

## **Decision in case 689/2016/ZA on the European Global Navigation Systems Agency's rejection of the complainant's application for the position of Head of the ICT Department**

Decision

**Case 689/2016/ZA - Opened on 29/06/2016 - Decision on 27/01/2017 - Institution concerned** European GNSS Agency ( No maladministration found ) |

The case concerned the selection procedure for the position of Head of the ICT Department in the European Global Navigation Systems Agency. The complainant maintained that the Agency had failed to assess his application fairly and claimed that the Agency should revise its decision to reject his application.

The Ombudsman inquired into the matter and asked the Agency to clarify a number of procedural matters. Based on the Agency's reply and her own analysis, the Ombudsman did not identify any manifest error in the selection procedure. Therefore the case was closed with a finding of no maladministration.

### **The background to the complaint**

1. The complainant applied for the position of Head of the ICT Department [1] at the European Global Navigation Satellite Systems Agency (GSA). On 28 January 2016, the complainant was informed that his application was eliminated at the evaluation stage of the selection procedure [2]. On 2 February 2016, the complainant submitted a complaint under Article 90(2) [3] of the Staff Regulations. In its reply of 3 May 2016, the Agency explained why the complainant's application had been eliminated. It also stated that, following his Article 90(2) complaint, the selection board had reviewed the evaluation of his application and had confirmed its initial assessment.

2. Dissatisfied with the Agency's reply, the complainant lodged the present complaint with the Ombudsman on 5 May 2016.

### **The inquiry**

3. The Ombudsman opened an inquiry into the complaint and identified the following allegation and related claim [4] :



*The Agency failed to assess the complainant's application fairly. It should reassess the complainant's application and revise the results of the selection procedure accordingly.*

4. On 29 June 2016, the Ombudsman contacted the Agency which replied on 27 September 2016. The complainant, although invited to, did not submit any observations on the Agency's reply [5] . In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

**Allegation that the Agency failed to assess the complainant's application fairly and related claim**

Arguments presented to the Ombudsman

5. The complainant argued that his qualifications were undervalued with respect to the criteria concerning the experience relevant to the tasks and responsibilities described in the Notice of Vacancy, the experience in ICT services of the EU institutions or in public administration, and the candidate's motivation.

6. In its reply to the complainant's Article 90(2) complaint, the Agency informed the complainant that as his application was eligible it had been assessed on the basis of the criteria listed under Section B of the Vacancy Notice. It listed the evaluation criteria against which the complainant's application had been assessed and the points he had scored per criterion [6] . Furthermore, it informed the complainant of his overall score (63/100) as well as of the pass mark the selection board had set for candidates to be invited for an interview (72/100).

7. In its reply to the Ombudsman, the Agency addressed the two specific matters the Ombudsman had raised when opening the inquiry. Concerning the Ombudsman's first question about the selection of the criteria against which the complainant's application had been evaluated [7] , the Agency stated that the selection board had decided not to evaluate the candidates against all the criteria listed under Section 3B of the Vacancy Notice at the initial stage of the selection procedure [8] . Moreover, it pointed out that not all the criteria listed under Section 3B of the Vacancy Notice could be assessed at the first stage because some of them, as for example the excellent command of both written and spoken English, could not be assessed on the basis of documents only.

8. Concerning the Ombudsman's second question about how the selection board defined 'public administration' in reference to the criterion concerning experience in ICT services of the EU institutions or in public administration, the Agency stated that the selection board understood experience in public administration as experience within a body which exercises official authority [9] . According to the Agency the complainant's experience in the Czech National Library, the Czech Academy of Science and the Geophysical Institute of the Czechoslovak Academy of Sciences did not satisfy this criterion.

The Ombudsman's assessment



9. Case law stipulates that the decisions of the selection boards are subject to review only if they are affected by a manifest error of assessment [10] . In this context, the Ombudsman's role is not to substitute its own assessment for that of the selection board but to ascertain whether, in coming to a decision, a selection board complied with the relevant procedural requirements and did not make a manifest error of assessment. After having analysed the information included in the file as well as the Agency's reply, the Ombudsman concludes that there was no manifest error of assessment as regards the selection board's decision.

