

Decision in case 83/2019/KT on how the European Personnel Selection Office accommodated a candidate's special needs in a selection procedure for EU civil servants

Decision

Case 83/2019/KT - Opened on 01/03/2019 - Decision on 27/11/2019 - Institution concerned European Personnel Selection Office (No further inquiries justified) |

The complainant is a visually impaired candidate who participated in a selection procedure for EU civil servants organised by the European Personnel Selection Office (EPSO). She argued that, in a test, she was not given the special accommodation promised to her, which was a manual timer.

It was not possible to establish what type of device EPSO had given the complainant and whether the complainant had received instructions on how to use it. However, EPSO informed the Ombudsman that it was working on improving the information on special accommodation measures that it makes available to candidates.

The Ombudsman closed the case with a suggestion to EPSO that it informs her of the updated information on special accommodation measures. The Ombudsman also suggested that candidates who are promised special measures be clearly informed, beforehand and in writing, about how they should proceed if they consider that there is a problem with these measures on the spot.

Background to the complaint

1. The complainant participated in a selection procedure organised by the European Personnel Selection Office (EPSO) to recruit EU civil servants. As she is visually impaired, she asked EPSO to accommodate her special needs during the 'e-tray' test [1] . Among other things, the complainant asked for breaks during the test and a manual timer to keep track of time (as the digital timer on the computer screen does not take into account exceptional breaks). Due to problems that she had encountered in similar selection procedures in the past, the complainant asked EPSO to confirm that she would be given a *timer* (to count time down) and not just a normal *clock* .



2. EPSO allowed the complainant two flexible breaks and confirmed twice that it would provide her with a manual timer.
3. After the complainant took the e-tray test, she complained to EPSO that, instead of a manual timer, EPSO had given her a normal clock. As this created problems for her during the test, she asked EPSO to allow her retake the test.
4. EPSO replied that the device given to the complainant was both a clock and a timer and that the staff at the test centre had explained to her how the device worked. If something was not clear at that stage, the complainant should have alerted the test centre staff immediately. EPSO said that the complainant could not retake the e-tray test.
5. Dissatisfied with EPSO's reply, and mainly contesting EPSO's version of the facts, the complainant turned to the Ombudsman in January 2019.

The inquiry

6. The Ombudsman opened an inquiry into the complaint that EPSO had failed to accommodate the complainant's special needs properly during the test and that she should therefore be allowed to retake the test.
7. In the course of the inquiry, the Ombudsman's inquiry team met with EPSO to obtain clarifications on the case. The Ombudsman's inquiry team also inspected EPSO's file in this case.

Arguments presented to the Ombudsman

8. The complainant contended that EPSO had failed to ensure the reasonable accommodation promised to her beforehand as, instead of a *timer*, it had given her a *clock*. As a result, she had to keep track of the time herself when she had her breaks. This took time and caused stress. She was thus disadvantaged compared to candidates who did not need breaks.
9. EPSO stated that the complainant made her complaint too late [2]. For procedural reasons, she could therefore not retake the test. However, despite the complaint being late, EPSO had decided to examine it to be able to explain to the complainant what had happened and to learn lessons for the future. EPSO is already, together with its contractor, updating the information on special measures that can be provided to candidates, including clear instructions as to the functionalities of the devices. The goal is to be able to share with candidates, before the exams, better information about the available special measures.
10. EPSO maintained that the device given to the complainant during the exam was *both* a clock *and* a timer. EPSO further stated that the complainant had not raised the issue properly during the exam. If the complainant had considered that the accommodation provided to her



was not as promised, she should have refused to take the test and asked EPSO immediately afterwards to allow her to retake the test.

11. The complainant disputes EPSO's account of events. She contends that she immediately notified the invigilators of the problem. The invigilators advised her to finish the exam and to complain to EPSO afterwards.

The Ombudsman's assessment

12. The EU administration, as an equal opportunities employer, must make every effort to avoid discrimination, promote diversity and ensure equal access to job opportunities.

13. EPSO, which is responsible for selecting EU staff, has a particular responsibility in this regard. EPSO has committed itself to provide 'reasonable accommodation' for candidates with special needs [3] . In the course of a previous inquiry concerning EPSO, the Ombudsman drew attention to the difficulties for certain candidates of sitting an exam under conditions that are not properly adapted to their needs [4] . Such incidents are bound to give rise to frustration and to exacerbate what is, by its very nature, a relatively stressful situation. They thus risk impacting upon candidates' performance in selection procedures that are already highly competitive.

14. In this case, EPSO showed its readiness to accommodate the complainant by allowing her to take breaks during the exam and providing a manual device to keep track of time.

15. Although the complainant made her complaint to EPSO about the functionalities of the device after the deadline set out in the notice of competition, EPSO looked into the matter to understand what had happened and to learn for the future. The Ombudsman welcomes EPSO's approach. She accepts, however, that because the complaint was made late, the complainant's request to retake the test cannot be accepted.

16. Regarding the factual circumstances, the information made available to the Ombudsman during the inquiry is not conclusive. The contractor's report from the test centre does not allow the Ombudsman to establish what type of device the complainant received during the exam, that is, whether it was a timer, a clock or a device with a dual function. Nor can it be established whether the complainant was given sufficient and clear instructions on how to use the device if this had a timer function. While this is unfortunate, the Ombudsman finds that further inquiries into the matter would not serve any purpose.

17. The Ombudsman welcomes the fact that EPSO is already working to improve the information on special measures that will be available to candidates before the tests. She will ask EPSO to inform her when it has finished its work improving this information.

18. In addition, the Ombudsman is of the view that EPSO cannot reasonably expect candidates, who consider that they have not been provided with the reasonable accommodation measure they have requested, to leave the exam centre unless they have been explicitly



informed of the possibility to do so. The Ombudsman will make a suggestion for improvement to EPSO in this regard.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

No further inquiries into the complaint are justified.

The complainant and the European Personnel Selection Office will be informed of this decision .

Suggestion for improvement

The Ombudsman invites EPSO to inform her when it has finished its work improving the information on reasonable accommodation measures it makes available to candidates. She also suggests that candidates who have been promised special measures be clearly informed, beforehand and in writing, about how they should proceed if they consider that there is a problem on the spot with these measures.

Emily O'Reilly

European Ombudsman

Strasbourg, 27/11/2019

[1] An 'e-tray' test is a computer-based simulation of a real work situation and replicates an email inbox which contains information relating to a particular issue. Candidates need to find solutions in the best way possible within a fixed amount of time (https://epso.europa.eu/help/faq/2744_en?category=421 [Link]).

[2] According to the notice of competition, which set out the rules applying to the selection procedure, complaints about technical issues had to be submitted to EPSO within three calendar days from the date of the exam (see Annex II, point 4.1.), whereas the complainant submitted her complaint only after eight days.

[3] https://epso.europa.eu/how-to-apply/equal-opportunities_en [Link]

[4] See paragraph 30 of the Ombudsman's recommendation in her joint inquiry into complaints 1337/2017/EA and 1338/2017/EA, available at:



<https://www.ombudsman.europa.eu/en/recommendation/en/107637> [Link]