

## Otsus juhtumi 2472/2005/MF kohta - Väidetavad probleemid lepinguliste töötajate töölevõtumenetlusega ühises Läti tõlketeenistuses

Otsus

Juhtum 2472/2005/MF - Alguskuupäev: {0} 12/09/2005 - Otsuse kuupäev: {0} 14/03/2008

2004. aasta veebruaris korraldasid Regioonide Komitee ning Euroopa Majandus- ja Sotsiaalkomitee ühiselt valikumenetluse, et täita vabad assistendi/sekretäri ametikohad nende ühises Läti tõlketeenistuses. Kaebuse esitaja, Läti kodanik, kandideeris ühele kohale. 29. märtsi 2004. aasta kirjas teatas Regioonide Komitee kaebuse esitajale, et ta on arvatud sobilike kandidaatide hulka ning et temaga võetakse tööpakkumise eesmärgil peatselt ühendust. Töökohta aga kaebuse esitajale kunagi ei pakutud.

Oma kaebuses väitis kaebuse esitaja, et võimu on kuritarvitatud, puudub läbipaistvus ja on eiratud menetlusnorme.

Ombudsmani uurimine näitas, et Regioonide Komitee oli võtnud tööle kaks kandidaati. Üks töölevõetud inimene oli edukate kandidaatide nimekirjas kaebuse esitajast eespool ning teine oli ametnik.

Ombudsman märkis, et Regioonide Komitee oli kandidaatide intervjuule kutsumisel teatanud, et nimekirja arvatud kandidaate võetakse tööle paremusjärjestuse alusel ning üksnes pärast seda, kui juba teenistuse olevate ametnike töölevõtmise võimalused on ammendatud. Sellest lähtudes järeltas ombudsman, et väidetava võimu kuritarvitamise ja menetlusnormide eiramise edasine uurimine ei ole vajalik.

Siiski kritiseeris ombudsman Regioonide Komiteed selle eest, et nad ei olnud kaebuse esitajale uuesti kirjutanud ja selgitanud, miks nad olid otsustanud teda mitte tööle võtta, kuigi nad olid 29. märtsi 2004. aasta kirjas teatanud, et nad seda teevad.

Strasbourg, 14 March 2008

Dear Mr X.,

On 15 July 2005, you submitted a complaint to the European Ombudsman against the Committee of the Regions of the European Union ("COR") concerning your application for the post of assistant/secretary, as a contractual agent, in the Joint Latvian Translation Service of the COR and of the European Economic and Social Committee ("EESC").



Given that several aspects of your complaint were also directed at the EESC, my Secretariat registered your complaint under the following second number reference 2617/2005/MF.

On 12 September 2005, I forwarded the complaint to the President of the COR.

The COR sent its opinion in English on 29 November 2005, and the Latvian translation on 7 December 2005.

On 20 December 2005, I forwarded the COR's opinion to you with an invitation to make observations, which you sent on 20 January 2006.

On 9 February 2007, I asked the President of the COR for further information in relation to your complaint. I asked the COR to reply to me by 15 March 2007.

Having received no reply by that date, my services contacted the COR's legal services by telephone on 12 April 2007 and were informed that, following an internal mistake in the file's transmission, the COR had not been able to reply to my letter of 9 February 2007.

By e-mail of 12 April 2007, the COR requested an extension of the deadline for its reply.

On 24 April 2007, I informed the COR's President that I had decided to grant its services its request for an extension of the deadline in the submission of its opinion. I asked the COR to reply by 15 May 2007. You were informed accordingly by letter of the same day.

On 2 May 2007, you sent a further e-mail to my services, to which they replied on 3 May 2007.

On 16 May 2007, the COR sent its reply in English to my request for further information. The COR sent the Latvian version of its reply on 13 June 2007.

On 28 June 2007, you sent a further e-mail to my services, to which they replied on 2 July 2007.

On 3 July 2007, I forwarded to you the COR's reply, with an invitation to make observations by 31 August 2007. On 27 August 2007, you sent me your observations.

I am writing now to let you know the results of the inquiries that have been made.

## **THE COMPLAINT**

According to the complainant, the relevant facts were, in summary, as follows:

In February 2004, a joint selection procedure was organised by the Committee of Regions of the European Union ("COR") and the European Economic and Social Committee ("EESC"), with a view to filling four secretarial posts, on a contractual agent basis, at the Joint Latvian



Translation Service (1) . This joint translation service is shared between the COR and the EESC and is staffed by officials of both Committees.

The complainant, a Latvian citizen, applied for the post of assistant/secretary in the Joint Latvian Translation Service.

On 9 March 2004, following the inclusion of his name in EPSO's reserve list for the recruitment of contractual agents from "new" Member States, he was invited to an interview by the COR and the EESC.