10. First, the Agency explained that, in line with the case law, the selection board had decided not to assess all the selection criteria mentioned in the Vacancy Notice at the initial selection stage [11] . The Ombudsman notes that the complainant's qualifications had been assessed against all the 'essential qualifications and experience criteria' but the 'excellent command of English' criterion. According to the Agency, the selection board had decided to evaluate this criterion at a later stage because it could not have been assessed on the basis of documents only. This approach is reasonable and complies with the relevant case law.

11. Second, the Agency's explanation as to why it did not consider the complainant's previous experience as satisfying the criterion concerning 'experience in ICT services of the EU institutions or in public administration' is reasonable and based on case law. Experience in public administration was understood as experience within a body which exercises official authority, a concept which implies "*the exercise of a decision-making power going beyond the ordinary law and taking the form of being able to act independently of, or even contrary to, the will of other subjects of law. Official authority manifests itself in particular, according to the Court's case-law, in the exercise of powers of constraint (Case C-114/97 Commission v Spain [1998] ECR I-6717, paragraph 37)*" [12] .

12. Finally, it should be pointed out that the selection boards enjoy broad discretionary powers when assessing the qualifications related to diplomas and previous work experience of candidates and their relevance to the vacant post, provided they stay within the limits set by the notice [13] . This broad discretion extends to the choice of the selection criteria, which are defined, based on the skills required for the post to be filled and the interest of the service [14] . In light of this approach, the complainant has failed to provide concrete evidence to demonstrate that the selection board has not respected the procedural and evaluation framework set by the Vacancy Notice [15] . Moreover, the personal conviction of the candidate cannot replace the selection board's assessment and does not constitute irrefutable evidence of manifest error committed by the selection board [16] . Therefore, there are no circumstances that lend support to the complainant's view that his former experience and motivation had been undervalued [17] .

13. The Ombudsman concludes that there is no maladministration in the Agency's conduct.

## Conclusion

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



conclusion [18] :

**There is no maladministration in the Agency's conduct .**

The complainant and the European Global Navigation Satellite Systems Agency will be informed of this decision.

Marta Hirsch-Ziembińska

Unit 1- Inquiries and ICT

Strasbourg, 27/01/2017

[1] Vacancy reference number: GSA/2015/700

[https://www.gsa.europa.eu/sites/default/files/jobs/GSA\\_2015\\_700\\_VN\\_Head\\_of\\_ICT.pdf](https://www.gsa.europa.eu/sites/default/files/jobs/GSA_2015_700_VN_Head_of_ICT.pdf) [Link]

[2] The selection procedure comprised three selection stages: (i) eligibility check; (ii) evaluation of eligible applications against predefined selection criteria; and (iii) interviews, written tests and, possibly, tests in an assessment centre of the shortlisted candidates so as to draw a reserve list.

[3] Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Union, Article 90 2. *“ Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act affecting him adversely, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. The period shall start to run: on the date of publication of the act if it is a measure of a general nature; on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person is such as to affect adversely another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication; on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided in paragraph 1. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which appeal may be lodged under Article 91 ....”*

[4] The complainant had raised two more allegations: (i) The Agency had replied to the complainant's appeal at a point of time that would, de facto, render his appeal devoid of meaning and (ii) the Agency regularly discriminated against Czech candidates. These allegations were deemed inadmissible because the complainant had not raised them in his Article 90(2) complaint to the Agency. According to the Ombudsman's Statute " *A complaint*



*shall be made within two years of the date on which [...] and must be preceded by the appropriate administrative approaches to the institutions concerned " (art. 2§4).*

[5] The complainant was invited to submit his comments on 7 November 2016.

[6] University degree in Informatics, Computer science, Mathematics, Engineering or in another

science relevant to the job: 8/10; Proven experience relevant to the tasks and responsibilities described in the Section "Tasks and responsibilities": 10/20; Proven experience in ICT project management (e.g. Prince 2, PMBOK, PM2) and in ICT service management {e.g. ITIL}: 10/10; Proven experience with design and operation of ICT systems processing classified information: 3/10; Experience in managing a team: 15/15; To hold, have held or be able to obtain a security clearance at the level of SECRET UE: 3/5; Experience in ICT services of the EU institutions or in public administration: 1/10; Formal certifications in project management, service management, information and ICT security: 7/10; Motivation: 6/10.

