

Decision of the European Ombudsman on complaint 350/98/OV against the Council of the European Union

Decision

Case 350/98/OV - Opened on 15/06/1998 - Decision on 26/05/1999

Strasbourg, 26 May 1999 Dear Mr S., On 17 March 1998 you made a complaint to the European Ombudsman concerning your non admission to open competition EUR/A/121 for recruitment of A7 administrators in the General Secretariat of the Council of the European Union. On 15 June 1998, I forwarded the complaint to the Secretary General of the Council of the European Union (hereafter the Council). The Council sent its opinion on 4 August 1998 and I forwarded it to you with an invitation to make observations, if you so wished. On 12 August 1998, I received your observations on the Council's opinion. I am writing now to let you know the result of the inquiries that have been made.

THE COMPLAINT

According to the complainant, the relevant facts were as follows : The complainant applied for participating in open competition EUR/A/121 for recruitment of A7 administrators in the General Secretariat of the Council (OJ C 363 A of 3 December 1996). After having succeeded in the preselection test and having submitted the complete application form by the deadline of 1 December 1997, he was informed by letter of 2 February 1998 from the Directorate for Personnel and Administration that he was not admitted to participate in the written tests. This decision was based on the fact that, according to the information provided in his application and the documents accompanying it, he did not provide sufficient proof that on the deadline of 3 December 1996 he had acquired two years' full-time or equivalent part-time professional experience as described in point IV.B.(d) of the competition notice. By letter of 7 February 1998, the complainant appealed against this decision. He drew the attention to the ambiguity of the rules in the competition notice concerning the requirement for professional experience and submitted further documentary evidence of his professional experience asking for the reexamination of his application. By letter of 9 March 1998, the Selection Board rejected his appeal on the ground that it could not find enough proof of two years' professional experience and that the documentary proof submitted after 1 December 1997 deadline could not be taken into account. More particularly, the Selection Board did not accept his MA from the College of Europe as professional experience. It further considered that he provided no proof of his DPhil studies at the Sussex University in his original application of 11 November 1997. He also failed to provide proof that he had accepted the different offers of employment he referred to in his



application. Therefore, the complainant filed a complaint with the European Ombudsman. Firstly, he alleged that the notice of the competition was ambiguous and vague as regards both the requirement of professional experience and what was acceptable as proof. Therefore, the criteria on which he had been judged had been arbitrary and untransparent. The complainant secondly alleged that he had been treated in a discriminatory way compared to applicants from other nationalities, because of the different culture in recruitment procedures which exists in the United Kingdom, where, according to the complainant, there is no practice of keeping detailed records of past employment history. Finally, the complainant alleged that the Selection Board should have taken into consideration during the reexamination of his application the supplementary documentary evidence that he enclosed with his letter of 7 February 1998.

THE INQUIRY

The Council's opinion In its opinion, the Council referred to the competition notice which laid down the conditions of eligibility for the competition. According to point IV.B.(d) of that notice, a professional experience of at least two years after graduation was required on the date of publication of the notification, which was 3 December 1996. The professional experience had to be acquired in planning, research, administration or supervision and the candidates had to produce documentary evidence to show that they satisfied this condition. Furthermore, the competition notice mentioned several examples of what sort of documentary evidence was considered appropriate. In its opinion, the Council enumerated one by one the documents which the complainant had sent with his application and which the Selection Board considered as insufficient proof of professional experience. The complainant had asked the reexamination of his application because he considered, on basis of point IV.B.(d) of the competition notice, that his postgraduate study/research at the University of Sussex and the College of Europe could be counted as professional experience. As regards the first allegation, the Council observed that point IV.B.(d) of the competition notice did not give any ground for misleading interpretation. In this text there was no combination of words like "postgraduate studies/research" as the complainant claimed, which might create confusion. In the competition notice, studies were mentioned in another paragraph and clearly apart from professional experience. It was exactly according to this unambiguous distinction that the complainant had filled in his application form by keeping his postgraduate studies apart from his professional experience. The Selection Board applied to all candidates equally the criteria not to account postgraduate studies as an equivalent for professional experience. Therefore, no element of discrimination could be found in the rules of the Selection Board. As regards the allegation of discrimination of the complainant due to the different culture of recruitment and proving evidence of professional experience in the UK, the Council stated that it is not grounded, since all the other candidates from the UK did not seem to have problems with fulfilling this requirement of the competition notice. In addition to that, it would appear from the complainant's explanations that he basically called for a less strict application of the competition requirements for UK candidates. The Council finally observed that by the invitation letter of 22 October 1997 which had been sent to the successful candidates of the preselection test, they were informed that documents sent after the date of 1 December 1997 would not be taken into consideration.