In a letter of 29 March 2004, the complainant was informed by the Director of Directorate Administration of the COR that he had passed the selection procedure and that his name had been put on the reserve list. The complainant was further informed that he would be contacted in order to be offered a contract of employment.

In mid-November 2004, the complainant met the Head of Unit of the Joint Latvian Translation Service who informed him that the post had been awarded to a person who had been a trainee at the Joint Latvian Translation Service.

In March 2005, the complainant met the Secretary-General of the COR in order to discuss his situation. He asked him to enquire into his case.

On 21 April 2005, the Secretary-General of the COR informed the complainant that, following the selection procedure, the COR and the EESC had shortlisted candidates for their respective vacancies. Given that the two posts under the control of the COR had been filled, the Secretary-General of the COR was not able to offer the complainant any position at the time of his letter.

The Secretary General of the COR further informed the complainant that, while he had been short listed for one of the posts at the EESC, these posts were finally offered to other persons. He pointed out that this decision came within the EESC's responsibility.

In May 2005, the complainant contacted the Head of the Resources and Financial Unit of the EESC in order to be informed about the situation relating to his recruitment. The Head of the Resources and Financial Unit promised that he would clarify the complainant's situation. In June 2005, in the absence of any information, the complainant telephoned the Head of the Resources and Financial Unit of the EESC, who confirmed that the post was occupied by a trainee.

In his complaint to the European Ombudsman, the complainant alleged that there had been an abuse of power and a lack of transparency in the selection procedure for the post of assistant/secretary in the Joint Latvian Translation Service of the COR and the EESC. In order to support his allegation, the complainant pointed out that the trainee who had been offered the post had not been subjected to a formal interview and her name was not on the reserve list of the shortlisted candidates. He argued that the trainee had been offered the post following the



unilateral decision of the Head of Unit of the Joint Latvian Translation Service.

The complainant further alleged that there had been procedural irregularities in the selection procedure.

The complainant claimed that he should receive compensation or receive an offer for an equivalent post. He further claimed that persons in charge of recruitment at the COR and the EESC should put an end to the irregularities in the recruitment procedure and should be reprimanded.

## **THE INQUIRY**

### **The COR's opinion**

The COR's opinion on the complaint was, in summary, as follows:

The Joint Latvian Translation Service is shared between the COR and the EESC. It is composed of officials and other agents of both Committees. However, it is important to stress that the administrations of the EESC and the COR remain separate.

In view of the enlargement of the EU, it was necessary to create divisions to deal with the "new" official languages. The Joint Latvian Translation Service was assigned a total of four secretarial posts of which two belonged to the COR and two to the EESC. In order to fill these posts and those assigned to the other new translation divisions, the COR and the EESC decided to launch a joint selection procedure which began in February 2004.

The COR stated that a first selection had been carried out among the candidates included in the EPSO database of potential contractual and temporary agents, which was established in order to fill posts while awaiting the constitution of EPSO reserve lists of candidates who had successfully passed an open competition for officials.

A selection committee made up of three members, namely, the Head of the translation unit as well as two Heads of translation divisions, one of whom represented the COR and the other the EESC. These three members interviewed the pre-selected candidates and drew up a shortlist in order of merit on the basis of the results of this interview and their education and experience. The complainant was shortlisted together with five other candidates. He was informed accordingly by letter of 29 March 2004.

During the interview, the candidates were further informed that, in accordance with the policy of the COR and the EESC to recruit officials where possible, candidates who had passed an EPSO competition would be given priority for the vacant posts. The shortlisted candidates were to be divided between the two Committees in order of priority. The COR recruited one candidate, with a better position on the shortlist than that of the complainant, and filled the other vacancy by recruiting an official. The two posts belonging to the COR were thus filled and its administration transferred the complainant's file to the EESC administration in view of a potential recruitment to one of their vacant posts.



The COR stated that the fact that the complainant was not offered any position within the EESC was a decision which fell under the latter's responsibility. Further to a meeting with the complainant in March 2005 and after having examined the case thoroughly, the Secretary-General of the COR explained the situation to him in a letter dated 21 April 2005.

#### **The complainant's observations**

In his reply, the complainant made, in summary, the following further comments:

The complainant claimed that the COR should provide him with the names of the two successful candidates, and should disclose its assessment of his own application and of those of the successful candidates.

The complainant further stated that, on the occasion of the meeting with the Secretary-General of the COR in March 2005, the complainant asked him for an explanation on the situation of the recruitment procedure related to him. On 21 April 2005, that is, more than 50 days later, the complainant received a letter from the Secretary-General of the COR in which he gave him the requested information. The complainant was not informed that the reply would be delayed. The complainant stated that he had to telephone the COR's relevant services in order to remind them of his case.

The complainant finally stated that the COR did not inform him that the post of assistant/secretary had been filled and it did not retract the content of its first letter.

