

## **Draft recommendation to the Council of the European Union in complaint 2097/2002/GG**

Recommendation

**Case 2097/2002/GG - Opened on 09/12/2002 - Recommendation on 16/04/2003 -  
Decision on 04/09/2003**

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1) )

### **THE COMPLAINT**

The complainant, a German citizen, took part in competition Council/C/412 for clerical assistants (C5 bracket) of German language. The competition comprised four parts: two multiple choice tests (A and B), a written examination for which the PC had to be used (C) and an oral examination (D). The written examination was sub-divided into three tests. In the second of these tests (test b), candidates had to produce a clean text out of and lay out some 45 lines that had been written on a typewriter and that contained manuscript corrections and references as well as typing errors and grammatical errors. This text was to be marked from 0 to 40 points. The pass mark was 24 points.

On 12 November 2002, the Council informed her that she had only obtained 18 points at test C.b and that she could therefore not be admitted to the oral examination.

In a letter of 20 November 2002, the complainant informed the Council that she had never sat a test of this kind before and added that as she was still interested in working within the European institutions, it would help her greatly to know the reasons as to why she had failed to obtain the pass mark. The complainant therefore asked for access to the assessment of the test in question.

In its reply of 27 November 2002, the Council informed the complainant that the Selection Board had reviewed her paper and decided to confirm its initial marking. The Council added that it was unfortunately not possible to give the complainant access to her examination paper.

In her complaint to the Ombudsman, the complainant stressed that the Council's refusal to grant her access to her marked examination paper was not acceptable. She pointed out that no reasons had been given for this refusal. The complainant added that this refusal made it impossible for her to understand why she had failed to pass the relevant test.



## THE INQUIRY

### **The Council's opinion**

In its opinion, the Council made the following comments:

According to Article 6 of Annex III of the Staff Regulations, the proceedings of the Selection Board shall be secret. As the Court of Justice had already stated, this secrecy was introduced with a view to guaranteeing the independence of Selection Boards and the objectivity of their proceedings, by protecting them from all external interference and pressures. Consequently, observance of this secrecy ran counter to divulging the attitudes adopted by individual members of Selection Boards and also to revealing all the factors relating to individual or comparative assessments of candidates. (2) This secrecy inherent in the Selection Board's proceedings also precluded the communication of the criteria for marking the competition tests, which criteria formed an integral part of the comparative assessment made by a Selection Board of a candidate's respective merits. (3)

The obligation to safeguard the secrecy of the proceedings of the Selection Board prevented it from granting a candidate access to his or her marked examination paper, since the latter revealed the attitudes adopted by the individual members related to the assessment of candidates.

The communication of the marks obtained in the various tests constituted an adequate statement of reasons on which a Selection Board's decision was based.

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

No observations were received from the complainant.

## THE DECISION

### **1 Refusal to grant access to marked examination paper**

1.1 The complainant, a German citizen, took part in competition Council/C/412 for clerical assistants (C5 bracket) of German language. Having been informed that she had failed to obtain the pass mark in one of the written tests of this competition, she asked for access to her marked examination paper. The Council rejected this request. In her complaint to the Ombudsman, the complainant expressed the view that this refusal was not acceptable.

1.2 In its opinion, the Council pointed out that according to Article 6 of Annex III of the Staff Regulations, the proceedings of the Selection Board shall be secret and that this secrecy had been introduced with a view to guaranteeing the independence of Selection Boards and the objectivity of their proceedings. In the Council's view, the obligation to safeguard the secrecy of the proceedings of the Selection Board prevented it from granting a candidate access to his or her marked examination paper, since the latter revealed the attitudes adopted by the individual members related to the assessment of candidates.

1.3 The European Ombudsman has already had to deal with the issue of access to candidates' marked examination papers in cases concerning the European Commission (4) and the



European Parliament. (5)

1.4 On the basis of his inquiries concerning the recruitment procedures of the Commission, the Ombudsman submitted, on 18 October 1999, a special report to the European Parliament (6) which contains the following considerations:

“The Ombudsman is not aware of any provision of Community law or case-law of the Community courts which would prevent the Commission from allowing a candidate in a written examination to see his or her own marked script. Article 6 of Annex III to the Staff Regulations stipulates that the “proceedings of the Selection Board” are to be secret. The deliberations of the Selection Board must therefore remain secret, but it does not necessarily follow from this that a candidate must be prevented from seeing his or her own marked examination script.

The main argument which the Commission puts forward in order to justify its refusal concerns the nature of the recruitment procedure. In the Commission’s view the Selection Board assesses each candidate by comparing his or her performance to the performance of all the other candidates in the same competition. The Commission concludes from this that the disclosure of the marked examination script would serve no purpose, since it only reflects the appraisal of a person who has not assessed all the other candidates.

