



Decision in case OI/14/2015/ZA concerning a selection procedure for a post at the EU Delegation to Albania

Decision

Case OI/14/2015/ZA - Opened on 03/12/2015 - Decision on 10/07/2017 - Institution concerned European External Action Service (No maladministration found) |

The case concerned a selection procedure for a post at the EU Delegation to Albania. The complainant was unhappy at not having been shortlisted for the post, as she believed that she fulfilled all the required criteria. She requested information on her application and the reasons why she was not the shortlisted. The Delegation failed to reply to her request in a timely manner.

The Ombudsman inquired into the matter. In the course of the inquiry, the Delegation replied to the complaint, thereby resolving this aspect of the complaint. As regards the decision not to shortlist the complainant, the Ombudsman found the Delegation's explanation of its decision to be reasonable and closed the inquiry with a finding of no maladministration. The Ombudsman suggested that the European External Action Service should give guidance to Delegations on the need to keep candidates informed where selection competitions have been delayed. The Ombudsman also suggested that the European External Action Service should include, in the 'EU Delegations' Guide for Local Agents', more detailed requirements regarding the type of information to be included in the list/excel spreadsheet drawn up by selection committees.

The background to the complaint

1. In September 2015, the complainant applied for the post of International Aid/Cooperation Officer with the EU Delegation to Albania (the Delegation). According to the vacancy notice, the Delegation should have contacted the shortlisted candidates by 7 October 2015 at the latest. On 8 October 2015, not having received any notification and assuming that she had not been shortlisted, the complainant contacted the Delegation by e-mail asking to be informed of the reasons her application had been rejected. The Delegation neither acknowledged receipt of her request for information nor replied to the complainant. As a result, the complainant turned to the Ombudsman on 27 October 2015.

2. As the complainant is an Israeli and Albanian national residing in Israel, the Ombudsman could not open an inquiry into her complaint directly [1]. However, given the importance of the matter for the public image of the EU in a non-EU country, the Ombudsman decided that there were grounds to carry out an inquiry on her own initiative.

The inquiry

3. The Ombudsman inquired into the complainant's claim that the Delegation had failed to reply to her request for information and had failed to explain the reasons for rejecting her



application. The inquiry also addressed the complainant's claim that the requirements set out in the vacancy notice were too vague. The complainant wanted the Delegation to explain its position and, ultimately, annul its decision to reject her application and invite her for an interview.

4. On 10 December 2015, in the course of the inquiry, the Delegation informed the complainant that her application had been rejected. The Ombudsman subsequently received the European External Action Service's (EEAS) [2] reply regarding the complaint on 5 January 2016. Following the Ombudsman's request for additional information and clarifications [3], the EEAS sent a further reply on 19 October 2016. The complainant submitted her comments on the replies on 9 May [4] and 27 November 2016, respectively. On 19 January 2017, the Ombudsman's inquiry team inspected certain documents related to the selection procedure [5]. Following the inspection, the EEAS was asked to provide further clarifications [6]. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Failure to reply to the complainant's request for information in a timely manner

Arguments made by the complainant and the institution

5. The complainant argued that the Delegation had failed to reply to her e-mail of 8 October 2015 requesting information about her application. The Delegation finally replied on 10 December 2015, after the complainant had contacted the Ombudsman.

6. The EEAS explained that the Delegation had organised three selection procedures at the same time. This, combined with the complexity of the procedures and the large number of applications received, meant that the selection procedure for the International Aid/Cooperation Officer post was still ongoing when the complainant asked for information on her application. The Delegation stated that it could not disclose information about an ongoing selection procedure as this was confidential.

7. The EEAS recognised that the Delegation had failed to comply with the European Code of Good Administrative Behaviour, which sets a two-week deadline for acknowledging receipt of a request for information. It attributed this delay to the significant workload described above. The EEAS stated that, on 10 December 2015, the Delegation had informed the complainant that she had not been shortlisted. The EEAS apologised on behalf of the Delegation for the delay in replying to the complainant's request.