#### **Further inquiries** *Preliminary remark*

In his observations, the complainant submitted the new claim that the COR should provide him with the names of the two successful candidates, and should have disclosed its assessment of his own application and of those of the successful candidates.

In his letter informing him of his request for further information, the Ombudsman also informed the complainant that, given that it appeared that he had not made any administrative approaches to the COR in relation to these issues, his new claim was inadmissible on the basis of Article 2(4) of the Ombudsman's Statute. The Ombudsman further informed the complainant that he could consider lodging a new complaint with him, in case he were to be dissatisfied with COR's reply as regards his claim or if he did not receive any reply within a reasonable period of time.

#### *The request for information addressed to the COR*

After careful consideration of the COR's opinion and the complainant's observations, it appeared that further inquiries were necessary. The Ombudsman therefore asked the COR to provide him with information on the following points:

The complainant's further allegations

1) In his observations, the complainant submitted that, following his request, in March 2005, to be given an explanation on the situation of the recruitment procedure relating to him, he received a letter from the Secretary General of the COR only on 21 April 2005, i.e., more than 50 days later.

It thus appeared that the complainant alleged that the COR had failed to deal with the relevant



request within a reasonable period of time. The Ombudsman noted that this issue had already been raised in the complaint itself, although it was then not clear that the complainant wished to raise an allegation concerning this issue.

The COR was requested to provide a supplementary opinion on this further allegation.

2) In his observations, the complainant stated that there had been a long delay in the recruitment procedure. In his complaint, he had also alleged that there had been procedural irregularities. He has now made it clear that this allegation extends to the time it took the COR to reach its decision.

The COR was requested to comment on this issue.

The request for further information

3) It appears that in his letter of 29 March 2004, the Director for Administration informed the complainant that his name had been included in the reserve list, and that he would be contacted very soon in order to be offered a contract.

The COR was requested to explain why it first announced to the complainant that he would be offered a contract but then recruited another person.

4) It appears from the COR's opinion that the latter filled the two posts (i) by a person from the short-list who did better than the complainant, and (ii) by a person who had passed an EPSO competition. However, no further information has been provided in this context.

The COR was requested to identify the reserve list on which the name of the relevant candidate appeared and the dates when this person was interviewed and recruited.

#### *The COR's Reply*

In its reply, the COR made, in summary, the following statements:

(1) As regards the first issue concerning the alleged failure to deal with the complainant's request within a reasonable period of time

The COR stated that the complainant did not indicate the exact date of the meeting held in March 2005 with the COR's Secretary-General but only asked a meeting be arranged for the first half of March 2005.

During that meeting, oral explanations were exchanged between the two parties and the final answer was given in writing by the COR's Secretary-General in a letter of 21 April 2005.

Considering that the recruitment procedure was conducted by the EESC, the COR stated that it took approximately four weeks to investigate what had been decided by the latter, which may be considered a reasonable period of time, taking into account the Easter holiday period which extended from 19 March 2005 to 3 April 2005.

(2) As regards the second issue concerning the alleged delay in the recruitment procedure The COR stated that, in view of the shared competences between the two Committees, the EESC was responsible for recruitment. Among the shortlisted candidates who were to be "shared" between the two Committees in order of priority, the COR recruited one candidate, with



a better placing than the complainant, and filled the other vacancy by recruiting an official.

Given that the two posts assigned to the COR had been filled, the complainant's file was then transferred to the EESC administration with a view to a potential recruitment for one of their vacant posts. The COR was not kept informed of the follow-up of the EESC's recruitment procedure.

(3) As regards the third issue concerning the reasons why the COR allegedly first announced to the complainant that he would be offered a contract but then recruited another person The COR stated that the Director of the Administration informed the complainant by letter of 29 March 2004 that he had been shortlisted together with five others candidates, but that the two posts assigned to the COR had been filled.

In accordance with the Committee's recruitment policy in the joint service, the Director of the Administration of the COR was the person who informed the complainant on behalf of both Committees. However, in accordance with the sharing of competences between the two Committees in this case, the complainant's potential recruitment fell within the remit of the EESC.

(4) As regards the fourth issue concerning the reserve list on which the name of the relevant candidate had figured and the dates when this person was interviewed and recruited The COR stated that the second person was recruited from the EPSO reserve list of Open Competition EPSO/C/6/03. The interview and the subsequent recruitment took place on 25 November 2004 and 1 February 2005 respectively.

The COR repeated its view that, after recruiting the two candidates, the administrative file containing the shortlist of five persons (including the complainant) was transmitted to the EESC in order to fill their vacancies. The final decision not to recruit the complainant was taken by the EESC.

#### *The complainant's further observations*

In his further observations, the complainant maintained his allegations and submitted the following further comments:

The COR lacked Latvian translators with a knowledge of French, while he had knowledge not only of French but also of English and German. The other candidates only mastered one or two languages.

