

Decision of the European Ombudsman on complaint 1163/97/JMA against the European Parliament

Decision

Case 1163/97/jma - Opened on 05/02/1998 - Decision on 23/11/1999

Strasbourg, 23 November 1999 Dear Mrs M., On 16 December 1997, you sent a complaint to the European Ombudsman concerning a number of irregularities in open competition A 1/97 (Spanish administrators) organised by the Socialist Group of the European Parliament. Your allegations refer to the composition of the competition's Selection Board, and the transparency of its proceedings. On 5 February 1998, I forwarded your complaint to the President of the European Parliament with a request for comments by the end of May 1998. On 4 June 1998, the Secretary-General of the European Parliament asked for a one-month extension of the deadline. Having accepted this first request, an additional request for a new extension was received dated 15 July 1998. On 27 July 1998, the European Parliament sent its opinion which I forwarded to you on 4 August with an invitation to make observations. On 28 September 1998, you sent your observations. On 25 February 1999, you wrote to me with a proposal for a friendly solution of the problem. I forwarded your proposal to the European Parliament on 3 March 1999, with a request for comments by the end of April 1999. This deadline was later postponed until 31 May 1999 at the request of the European Parliament. On 15 June 1999, I received the response of the European Parliament. I am writing now to let you know the result of the inquiries that have been made. **THE COMPLAINT** In 1997, the complainant participated in open competition A 1/97 (Spanish administrators) organised by the Socialist Group of the European Parliament. Even though she had been interviewed by the Selection Board, her name was not included in the competition's reserve list. The complainant wrote to the secretariat of the Selection Board requesting to have access to her written tests. The Selection Board informed her that since its work was confidential, as set out in the Staff Regulations and recognised by the case-law of the Court of Justice, it could not give access to her written test. The letter added that, although she had obtained high marks in the written tests (83 points over 100), in view of the interviews carried out by the Selection Board, her name could not be included in the reserve list. Following another request by the complainant, the Selection Board informed her on 26 November 1997 that three candidates had been included in the reserve list for this competition, two of which had been selected to fill the available posts. The letter only referred to the names of these candidates. The reply did not mention the candidates' results, because of the confidential nature of the deliberations of the Selection Board. This decision was confirmed by the President of the political group responsible for the organisation of the competition. The complainant therefore lodged a complaint with the European Ombudsman, putting forward the following claims: 1. Violation of internal proceedings : the complaint



indicated that a number of rules from the Socialist Group's regulations had not been respected:

- Article 8.1.5 : no representative of the Staff Committee was present during the oral tests; moreover, the Selection Board included more than two members of the same nationality/language of the test (Spanish).
- Article 8.1.6: the number of candidates included in the reserve list was less than three times the number of vacant post.
- Article 8.1.5-8.2: the decision taken by the Selection Board had been signed by one of its members without voting rights.

The complainant also alleged that the fact that some candidates included in the reserve list had had working relations with certain members of the Selection Board, raised doubts as to the impartiality of its decision.

2. Failure to provide information : according to the complainant, she did not receive appropriate explanations as regards the evaluation criteria followed by the Selection Board for the assessment of the tests. In relation to this aspect, the complainant indicated that it had taken the President of the Socialist Group a long time (2 months) to reply to her requests, and moreover, that her letter to the member of the Selection Board representing the Staff Committee had remained unanswered.

THE INQUIRY

The Parliament's opinion In its opinion, the European Parliament referred to the comments which had been put forward by the Socialist Group. In summary these comments are as follows:

- As for the absence of a Staff Committee representative in the Selection Board, the opinion pointed out that, in order to constitute the Selection Board, its President had only to verify whether the minimum number of members were present so as to form a quorum. Moreover, no candidate had raised any objection concerning this matter prior to the beginning of the tests.
- The Socialist Group explained that although two members of the Selection Board had the same nationality, one of them was merely an observer, without the right to vote. There was, therefore, only one vote from the representative of the Spanish delegation. The Socialist Group recognised this observer had also signed the final decision by the Selection Board. However, as a member of the Board, even if only with a mere consultative role, he was not barred from signing the final document.
- Concerning the number of candidates included in the reserve list, the opinion pointed out that it only included the candidates who, in the opinion of the Selection Board, met the selection criteria.
- The opinion contested the allegation of partiality of the Selection Board based on the existence of working relations between some of its members and some candidates who were included in the reserve list. The Socialist Group explained that similar relations existed also in relation to other candidates who had not been chosen.

