

Decision of the European Ombudsman on complaint 1196/2003/ELB against the European Personnel Selection Office

Decision

Case 1196/2003/ELB - Opened on 28/07/2003 - Decision on 19/05/2004

Summary of the decision on complaint 1196/2003/ELB against the European Personnel Selection Office

The complainant applied for competition COM/C/1/02, which aimed at constituting a reserve list of French-speaking typists (C4/C5). Her application was rejected because her professional experience was insufficient. She sent a first request for clarification. The Selection Board confirmed its decision to exclude her from the competition. She sent a second request for clarification and was invited to the tests which were taking place the following day. The complainant took the tests but obtained insufficient results and was excluded from the competition. She therefore made a complaint based on Article 90 (2) of the Staff Regulations.

In her complaint to the Ombudsman, the complainant alleged that the Appointing Authority did not answer some of the questions mentioned in her complaint based on Article 90 (2) of the Staff Regulations.

The Commission sent an opinion on the complaint which the Ombudsman understood to represent the joint views of EPSO and the Commission. In their opinion, the Commission and EPSO explain that they replied to all the complainant's requests for clarification/reconsideration. The complainant also received a reply to her complaint under Article 90 (2) of the Staff Regulations.

The Ombudsman noted that the reply to the complainant's complaint under Article 90 (2) was very detailed. The Ombudsman also noted that, in the framework of his own enquiry, the Commission and EPSO provided additional explanations to the complainant about the documents to be attached to the application form, her late invitation to the tests, the content of the test, the appeals and the Selection Board's proceedings. As regards the fact that the complainant's initial application and first request for clarification were rejected, whereas her second request was accepted, the Ombudsman pointed out that the explanation given to the complainant by the Commission and EPSO in their opinion on the complaint appeared to differ from that given by the Appointing Authority in its reply to the complaint under Article 90 (2) of the Staff Regulations. In particular, the Ombudsman considered that it could be inferred from



the explanation given by the Commission and EPSO in their opinion that the Selection Board finally allowed the complainant to take part in the written tests on the basis of the documentary evidence attached to her original application to the competition.

The Ombudsman recalled that the complainant wished to have clarifications and indicated that, on the basis of these clarifications, she would consider whether to take the matter to court or to lodge a new complaint with the Ombudsman. The Ombudsman considered that the issues raised by the complainant in her original complaint had been sufficiently clarified and that no further inquiries were therefore necessary.

Strasbourg, 19 May 2004

Dear Mrs G.,

On 24 June 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.

On 28 July 2003, I forwarded the complaint to the Director of EPSO. As this competition was formally organised by the Commission, EPSO transmitted your complaint to the Commission. On 17 October 2003, the Commission sent an opinion, in which EPSO's comments were included. I forwarded the opinion to you with an invitation to make observations, which you sent on 27 December 2003.

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 as follows:

The complainant applied for competition COM/C/1/02, which aimed at constituting a reserve list of French-speaking typists (C4/C5). Her application was rejected on 17 October 2002 because her professional experience was insufficient.

On 25 October 2002, she sent a request for clarification. She stated that she had more than 11 years of professional experience and drew attention to Annex 8 of her application, which is a professional training certificate (1). The last page of this document describes the skills she had to acquire to work for an Institute called "Institut économique et social des classes moyennes". These skills are similar to those described in Title II of the competition notice. On 17 April 1989, she started working for the "Institut économique et social des classes moyennes" for an indefinite period. In 1991, the Institute was disbanded and its staff was transferred to the Walloon region, where the complainant is carrying out the same duties. She also attached to her request her current contract of employment.

On 6 November 2002, the Selection Board confirmed its decision to exclude her from the competition, because the certificate from the Ministry of the Walloon region (2), certifying the



complainant's employment from 17 April 1989 to 30 April 2001, did not allow the Selection Board to identify the nature of her duties and it could not take into consideration documents supplied after the deadline for applications.

On 21 November 2002, she sent a second request for clarification explaining that the nature of her duties was explained in Annex 8 to her application. On 28 November 2002, she was invited to the tests which were taking place the following day.

On 7 February 2003, she was informed that her results in test (d) were insufficient (8.6 out of 20 points) and that she was excluded from the competition.