However, being able to inspect his own marked examination script does entail several benefits for the candidate. First, the candidate gains the opportunity to discover his mistakes and thus to improve his future performance. Second, the candidate’s confidence in the administration is strengthened. This is important, since there seems to be a widespread belief that tests are not always properly assessed by the Commission and indeed that sometimes they are not assessed at all. Third, if a candidate feels that he has been wrongly assessed, he will be able to argue much more precisely if he has seen his marked examination script. In any event, the citizen who requests information should be the judge of whether the information is useful, not the administration.

The Commission also refers to administrative and financial burdens which the disclosure of examination scripts could entail. The Ombudsman is confident that the Commission services could organise the process of disclosure in a way that would minimise the costs since it is unlikely that every candidate would wish to see his or her marked examination script.

(...)

The Commission is also correct to point out that the activity of Selection Boards is subject to judicial review by the Community courts. However, this means that queries which could easily have been solved if the candidate had a chance to see the marked examination script may have to be dealt with by the courts. The Ombudsman believes that this is highly unsatisfactory for candidates. Granting access to the marked examination script, on the other hand, is likely to satisfy many queries with a minimum of effort and time.

(...)



As the Treaty of Amsterdam has confirmed, the obligation to take decisions as openly as possible represents one of the fundamental principles of the administrative law of the European Communities. Furthermore, it is important to ensure that citizens receive a positive impression when first encountering the Community institutions. Citizens who wish to work for the Communities receive a very bad impression if they are left in doubt as to whether they have been assessed fairly and correctly. To dispel such doubt it is essential that each candidate should have the possibility to inspect the marked copy of his or her own examination script. This possibility in no way conflicts with the requirement that the proceedings of Selection Boards shall be secret, since it does not concern the deliberations of Selection Boards in which the relative merits of candidates are assessed. For these reasons, the Commission's failure to modify its administrative procedures so as to give each candidate the possibility of access to his or her own marked examination script, appears to constitute an instance of maladministration."

1.5 On the basis of these considerations, the Ombudsman made a recommendation to the Commission according to which the latter should, in its future recruitment competitions, and at the latest from 1 July 2000, give candidates access to their own marked examination scripts upon request. By letter of 7 December 1999, the President of the European Commission informed the Ombudsman that the Commission had accepted this recommendation.

1.6 On 17 November 2000, the European Parliament adopted a resolution (7) in which it endorsed the Ombudsman's special report and congratulated the Commission on its positive response to the recommendation made by the Ombudsman. Parliament also expressed the hope "that all other European bodies and institutions will follow the example set by the Commission".

1.7 On 17 July 2000, the Ombudsman addressed draft recommendations to the European Parliament in which he suggested that the latter should grant the complainants concerned access to their marked examination papers. On 27 November 2000, Parliament informed the Ombudsman that it had accepted the principle that candidates should be allowed to obtain a copy of their own marked examination papers and described how it would implement the Ombudsman's draft recommendations. (8)

1.8 The arguments put forward by the Council in the present case do not refer to any special characteristics of competitions organised by the Council which would distinguish them from competitions organised by the European Parliament and the Commission. The Ombudsman therefore takes the view that the considerations set out in his special report concerning the recruitment procedures of the Commission also apply (*mutatis mutandis*) to the competitions organised by the Council.

## **2 Conclusion**

In view of the above, the Ombudsman considers that the refusal of the Council to grant the complainant access to her marked examination paper is an instance of maladministration.

The Ombudsman therefore makes the following draft recommendation to the Council, in accordance with Article 3 (6) of the Statute of the Ombudsman:



### **The draft recommendation**

The Council of the European Union should allow the complainant to have access to her own marked examination paper.

The Council and the complainant will be informed of this draft recommendation. In accordance with Article 3 (6) of the Statute of the Ombudsman, the Council shall send a detailed opinion by 31 July 2003. The detailed opinion could consist of the acceptance of the Ombudsman's decision and a description of the measures taken to implement the draft recommendation.

Strasbourg, 16 April 2003

P. Nikiforos DIAMANDOUROS

- (1) 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 1994 L 113, page 15.
- (2) Case 89/79 *Bonu v Council* [1980] ECR 553, paragraph 5.
- (3) Case C-254/95 P *European Parliament v Innamorati* [1996] ECR I-3423, paragraph 29.
- (4) Own-initiative inquiry 1004/97/(PD)/GG.
- (5) Complaints 457/99/IP, 610/99/IP, 1000/99/IP and 25/2000/IP.
- (6) OJ 1999 no. C 371, page 12.
- (7) OJ 2001 no. C 223, pages 352, 368.
- (8) Cf. the Ombudsman's decisions of 11 May 2001 concerning complaints 457/99/IP, 610/99/IP, 1000/99/IP and 25/2000/IP, available on the Ombudsman's website (<http://www.ombudsman.europa.eu>).