

## **Decision of the European Ombudsman closing his inquiry into complaint 2561/2009/(BU)VIK against the European Commission**

Decision

**Case 2561/2009/(BU)VIK - Opened on 16/11/2009 - Decision on 07/07/2010**

### **THE BACKGROUND TO THE COMPLAINT**

1. The complainant is a laureate of Open Competition EPSO/AD/99/07 for administrators in the building sector.
2. After having been included in the reserve list resulting from the above competition, he wrote to the European Commission's Representation in Italy ('the Representation') and asked whether he could obtain information on open vacancies published in 'SYSPER 2'.
3. SYSPER 2 is an integrated system for human resource management, maintained by the Commission. The system covers recruitment procedures, career development, staff evaluation and promotion, staff mobility and so on. It consists of a number of sections, one of which concerns vacancy notices and is called VAC. The purpose of this section is to provide information on current vacancies within the Commission and descriptions of the vacant posts.
4. The Representation refused to provide the information requested by the complainant. It explained that this information was not available to laureates and that the only point of contact for them was EPSO.
5. In his complaint to the Ombudsman, the complainant outlined that he had written to the Representation again, but did not receive an answer.

### **THE SUBJECT MATTER OF THE INQUIRY**

6. The complainant submitted the following allegations and claim:

Allegations :

- The Representation wrongly refused to grant him access to information on vacancies



published in SYSPER 2.

- The Representation's refusal is inconsistent with the practice of other Commission representations, which provide such information to nationals of the Member States in which such representations are located.
- The difference in treatment outlined in allegation (2) constitutes discrimination.
- The Representation failed to answer his second letter.

Claim :

The Commission should give laureates of open competitions organised by EPSO access to information on vacancies published in SYSPER 2, if they so request.

## THE INQUIRY

7. The present complaint was submitted on 13 October 2009. On 16 November 2009, the Ombudsman opened an inquiry and requested the Commission to provide an opinion.

8. The Commission sent its opinion on 9 March 2010. On 12 March 2010, the Ombudsman forwarded it to the complainant and invited him to submit observations. No observations were provided by the complainant.

## THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

### A. As regards the Commission's refusal to grant access to SYSPER 2 (allegations 1-3 and related claim)

#### *Arguments presented to the Ombudsman*

9. The complainant alleged that, as a laureate of an EPSO competition, he should be given access to SYSPER 2. He argued, in this context, that many heads of unit in the Commission assume that laureates from EPSO reserve lists have access to the information on vacancies available in SYSPER 2, given that heads of unit often receive many spontaneous applications from laureates. The complainant thus believes that heads of unit consider that laureates who do not apply are not interested in the post(s) concerned. Heads of unit will consequently not contact laureates such as the complainant, since they assume that they are not interested in the post in question. The complainant, however, is unable to express his interest, because he has not been given access to SYSPER 2.

10. The complainant further alleged that, in contrast to the one in Italy, certain Commission representations do in fact provide information on vacancies from SYSPER 2 to nationals of the Member States in which such representations are located. In the complainant's view, this difference in treatment constitutes discrimination.



11. In its opinion, the Commission pointed out that none of the provisions of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') oblige the institutions to grant laureates on reserve lists access to the vacancy notices that they publish internally.

12. According to Article 4 of the Staff Regulations, an institution has to inform its staff of any internal vacant posts as soon as the Appointing Authority has decided that the vacancy should be filled. In the same line, Article 29(1) of the Staff Regulations stipulates that, before filling a vacant post, the Appointing Authority shall first consider whether the post can be filled with a candidate from within the institution.

13. In view of the above provisions, the Commission's administrative practice is to grant its staff members access to all vacancy notices published in SYSPER 2. Laureates are not, however, granted access to this information.

14. The Commission noted that some laureates on reserve lists for officials do indeed have access to at least some of the vacancy notices published in SYSPER 2. This access results from their status as staff members (such as contract or temporary agents) and is not linked to the fact that they have succeeded in a competition and are on the reserve lists for officials.

15. The Commission added, however, that Articles 4 and 29 of the Staff Regulations do not exclude the possibility of informing laureates about current vacancy notices. It stated that it had started examining the possibility of granting laureates access to certain vacancy notices in the future. The Commission outlined that it would inform the Ombudsman of the outcome of this analysis and the follow-up given to it.

16. The Commission concluded that the refusal of its Representation in Italy to provide the information requested by the complainant was in line with the Staff Regulations and its established administrative practice.

#### *The Ombudsman's assessment*

17. Article 4 of the Staff Regulations provides that "[v]acant posts in an institution shall be notified to the staff of that institution once the appointing authority decides that the vacancy is to be filled."

18. Article 29(1) of the Staff Regulations stipulates that "[b]efore filling a vacant post in an institution, the Appointing Authority shall first consider whether the post can be filled by (i) transfer, or ... (iii) promotion within the institution."

19. It is clear from the above provisions that, when filling a vacant post, the Appointing Authority shall first consider whether there is a suitable candidate within the institution. Moreover, the institution has to inform its staff of any such vacancies. Against this background, the Commission's administrative practice of initially only informing its own staff members of



vacancies is reasonable and in line with the provisions of the Staff Regulations.

20. The Ombudsman therefore finds no maladministration concerning the Representation's decision not to provide the complainant with information on vacancy notices available in SYSPER 2. The complainant's related claim that this information should also be given to laureates of EPSO open competitions can thus not be sustained either. Nevertheless, the Ombudsman welcomes the Commission's announcement that it will consider the possibility of granting laureates access to certain vacancy notices in the future.

21. The complainant also alleged that the Representation acted inconsistently and in a discriminatory manner, since certain other Commission representations provide information on vacancies from SYSPER 2 to nationals of the Member States in which such representations are located. In its opinion, the Commission did not comment on these aspects of the case. The Ombudsman notes, however, that the complainant did not submit any evidence in support of his view. Nor did he make observations on the Commission's opinion. In these circumstances, the Ombudsman takes the view that further inquiries into these aspects of the case are not justified.

## B. As regards the alleged failure to reply (allegation 4)

### *Arguments presented to the Ombudsman*

22. The complainant alleged that the Representation failed to reply to his second letter.

23. The Commission explained that the Representation received a request for information from the complainant on 7 October 2009, and replied on the next day. No other requests for information were received from the complainant or dealt with by the Representation.

### *The Ombudsman's assessment*

24. The Ombudsman notes that the complainant did not submit copies of his letters to the Representation. As regards the allegedly unanswered letter, he merely stated in his complaint that it had been sent " *almost a week ago* ".

25. According to the case-law of the Court of First Instance (now the General Court), a presumption of legality attaches to any statement made by the institutions relating to the non-existence of documents requested. This presumption can be rebutted on the basis of relevant and consistent evidence [1]. In the present case, the Commission explained that it did not receive the second letter to which the complainant referred. The complainant did not dispute this claim or provide evidence to show that the said letter was sent to the Representation.

26. In any event, it seems that the complainant's second letter concerned the same issue as his first one, to which the Representation replied. This issue has been further clarified during the present inquiry. Given these circumstances, the Ombudsman considers that it is not necessary to conduct further inquiries into this aspect of the case.



## C. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusions:

As regards the complainant's first allegation and his related claim, there has been no maladministration by the Commission.

As regards the complainant's second, third and fourth allegations, no further inquiries are justified.

The complainant and the Commission will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 7 July 2010

[1] Joined Cases T-110/03, T-150/03 and T-405/03 *Sison v Council* [2005] ECR II-1429 paragraph 29.