

Decision in case 2263/2019/VB on the European Personnel Selection Office's alleged failure to accommodate the special needs of a person in a selection procedure for EU civil servants in the field of audit

Decision

Case 2263/2019/VB - Opened on 14/01/2020 - Decision on 17/06/2020 - Institution concerned European Personnel Selection Office (No further inquiries justified) |

The case concerned the European Personnel Selection Office's (EPSO) alleged failure to provide the complainant with appropriate measures to accommodate his learning difficulties in the context of a selection procedure for EU civil servants in the field of audit - EPSO/AD/357/18.

The complainant had raised the same issue with EPSO in a different selection procedure (EPSO/AD/338/17) and brought a discrimination case to the General Court of the European Union. He asked the Ombudsman to ask EPSO to apply the remedies that the Court might award to him also in the other selection procedure (EPSO/AD/357/18).

The Ombudsman proposed such a solution to EPSO. EPSO said that while it could not accept the Ombudsman's proposal while the case was still pending before the Court, it would seek to apply a fair solution once there is a judgement.

The Ombudsman considers that EPSO's position is reasonable. She closes the inquiry, maintaining that - when the time comes - EPSO should apply any outcome of the Court case in favour of the complainant also in the context of selection procedure EPSO/AD/357/18. She will ask EPSO to keep her informed of relevant developments.

Background to the complaint

1. The complainant took part in two selection procedures for the selection of EU civil servants, organised by the European Personnel Selection Office (EPSO). In both procedures, he asked EPSO to take measures to accommodate his learning difficulties (reasonable accommodation [\[1\] \[Link\]](#)) in the computer based test. In particular, he requested 75% extra time, rest breaks, an individual room, and the possibility to type his answers. He sent EPSO medical certificates in support of his request.



2. In both selection procedure, EPSO granted the complainant 25% extra time for each of the test sections and four additional flexible breaks of 5 minutes each. EPSO also gave him a work station away from other candidates.

3. The complainant filed two administrative complaints challenging EPSO's decision. He argued that EPSO discriminated against him because of his disability when it did not grant him the requested accommodation measures. He asked to be allowed to re-sit the tests with the accommodation that he had requested.

4. EPSO rejected both administrative complaints. It argued that it had taken appropriate measures to respond to the complainant's request. According to EPSO, the granting of extra time is a considerable variation from the standard test conditions. Granting 75% extra time to the complainant would constitute a significant comparative advantage and compromise the equal treatment of candidates.

5. Regarding one of the selection procedures (EPSO/AD/338/17) [\[2\] \[Link\]](#), the complainant brought an action for annulment to the General Court of the European Union against EPSO's decision. Regarding the other procedure (EPSO/AD/357/18) [\[3\] \[Link\]](#), he made a complaint to the Ombudsman, asking her to request EPSO to replicate the remedies that the Court might award him in the other case.

The alleged discrimination suffered by the complainant

The Ombudsman's proposal for a solution

6. The complainant has brought a case to the General Court of the European Union concerning the very same issue as covered by this complaint, that is, what would be a reasonable accommodation for his learning difficulties. The Ombudsman considered the complainant's request to be reasonable and made the following solution proposal to EPSO:

EPSO could agree to apply any outcome in the complainant's court case that is in his favour also in the context of selection procedure EPSO/AD/357/18.

7. EPSO replied to the Ombudsman that it cannot accept the solution proposal at the present stage, as the case is still pending before the Court. However, it said that it will carefully assess the outcome of the court case and seek to apply a fair solution in the other selection procedure.

8. The Ombudsman received the complainant's comments on EPSO's reply. The complainant considers that it is reasonable for EPSO to wait for the Court's ruling before applying a solution to the present case.



The Ombudsman's assessment after the proposal for a solution

9. The Ombudsman accepts that EPSO is not ready to commit to a solution while the case is pending before the Court. However, she welcomes EPSO's statement that it will seek to find a fair solution to the present complaint after the Court's ruling.

10. On the basis of the above, the Ombudsman considers that no further inquiries into this complaint are justified at this stage. However, she maintains her view that it would be reasonable for EPSO to apply any outcome in the Court case that is in favour of the complainant also in the selection procedure concerned by this complaint. She will ask EPSO to keep her informed of relevant developments.

Conclusion

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

No further inquiries into this complaint are justified at this stage.

The complainant and EPSO will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 17/06/2020

[1] [\[Link\]](#) According to the definition contained in the UN Convention on the Rights of Persons with

Disabilities, 'reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The Convention is available at the following link:



https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf [Link].

[2] [Link] Open competition EPSO/AD/338/17,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CA.2017.099.01.0001.01.ENG&toc=OJ:C:2017:099>
[Link].

[3] [Link] Open competition EPSO/AD/357/18,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CA.2018.107.01.0001.01.ENG&toc=OJ:C:2018:107>
[Link].