8. In her observations on the EEAS's replies, the complainant criticised the fact that the Delegation had failed to respect the deadline set out in the vacancy notice. She claimed that, at the very least, it should have informed candidates once it became aware that there was a delay with the selection procedure [7].

The Ombudsman's assessment

9. The Ombudsman notes that the Delegation failed to acknowledge receipt of the complainant's request for information and failed to inform her about the delay with the selection procedure. The Ombudsman encourages the EEAS to provide guidance and



support to the Delegation with a view to preventing similar regrettable incidents taking place in the future. At the same time, the Ombudsman points out that, following the intervention of her inquiry team, the Delegation replied to the complainant on 10 December 2015. In its reply to the Ombudsman, the EEAS recognised the Delegation's misconduct and apologised. She therefore considers that the matter has been resolved. However, it is good administrative practice to inform candidates about delays in a selection procedure and the Ombudsman will make a related suggestion for improvement to this end.

Failure to justify the rejection of the complainant's application

Arguments made by the complainant and the institution

10. The complainant argued that she fulfilled all the requirements set out in the vacancy notice (relevant university degree, C1 [8] level of spoken and written English, at least five years of related professional experience and "knowledge on budget, finance and contracts") and, therefore, should have been shortlisted. She maintained that, during her professional carrier, she had participated in a number of EU-funded training programmes on, and had gained experience of, budget and finance matters. The 'selection committee' seemed not to have taken this into consideration. Furthermore, the complainant believed that her Albanian nationality and knowledge of the Albanian language should be considered as assets.

11. The complainant was dissatisfied with the EEAS's answers. She noted that, in its first reply to the Ombudsman of 5 January 2016, the EEAS did not provide sufficient information about the grounds on which her application had been rejected, the number of shortlisted candidates and the reasons to why they had been shortlisted. The complainant considered the EEAS's second reply of 19 October 2016 to be equally unsatisfactory [9]. Finally, the complainant asked the Ombudsman to either review the CVs of all the applicants or, alternatively, appoint a professional Human Resources expert to conduct an independent review, in order to verify the impartiality of the entire selection procedure.

12. The EEAS informed the Ombudsman that 93 candidates had applied for the post of International Aid/Cooperation Officer. The initial screening procedure comprised two stages. The selection committee first verified the eligibility of candidates based on the requirements set out in the vacancy notice. It then screened the CVs as regards the relevance of each candidate's work experience to the tasks of the post, as set out in the job description. This also involved a comparison of the qualifications and experience of the candidates. Following the eligibility check and screening of the eligible applications (that is, the first pre-selection exercise), 25 candidates were pre-selected for a second screening. The complainant was not among them. Following the second screening, a shortlist of 14 candidates was drawn up. These were invited to sit a written exam. Based on that exam, eight candidates were invited for interview.

13. The EEAS said that the Delegation had created an Excel spreadsheet listing all the candidates, which included information related to their fulfilment of the requirements [10]. Additional comments were also included in this spreadsheet in order to facilitate the first screening of the CVs. According to the EEAS, this ensured the accurate registration of all applications received and facilitated the pre-selection procedure.



14. The complainant's application was eligible but was rejected during the first pre-selection screening. The EEAS said that "*the Selection Committee considered that the applicant was not among the best of the eligible candidates*" and that the complainant's professional experience was "*too focused on the education sector and satisfied the needs outlined in the job description to a lesser extent than the CVs of the preselected candidates*" [11]. The EEAS maintained that the Delegation carried out the selection procedure in full compliance with the 'EU Delegations' Guide for Local Agents' [12]. It also pointed out that, in producing the Excel spreadsheet, the Delegation went beyond what was required by the guidelines applicable at that time. Finally, the EEAS clarified that the recruitment procedure set out under the EU Delegations' Guide for Local Agents does not require delegations to allocate minimum "threshold" scores for evaluation of candidates.

