

## **Decision of the European Ombudsman on complaint 774/2003/ELB against the European Personnel Selection Office**

Decision

**Case 774/2003/ELB - Opened on 22/05/2003 - Decision on 06/04/2004**

Strasbourg, 6 April 2004

Dear Mr X.,

On 14 April 2003, you made a complaint to the European Ombudsman against the European Personnel Selection Office (EPSO) concerning your exclusion from competition COM/C/1/02 (French-speaking typists) because of your insufficient results in test e).

On 22 May 2003, I forwarded the complaint to the Director of EPSO. EPSO transferred your complaint to the Commission, as formally this competition was organised by the Commission. On 1 July 2003, the Commission sent its opinion, which EPSO adopted on 29 July 2003. I forwarded the opinion to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

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

### **THE COMPLAINT**

According to the complainant, the facts are, in summary, as follows:

The complainant took part in competition COM/C/1/02 (French-speaking typists). He was informed that he had failed at selection test e) in which he only obtained 9.75 points out of 20 and that he was therefore excluded from the competition. He indicates that in a similar previous competition he had obtained 15 points out of 20.

He asked the President of the Selection Board to re-examine his test e). By letter of 7 April 2003, his results were confirmed to him and he was sent a copy of his test, as well as an evaluation sheet containing the comments of the examiners. Test e) consisted of a case study containing instructions and aiming at evaluating drafting abilities in French, as well as organisational and administrative follow-up capabilities.



The complainant is not satisfied by the reply that he received. He alleges that his test e) was not re-examined, despite his request, and that the copy of his test which he received had not been annotated. He claims that he should be informed of the criteria used by the examiners.

The complainant supplied to the Ombudsman copies of his written test e) and of the evaluation sheet, which had been sent to him by the Selection Board.

## **THE INQUIRY**

### **EPSO's opinion**

The opinion adopted by EPSO can be summarised as follows:

Competition COM/C/1/02 was organised with a view to drawing up a reserve list of French-speaking typists. The complainant applied for this competition. As he was among the 1,000 best candidates after the preselection tests, he was invited to fill in an application form and then to take part in the written tests, which took place on 29 November 2002 in Brussels.

Selection test e) aimed at assessing ability to write in French, as well as organisation and administrative follow-up capabilities. All papers were corrected anonymously by at least two examiners on the basis of the criteria established by the Selection Board. The Selection Board checked the correct application of these criteria and examined the comments made by the examiners. The Selection Board determined the results, which were communicated to the candidates.

On 7 March 2003, the complainant was informed that his results in test e) were insufficient and that he was excluded from the competition.

On 14 March 2003, the complainant requested a copy of his test, as well as the re-examination of this test.

On 3 April 2003, the complainant received the copies requested as well as the evaluation sheet containing the comments from the examiners and his mark. The Selection Board also informed him that the correction of his test had been checked and that his results were confirmed. He was also informed that all papers had been corrected anonymously by at least two examiners and that as the examiners' assessments are part of the Selection Board deliberations, they are covered by secrecy.

It is pointed out that the candidates' tests themselves are not annotated. Instead, the examiners make comments on separate evaluation sheets (1) . The Selection Board takes into account these sheets as preparatory documents to proceed with the marking of the papers. Consequently and because they do not express the Selection Board's judgement as a whole, but are part of the deliberations, they are not communicated. The assessment of the Selection Board as a whole only appears on the final evaluation sheet (2) , which was sent to the complainant.



In accordance with established case law, the correction criteria adopted before the test are part of the assessments of a comparative nature of the Selection Board. These criteria are covered by the secrecy of the deliberations of the Selection Board. According to this same case law, the Selection Board is not obliged, when justifying the failure of a candidate in one test, to specify which replies were considered insufficient or to explain why they were judged insufficient. Because of the secrecy of the work of the Selection Board, the communication of the marks obtained in the different tests is a sufficient reasoning of the Selection Board's decisions.