The complainant stated that the COR should have replied to him within 15 days and, in the event that that was not possible, it should have informed him in writing that there would be a delay.

He further stated that he had been unaware of the fact that the recruitment procedure functions were to be shared between the two Committees and of the fact that his file had been transferred to the EESC.

## **THE DECISION**



## **1 Preliminary section: factual background**

1.1 The complainant lodged a complaint against both the Committee of the Regions of the European Union ("COR") and the European Economic and Social Committee ("EESC") in relation to their respective decisions not to recruit him as an assistant/secretary at the Joint Latvian Translation Service. This joint translation service is shared between the COR and the EESC and is made up of officials of both Committees. The complainant's allegations and claims against the COR and the EESC were identical. However, as the complaint concerned two separate institutions, the complaint was dealt with by the Ombudsman in two separate inquiries (2). The COR and the EESC sent separate opinions to the Ombudsman. In his request for further information, the Ombudsman also raised different questions to the COR and the EESC.

In order to determine whether there was an instance of maladministration by the COR, the Ombudsman, first, finds it useful to describe the factual background at the origin of the selection procedure involving the Joint Latvian Translation Service.

The Ombudsman would like to point out that this factual background has been established after a parallel examination of the opinions and further replies of the COR and the EESC. The Ombudsman would also like to point out that, although the present decision only concerns the COR, the EESC is also mentioned in the following paragraphs, given that the COR and the EESC jointly organised the selection procedure which is the object of the present inquiry.

1.2 After a careful examination of the opinions and further replies of the COR and the EESC, the Ombudsman understands the factual background to be as follows:

The Joint Latvian Translation Service forms part of the joint services, shared between the COR and the EESC. It is composed of officials and other agents of both the COR and the EESC. However, the administrations of both the COR and the EESC remain separate.

At the beginning of February 2004, the COR and the EESC jointly organised a selection procedure, in order to fill four vacant posts of secretaries at the Joint Latvian Translation Service. Two posts were at the disposal of the COR and two posts at the disposal of the EESC (3).

The COR first carried out a pre-selection procedure in relation to the candidates on the reserve list of contractual or temporary agents short-listed by EPSO. The complainant was part of this reserve list. It appears that the reserve list of contractual or temporary agents was established with a view to filling posts which could not be filled by the recruitment of candidates placed on a reserve list after having passed an EPSO open competition.

A Selection Committee composed of members representing both the COR and the EESC interviewed candidates on the reserve list of contractual or temporary agents. On the basis of the result of these interviews and a comparative assessment of the candidates' educational background and professional experience, the Selection Committee drew up, in order of merit, a short-list of five candidates. The complainant was among these five short-listed candidates (4). These candidates could be recruited by either the COR or the EESC, by order of merit. The





complainant was informed by letter of the COR of 29 March 2004 that his name had been put on the reserve list.

1.3 The COR decided to fill its first post by recruiting candidate "A" (5) , an official whose name had been put on the reserve list of Open Competition EPSO/C/6/03.

As regards its second post, the COR recruited a candidate from the shortlist of five pre-selected candidates, namely, candidate "B". That candidate was higher on the shortlist than the complainant.

The COR then transferred the complainant's file to the EESC. At this stage of the selection procedure, the complainant's name was still on the shortlist of the pre-selected candidates.

1.4 The EESC decided to fill its first post by recruiting candidate "C", a candidate whose name was on the shortlist of five candidates (6) . That candidate was higher on the shortlist than the complainant.

As regards its second post, the EESC initially decided to fill the post by appointing a person from the reserve list established as a result of competition EPSO/C/6/03 (candidate "D"). However, another service, namely the Directorate for Consultative Work A, also expressed its wish to recruit candidate D.

Given that two services wished to recruit candidate D, the complainant was invited to undergo a medical examination by letter of the EESC of 25 October 2004. On 29 October 2004, the EESC interviewed candidate D for the post of assistant/secretary at the Joint Latvian Translation Service, as well as for the post at the Directorate for Consultative Work A. The Recruitment Unit finally decided that Ms D. would be recruited to work at the Directorate for Consultative Work A.

On 17 November 2004, the Head of the Joint Latvian Translation Service thereafter launched a procedure with a view to recruiting, to the remaining post of assistant/secretary, a person who had been working as a trainee in the Joint Latvian Translation Service since 16 September 2004. The official letter of appointment to the post of assistant/secretary was signed by the EESC's Secretary-General on 23 December 2004.

In mid-November 2004, the complainant met the Head of Unit of the Joint Latvian Translation Service who informed him that the post of assistant/secretary was to be offered to a person who had been a trainee at the EESC.

