

Decision in case 172/2019/KT on how the Publications Office of the European Union filled a post for a proof-reader

Decision

Case 172/2019/KT - Opened on 22/02/2019 - Decision on 15/04/2020 - Institution concerned Publications Office of the European Union (No maladministration found) |

The complainant is included on a shortlist of candidates from which the Publications Office of the European Union (‘Publications Office’) may recruit staff as proof-readers. He complained that the Publications Office did not consider him in the context of a vacancy and eventually recruited a candidate who was on a shortlist drawn up for the staff needs of another EU institution.

The Ombudsman found that, as the Publications Office had interviewed and rejected the complainant for a post with the same profile a few months earlier, it was justified in not inviting him to an interview for a similar post that became vacant shortly afterwards.

The Ombudsman closed the case finding no maladministration.

Background to the complaint

1. In 2003, the complainant participated successfully in a selection procedure for proof-readers, organised by the European Personnel Selection Office (EPSO). The procedure was organised primarily for the staff needs of the Publications Office of the European Union (‘Publications Office’) [1] . Since then, he has been included on a shortlist from which staff may be recruited (‘reserve list’).

2. In February 2018, the Publications Office published a vacant proof-reader post. EU civil servants and candidates on EPSO reserve lists could apply to this post. The post was published internally, that is, in the European Commission’s Human Resource Management information system (‘Sysper’). The Publications Office informed the complainant of the vacancy and invited him to an interview. The complainant attended the interview in March 2018 but, as he obtained a very low score, he was not selected for the post.

3. In November 2018, the complainant learnt that there was an ongoing procedure to recruit



another proof-reader in the Publications Office. The complainant asked the Publications Office whether he would be invited to an interview. The Publications Office replied that there was indeed an ongoing recruitment procedure. The complainant then asked why the Publications Office had not advertised the vacant post and invited interested candidates to interviews, including those on the EPSO reserve list.

4. The Publications Office replied that it had published a vacancy open to EU civil servants and to candidates on EPSO reserve lists at the end of May 2018. Two persons on EPSO reserve lists had applied. The selected candidate had succeeded in a selection procedure organised by EPSO for the staff needs of the Court of Justice of the European Union. However, the Publications Office was allowed to recruit also from that list.

5. The complainant then asked the Publications Office why, this time, it had not invited him to an interview, as it had done a few months earlier (March 2018). He also wanted to know why the Publications Office had not recruited a candidate from its own reserve list.

6. The Publications Office replied that, during the interview held in March 2018, the selection panel had examined the complainant's overall suitability for the post and had decided not to propose him for recruitment. The Publications Office may recruit candidates from any EPSO reserve list and it is not obliged to invite all candidates on a reserve list for an interview. Regarding the post in question, the Publications Office had not interviewed any candidate who had not applied for the post.

7. The complainant then complained to the Publications Office that, by turning to the reserve list of another EU institution, it had disregarded its own reserve list, leaving him with no recruitment chances.

8. The Publications Office replied that all candidates on EPSO reserve lists are considered on an equal footing for vacant posts of the same profile. Other EU institutions have recruited candidates from the Publications Office's reserve lists.

9. Dissatisfied with this response, the complainant turned to the Ombudsman in January 2019.

The inquiry

10. The Ombudsman opened an inquiry into how the Publications Office had filled the post of a proof-reader, based on the complainant's concerns about how the vacancy had been published and why the Publications Office had not considered him for the post.

11. In the course of the inquiry, the Ombudsman received the reply of the Publications Office to the complaint and, subsequently, the comments of the complainant in response to the Publications Office's reply.



Arguments presented to the Ombudsman

12. The complainant argued that, since the Publications Office has its own reserve list of proof-readers, on which he is included, it should have informed him of the new vacancy and considered him for the post. Instead, the Publications Office published the vacancy in such a way that only candidates who had access to the Commission's intranet could have known of it.

13. The complainant contended that the Publications Office had previously told him that he did not need to apply to any vacancies, as it was aware of the candidates on its reserve list. The complainant further said that, as he is one of the few candidates still on the Publications Office's reserve list, he had reasons to believe that it would soon be his turn to be recruited. However, the Publications Office unjustifiably opted for a candidate from a reserve list of another EU institution.

14. The Publications Office stated that the vacancy in question had been published in Sysper and that it was accessible both to EU civil servants and to candidates on EPSO reserve lists "under certain circumstances". Whenever it has a vacancy, it follows the procedure set out in the Staff Regulations [\[2\]](#) [\[Link\]](#). First, it decides which of the candidates on the reserve list shall be considered for the post, then it informs these candidates of the vacancy and, finally, it invites them to interviews. Thus, unlike candidates on reserve lists managed by EPSO, who may have access to certain vacancy notices through their EPSO accounts, candidates on the reserve list in question will be informed of a vacancy only if directly contacted by the Publications Office, which manages the list.