[7] The Ombudsman had asked the Agency to clarify, first why the selection criteria *vii* (excellent command of both written and spoken English), *ix* (experience from an environment certified to the ISO 9001 standard and good background in information security management e.g. ISO 27001); and *xi* (previous working experience in the role of system administrator or software developer) were not included in the list of the evaluation criteria against which the complainant's application had been assessed.

[8] To support its view, the Agency referred to the established case law concerning first, the selection boards' wide discretion in deciding upon the rules and conditions under which a competition is organised and conducted (Judgment of the Civil Service Tribunal of 24 April 2013, *CB v Commission*, Case F-73/11, ECLI:EU:F:2013:50, point 81) and second, the selection boards' discretion not to assess all criteria mentioned in a vacancy notice at all stages of a selection procedure (Judgment of the Civil Service Tribunal of 8 July 2010, *Wybranowski v Commission*, Case F-17/08, ECLI:EU:F:2010:83, point 67).

[9] Judgment of the Court (Grand Chamber) of 24 May 2011, *Commission v Kingdom of Belgium*, C-47/08, ECLI: EU:C:2011: 334.

[10] Judgment of the Court of First Instance of 11 May 2005, *de Stefano v Commission*, T-25/03, ECLI:EU:T:2005:168, paragraph 34; Judgment of the Court of First Instance of 11 February 1999, *Mertens v Commission*, T-244/97, ECLI:EU:T:1999:27, paragraph 44.

[11] The selection criteria were divided into three sub-categories: (i) essential qualifications and experience (seven criteria); (ii) advantageous qualifications and experience (four criteria); and (iii) behavioural competences (six criteria).

[12] Judgment of the Court (Grand Chamber) of 24 May 2011, *Commission v Belgium*, Case C-47/08, ECLI:EU:C:2011:334, paragraph 40.



[13] Judgment of the General Court of 22 February 2002, *Pujals Gomis v Commission* , T-332/01, ECLI:EU:T:2002:289, paragraphs 39-41; Judgment of the General Court of 11 February 1999, *Mertens v Commission* , T-244/97, ECLI:EU:T:1999:27, paragraph 44; Judgment of the General Court of 11 May 2005, *De Stefano v Commission* , T-25/03, ECLI:EU:T:2005:168, paragraph 34; Judgment of the Court of Justice of 6 February 1986, *Vlachou v Court of Auditors* , C-143/84, ECLI:EU:C:1985:475, paragraph 16.

[14] Judgment of the Court of First Instance of 16 October 1990, *Gallone v Council* , Case T-132/89, ECLI:EU:T:1990:60; *Ibarra Gil v Commission* , Case T-207/95, ECLI:EU:T:1997:12, para 66

[15] Judgement of the Court of First Instance of 13 March 2002, *Bal v Commission* , T-139/00, ECLI:EU:T:2002:65, paragraph 35; Judgment of the Civil Service Tribunal of 11 July 2006, *Tas v Commission* , F- 12/05, ECLI:EU:F:2006:68, paragraph 43. Judgment of the Court of First Instance of 16 April 1997, *Fernandes Leite Mateus v Council* , Case T-80/96, ECLI:EU:T:1997:57, paragraph 27; Judgment of the Court of First Instance of 5 March 2003, *Staelen v Parliament* , T-24/01, ECLI:EU:T:2003:52, paragraph 47.

[16] Judgment of the Court of First Instance of 15 July 1993, *Camara Alloisio and others v Commission* , Joined cases T-17/90, T-28/91 and T-17/92, ECLI:EU:T:1993:69, para 90; Judgment of the Court of First Instance of 1 December 1994, *Michaël-Chiou v Commission* , Case T-46/93, ECLI:EU:T:1994:285, para 50; Judgment of the Court of First Instance of 23 January 2003, *Serena Angioli v Commission* , Case T-53/00, ECLI:EU:T:2003:12, para 94.

[17] In the criterion 'proven experience relevant to the tasks and responsibilities described in the Section "Tasks and responsibilities"' the complainant got 10/20 points and in the motivation criterion 6/10 points.

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