

Decision of the European Ombudsman on complaint 2216/2003/(BB)MHZ against the European Personnel Selection Office

Decision

Case 2216/2003/(BB)MHZ - Opened on 18/12/2003 - Decision on 10/12/2004

Strasbourg, 10 December 2004

Dear Mr G.,

On 18 November 2003, you made a complaint to the European Ombudsman against the European Personnel Selection Office (EPSO) concerning Open competition EPSO/A/11/03 for Assistant Administrators (A 8) in the field of Auditing, and specifically the decision of EPSO, announced in the notice of the competition, to draft the correspondence between EPSO and the candidates in English, German or French.

On 18 December 2003, I forwarded the complaint to the Director of EPSO. On 1 April 2004, EPSO sent an opinion, which I forwarded to you with an invitation to make observations.

On 18 May 2004, I received your observations.

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

THE COMPLAINT

On 31 July 2003, the notice of open competition EPSO/A/11/03 was published in the Official Journal of the European Union C 180 A in order to constitute a reserve list for recruitment of Assistant Administrators (A8) in the field of Auditing.

The complainant learnt that the second paragraph of title C of the notice of competition "How to apply", stated that communications from EPSO to candidates would be in English, French or German. He also noted that, according to point 3 of title A of the notice "Duties and eligibility (profile of candidates)", the candidates should have a thorough knowledge of one of the official languages of the European Union and a satisfactory knowledge of a second official language, so that knowledge of English, German or French was not a condition to apply.

On 21 October 2003, the complainant wrote to the Chairman of the Management Board of the



European Personnel Selection Office (EPSO). In his letter he pointed out that, by limiting the correspondence with candidates in the competition EPSO/A/11/03 to only three official languages of the European Union, EPSO violated European law rules on the use of languages within the European Community. In this context, he quoted Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community, which prescribes that "documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language." He also referred to Article 41.4 of the Charter of Fundamental Rights of the European Union: "Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language".

He also asked EPSO to provide him with the legal basis of EPSO's decision to use only three of the official languages to communicate with candidates in the competition.

On 12 November 2003, EPSO informed the complainant that the issue he had raised was currently under consideration and that the EPSO Management Board would examine it at its next meeting. EPSO also stated that it would inform the complainant about the evolution of the issue.

On 18 November 2003, the complainant submitted a complaint to the European Ombudsman against EPSO's decision to correspond with the candidates in the competition only in English, German or French.

He alleged violation of the principle of equality of official languages and working languages contained in Council Regulation No 1 of 15 April 1958, as well as of the principle that every person may write to the institutions of the Community in one of the Treaty languages and have an answer in the same language (Article 21 EC, Article 41 of the Charter of Fundamental Rights of the European Union).

In support of this allegation, the complainant pointed out that the candidates were not required to have knowledge of any of these three languages as a condition for participation in the competition.

THE INQUIRY

The opinion of EPSO

EPSO's comments on the complaint can be summarised as follows:

EPSO noted that the complainant was not a candidate himself in the competition and did not submit the complaint to the European Ombudsman as regards his personal situation.

The candidates in open competition EPSO/A/11/03 should be citizens of EU Member States. One of the conditions of admissibility concerned the knowledge of languages: i.e. a thorough knowledge of one of the official languages of the EU and a satisfactory knowledge of a second



of these languages.

The notice of competition included instructions for candidates. Among them, it was indicated that the communications from EPSO to candidates would be in English, French or German, at the choice of the applicant, and that EPSO would accept, if necessary, correspondence from candidates in any of the official languages of the European Union.

After the notice of competition was published in the Official Journal in all 11 official languages of the then European Union, the national press of different Member States advertised the competition in a language of the respective country. According to EPSO, all potential candidates were then informed about the conditions of the competition and were able to decide whether to apply.

EPSO also stated that no candidate in the competition had questioned the correspondence being limited to three languages. EPSO also observed that candidates did not make any submission concerning linguistic problems with filling in the electronic registration form in only these three languages, as required by the notice of competition. As regards this last aspect, EPSO explained that given that the candidates had to provide only a small amount of information at this stage of the competition, it proposed the use of these three languages also to complete the electronic registration forms, in order to optimise the efficiency of communication with candidates.

According to EPSO, such an approach reflected the interests of the institutions, which require from their officials the knowledge of certain languages, related for instance to their field of activity. The successful candidates are therefore called to exercise functions in a multicultural and multilingual environment, where the so called "lingua francas" are most commonly used.

Furthermore, EPSO recalled Article 6 (c) of the Decision of 25 July 2002 on the organisation and operation of EPSO (1) . In accordance with the decision, the Management Board (composed of one representative of every institution and three representatives of the Staff as observers) is empowered to decide on principles governing EPSO's selection policy. On this basis, the Chairman of the Management Board approved the measures proposed by the Director of EPSO concerning the use of languages in the organisation of competitions, particularly, on the occasion of the enlargement of the EU and as regards the registration of applications, preselection tests and communication of the administration with candidates.