EPSO assures the Ombudsman that the Selection Board took into account the comments of the complainant and that his test was conscientiously re-examined. However, this did not lead to a modification of his results.

EPSO draws attention to the fact that the selection of the tests in a competition is within the competence of the Selection Board and that it enjoys wide powers of appraisal regarding the content of tests in a competition. The tests of one competition cannot be compared with those of another competition. Similarly, the fact that the complainant obtained a particular mark in a previous competition does not imply that he should obtain an equivalent mark in another competition.

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

No observations were received from the complainant.

## **THE DECISION**

### **1 Alleged failure to re-examine test e)**

1.1 The complainant took part in competition COM/C/1/02 (French-speaking typists). He was informed that he had failed at selection test e) in which he only obtained 9.75 points out of 20 and that he was therefore excluded from the competition. He alleges that his test e) was not re-examined despite his request that it should be.

1.2 EPSO assures the Ombudsman that the Selection Board took into account the comments of the complainant and that his test was conscientiously re-examined. However, this did not lead to a modification of his results.

1.3 The Ombudsman notes that EPSO's opinion is consistent with the letter sent to the complainant on 3 April 2003, in which the Selection Board explained that the complainant's written test had been re-examined and confirmed the results obtained by the complainant. The Selection Board also provided the complainant with some explanations as to how the tests had been corrected.

1.4 The Ombudsman considers that the complainant has not succeeded in raising any real doubt as to the reality of the re-examination of his test and that it is unnecessary to exercise the power to inspect EPSO's file on the case. The Ombudsman therefore finds no instance of maladministration as regards this aspect of the complaint.

### **2 Alleged failure to annotate test e)**

2.1 The complainant alleges that the copy of his test which he received had not been annotated.



He claims that he should be informed of the criteria used by the examiners.

2.2 According to EPSO, the candidates' tests themselves are not annotated. Instead, the examiners make comments on separate evaluation sheets. The Selection Board takes these sheets into account as preparatory documents. Consequently and because they do not express the Selection Board's judgement as a whole but are part of the deliberations, they are not communicated. The assessment of the Selection Board as a whole only appears on the final evaluation sheet, which was sent to the complainant.

EPSO argues that, in accordance with established case law, the correction criteria adopted before the test are part of the assessments of a comparative nature of the Selection Board and that these criteria are covered by the secrecy of the deliberations of the Selection Board.

2.3 The Ombudsman notes that, following the complainant's request, he received a copy of his answers to written test e), as well as a copy of the final evaluation sheet, which contains the Selection Board's comments relating to its assessment of his answers. As already stated in a previous decision (3) , the European Ombudsman is not aware of any rule that would oblige the Selection Board to write its comments relating to the assessment of a candidate on the candidate's examination paper itself. In principle, giving access to an evaluation sheet can be an adequate indication of the reasons for the mark of a candidate.

2.4 In the present case, after having examined all relevant documents included in the file, the Ombudsman does not consider that it was unreasonable for EPSO to regard the comments made on the final evaluation sheet as an adequate indication of the reasons for the complainant's mark for test e).

2.5 As regards the complainant's claim, the Ombudsman points out that, according to the case law of the Court of Justice, the secrecy inherent in the proceedings of Selection Boards precludes the communication of the criteria for marking the competition tests, which form an integral part of the comparative assessments made by the jury of the candidates' respective merits (4) .

2.6 The Ombudsman therefore considers that the position adopted by EPSO appears reasonable and that there is no maladministration as regards this aspect of the complaint.

### **3 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by EPSO. The Ombudsman therefore closes the case.

The Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS



(1) In French: "fiches d'évaluation".

(2) In French: "fiche de notation".

(3) See Decision on complaint 324/2003/MF.

(4) See case C-254/95 *European Parliament v. Angelo Innamorati* [1996] ECR I - 3423 para. 29.