## **2 The alleged abuse of power and lack of transparency in the selection procedure for the post of assistant/secretary in the Joint Latvian Translation Service**

2.1 In his complaint to the Ombudsman, the complainant alleged that there had been an abuse of power and a lack of transparency in the selection procedure for the post of assistant/secretary in the Joint Latvian Translation Service. In order to support his allegation, the complainant pointed out that the trainee (7) who had been offered the post had not been subjected to the relevant job interview and his name was not on the reserve list of the shortlisted candidates. He argued that the trainee had been offered the post following the



unilateral decision of the Head of Unit of the Joint Latvian Translation Service.

2.2 In its opinion, the COR stated that it had decided to recruit one candidate, with a better position on the shortlist than the complainant, and filled the second vacancy it had by recruiting an official. The two posts belonging to the COR were thus filled and the COR administration transferred the complainant's file to the EESC administration. The COR stated that the fact that complainant was not offered any position within the EESC was a decision which fell under the latter's responsibility.

2.3 In his observations, the complainant stated that the COR never informed him that the post of assistant/secretary had been filled and that it did not retract the content of its first letter.

2.4 In view of the complainant's observations and the COR's opinion, the Ombudsman considered it appropriate to ask the COR for further information. The Ombudsman asked the COR to comment on, *inter alia*, the following issues relating to the complainant's first allegation, namely, (i) the reasons why the COR initially announced to the complainant that he would be offered a contract, but then recruited another person; (ii) how the COR created the reserve list on which the name of the person who was eventually recruited appeared; and (iii) the dates when this person was interviewed and recruited.

2.5 In its additional reply, the COR pointed out that, by letter of 29 March 2004, the Director of the Administration of the COR informed the complainant that he had been shortlisted together with five other candidates. Subsequently, the COR further stated that the two positions had been filled, the first by a candidate who was better placed on the shortlist, and, the second by recruiting an official. In accordance with the COR's recruitment policy in the joint Service, the Director of the Administration of the COR informed the complainant on behalf of both the COR and the EESC. However, in accordance with the sharing of competences between the COR and the EESC, the complainant's potential recruitment fell within the remit of the EESC.

The COR also stated that the second person was recruited from the EPSO reserve list of Open Competition EPSO/C/6/03. The interview and the subsequent recruitment took place on 25 November 2004 and 1 February 2005 respectively. The COR repeated its view that, after recruiting the two candidates, the administrative file containing the shortlist of five persons (including the complainant) was transmitted to the EESC in order to fill their vacancies. The final decision not to recruit the complainant was taken by the EESC.

2.6 In his further observations, the complainant further stated that he had been unaware of the fact that the recruitment procedure functions were to be shared between the COR and the EESC and that his file had been transferred to the EESC for a potential recruitment.

2.7 The Ombudsman further notes that, in its letter of 29 March 2004 to the complainant, the Director for Administration of the COR wrote the following:

*" Following your interview, I would like to inform you that the selection procedure for the post of Assistant/Secretary at the Translation Service is completed.*



*I have the pleasure to inform you that yours [ sic ] marks are sufficient for you to pass the competition. You are thus included in our reserve list.*

We will contact you very soon to propose a contract ". (Emphasis added).

The Ombudsman further notes that the complainant was then invited to the medical examination by letter of 25 October 2004 sent by the EESC.

2.8 As regards the alleged abuse of power in the selection procedure, the Ombudsman notes that it emerges from the COR's opinion that, during the interview, the candidates were informed that, in accordance with the policy of the COR and the EESC to recruit "officials" where possible, candidates who had passed an EPSO open competition would be given priority for the vacant posts. In accordance with this practice, the COR decided to recruit, as regards one of the posts, an official from the EPSO reserve list of Open Competition EPSO/C/6/03. It further appears that that the reserve lists of contractual agents from the "new" Member States were established with a view to recruiting agents and to responding to the need of staff from these Member States, pending the recruitment of candidates who were placed on reserve list after having passed an EPSO open competition and could therefore be appointed as officials. In these circumstances, the Ombudsman considers that the complainant has not submitted any evidence suggesting that there was an abuse of power from the COR by deciding to recruit, for one of its posts, a person who had passed an EPSO open competition.

2.9 As regards the filling of the second post at the COR's disposal, the Ombudsman notes that the COR stated that it had decided to fill it by recruiting a candidate who "*was better placed in the short-list of candidates*".

2.10 In this context, the Ombudsman would like to recall that, pursuant to the established case-law of the Community Courts, the assessments which a Selection Board makes when evaluating the candidates' knowledge and abilities constitute the expression of a value judgment. They fall within the wide discretion enjoyed by the Selection Board and are amenable to review by the Community judicature only when there has been a flagrant breach of the rules governing the Selection Board's work.