Furthermore since the competition had been organised by the political group only a previous working relation with that group would have been relevant. As regards the allegations of lack of information and transparency, the opinion indicated that, taking into account the need for confidentiality in the work of the Selection Board, the complainant had been given sufficient information. Accordingly, the Selection Board had no obligation to give any further information to the complainant. The Socialist Group explained that the delay in the reply by the President of its group was due to her frequent travelling. As regards the lack of reply from the representative of the Staff Committee, it was noted that, in his capacity as a member of the Selection Board, he could not make statements on behalf of the Board in reply to the complainant's claim.

The complainant's observations In her observations, the complainant stressed the allegations already made in her complaint. The complainant referred to each one of the aspects regarding the violation of the internal rules of the Socialist Group, which she considered as the basis for



her claim: - Firstly, concerning the absence of a representative of the Staff committee, the complainant considered that the need to reach the quorum is a qualitative obligation rather than a quantitative one. In her view, the presence of a Staff committee's representative is a guarantee. His absence is therefore a violation of the procedure established both in the Staff Regulations as well as the internal rules of the Socialist Group. She also pointed out that she had not contested the Selection Board's composition before the beginning of the test because she presumed that their members acted in good faith. - The complainant also rejected the Parliament's explanation for the presence of a third Spanish national in the Selection Board. Although the Parliament had indicated that this person only acted on a consultative role, the complainant considered that this role should have prevented him from signing the final decision by the Selection Board. - The complainant restated her claims as regards the allegedly low number of candidates included in the reserve list. As regards the lack of transparency, she stressed that the extensive interpretation given in the Parliament's opinion to the principle of confidentiality of the deliberations of the Selection Board led to a lack of transparency and information. In her view, the confidentiality of the Board's deliberations would not be affected by the release of the selection criteria used for her final marks, as she had requested. The complainant supported her point of view with extracts from a recent judgement of the Court of Justice in case 254/95 (Innamorati v. European Parliament) (1) . The complainant rejected the Socialist Group's explanation about the delay in replying to her requests due to the travelling of its President. She referred to the rules applied by the services of the European Ombudsman, which establish that the complainant should receive an answer in a reasonable delay.

FURTHER INQUIRIES

On 25 February 1999, the complainant wrote again to the European Ombudsman. Following a conversation with the President of the Spanish Socialist Delegation, she believed a friendly solution was possible, whereby her name would be added to the reserve list of the competition. On 8 March 1999, the Ombudsman forwarded the complainant's proposal to the European Parliament. After several requests for an extension of the deadline, the Ombudsman received the comments made by the Socialist Group of the European Parliament on 15 June 1999. In this letter the group indicated that it could not accept the suggestion made by the complainant. It pointed out that the reserve list had already been established on the basis of the candidates that were considered suitable for the post, and at that time the complainant was not among the names chosen. It added that any modification of the reserve list would be discriminatory towards the other non-selected candidates.

THE DECISION

On the basis of the information provided by the complainant and the observations submitted by the European Commission, the Ombudsman has reached the following conclusions: **1 Scope of the European Ombudsman's powers** 1.1. Since the case is primarily addressed against a political group of the European Parliament, the Ombudsman deems it necessary, before considering the merits of the case, to make a few considerations regarding the scope of his powers. 1.2. The facts of the case relate to the decisions taken by a Selection Board of a competition organised by a political group of the European Parliament for the selection of several temporary agents to be employed by that group. 1.3. As set out in Article 2 § 1 of his Statute, *"the European Ombudsman shall help to uncover maladministration in the activities of*



