



Decision in case 969/2016/JN on the rejection by the European Union Advisory Mission Ukraine of the complainant's application in a selection procedure

Decision

Case 969/2016/JN - Opened on 27/07/2016 - Decision on 13/01/2017 - Institutions concerned European External Action Service (No maladministration found) | European External Action Service (Settled by the institution) | European External Action Service (No further inquiries justified) |

The case concerned the rejection by the European Union Advisory Mission Ukraine (EUAM) of the complainant's application in a selection procedure. The Ombudsman inquired into the issue and found that there was no maladministration as regards the rejection of the application. The Ombudsman further found that a one-level administrative review mechanism is sufficient. Finally, the Ombudsman was pleased to be informed that the European External Action Service has now decided to amend the message it sends to rejected candidates in order to include information on available remedies.

The background to the complaint

- 1.** The complainant applied for the position of a Mission Security Officer with the European Union Advisory Mission Ukraine (EUAM). On 15 April 2016, the EUAM informed the complainant that it had not selected him. It explained that the competition had been of a high standard and that only a limited number of applicants with particularly suited skills and experience had been admitted to the following phase of the selection procedure.
- 2.** On 28 April 2016, the complainant wrote to the EUAM and contended that the procedure had been unlawful and that he had been discriminated against. He further complained that the vacancy notice had not specified the remedies available to dissatisfied applicants.
- 3.** On 20 May 2016, the Head of Mission replied that the EUAM had thoroughly reviewed the documents related to the recruitment process. The EUAM assessed the complainant's application in accordance with the Civilian Operations Commander Instruction "New selection procedures for CSDP Civilian Missions' Staff" of October 2014 (the "Instruction"). All information that was published at http://eeas.europa.eu/csdp/opotunities/index_en.htm and/or was attached to any Call for Contributions was based on that Instruction. The panel members assessed all applications independently against the same standard evaluation grid and shortlisted candidates. The complainant met the eligibility criteria and his professional qualifications were well noted. However, there were other candidates with higher



professional expertise/experience. Therefore, the panel did not shortlist the complainant. The Head of Mission provided assurances that the procedure had been fair, non-discriminatory and complied with the Instruction.

The inquiry

4. The Ombudsman opened an inquiry into the complaint and identified the following allegations and claims:

1) The EUAM wrongly rejected the complainant's application taking into account his qualifications and experience. The EUAM should provide a better explanation of the reasons why it rejected the complainant's application together with a comparative assessment of the candidates.

2) The EUAM failed to inform the complainant of the remedies available to dissatisfied applicants. The vacancy notice provided no information on remedies. The EUAM should make information on remedies publicly available. The vacancy notice should contain information on remedies.

3) The EUAM offers no review of the decision of the Head of Mission rejecting a complaint. The EUAM should introduce a two-stage complaint procedure instead of the current one-stage mechanism.

5. In the course of the inquiry, the Ombudsman received the reply of the European External Action Service (EEAS) concerning the complaint. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation of a wrongful rejection of the complainant's application

Arguments presented to the Ombudsman

6. The complainant says that he is a lawyer with excellent qualifications and cannot understand that he was not successful. He argues that the EUAM provided no evidence for its assertion that other candidates were better.

7. The EEAS clarified that the EUAM had carefully screened all applications in accordance with the Instruction with which it fully complied. The Instruction allows the selection panels to use standard language to justify the non-shortlisting of candidates. The relevant justification was that "[t] *he candidate meets the requirements but was not shortlisted because another candidate better matched the job requirements.*"

8. In addition to this standard justification, the panel members found that the complainant "*was one of the 26 other candidates meeting the requirements who were not shortlisted because ten (10) other candidates better matched. (...) We had a very large pool of good candidates, 128 in total ...*" Another member stated that: "*[w]hilst [the complainant] was assessed as meeting the requirement within the first paper shift, he was not included in the final selection for interview as*



there were stronger candidates.”

9. Referring to the Court’s case law, the EEAS said that it was aware of the fact that the appointing authority has to “ *carefully and impartially examine the candidates’ files and have meticulous regard to the requirements laid down in the vacancy notice*”. [1] The EEAS said that it respects these obligations.