The complainant's observations The complainant in his observations maintained his complaint. He first stated that his general point about postgraduate studies was not about proof but rather about the fact that the competition notice gave no guidance on the policy on



postgraduate studies. He also stated that the Selection Board in its letter of 9 March 1998 stated that "you provide no proof of your DPhil studies at Sussex University with your application of 11 November 1997", which, according to the complainant, would suggest that in principle DPhil research is equivalent to professional experience. With regard to his argument related to the different cultures in proof of work experience existing in Europe, the complainant alleged that it constitutes a serious policy point, which the EU recruitment procedures should acknowledge. Given that he was not familiar with this kind of recruitment procedures, he suggested that future competition notices should provide more explanations on the relevant procedures. The complainant finally considered that, given the wasted time, money and effort in attending the preselection test, some compensation was appropriate.

THE DECISION

1 The alleged arbitrary and untransparent selection criteria of the competition notice 1.1

The complainant alleged that the competition notice was ambiguous and vague as regards both the requirement of professional experience and what was acceptable as proof. Therefore, the criteria on which he had been judged were arbitrary and untransparent. The Council observed that the competition notice, more particularly point IV B(d) which referred to professional experience, did not give any ground for misleading interpretation. 1.2 The Ombudsman considers that the competition notice was clear and unambiguous as regards the requirement of professional experience. Point IV.B.(d) of the competition notice (in the section concerning particular conditions of eligibility for the competition) clearly stated that a professional experience was required "of at least two years after graduation, as at the date of publication of this notification, or, where appropriate, after the equivalent professional experience (of 8 years) referred to in IV.B.(a) above has been acquired". 1.3 The competition notice further stated that the professional experience had to be acquired in planning, research, administration or supervision, and that the candidates had to produce appropriate documentary evidence that they satisfied this condition. The competition notice mentioned as examples of documentary evidence pay slips, work certificates, contracts or letters of recruitment. The Ombudsman further notes that point IV.B.(d) of the competition notice did not make any reference to postgraduate studies or research. Therefore there was no ground for considering postgraduate studies or research as equivalent professional experience. 1.4 In the present case it appears that the Selection Board rejected the complainant's application because, on the one hand, his postgraduate studies and research were not accepted as professional experience, and on the other hand, he did not provide adequate documentary evidence for the required 2 years' work experience. More particularly, the complainant had included different employment offers, but failed to provide proof that he had accepted those offers. The complainant in his letter of 7 February 1998 also admitted that he did not submit adequate supporting evidence. 1.5 For those reasons, the Ombudsman considers that the allegation of the complainant that the competition notice was ambiguous and that his application has been judged on basis of arbitrary and untransparent criteria is not grounded. Therefore, there appears to have been no maladministration by the Council in the evaluation of the complainant's application. **2 The alleged discrimination** 2.1 The complainant alleged that he had been treated in a discriminatory way compared to applicants from other Member States, because of the different culture in keeping evidence of professional experience which exists in the United Kingdom. The Council observed that this allegation was not grounded, since all the other candidates from the



UK did not seem to have problems with fulfilling this requirement of the competition notice. 2.2 The principle of equality of treatment in the present situation means that all candidates from the different Member States should equally provide documentary evidence for their professional experience. The Council would violate this principle if it would apply different and less strict criteria for candidates from the UK, unless there are reasonable justifications for doing so. There are however no grounds for considering that candidates from the UK should be treated differently as regards the obligation to provide documentary evidence for their professional experience. Therefore, the complainant's allegation is not grounded and no maladministration was found concerning this aspect of the case. **3 The alleged failure to consider the complainant's additional documents submitted after 1 December 1997** 3.1 The complainant alleged that the Selection Board should have taken into consideration the supplementary documentary evidence he enclosed with his letter of 7 February 1998 asking for the reexamination of his application. The Council referred to the invitation letter of 22 October 1997 sent to all successful candidates of the preselection test. This letter clearly stated that documents sent after the date of 1 December 1997 would not be taken into consideration. 3.2 The Ombudsman notes that this letter indeed specified that "supporting documents sent after the date (i.e. 1 December 1997) will not be taken into consideration". The complainant was thus aware of the fact that he had to submit the supporting documents before that deadline. Therefore, there appears to have been no maladministration by the Council in not having considered the complainant's supporting documents submitted after that date. **4 Request for compensation** In his observations, the complainant observed that, given the wasted council of the ime, money and effort in attending the preselection test, some compensation was appropriate. With this regard, the Ombudsman draws the complainant's attention to the fact that he can always submit to the Council an application for reimbursement of the travel expenses. **5 Conclusion** On the basis of the European Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Council. The Ombudsman has therefore decided to close the case. The Secretary General of the Council of the European Union will also be informed of this decision. Yours sincerely Jacob SÖDERMAN