15. The Publications Office further said that the complainant had obtained a very low score in the interview held in March 2018. It had therefore decided not to consider him for the post with the same profile that became vacant within a "very short period of time" (end-May 2018). It thus did not inform the complainant of the new vacancy.

16. In his comments on the Publications Office's reply, the complainant argued that the notion of "very short period of time" is subjective and does not allow him to know at what point in time the Publications Office would consider him again for a vacancy with his profile. Furthermore, by deciding beforehand not to consider him, the Publications Office took it for granted that his performance in the interview would be poorer than that of the other two candidates eventually considered. The complainant expressed the concern that the negative outcome of his first interview would mean that he is, in practice, excluded from all future vacancies in the Publications Office.

The Ombudsman's assessment

17. The EU Staff Regulations require EU institutions to recruit staff of the highest standard of ability, efficiency and integrity [\[3\]](#) [\[Link\]](#). In case of a vacancy, the EU institutions may consider candidates from reserve lists if there are no candidates from within the institution or from other institutions that are suitable for the post.



18. The EU institutions have a very wide margin of discretion when it comes to recruiting from reserve lists. They do not necessarily have to follow the order of merit of the candidates on a list or even to complete a recruitment procedure by necessarily filling a vacant post [\[4\] \[Link\]](#). Candidates included on a reserve list do not have a *right* to be appointed, but are merely *eligible* to be appointed [\[5\] \[Link\]](#). When filling a vacant post, the EU institutions may also consider possibilities that widen their choice, to obtain better candidates [\[6\] \[Link\]](#).

19. In this case, it fell within the Publications Office's margin of discretion to decide which of the candidates on reserve lists, if any, it would invite to an interview. The Publications Office had assessed the complainant's suitability for a post with the same profile only a few months earlier. It was thus reasonable for the Publications Office to rely on that assessment for the new vacant post with the same profile. It was also reasonable for the Publications Office to consider candidates on other reserve lists to increase its chances of finding a suitable candidate. As set out above, the Publications Office was not even obliged to fill the post unless it found a candidate that it considered sufficiently suitable.

20. While institutions also have a margin of discretion in terms of disseminating vacancy notices, the Ombudsman notes that the history and logic of the relevant provision of the Staff Regulations [\[7\]](#) suggests that it is there to ensure greater transparency regarding vacancies [\[8\] \[Link\]](#).

21. That said, the Ombudsman considers that the fact that the vacancy in this case was not widely disseminated did not affect the complainant, since the Publications Office had justifiably decided not to interview him again (see paragraph 19 above).

Conclusion

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

There was no maladministration by the Publications Office of the European Union.

The complainant and the Publications Office will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 15/04/2020



[1] [Link] The Publications Office, based in Luxembourg, is an interinstitutional office responsible for the publications of the EU institutions, among which the EU Official Journal. While generally governed by rules specific to its interinstitutional role, the Publications Office acts under the authority of the European Commission as regards the application of administrative and financial procedures. See <https://op.europa.eu/en/web/about-us/who-we-are> [Link].

[2] [Link] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:01962R0031-20140501> [Link]).

[3] [Link] Article 27 of the Staff Regulations.

[4] [Link] Judgment of the General Court of 31 January 2018, *Gyarmathy v FRA*, T-196/15 P, paragraph 41 (<http://curia.europa.eu/juris/document/document.jsf?text=%2B%2522respecter%2BI%2527ordre%2Bpr%25C3%25A> [Link]).

[5] [Link] Judgment of the Court of First Instance of 15 September 2005, *Luxem v Commission*, T-306/04, paragraph 22 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1582716850148&uri=CELEX:62004TJ0306> [Link]).

[6] [Link] See, by analogy, judgment of the Court of 13 July 2000, *Parliament v Richard*, C-174/99 P, paragraphs 37-43 (<http://curia.europa.eu/juris/document/document.jsf?text=&docid=45094&pageIndex=0&doclang=EN&mode=lst&dir=> [Link]).

[7] [Link] Article 30 of the Staff Regulations reads as follows: “ *For each competition, a selection board shall be appointed by the appointing authority. This board shall draw up a list of suitable candidates. The appointing authority shall decide which of these candidates to appoint to the vacant posts. **These candidates shall have access to adequate information on appropriate vacancies published by the institutions and agencies*** ” (emphasis added).

[8] [Link] See, for instance, Valérie Giacobbo Peyronnel, Ezio Perillo, *Statut de la fonction publique de l'Union européenne, Commentaire article par article*, 1re édition 2017, Chapitre 1, Recrutement et Concours (Art. 27 à 31, page 87).