The Ombudsman's assessment

15. The Ombudsman notes that selection committees enjoy broad discretionary powers in assessing the relevance of candidates' qualifications to the requirements of the post to be filled. The Ombudsman's role is, therefore, to ascertain whether, in coming to its decision, the selection committee complied with the relevant procedural requirements and did not make a manifest error of assessment [13]. According to the relevant case law, the personal conviction of a candidate as to how his/her application should have been evaluated cannot replace the selection committee's assessment and does not constitute irrefutable evidence of manifest error committed by the selection committee [14].

16. Against this background, the Ombudsman examined: (i) the complainant's application (CV and "motivation" letter); (ii) the Excel spreadsheet that included information about the 93 applicants [15]; (iii) the selection committee's 'evaluation report', which it submitted to the Head of the Delegation [16]; and (iv) the 'EU Delegations' Guide for Local Agents' that was applicable in 2015.

17. The Ombudsman's inspection established that the Excel spreadsheet included very detailed information about the education and the professional experience of all candidates. Despite the fact that the 'relevant experience' and the 'comments' fields in the spreadsheet were not filled in for **all** candidates, it appears that the spreadsheet assisted the selection committee in the pre-selection of candidates, in verifying that the applicants' qualifications fulfilled the requirements set out in the vacancy notice, and in comparing the qualifications of the applicants.

18. The Ombudsman notes that the use of the Excel spreadsheet appears to be useful in managing such a pre-selection procedure. It is positive that the current version of the EU Delegations' Guide for Local Agents includes a clear reference to the selection committee's obligation to "*draw up a list (preferably in excel format) reproducing the list of names of applicants, the date of receipt of the application and whether or not they have been shortlisted (i.e. considered to be among the best candidates)*" [17]. The Ombudsman believes that the inclusion of additional information in this spreadsheet would be very useful and will make a suggestion in this regard.



19. The Ombudsman finds that the vacancy notice set out precise selection criteria [18] and also described the post's tasks and responsibilities in a detailed manner. It made clear that knowledge of, and experience in, financial and budgetary matters was an important factor in the evaluation of candidates. The Ombudsman notes that the complainant referred clearly, both in her CV and "motivation" letter, to her experience in 'budget, finance and contract' matters (e.g. procurement, 'calls for tender', assessment of projects). She also detailed her participation in EU-funded programmes, as well as her familiarity with the EU Technical Assistance and Information Exchange instrument (TAIEX), used by the European Commission. However, her professional experience was predominantly in the education sector

20. The selection committee's decision not to shortlist the complainant, because her professional experience was predominantly in the education sector, appears reasonable. The Ombudsman's inspection of the Excel spreadsheet showed that the 25 candidates initially preselected appeared to have professional experience more relevant to the job description. In that regard, the Ombudsman points out that a selection process of this kind is in essence a comparative assessment of all the candidates with a view to selecting the most appropriate candidate.

21. Moreover, the Ombudsman notes that, based on her "motivation" letter, the complainant appeared to be aware that her CV might not fully meet the requirements set out in the vacancy notice. In her letter, she referred to the two other advertised posts and said that she would be happy to apply for either, should her skills or experience be better suited to those positions.

22. Concerning the complainant's argument that having Albanian nationality and speaking Albanian should be considered as an asset, the Ombudsman notes that the EU Delegations' Guide does not set out any requirement as regards nationality [19]. The Excel spreadsheet included information on certain candidates' knowledge of the Albanian language but the selection committee did not consider this to be a decisive criterion [20].

23. Based on the information included in the file and the outcome of the inspection, the Ombudsman does not consider it necessary to examine all the applications submitted for the International Aid/Cooperation Officer post, as requested by the complainant. The Excel spreadsheet contained information about all candidates to whom the complainant was compared. The Ombudsman deems that this information is sufficient to conclude that the selection committee's assessment does not suggest any manifest error in the assessment of the complainant's application as compared to other candidates.