On 13 February 2003, she requested a corrected version of her tests.

On 24 February 2003, she sent a new request for clarification to the President of the Selection Board. According to her, the fact that she had been invited to the tests implied that her initial exclusion had been the result of an error. She wished to know what was this error and how many candidates were invited at a later stage. She also emphasised the lack of time to study for the tests and the stress caused by this late invitation. She considered that the Code of Good Administrative Behaviour had not been complied with.

On the same date, she also lodged a complaint in accordance with Article 90 (2) of the Staff Regulations against the Selection Board's decision of 7 February 2003.

On 24 February 2003, she received a copy of her test, as well as a corrected version of the test.

On 17 March 2003, EPSO, on behalf of the Selection Board, replied to her new request for clarification. It informed her that she had always received a reply within the deadlines prescribed by the Code of Good Administrative Behaviour, that all steps had been taken not to harm her interests and that she had never previously raised the lateness of the invitation to take part in the competition.

On 28 March 2003, the complainant modified and added new requests to her complaint under Article 90 (2) of the Staff Regulations.

The following questions, among others, were put forward by the complainant to the Appointing Authority:

(1) The application form :

Which documents should be attached to the application form as evidence of candidates' professional experience ?

(2) The late invitation to the tests :

Does sending an invitation one day before the tests constitute unfair treatment ?



Was the complainant the only candidate to be invited one day before the tests ?

What were the new elements concerning the length and the nature of her professional experience and included in her letter dated 25 October 2002, which led the Selection Board to invite her to the tests ?

The late invitation to the tests was a cause of stress for the complainant and led to her failure. This stress was increased by the need to find someone to take care of her children during the tests. This might be considered, according to the complainant, as sex discrimination.

Are the arguments put forward by the complainant to explain why she did not complain earlier about the lateness of the invitation unfounded ?

3) The content of the test :

Was the supplementary correction made by the complainant in the text of test (d) wrong ?

(4) The appeals :

Why are the answers to the complainant's requests for clarification and her complaint under Article 90 (2) of the Staff Regulations signed by the same person ?

(5) The Selection Board's proceedings :

She states that the selection procedures at the European institutions seem mysterious and secret. What are the correction criteria used by the Selection Board ?

On 10 June 2003, she was informed that the Appointing Authority had rejected her complaint.

In her complaint to the Ombudsman, the complainant alleges that the Appointing Authority did not answer some of the questions mentioned in her complaint based on Article 90 (2) of the Staff Regulations. She would like to have clarification for her future applications and for considering, on the basis of these clarifications, whether to take the matter to court or to lodge a new complaint with the Ombudsman.

THE INQUIRY

The opinion

The Ombudsman forwarded the complaint to the Director of the European Personnel Selection Office (EPSO). The Ombudsman received an opinion from the Commission, which was presented as containing the joint views of EPSO and the Commission. The Ombudsman understands from another inquiry involving the same competition that EPSO had transmitted the complaint to the Commission because the latter had organised the competition in question. The opinion can be summarised as follows:



The complainant applied for competition COM/C/1/02 for French-speaking typists. On 7 February 2003, she was informed that her results in test (d) were insufficient and that she was excluded from the competition. Test (d) aimed at assessing the candidates' command of the French language. Candidates were asked to correct approximately 50 lines containing spelling mistakes, grammatical and syntactical errors. This test was marked on a scale of 0 to 20 points and the minimum mark was 10. The complainant obtained 8.6 points.

At her request, the complainant received a copy of her test (d), as well as the original text with the corrections.

On 24 February 2003, the complainant submitted a complaint in accordance with Article 90 (2) of the Staff Regulations against the decision of the Selection Board of 7 February 2003 informing her of her exclusion from the competition.

On 10 June 2003, the Appointing Authority decided to reject her complaint.

