and that a proposal for a contract was ready for signature. That contract was due to begin on 16 March 2007.

The Commission considers that the complainant only informed its services on 7 March 2007 of his intention not to take up the offer from the Delegation in Angola, and to accept instead the offer made by the Delegation in Brazil. The 7 March 2007 was only a few days before the date for signing the contract with the Delegation in Angola. It was therefore too late for him to change his mind. In refusing to accept a position for which the recruitment procedure was well advanced, the complainant's behaviour was deemed to be detrimental to the functioning of the Delegation in Angola.

1.3 In his observations, the complainant explains that he did not inform all services concerned of his different applications because he considered that these recruitment procedures were separate and independent from each other.

1.4 In view of the available evidence, it appears that, in early December 2006, following his application for a position with the Delegation in Angola on an unspecified date in mid-2006, the Commission informed the complainant that he had been selected for the position. Furthermore, upon being informed of the Commission's decision, the complainant expressed his willingness to accept the offer. Therefore, the Commission immediately started the necessary recruitment procedure and prepared the recruitment file and training arrangements, with a view to fixing the complainant's starting date at 16 March 2007.

It emerges that, on 13 December 2006, the complainant also applied for a vacancy with the Delegation in Brazil, for which he was interviewed in February 2007. In early March 2007, the complainant was informed by that Delegation that he had been selected for the vacancy in that country. It also emerges that it was only on 7 March 2007 that the complainant informed the Commission of his successful participation in two separate recruitment procedures organised by Delegations in Angola and Brazil, and of his intention to accept the latter's offer.

1.5 The Ombudsman is mindful of the fact that the selection of temporary agents organised by the Delegation in Angola and the Delegation in Brazil were separate and independent recruitment procedures, and that there was no indication in the vacancy notices of these



procedures that candidates were precluded from applying simultaneously for both vacancies. The Ombudsman notes that the positions for which the complainant applied concerned the same institution, namely, the Commission and that, furthermore, the handling of these recruitment procedures was carried out by the same Commission services, namely, its Directorate-General for External Relations ("DG RELEX").

However, it appears reasonable that the Commission would expect candidates applying for positions to inform the responsible services of all relevant information which might affect their future appointment. The fact that the complainant had already informed the Commission that he accepted the offer from the Delegation to Angola is relevant information which the Commission could reasonably expect the complainant to proffer to the Commission. An institution can only organise these recruitment procedures properly and fill all vacancies efficiently and in the interest of the service if they are made aware of such information.

The obligation for candidates to proffer to the Commission, in the context of a recruitment procedure, including interviews, all relevant information which might affect their future appointment, need not be specifically set out in the relevant vacancy notice, given that such an obligation is implicit in light of the very purpose of recruitment procedures.

1.6 The Ombudsman notes that, after having been informed in early December 2006 that he had been selected for the vacancy in the Delegation in Angola, the complainant failed to inform the responsible Commission services of this circumstance, either when he applied for a vacancy with the Delegation in Brazil in late December 2006, or when he was invited to an interview with that Delegation in February 2007, or when he was formally informed of his selection by that Delegation in March 2007.

The Ombudsman finds that it was understandable that the Commission would rely on the complainant's commitments, and expect him to start working for its Delegation in Angola on 16 March 2007. The Ombudsman considers that the complainant's change of mind, just a few days before he was due to begin his work for that Delegation, was likely to cause disruption in the work of the Commission, and that the institution was entitled to take adequate measures to avoid this disruption. The Ombudsman therefore finds it reasonable that the Commission took the view that, at that advanced stage of the recruitment procedure, it was too late for the complainant to choose a position with a different Delegation, and that he should have honoured his initial undertaking, that is, to work for the Delegation in Angola.

The Ombudsman further notes that the Commission explained its position to the complainant on 27 March 2007, soon after he had disclosed all relevant information as regards his different job applications.

On the basis of the above considerations, the Ombudsman considers that there appears to be no maladministration as regards this aspect of the case.

2 Claim to have the complainant offered a new position

2.1 The complainant claims that the Commission should offer him a position with its Delegation in Brazil.



2.2 In view of the above findings, in particular the conclusions reached in point 1.6 above, whereby the Commission has justified its position on grounds which appear to be reasonable, the Ombudsman does not consider that the complainant's claim can be sustained.

3 Conclusion

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

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

Yours sincerely,

P. Nikiforos DIAMANDOUROS