

## Decision of the European Ombudsman on complaint 112/98/PD against the European Commission

Decision

**Case 112/98/PD - Opened on 11/03/1998 - Decision on 09/06/1999**

Strasbourg, 9 June 1999 Dear Mrs. A., On 23 January 1998 you made a complaint against the European Commission concerning the latter's refusal to allow you to resit the exam you had missed because of illness. On 16 February 1998 I received another letter from you with further information concerning the facts of your complaint. On 11 March 1998 I forwarded the complaint to the President of the European Commission. The Commission sent its opinion on 29 May 1998 and I forwarded it to you with an invitation to make observations, if you so wished. On 28 July 1998 I received your observations. On 31 March 1999 you asked for information as to the processing of your complaint. I am now writing to let you know the results of the inquiries that have been made. I apologise for the length of time it has taken to deal with your complaint.

### THE COMPLAINT

The background to the complaint is in brief the following: In 1997, the complainant was admitted to participate in the written tests under a competition COM/A/1047, organised by the European Commission. The tests were taking place on the 27 and 28 November 1997 in Stockholm. On 18 November 1997 the complainant underwent a serious medical operation. She left the hospital on 24 November 1997 and was put on sick leave until 28 December. She addressed the Commission Representation in Stockholm to know whether she could sit the exam on another date than 27 and 28 November 1997. She was informed that she could try to send in the medical certificate to the Commission but that most probably, she would not be allowed to sit the exam on another date. The complainant then sat the exams on 27 November 1997. During the exam, her wounds started bleeding, and her physical condition deteriorated. Upon medical advice, she therefore did not present herself to the exams which took place on 28 November 1997. Subsequently, the complainant was informed by the Commission that she had been excluded from the competition as she had not completed the exams. Against this background, the complainant lodged the complaint with the European Ombudsman. The complainant considered that the Commission should have allowed her to sit other exams in replacement of the those in which she could not participate on 28 November 1997. The complainant considered that the Commission's position reflected a bureaucratic, inhuman and inflexible attitude to citizens.

### THE INQUIRY

**The Commission's opinion** In its opinion, the Commission firstly remarked that the



complainant was one amongst 1344 applicants who were invited to participate in the exams in question, held on the same dates in all Member States. The Commission thereafter explained that an underlying and fundamental principle for the conduct of competitions is that all applicants are given identical exams on the same date and hour in all Member States. This is so in order to ensure equal treatment of all applicants and to keep the contents of the exams confidential. Therefore, the Commission never allowed applicants to sit the written exams on other dates. The Commission regretted that no exceptions could be made to this rule, be it on grounds of illness, accidents or strikes. Thus, the Commission upheld its decision to exclude the complainant from the competition in question. **The complainants' observations** In her observations, the complainant maintained the complaint. She stated that the Commission very rarely organised competitions in her field of competence - animal health and welfare. The Commission's decision not to let her resit the exams was therefore particularly severe.

## THE DECISION

**1 Refusal to let the complainant resit the exams** 1.1 The complainant who at the date of the exams of a competition had been seriously ill and therefore could not participate in the exams considered that the Commission should allow her to resit the exams. 1.2 A competition has to be conducted in accordance with the principle of equal treatment of applicants. Violation of this principle may lead to the annulment of the competition. That may entail considerable financial and administrative costs for the administration. 1.3 It appears from the Commission's opinion that the Commission has considered that allowing applicants to sit another exam in replacement of an exam in which they have not been able to participate for reasons independent of their will, would entail risks of violation of the principle of equal treatment of applicants. Therefore, the Commission has decided not to allow for such a possibility. There are no elements at hand which indicate that this decision has been taken in violation of any rule or principle binding upon the Commission. 1.4 Therefore, the Ombudsman finds that there is no instance of maladministration in the refusal of the Commission to let the applicant sit other exams in replacement of those in which she could not participate. However, as this state of affairs may appear unfair to the citizen concerned, the Ombudsman shall below address further remarks to the Commission. **2 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Commission. The Ombudsman has therefore decided to close the case.

## FURTHER REMARKS

It appears from the present complaint that an applicant under a competition who for reasons independent of her will cannot participate in the exams, cannot be allowed to resit the exams. Such reasons may be illness, accidents or strikes. Given the principle that employment with the public administration should be open to all citizens who fulfill the required job conditions, and the limited number of competitions organised by the Community administration, this may appear unfair to the citizens concerned. The Ombudsman shall therefore suggest to the Commission that it considers the question whether citizens should be allowed to sit other exams in replacement of those in which they have not been able to participate for reasons independent of their will. The President of the European Commission will also be informed of this decision.

Yours sincerely, Jacob SÖDERMAN