2.11 In the present case, the Ombudsman notes that it emerges from the shortlist of the five pre-selected candidates that the complainant was placed at the fourth position and that he had been awarded 12 points for his oral examination by the Selection Committee at the time the interviews were carried out. The Ombudsman further notes that the first three candidates of the shortlist were awarded 16, 15 and 14 points respectively for the oral examination. The shortlist also contains, for each of the five candidates, a section entitled "*Observations*" describing their educational background, their professional experience acquired (if any), their professional availability (with the indication of the relevant notice period) and certain aspects of their personality.

2.12 The Ombudsman notes that, in the complainant's view, the COR lacked Latvian translators



with a knowledge of French, while he had knowledge, not only of French, but also of English and German. Furthermore, the other candidates only mastered one or two languages. The complainant therefore appears to challenge also the ranking of the candidates shortlisted made by the Selection Committee.

The Ombudsman notes that, under the section " *Observations* " concerning the complainant, the Selection Committee wrote the following comment: " *Good knowledge of languages* " (8) and that the languages indicated were " *French, English and German* ". As such, it is clear that the Selection Committee took due account of the various languages which the complainant had knowledge of.

The Ombudsman notes that, as regards the two first candidates, two languages (English and German, and English and French, respectively) were indicated and for the third one, one language was specified (English). The Ombudsman notes that the comparative evaluation of the Selection Committee does not only focus on the number of languages which candidates have knowledge of, but also their comparative level of proficiency in those languages. The Ombudsman notes that the first three candidates were awarded a higher mark for their oral examination than the mark awarded to the complainant. The Ombudsman notes that if the Selection Committee ranked certain other candidates higher than the complainant after this oral examination, the comparative level of proficiency of these other candidates was taken into consideration.

The Ombudsman also considers that the assessments carried out by the Selection Committee did not only concern the candidates' linguistic skills, but also concerned, *inter alia* , their professional experience and their suitability to carry out the tasks linked to the posts advertised.

The Ombudsman also notes that, absent a manifest error of assessment, the substantive assessment of the comparative merits of the various candidates by the Selection Committee cannot be called into question.

2.13 The Ombudsman further notes that the institutions have announced that the candidates shortlisted would be recruited by order of merit. The Ombudsman further notes as well that it is undisputed that the candidate recruited by the COR was placed in a higher position than the complainant. The Ombudsman therefore considers that there is no evidence to suggest that the decision of the COR not to recruit the complainant constituted an abuse of power. In these circumstances, the Ombudsman finds that no further inquiries are necessary as regards this aspect of the complainant's allegation.

2.14 As regards the alleged lack of transparency, the Ombudsman notes that candidates were indeed informed of the policy of the COR and the EESC to recruit, where possible, candidates who had passed an EPSO competition.

2.15 However, it remains for the Ombudsman to consider why the COR first announced to the complainant, in its letter of 29 March 2004, that he would be offered a contract, and subsequently proceeded to recruit another candidate, without informing him accordingly.



2.16 Principles of good administration require that institutions act in a transparent way. The Ombudsman finds it particularly important for the European Institutions to respect the principle of transparency of the administration's decision-making in the recruitment procedure.

2.17 In its further opinion and in an attempt to justify why the complainant had not been specifically informed that he would not be recruited by the COR, the COR stated that the Director of the Administration of the COR informed the complainant, on behalf of both the COR and the EESC, that, in accordance with the sharing of competences between the COR and the EESC, the complainant's potential recruitment fell within the remit of the EESC.

2.18 The Ombudsman does not consider the argument invoked by the COR to be convincing. In fact, the Ombudsman considers that the COR's first letter did lead the complainant to assume that he would be offered a contract in the near future by the COR. In such specific circumstances, the Ombudsman considers that the COR should, once it decided to recruit other candidates, have informed the complainant that he would not be recruited by the COR. Such a letter should also have contained an explanation for the decision and an apology for the inconvenience that may have been caused by the first letter in which the complainant was led to believe (in fact he was told explicitly that) he would be offered a contract. The Ombudsman considers that, in accordance with the principle of transparency, the COR should also have mentioned in its letter to the complainant that his file had been transferred to the EESC for his potential recruitment.

The complainant's argument that the COR had failed to inform him that the post of assistant/secretary had been filled and to retract the content of its first letter therefore appears to be founded. The Ombudsman is therefore of the view that the COR failed to act in a transparent way. The COR's actions therefore constituted an instance of maladministration. A critical remark will be made in this regard.

### **3 The alleged procedural irregularities in the selection procedure for the post of assistant/secretary in the Joint Latvian Translation Service**

3.1 The complainant alleged that there were procedural irregularities in the selection procedure for the post of assistant/secretary in the Joint Latvian Translation Service. During the course of the Ombudsman's inquiry, the complainant clarified that this allegation related to the time it took the COR to reach its final decision.

3.2 The COR stated that, further to a meeting with the complainant in March 2005 and after having examined the case thoroughly, the Secretary-General of the COR explained the situation to him in a letter of 21 April 2005.