24. The Ombudsman notes that the EU Delegations' Guide for Local Agents instructs delegations to explain to rejected applicants who seek such information the reasons why they were not selected [21]. In this case, the Ombudsman notes that she had to contact the EEAS several times and also inspect relevant documents in order to obtain a sufficient explanation of the relevant rules and of the decision to reject the complainant's application. She therefore asks the EEAS to provide EU delegations with better guidance and support on how to respond to requests concerning recruitment procedures.

Vagueness of requirements set out in the vacancy notice



Arguments made by the complainant and the institution

25. The complainant argued that the requirements set out in the vacancy notice (relevant university degree, English language knowledge, at least five years of related professional experience and “knowledge on budget, finance and contracts”) were too generic. She claimed that this allowed for wide discretion as regards their application and the evaluation of the candidates. She also criticised the failure to include knowledge of the Albanian language as a requirement. Finally, she argued that the selection criteria set out in the vacancy notices for the two other posts published at the same time were more detailed and specific, thus allowing a more objective evaluation of the candidates.

26. The EEAS argued that the criteria were determined objectively, met the needs of the Delegation, and allowed for an objective evaluation of the applications received, when combined with the job description. Finally, it noted that the fact that three vacancy notices were published at the same time did not imply that each one had to contain the same selection requirements.

The Ombudsman's assessment

27. Concerning the claim that the vacancy notice was vague, it is the prerogative of the appointing authority to draw up recruitment notices and identify the qualifications and requirements considered appropriate for the post to be filled and in the interest of the institution/office [22] . Furthermore, the Ombudsman notes that the vacancy notice specified the requirements that, together with the detailed description of the post, would provide the basis for the evaluation and comparative assessment of the candidates. As such, it can be considered that candidates had sufficient information to decide if they had suitable qualifications for the post or not. The Ombudsman therefore finds the EEAS's reply reasonable [23] .

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusions [24] :

As regards the Delegation's **failure to reply to the complainant's request for information in a timely manner, the matter has been resolved.**

As the Ombudsman finds the Delegation's explanation to be reasonable, **there is no maladministration regarding its decision not to shortlist the complainant.**

The complainant and the European External Action Service will be informed of this decision.

Suggestions for improvement

The European External Action Service should include, in the 'EU Delegations' Guide for Local Agents', guidance on proactively informing candidates about delays in selection procedures, for example through an announcement on their websites.

The European External Action Service should include, in the 'EU Delegations' Guide for Local Agents', more detailed requirements regarding the type of information to be included in the



list/excel spreadsheet drawn up by selection committees. It would be helpful to include information on the key eligibility requirements of the particular competition, for example, professional experience and educational attainment. The Guide should also emphasise the importance of having all of the spreadsheet fields completed in a consistent way.

Emily O'Reilly

European Ombudsman

Strasbourg, 10/07/2017

[1] According to Article 2.2 of the European Ombudsman's Statute, a complaint can be accepted only from a "*citizen of the Union or any natural or legal person residing or having his registered office in a Member State of the Union.*"

[2] When the Ombudsman receives complaints about an EU Delegation, all correspondence takes place through the European External Action Service (EEAS), which supervises the delegations.

[3] The Ombudsman asked the European External Action Service to provide the Ombudsman with precise information about the selection process and, in particular, the grounds on which the complainant's application was rejected. The Ombudsman also asked to be informed of: (i) the stage at which the complainant's application was rejected; (ii) the threshold scores in the evaluation; (iii) the complainant's respective scores; and (iv) the number of shortlisted candidates.

[4] The complainant had sent her observations to the Ombudsman on 1 February 2016 but, due to a technical problem, the Ombudsman did not receive them. After being contacted by the Ombudsman's inquiry team, the complainant re-sent her observations in May 2016.