the Community institutions and bodies" . Maladministration occurs when a public body fails to act in accordance with a rule or principle which is binding upon it (2) . There are limits to what may count as maladministration. Thus, complaints against decisions of a political rather than an administrative nature are to be regarded as inadmissible. That is the case of complaints against the political work of the European Parliament, or its organs (3) , most notably the activities of its political groups. 1.4 However, the organisation by the European Parliament's political groups of a recruitment procedure for the selection of temporary agents cannot be entirely considered as a political activity. Pursuant to article 14 of the Decision of the European Parliament's Bureau of 25 June 1997 (4) , the political groups are empowered to select their own temporary agents, and in doing so they exercise by delegation the powers of the institution's appointing authority under the Staff Regulations. From this perspective, the organisation of competitions for the selection of temporary agents by the Parliament's political groups constitutes an administrative activity subject to certain Community rules. To that extent, this type of situations fall within the jurisdiction of the Community courts, and hence both the Court of First Instance and the European Court of Justice have the power to review the conformity of these competitions with Community law. 1.5 The inquiry of the Ombudsman has thus been limited to assess whether, in this case, Community rules and principles have been duly respected. **2 Alleged irregularities based on the internal rules of the political group** 2.1. The complainant has claimed that a number of irregularities took place in the course of the competition. These irregularities referred to: a. The composition of the Selection Board: absence of a representative of the Staff Committee during the oral tests; presence of more than two members of the same nationality/language of the test in the Selection Board; the signature of the final act of the Selection Board by one of its non-voting members; and working relations between some member of the Selection Board and several candidates. b. The limited number of candidates included in the reserve list. The complainant had stressed that all these irregularities were in breach of the Socialist group's internal regulations. 2.2. It should be noted that the allegedly non-respected regulations are addressed to the members of a European Parliament's political group. In view of the political nature of that work, supervising the application of these rules is beyond the Ombudsman's remit. 2.3. Nevertheless, the alleged irregularities took place in the course of a recruitment procedure in which the political group was acting with the authority and on behalf of the European Parliament's appointing authority. From that point of view, the organisation of the competition constituted an administrative activity under Community law, and subject to review by the Community courts. In order therefore to assess the alleged irregularities, the Ombudsman has sought to elucidate whether the Selection Board failed to act in accordance with a Community rule or principle binding upon it. 2.4. Some of the claims of the complainant referred to the incorrect composition of the Selection Board. As established by the Community Courts, the composition of a Selection Board is to be considered improper if it cannot guarantee an objective assessment of the candidates' qualities (5) . From the information submitted in the course of the inquiry, the Ombudsman cannot conclude that in assessing the candidates' qualities the Selection Board of the competition was not objective. The Ombudsman therefore finds that there is no evidence of maladministration in relation to this aspect of the case. 2.5. As regards the candidates to be included in the reserve list of the competition, the complainant believed that the number of selected candidates should include three times the number of posts to be filled. In the Parliament's opinion, the Socialist Group had indicated that the Selection Board included in the reserve list only those candidates who were



considered suitable on the basis of the competition. 2.6. The Ombudsman notes that Article 5 § 5 of the Staff Regulation states that *"the Selection Board shall draw up the list of suitable candidates [...]; the list shall wherever possible contain at least twice as many names as the number of posts to be filled"*. In view of the previous provisions, the Selection Board enjoys certain discretion as to the number of suitable candidates to be included in the reserve list. The Ombudsman considers therefore that there is no evidence of maladministration in relation to this aspect of the case. **3 Information on the criteria for the evaluation of the tests** 3.1. The complainant stated that despite her many requests to the Selection Board's secretary, its member representing the Staff Committee and the President of the Group, no explanation had been given to her as to the criteria for the evaluation of the tests. In its opinion, the Parliament indicated that the complainant had been informed of her marks in the written and oral tests. No further information could be given to her on the grounds of the confidentiality of the Selection Board's deliberations. In the present state of Community law there is no legal basis for considering that the Parliament is under an obligation to disclose detailed information on the criteria followed by the Selection Board for its evaluation of the tests. The Ombudsman therefore finds that there is no evidence of maladministration in relation to this aspect of the case. 3.2. The Ombudsman, however, should draw the Parliament's attention to the fact that, by communicating more detailed information on the criteria of evaluation to the candidates, the Parliament would considerably increase the transparency in the recruitment and could also alleviate the work of Selection Boards in dealing with requests and complaints from applicants. **4 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Parliament. The Ombudsman therefore closes the case.

FURTHER REMARKS

All the claims made by the complainant referred to allegations of potential violations of internal regulations of a political group. As the Ombudsman stated before, ensuring a correct application of these rules is beyond his remit. Nevertheless, in carrying out a recruitment procedure for temporary agents, a political group acts on behalf of the Parliament as the institution's appointing authority, and therefore, should abide by the relevant Community rules and principles of good administration. Moreover, since these types of procedures are often perceived by the citizens as official Community competitions, the institution itself should also play a monitoring role in order to ensure that those recruitment procedures are properly carried out, in due respect of the applicable legal rules and principles. By doing so the Parliament would contribute to enhancing the Union's relationship with its citizens. Yours sincerely, Jacob SÖDERMAN

(1) Case C-254/95, *European Parliament v. Angelo Innamorati*, ECR [1996] I-3423

(2) The European Ombudsman, Annual Report 1997, p. 23.

(3) The European Ombudsman, Annual Report 1995, p.17-18.

(4) PE 259.383/BUR.

(5) See Joint cases T-32/89 and T-39/89, *Georges Marcopoulos v. ECJ* [1990] ECR-II-0281, par.



37-41.