As regards the complainant's requests, the Commission and EPSO wish to make the following comments:

(a) The application form

Paragraph 4 of the sworn statement, which refers to the obligation to attach supporting documents for the admissibility of the application, states that candidates shall attach the following documents as proofs of their professional experience: "statements of employment or contracts and the latest payslip." (3)

The Commission and EPSO note that it is up to the candidate to attach to his/her application form the documents that the candidate considers relevant according to his/her personal situation. The Selection Board examines whether the candidate meets the specific conditions of a competition on the basis of the documents sent by the candidate. It is thus obvious that the quality of these documents is very important. The expressions "statements of employment or contracts and the latest payslip" are used in the application form to best explain to candidates what types of documents need to be enclosed. Explanations are also given in the notice of competition and in the guide for the attention of candidates.

The Commission and EPSO also point out that the comments of the candidate on this matter are irrelevant as she was admitted to the written tests.

(b) The late invitation to the written test and the nature of this test

The Selection Board examines carefully all requests for clarification/re-examination (4) . Following the first request from the complainant, the Selection Board could not accept her application in view of the documents attached. However, in her second request dated 21 November 2002, the complainant gave clarifications about her professional experience.



Consequently, the Selection Board decided to invite her to the test. As the Selection Board met two days before the tests, the invitation was sent to the complainant the day following the meeting and she was contacted by telephone.

As regards the consequences for candidates of late invitations, the Commission and EPSO explain that the behaviour of each candidate in similar situations can differ from one person to another.

All invitations to the written tests were sent at the same time. The sequence of events is the consequence of the correspondence between the candidate and the Selection Board. Her allegation about sex discrimination is unfounded.

(c) The appeals

As regards the signature of the letters addressed to the complainant, EPSO is in charge of the oral and written contacts with candidates in a competition and communicates the Selection Board's decisions to candidates. Moreover, in accordance with the Decision of 25 July 2002 on the organisation and the operation of EPSO, the Head of the Office shall exercise the powers conferred on the appointing authority under Article 90 of the Staff Regulations in respect of all requests or complaints relating to the tasks of the Office.

(d) The secrecy of the Selection Board's proceedings

Article 6 of Annex III to the Staff Regulations states that the proceedings of the Selection Board shall be secret. According to case-law of the European courts, the secrecy of the proceedings of Selection Boards is aimed at ensuring the independence of Selection Boards and the objectivity of their work, by protecting them from external interference and pressure.

A competition aims at comparing the abilities of candidates. The secrecy inherent in Selection Boards' proceedings precludes the communication of attitudes of members of Selection Boards and all elements which form part of personal or comparative assessments of candidates.

The communication of candidates' marks constitutes, according to case-law, an adequate statement of the reasons on which the Selection Board's decisions are based. The complainant was informed of the marks she obtained and received a copy of her written test as well as a copy of the original text with the corrections.

As regards correction criteria, they are part of the comparative assessments made by the Selection Board and are thus covered by the secrecy of the Selection Board's proceedings. For the sake of transparency, the Commission and EPSO would like to indicate that a distinction was made between simple mistakes (mainly spelling mistakes) and serious mistakes (for example, grammatical mistakes). The importance of each mistake varied according to this distinction. Different spellings were accepted for some words and consequently were not penalised. This was the case for the correction mentioned by the complainant.



The proceedings of Selection Boards are not full of "mysteries and secrets", as stated by the complainant, but are subject to judicial review by the Community courts. Secrecy of the proceedings of the Selection Board enables the Selection Board to work with equanimity. Furthermore, the following measures have been taken in the recent years to increase transparency:

- candidates are, for example, allowed to keep the multiple-choice questions of the preselection tests and the examination questions for the written tests when they leave the competition room;
- they may request a copy of their tests as well as a copy of the correct replies for the multiple-choice questions and a copy of the evaluation sheet for the written tests for all competitions published since 1 July 2000;
- the names of the members of the Selection Board as well as the names of the successful candidates are published since 1999;
- examples of tests of previous competitions are available on EPSO's website. This enables candidates to know the type and the nature of the tests and helps them to study for the competition.

These various elements show improved openness and transparency in the selection procedures. The Commission and EPSO underline that this cannot go against statutory rules or the independence of Selection Boards.

The complainant's observations

In her observations, the complainant maintains her complaint and makes, in summary, the following points:

First, the complainant notes that the opinion is not signed and wishes to know which institution is the author.

The complainant asserts that her application should have been accepted either following her application or her request for re-examination of 25 October 2002, because there was no new element in the letter that she sent on 21 November 2002. She considers that she was treated unfairly compared with other candidates.