[5] The inspection took place on the premises of the European External Action Service in Brussels.

[6] E-mails sent to the European External Action Service on 17 March and 2 May 2017 asking for clarification on the content of the 2015 version of the EU Delegations' Guide for Local Agents. The EU Delegations' Guide is an internal administrative document that compiles all the rules, procedures and best practices delegations should follow with regards to the management of local staff.

[7] In her observations of 9 May 2016, the complainant noted that the European External Action Service had mistakenly stated that she had lodged her complaint with the Ombudsman on 8 October 2015, whereas she had done so on 27 October 2015. From the context it is clear that, in its reply, the EEAS was referring to the date the complainant had sent her request for information to the Delegation.



[8] According to the Common European Framework of Reference for Languages scale.

[9] The complainant repeated that due to her professional background on EU and EU programmes as well as the training she had received from the European Commission, she met all the criteria set in the Call and therefore she should have been shortlisted and invited for an interview.

[10] The spreadsheet included information on (i) whether the applicants had met the deadline; (ii) education (relevant university degree); (iii) professional experience (period, post held, employer); (iv) languages; (v) knowledge on budget, finance and contracts.

[11] EEAS's reply of 19 October 2016.

[12] According to the EEAS, the 'EU Delegations' Guide for Local Agents' is "an internal administrative Guide compiling all the rules, procedures and best practices to be followed in Delegations with regards to the management of local staff".

[13] 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.

[14] Judgment of the General Court (Court of First Instance) of 15 July 1993, *C amara Alloisio e.a.v Commission* , T-17/90, Joined cases T-28/91 and T-17/92, ECLI:EU:T:1993:69 , paragraph 90; Judgment of the General Court (Court of First Instance) of 1 December 1994, *Michaël-Chiou v Commission* , T-46/93, ECLI:EU:T:1994:285 , paragraph 50; Judgment of the General Court of 23 January 2003, *Angioli v Commission* , T-53/00, , ECLI:EU:T:2003:12, paragraph 94.

[15] This document was classified by the EEAS as 'confidential', which means it cannot be disclosed to anybody, including the complainant.

[16] This document was also classified by the EEAS as 'confidential', which means it cannot be disclosed to anybody, including the complainant. It is noted that this document proved not to be relevant for the inquiry as it concerns steps in the selection procedure which are beyond the scope of the inquiry (shortlist of the 14 candidates, written tests, interview stage, and shortlisted candidates following the interviews).

[17] The relevant guidelines were revised in April and June 2016.

[18] Relevant university degree; English (spoken and written at C1 level); 5 years of relevant professional experience; and 'knowledge on budget, finance and contracts'.

[19] The 2015 version of the EU Delegations' Guide stipulates that " *the Specific Conditions of Employment of local staff serving in Delegations impose no nationality requirement: the Head of Delegation is free to choose the staff they want, provided of course, the local agent is recruited*



locally and has the right to live and work in the country (valid work and residence permits)” .

[20] There were comments by the Selection Board about no knowledge of Albanian in candidates who were rejected, albeit for other reasons, but also in relation to a candidate who was preselected and made it through to the final shortlist.

[21] EU Delegations' Guide for Local Agents: career-Recruitment; Procedure, guidance and best practices, point 7. Also in the version applicable in 2015, Section 3, Publication of the vacancy.

[22] See also the established case law: Judgment of the Court of First Instance (First Chamber) of 15 February 2005, *Pyres v Commission* , Case T-256/01, ECLI:EU:T:2005:45, paragraph 36; Judgment of the Court of First Instance (First Chamber) of 27 September 2006, *Blacker v Parliament* , T-420/04, ECLI:EU:T:2006:282, paragraph 45 and the case law cited.

[23] Concerning the complainant's argument about the Delegation's failure to include knowledge of the Albanian language as a requirement, see point 20.

[24] 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>