3.3 In his observations, the complainant submitted that, following his oral request during an interview with the Secretary-General of the COR, in March 2005, to be given an explanation as regards the situation of the recruitment procedure relating to him, he only received a letter from the Secretary-General on 21 April 2005, that is, more than 50 days later. The complainant further stated that there had been a long delay in the recruitment procedure. In his view, although the selection procedure began in February 2004, the decision to fill the last vacancy



was only signed by the Secretary-General on 23 December 2004.

3.4 In view of the complainant's observations and the COR's opinion, the Ombudsman considered it appropriate to ask the COR for further information. The Ombudsman therefore asked the COR to comment on the following issues: (i) the CORs' alleged failure to deal with the complainant's request within a reasonable period of time and (ii) the alleged delay in the recruitment procedure.

3.5 In its additional reply, the COR pointed out that, as regards the first issue mentioned above, an oral explanation was provided to the complainant on the occasion of the meeting between himself and the Secretary-General of the COR in March 2005. A final answer was given in writing by the Secretary-General of the COR in a letter dated 21 April 2005. Considering that the recruitment procedure was conducted by the EESC, the COR stated that it took approximately four weeks to investigate what had been decided by the latter, which may be considered a reasonable period of time, taking into account the Easter holiday period which extended from 19 March 2005 to 3 April 2005.

As regards the second issue mentioned above, the COR stated that, after having filled its two positions, the complainant's file was transferred to the EESC administration with a view to a potential recruitment for one of their vacant positions. The COR was not kept informed about the follow-up of the EESC recruitment procedure.

3.6 In his additional reply, the complainant stated that the COR should have replied to him within a 15-day period and, in the event that this was not possible, it should have informed him in writing that there would be a delay.

3.7 As regards the alleged failure to deal with the complainant's request within a reasonable period of time, the Ombudsman recalls that, pursuant to Article 17 of the European Code of Good Administrative Behaviour (9) :

*" 1. The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. (...) "* (Emphasis added).

*" 2. If a request or a complaint to the Institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author thereof as soon as possible. (...) "*

3.8 In the present case, the Ombudsman notes that, according to the complainant himself and the COR'S opinion, the complainant asked the Secretary-General " *to inquire into his case* " and " *to give him an explanation as regards the situation of the recruitment procedure related to him* ". The Ombudsman further notes that the complainant stated that the interview with the Secretary-General of the COR took place in the first half of March 2005, without providing any further detail as regards the exact date. Assuming that this meeting took place during the first week of March 2005, the Ombudsman notes that 7 weeks elapsed between the date of this



interview and the reply of the Secretary-General of the COR dated 21 April 2005.

3.9 The Ombudsman further notes that it emerges from the COR's opinion that the complainant was already given oral explanations on the occasion of the meeting and that these explanations were confirmed in the letter of 21 April 2005 of the Secretary-General of the COR. The Ombudsman also notes that the COR pointed out that, given that the complainant's file had been transferred to the EESC after the filling of the two positions at the COR's disposal, it had to refer to the EESC in order to reply to the complainant's request and that the Easter holiday period delayed the procedure. In these circumstances, the Ombudsman considers that the position of the COR appears to be reasonable. As regards the complainant's argument that the COR should have replied to him within a 15-day period, the Ombudsman considers that this 15-day period rather concerns the sending of an acknowledgment of receipt by the institution to a citizen's letter, in accordance to Article 14 of the European Code of Good Administrative Behaviour (10) . It does not apply to the providing of a substantive response, which may take longer to formulate depending on the complexities of the case. The Ombudsman therefore considers that no further inquiries are necessary as regards this aspect of the complainant's allegation.

3.10 As regards the alleged delay in the recruitment procedure, the Ombudsman would like to underline that he is not aware of any precise deadlines imposed on the administrations to issue recruitment offers to candidates shortlisted after a selection procedure. The Ombudsman notes that, in the present case, the complainant was led to believe that he would rapidly receive an offer of a contract but this aspect has already been considered above and has been deemed to warrant the issuing of a critical remark (see point 2.18).

3.11 The Ombudsman also notes that the second candidate (11) retained by the COR for the position in this institution was recruited on 1 February 2005 , that is 11 months after the selection procedure was concluded in the end of March 2004 (12) . In view of the above, the Ombudsman considers that the complainant has not sustained his view that the recruitment procedure in relation to him incurred an undue delay. In light of the above, the Ombudsman finds that no further inquiries are necessary as regards this aspect of the complainant's allegation.

#### **4 The complainant's claims**

4.1 The complainant claimed that (i) he should receive compensation or receive a proposal of an equivalent post. He further claimed that (ii) persons in charge of the recruitment at the COR should put an end to the irregularities in the recruitment procedure and should be reprimanded.