The complainant was not informed of the implications of the Decision of 25 July 2002 establishing EPSO for ongoing competitions.

She wishes to be informed of the number of appeals lodged with the Court of First Instance (5) regarding this competition and previous competitions similar to the present one, as well as the number of appeals from people not working for the European Union institutions. If this number is small, this could explain the way her application was handled.

As regards the nature and content of written test (d), the complainant considers that it would be more useful for candidates to obtain the original tests with all the possible corrections and not



only with one possibility. According to her, it is incorrect not to penalise candidates who did not make the supplementary correction that she did.

As regards correction criteria, the complainant refers to Case T-72/01 of the Court of First Instance *Pyres v. Commission* mentioned in the Ombudsman's Decision on complaint 2059/2002/IP and requests that the correction criteria for test (d) be given to her.

In conclusion, the complainant requests the following:

- as regards inequality of treatment :

- if an error was made when her application was examined, the Commission should re-examine her request of 24 February 2003 and give a positive answer;
- if the instruction given to candidates is unclear and led other candidates to be invited the day before the test, she wishes to be informed of the rate of success of these candidates compared with the others. If this rate is lower, she requests the Ombudsman to take position on the validity of the competition and of the decisions of the Selection Board;
- if, despite an unclear instruction, she was the only candidate invited the day before the examination, the Commission should re-examine the complainant's request of 24 February 2003 and give a positive answer. She also requests the Ombudsman to check whether other candidates whose application was rejected because of lack of statement of employment or contract of employment had the possibility to request the re-examination of their application. If they were not informed of this possibility, she requests the Ombudsman to inform them and to take position on the validity of the competition and of the decisions of the Selection Board.

- as regards lack of transparency :

The complainant states that she does not know why her application was first rejected, if she was the only candidate invited late and which details led to her admission to tests (d) and (e). She does not know which documents should be attached to her future applications to competitions.

She asks the Ombudsman to request from the Commission an answer to her questions.

THE DECISION

1 Preliminary remarks concerning the complainant's observations

1.1 In her observations on the opinion sent by the Commission on her complaint, the complainant points out that the opinion is not signed and wishes to know which institution is the author. The Ombudsman recalls that the complaint was made against EPSO and that he therefore forwarded the complaint to the Director a.i. of EPSO, with a request for an opinion. The Ombudsman received an opinion from the Commission, which was presented as containing the joint views of EPSO and the Commission. The Ombudsman understands from another inquiry involving the same competition that EPSO had transmitted the complaint to the



Commission because the latter had organised the competition in question. As regards the question of signature, the Ombudsman informs the complainant that the Commission's opinions on complaints are sent to the Ombudsman accompanied by a formal letter of transmission signed by the Secretary-General of the Commission.

1.2 In her original complaint to the Ombudsman, the complainant alleged that the Appointing Authority did not answer some of the questions mentioned in her complaint based on Article 90 (2) of the Staff Regulations. In her observations, the complainant makes a new allegation and new requests. She alleges that she was treated unfairly because she was not invited to participate in the tests for the competition until the day before they took place. In this context, she also wishes to know how many appeals concerning this competition or similar ones were lodged before the Court of First Instance and what was the rate of success in this competition of those candidates who were invited late compared to other candidates. She asks the Ombudsman to request from the Commission an answer to her questions.

1.3 As regards the complainant's new allegation and new requests, the Ombudsman first points out that he considers that he is already in possession of all the information needed to deal with the original complaint. The Ombudsman also points out that the complainant does not appear to have made any administrative approaches to the Commission or to EPSO concerning the new requests. In these circumstances, the Ombudsman considers that it would not be appropriate to extend the scope of the present inquiry to include these matters. The complainant is of course free to submit a new complaint to the Ombudsman if she so wishes, after first making appropriate administrative approaches concerning her new requests.

1.4 Finally, the Ombudsman notes that the complainant makes reference, in her observations, to the Ombudsman's decision on complaint 2059/2002/IP. The Ombudsman takes the view, however, that the decision on complaint 2059/2002/IP does not assist the complainant in the present case (6) .

