

## Decision of the European Ombudsman closing the inquiry into complaint 1329/2014/EIS against EUROPOL

Decision

**Case 1329/2014/EIS - Opened on 19/08/2014 - Decision on 30/10/2015**

The case concerned EUROPOL's recruitment procedures and the role that selection committees play in this context. The complainant had submitted two different job applications. He was not invited to an interview in either case. He questioned the procedures on the ground that, in one of the selection procedures, he received higher points for the same work experience than in the other. The Ombudsman inquired into the issue and found that there had been no maladministration. However, she made a further remark to EUROPOL, suggesting that it provide candidates with useful information on how they may request a review from the selection board before resorting to the redress avenues open to them under the Staff Regulations.

### The background to the complaint

1. The complainant is an EU citizen. In 2014, he applied for two separate positions with EUROPOL. These were the post of a Specialist (grade AD7, hereinafter the "AD7 post") and an External and EU Institutional Affairs Officer (function group IV, hereinafter, the "FGIV post") [1]. In both cases, the complainant was not invited to an interview.

#### FGIV post

2. On 19 May 2014, EUROPOL informed the complainant that he had not been shortlisted. On 20 May 2014, the complainant asked EUROPOL for feedback as to why he had not been invited to interview. On 8 July 2014, EUROPOL replied, noting, among other things, that his application scored 33 out of 60. To be invited to an interview, a score of 36 out of 60 was required. On the same day, the complainant asked for a breakdown of his marks.

3. On 15 July 2014, EUROPOL provided the breakdown of his marks. It identified a number of specific competencies. For the competency entitled "*Work experience in a cabinet or secretariat of a public administration*", he scored 0 out of 5.

4. Dissatisfied with the reply he received, on 16 July 2014, the complainant complained to



EUROPOL. With regard to the mark of 0 out of 5, he cited from his application: "[d]uring the years at the Ministry of Interior (1998–2005) my unit belonged to the Ministerial Cabinet and subsequently to the Deputy State Secretariat for International Relations where I have gained valuable experience in supporting management, drafting documents and coordination. These skills proved inevitable [sic] later while I was working at the General Secretariat of the Council of the European Union and subsequently at the European Commission".

## AD7 post

5. On 20 May 2014, the complainant asked for details on why he was not invited to an interview for the AD7 post. On 16 July 2014, the complainant complained to EUROPOL, repeating his request for feedback and asking for a breakdown of his marks for this application.

6. On 22 July 2014, EUROPOL replied, noting, among other things, that his application scored 45 out of 80. To be invited to an interview, a score of 52 out of 80 was required. He was awarded 0 marks out of 20 for the specific competency "Work experience in turning policy into practice in support of senior management in an administrative environment". On the other hand, he was awarded 5 marks out of 5 for "Work experience in a cabinet or secretariat of a public administration".

7. On 24 July 2014, the complainant sent a reminder e-mail to EUROPOL, asking for a review of both his complaints concerning the two selection procedures referred to above. In the absence of a reply, he submitted a complaint to the European Ombudsman.

## The inquiry

8. On 19 August 2014, the Ombudsman contacted EUROPOL in an attempt to obtain a reply to the complainant's e-mail of 24 July 2014.

9. EUROPOL subsequently informed the complainant that it had interpreted his e-mail of 24 July 2014 as an appeal under Article 90(2) of the Staff Regulations and would reply to it within the statutory timeframe. EUROPOL did so on 28 November 2014 and rejected the complainant's arguments. The complainant, on the other hand, took the view that the selection committees had committed a manifest error because they had failed to take into consideration his work experience in its entirety.

10. The Ombudsman subsequently decided to invite EUROPOL to submit a formal opinion on the following allegations and claim:

1) The decision not to call the complainant for an interview in EUROPOL/2014/TA/AD7/143 and EUROPOL/2014/CA/FGIV/018 ('the recruitment procedures') was incorrect.

2) The selection boards in the recruitment procedures failed to reconsider the conclusions they



had reached in the case, following the complaint against EUROPOL dated 16 July and reiterated on 24 July 2014.

3) The selection boards in the recruitment procedures should reconsider those conclusions and invite the complainant for an interview.

11. In the course of the inquiry, the Ombudsman received the opinion of EUROPOL on the complaint, and the complainant's observations on the opinion. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

## **Allegation that the decision not to call the complainant for an interview was incorrect and the claim**

### **Arguments presented to the Ombudsman**

12. The complainant argued that EUROPOL's failure to consider all his experience relevant was a manifest error. EUROPOL stated that the allocation of marks under each of the headings was a comparative exercise and thus was always likely to give a different outcome, in relation to a specific heading, where that heading was used in two different competitions. It said that, in the case of the second selection procedure (FGIV), there were four times as many applicants as for the first one; this increased the chances that other candidates could, comparatively, be assessed as having more relevant experience than the complainant. This is why, considering the selection boards' wide discretion, it was possible for the complainant to receive zero points for relevant experience in one competition while receiving full points for the same relevant experience in another competition.