4.2 In light of the Ombudsman's conclusions in points 2.13, 3.9 and 3.11 above, there appears to be no need further to pursue his inquiry as regards the complainant's first claim.

4.3 The complainant further claimed that the Ombudsman should recommend that the persons in charge of recruitment at the COR put an end to the irregularities in the recruitment procedures and be reprimanded. It thus appears that the complainant claims that the Ombudsman should suggest that disciplinary sanctions be taken in relation to the officials concerned, without specifically mentioning the officials in question. Given that disciplinary





sanctions can in any event only be imposed after the disciplinary proceedings foreseen in the Staff Regulations have been carried out, the Ombudsman is unable to pronounce himself on a claim that such sanctions should be imposed in a given case. The Ombudsman recalls that his role is to conduct inquiries into instances of maladministration by the institutions of the European Union. It is not in his mandate to exercise any disciplinary powers in relation to officials or agents and not even to suggest that this should be done. On the other hand, Article 4 (2) of the Ombudsman's Statute provides that the Ombudsman has the possibility to "inform" the Community institution or body concerned of the facts calling into question the conduct of a member of their staff from a disciplinary point of view. In the circumstances of the present case, the Ombudsman does not consider it appropriate to do so.

## **5 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, no further inquiries are necessary as regards the complainant's allegations of abuse of power and irregularities in the recruitment procedure, or as regards his claims. The Ombudsman therefore closes the case as regards these aspects.

As regards the complainant's allegation of lack of transparency, it is necessary to make the following critical remark:

Principles of good administration require the institution to act in a transparent way. The Ombudsman finds it particularly important for the European Institutions to respect the transparency of the administration's decision making in the recruitment procedures.

The Ombudsman considers that the COR's first letter did lead the complainant to presume that he would be offered by the COR a contract in the near future. In such specific circumstances, the Ombudsman considers that the COR should, once it had decided to recruit other candidates, have informed the complainant that he would not be recruited by the COR. Such a letter should also have contained an explanation for the decision and an apology for the inconvenience that may have been caused by the first letter in which the complainant was led to believe that he would be offered a contract. The Ombudsman considers that, in accordance with the principle of transparency, the COR should also have mentioned in its letter to the complainant that his file had been transferred to the EESC for his potential recruitment.

The Ombudsman therefore concluded that the COR failed to act in a transparent way and this constituted an instance of maladministration.

Given that these aspects of the case concern procedures relating to specific events in the past, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The President of the COR will also be informed of this decision.

Yours sincerely,





P. Nikiforos DIAMANDOUROS

(1) In this context, the Ombudsman would like to highlight that, according to his understanding, the four permanent posts at the disposal of the COR and the EESC were to be awarded to contractual agents, on a provisional basis, pending the recruitment of officials who would have successfully sat an EPSO general competition.

(2) The inquiry in relation to the EESC is dealt with in Decision 2617/2005/MF.

(3) The Ombudsman finds it appropriate to use the initials A, B, C and D to refer to the candidates who were eventually awarded the relevant four posts at the disposal of the COR and the EESC. Candidate A was on the reserve list of Open Competition EPSO/C/6/03 and was eventually recruited to one of the posts that was available in the COR. Candidate B was the first candidate on the shortlist established by the COR and the EESC and was eventually recruited by the COR. Candidate C was the third candidate on the shortlist of five candidates established by the COR and the EESC and was eventually recruited by the EESC. The candidate who ranked second on the shortlist refused the offer because he wanted an indefinite period contract. Candidate D was a successful candidate on the reserve list established as a result of Open Competition EPSO/C/6/03. Despite efforts by the Joint Latvian Translation Service to recruit candidate D, that candidate was recruited by another service, that is, the Directorate for Consultative Work.

(4) On the basis of the documents in the file, the Ombudsman notes that the complainant was ranked fourth on the shortlist.

(5) See footnote 3 above.

(6) On the basis of the documents in the file, the Ombudsman notes that this candidate was ranked third on the shortlist. The Ombudsman also notes that the candidate ranked second on the shortlist refused the offer of employment because it appears that he wanted a contract of an indefinite duration.

(7) In view of the factual background, the Ombudsman understands that the "trainee" to whom the complainant refers is the candidate who was offered the fourth post at the EESC. This aspect of the complainant's allegation will therefore be dealt with in complaint 2617/2005/MF.

(8) Translation of the original French version by the Ombudsman's services.

(9) The European Code of Good Administrative Behaviour is available on the Ombudsman's website ( <http://www.ombudsman.europa.eu/code/en/default.htm> [Link]).

(10) See footnote 9.

(11) The Ombudsman has not found any information in the complaint's file on the exact date of



recruitment of the first candidate recruited by the COR.

(12) The Ombudsman notes that, by letter of 29 March 2004, the complainant was informed that he had been shortlisted together with four other candidates.