The Ombudsman's assessment

10. The EUAM and the EEAS explained that the rejection of the complainant’s application had been based on a comparative assessment of all candidates. They explained that the complainant’s application had been good but that there had been other candidates who better matched the requirements. The Ombudsman accepts this explanation and considers that it is sufficient. There is no reason to believe that the selection panel exceeded the limits of the broad discretion applying in this area. [2] Neither is there anything to suggest that the complainant was discriminated against or that the decision was tainted by a manifest error of assessment. Accordingly, there has been no maladministration as regards this aspect of the case.

Allegation of a failure to provide information on remedies

Arguments presented to the Ombudsman

11. The EEAS admitted that the vacancy notice contained no information on the remedies available to dissatisfied applicants. As a result of the Ombudsman’s inquiry, the EEAS decided that it would be useful, more transparent and in line with the European Code of Good Administrative Behaviour to add a paragraph to the “standard notice on non-selection” informing candidates of the possibility to complain to the Head of Mission and to inform Contributing States that possible complaints need to be addressed to the Civil Planning and Conduct Capability (CPCC). This should increase transparency and address some of the issues raised by this complaint. The Head of Mission and CPCC will subsequently refer to the possibility of judicial proceedings and complaints to the Ombudsman when responding to complaints.

12. The CPCC will instruct all missions that from now on the following paragraphs will be added to the “notice of non-selection”: “ *Possible complaints from contracted candidates shall be addressed to the HoM, as the legal representative of the Mission. S/he takes the final decision after reviewing the selection documents. CPCC is consulted if participating in the selection panel* ” and “ *Possible complaints from Contributing States regarding seconded candidates are addressed to CPCC* ”.

The Ombudsman's assessment

13. The Ombudsman appreciates that the EEAS has acknowledged that it should inform rejected candidates of the available remedies in a transparent way. The EEAS proposes to include relevant information in the “notice on non-selection” which the Ombudsman



understands to be the individual letter the EEAS or its missions send to candidates to inform them that their application has been rejected. The Ombudsman considers that including information on remedies in these letters is sufficient and in line with the European Code of Good Administrative Behaviour [3] . Accordingly, the EEAS has settled this aspect of the complaint and no further inquiries are justified.

Allegation of an inadequate review mechanism

Arguments presented to the Ombudsman

14. The complainant claimed that a one-stage administrative review mechanism was insufficient. In his view, the Head of Mission will always confirm the decision of the Human Resources. The EEAS acknowledged that the EUAM does not offer a review of the decision of the Head of Mission on a complaint against a decision of non-selection. Nevertheless, the EEAS argued that a two-tier complaint mechanism was not compulsory. The Head of Mission's decision may be challenged before judicial authorities which satisfies the right to an effective remedy (Article 47 of the Charter). Moreover, whenever the CPCC is involved, it is consulted in relation to any eventual complaints made.

The Ombudsman's assessment

15. The Ombudsman agrees with the EEAS that it is sufficient for there to be a one-stage system of internal, hierarchical administrative review of decisions rejecting the application of candidates in a competition. The candidates then have the possibility of using external remedies which are fully independent. Accordingly, there has been no maladministration concerning this aspect of the case.

Conclusions

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusions [4] :

There has been no maladministration either as regards the rejection of the complainant's application or regarding the absence of a second level of administrative review of the decision rejecting his application.

The EEAS has taken adequate steps to settle the allegation that it does not provide candidates with information on available remedies. Therefore, no further inquiries are justified.

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

Emily O'Reilly



European Ombudsman

Strasbourg, 13/01/2017

[1] F-39/07 *Campos Valls v Council* , 6 May 2009, para 41.

[2] See, for instance, the Ombudsman's decision in case 962/2011/AN, point 27, with further references.

[3] Article 19 of the European Code of Good Administrative Behaviour reads as follows:

" 1. A decision of the institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, and the time-limits for exercising them.

2. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under the conditions specified in, respectively, Articles 263 and 228 of the Treaty on the Functioning of the European Union. "

[4] Information on the review procedure can be found on the Ombudsman's website :
<http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>