### **The Ombudsman's assessment**

13. Well-established case-law of the Union courts lays down that selection committees have a wide margin of discretion when assessing, on a case-by-case basis, whether a candidate's diploma or professional experience corresponds to the level required by the Staff Regulations and by the Notice of Competition [2] . In this respect, the Ombudsman has consistently taken the view that she would intervene only where there has been a manifest error of assessment [3] . However, even though selection committees have a wide margin of discretion when deciding whom to recruit and whom not to, this does not mean that the grounds for such a decision can be arbitrary, irrelevant or wrong. When selecting and recruiting candidates, EU institutions, bodies, offices and agencies must, therefore, comply with the provisions laid down in the Notice of Competition and respect the relevant provisions of the Staff Regulations.

14. In this case, the Ombudsman does not find a manifest error. In fact, the existence of a manifest error cannot be alleged on the mere basis that a candidate's scores in one competition differed from those in another competition, because, as EUROPOL correctly explained, each



competition has its own (i) selection board and (ii) number of candidates. It is thus understandable that the same candidate may obtain a different score for similar competencies in two separate selection procedures, since the assessment is a comparative exercise and the decision on the number of points to award falls within the discretionary powers of the selection committee. Apart from disagreeing with EUROPOL's position, the complainant did not submit any evidence to indicate that EUROPOL's decision was arbitrary or not in line with the provisions laid down in the Notice of Competition. The fact that the same period of professional experience was considered irrelevant in one competition and entirely relevant in the other is regrettable but does not suffice for a finding that there was a manifest error.

15. Given the above, the Ombudsman finds that the decision not to invite the complainant to an interview did not involve any maladministration and thus the claim must also be rejected.

## **Allegation that the selection boards failed to reconsider their conclusions following the complaint**

### **Arguments presented to the Ombudsman**

16. In its opinion, EUROPOL explained that the selection committees had not reconsidered the complainant's complaint of 16 July 2014 because this request had been made too late: by July 2014, both posts had already been filled. In addition, EUROPOL submitted that it had informed interested parties that feedback meetings would take place on 19 March 2014 for the AD7 post and on 28 April 2014 for the FGIV post.

17. EUROPOL also submitted that there is no legal basis for a candidate to request the selection committee to reconsider applications outside the procedure laid down by Article 90 of the Staff Regulations. Nevertheless, EUROPOL stated that "[f] or the sole purpose of determining whether lessons should be learned from these recruitment procedures", the Chairmen of the selection committees were invited to reconsider the complaint following the Ombudsman's inquiry into the matter. However, in both cases, the decisions of the selection boards remained unaltered.

### **The Ombudsman's assessment**

18. It is clear that, in the course of this inquiry, the selection committees did review the complainant's applications. Therefore, the Ombudsman concludes that there are no further grounds for pursuing this allegation.

19. On the other hand, the Ombudsman points out that it would be in conformity with the principles of good administration if, before a dispute escalates to such an extent that the procedure provided for in Article 90(2) of the Staff Regulations must be resorted to, candidates were to be allowed to request a review of decisions taken by the selection board. It is not



sufficient to inform them only about the dates of feedback meetings. The Ombudsman points out that the European Personnel Selection Office (EPSO) has introduced an internal review procedure by means of which candidates may request a review of any decision of the selection board or EPSO that directly and immediately affects their legal status in the competition within ten calendar days from the date of notification of the decision [4] . This issue will be addressed by means of a further remark below.

## Conclusion

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

**There was no maladministration in EUROPOL's conduct.**

## Further remark

**EUROPOL should provide candidates with the opportunity to request a review of decisions taken by selection boards before resorting to the official redress avenues available to them.**

The complainant and EUROPOL will be informed of this decision.

Emily O'Reilly

Strasbourg, 30/10/2015

[1] The notices advertising the posts carried references EUROPOL/2014/TA/AD7/143 and EUROPOL/2014/CA/FGIV/018.

[2] Judgment of the Civil Service Tribunal of 11 July 2006, *Tas v Commission* , F-12/05, ECLI:EU:F:2006:68; Judgment of the General Court of 13 December 1990, *González Holguera v Parliament* , T-115/89, ECLI:EU:T:1990:84; Judgment of the General Court of 6 November 1997, *Wolf v Commission* T-101/96, ECLI:EU:T:1997:171; Judgment of 11 February 1999, *Mertens v Commission* , T-244/97, ECLI:EU:T:1999:27; and Judgment of the General Court of 11 May 2005, *de Stefano v Commission* , T-25/03, ECLI:EU:T:2005:168.

[3] Decision of the European Ombudsman concerning complaint 141/2009/(JMA)MHZ, available at:  
[http://www.ombudsman.europa.eu/cases/decision.faces/en/5041/html.bookmark#\\_ftn3](http://www.ombudsman.europa.eu/cases/decision.faces/en/5041/html.bookmark#_ftn3) [Link],



paragraph 33.

[4] See point 3.4.3 of EPSO's General rules governing open competitions, OJ 2014 C 60A, p. 1.