2 Alleged lack of adequate reply from the Appointing Authority

2.1 The complainant applied for competition COM/C/1/02, which aimed at constituting a reserve list of French-speaking typists (C4/C5). She obtained insufficient results in test (d) and was excluded from the competition. On 24 February 2003, she therefore made a complaint based on Article 90 (2) of the Staff Regulations. In her complaint to the Ombudsman, the complainant alleges that the Appointing Authority did not answer some of the questions mentioned in her complaint based on Article 90 (2) of the Staff Regulations.

2.2 The Commission sent an opinion on the complaint which the Ombudsman understands to represent the joint views of EPSO and the Commission. According to the opinion, the Commission and EPSO replied to the complainant's requests for clarification/reconsideration of 25 October 2002, 21 November 2002, and 24 February 2003 respectively on 6 November 2002, 28 November 2002, and 17 March 2003. On 10 June 2003, the complainant also received a reply to her complaint under Article 90 (2) of the Staff Regulations.

2.3 The Ombudsman has carefully examined the documentary evidence available in the file. The Ombudsman notes that the reply to the complainant's complaint under Article 90 (2) was



very detailed. The Ombudsman also notes that, in the framework of his own enquiry, the Commission and EPSO provided additional explanations to the complainant about the documents to be attached to the application form, her late invitation to the tests, the content of the test, the appeals and the Selection Board's proceedings.

2.4 As regards the fact that the complainant's initial application and first request for clarification were rejected, whereas her second request was accepted, the Ombudsman points out that the explanation given to the complainant by the Commission and EPSO (7) in their opinion on the complaint appears to differ from that given by the Appointing Authority in its reply to the complaint under Article 90 (2) of the Staff Regulations (8) . In particular, the Ombudsman considers that it can be inferred from the explanation given by the Commission and EPSO in their opinion that the Selection Board finally allowed the complainant to take part in the written tests on the basis of the documentary evidence attached to her original application to the competition.

2.5 The Ombudsman recalls that the complainant wished to have clarifications and indicated that, on the basis of these clarifications, she will consider whether to take the matter to court or to lodge a new complaint with the Ombudsman. In the light of paragraphs 2.3 and 2.4 above, the Ombudsman considers that the issues raised by the complainant in her original complaint have been sufficiently clarified and that no further inquiries are therefore necessary.

3 Conclusion

For the reasons stated above, the Ombudsman concludes that no further inquiries into the present complaint are necessary. 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: "contrat de formation professionnelle".

(2) In French: "attestation du Ministère de la Région wallonne".

(3) In French: "l'(les) attestation(s) de travail ou bien le(s) contrat(s) de travail et la (les) dernière(s) fiche(s) de paie".

(4) In French: "demandes de réexamen/de précisions".

(5) The complainant wrote the Court of First Instance in Strasbourg. She probably meant Luxembourg.

(6) In complaint 2059/2002/IP, following the Ombudsman's draft recommendation, the Council



informed the Ombudsman that a copy of the complainant's examination paper and of the notice of competition would be sent to the complainant the same day. The Council also explained that, since the evaluation criteria followed by the Selection Board had been set out in point VI.A.d) of the notice of competition, the Selection Board had not drawn up an evaluation sheet. The Ombudsman concluded that the Council had accepted the Ombudsman's draft recommendation and that the measures taken by the Council to implement it were satisfactory.

The full text of the decision is available online at the following address:

<http://www.ombudsman.europa.eu/decision/en/022059.htm> [Link]

(7) In the opinion, the Commission and EPSO state that the complainant gave clarifications about her professional experience in her second request for clarification.

(8) On 11 June 2003, in its reply to the complaint under Article 90 (2) of the Staff Regulations, the Appointing Authority states the following: "(...) les indications que la réclamante avait fournies dans son acte de candidature n'avaient pas permis au jury d'identifier initialement la nature des fonctions exercées puisque le certificat du Ministère de la région wallonne ne les spécifiait pas. Dès lors, le jury était fondé à refuser la candidature de la réclamante. Le fait que le jury ait quand même décidé d'admettre la réclamante aux épreuves écrites suite à ses deux courriers a donc été une mesure prise dans un souci de favoriser l'intéressée malgré le fait que son dossier n'était pas complet".