In this context, EPSO pointed out that the multiplication of official languages resulting from the enlargement of the EU could affect the efficiency of proceedings and cause delays. For that reason, the adoption of "lingua francas" within the European institutions appeared to be essential to ensure effective communication and work within reasonable time limits. It was decided therefore that the principle of using the three languages most commonly used in the institutions' day-to-day work would be applied in the "enlargement competitions " and the competitions designed exclusively for citizens of the EU-15 as well, in order to treat both competitions with equity. This concerned only the communication of EPSO with candidates, while the candidates kept the possibility to write to EPSO in their own language.



EPSO also took the view that a European citizen who decides to participate in a European competition becomes, from that moment, a potential official of the European institutions. This quality of a potential official is recognised by the European courts, according to which all controversies, pre-contentious or contentious, come under the procedures of Article 90 and 91 of the Staff regulations. Contentious proceedings come under the exclusive jurisdiction of the European courts. According to the established case-law of the European courts (2) , the institution is not necessarily required to answer in the language of the person concerned or the language in which he or she chooses to submit the request or complaint. On the contrary, the institution can use another language to answer the citizen provided that it is able to demonstrate that in case of difficulties the person concerned can understand it. If the addressee of the decision considers that he cannot understand it, he can ask the institution for a translation. (These principles do not apply to the choice of the language of procedure before the European courts, this issue being governed by the Statute of the Court of Justice and its rules of procedure).

Finally, EPSO concluded that the language regime differs according to the nature of the relations between the person concerned and the institution. In this context, EPSO took the view that Article 6 of Regulation 1/58 and the case-law of the European courts (3) recognise the possibility of a different language regime, according to the internal needs of the institutions and that such an internal language regime also concerns candidates in competitions. Moreover, EPSO states that on the basis of Regulation 1/58 and the interests of the service, the case of the candidates (as being a limited category of citizens) constitutes an exception to the general principle that the communication with citizens of a Member State should be in the language (or one of the languages) of that State.

EPSO also recalled that the Court of Justice recognised that limiting the use of languages to those which are most widely known in the European Union, is appropriate and proportional.

The complainant's observations

The complainant's observations can be summarised as follows.

EPSO's remark concerning the fact that he is not a candidate in the competition in question is irrelevant as regards his right to complain to the European Ombudsman.

In providing information to potential candidates in a competition, EPSO must respect the law. Internal rules of procedure, as foreseen by Article 6 of Regulation 1/58 cannot derogate from general principles of primary law.

The complainant also referred to the fact that EPSO's answer to his request for information on the legal basis of EPSO's decision was that this question was currently under study. He inferred that there were no previously established grounds for the decision and that EPSO therefore acted contrary to Article 4 of the European Code of Good Administrative Behaviour.

He also argued that since a number of citizens received correspondence from EPSO in their own language (English, French or German) whilst others were deprived of such a possibility,



EPSO's decision was against the principle of equal treatment. In this context, he referred to EPSO's statement that the institution can use another language to answer the citizen provided that it is able to demonstrate in case of difficulties that the person concerned can understand it. He pointed out that EPSO failed to be precise about how such a condition could be fulfilled.

Finally, the complainant challenged EPSO's point of view that internal rules also bind candidates in competitions and that the court judgement cited by EPSO in Case T-118/99 is relevant to his complaint. The complainant argues that the concrete case did not concern a candidate in a competition and that his complaint to the European Ombudsman raised a more general issue.

THE DECISION

1 Preliminary remarks

1.1 The complaint is against EPSO's decision to draft its correspondence to the candidates in open competition EPSO/A/11/03 only in English, German or French. In its opinion, EPSO noted that the complainant was not himself a candidate in the competition and did not submit the complaint to the European Ombudsman as regards his personal situation.

1.2 The Ombudsman does not understand EPSO to have challenged the admissibility of the complaint. However, the Ombudsman considers it useful to recall that neither Article 195 of the EC Treaty nor the Statute of the Ombudsman requires a complainant to be personally affected by the alleged maladministration.

2 Alleged unlawfulness of EPSO's decision to correspond with candidates in only three languages

2.1 The complainant alleges that EPSO's decision to draft its correspondence to the candidates in open competition EPSO/A/11/03 only in English, German or French (hereafter "the contested decision") violates the principle of equality of official languages and working languages contained in Council Regulation No 1 of 15 April 1958 (4), as well as the principle that every person may write to the institutions of the Community in one of the Treaty languages and have an answer in the same language (Article 21 EC, Article 41 of the Charter of Fundamental Rights of the European Union).

In support of this allegation, the complainant also points out that candidates were not required to have knowledge of any of the three languages of correspondence as a condition for participation in the competition.

2.2. According to EPSO, its approach reflects the interests of the institutions in recruiting officials to exercise functions in a multicultural and multilingual environment. The multiplication of official languages could affect the efficiency of proceedings and cause delays. For that reason, the adoption of "lingua francas" within the European institutions appeared to be essential to ensure effective communication and work within reasonable time limits.

EPSO also argues, in summary, that a European citizen who decides to participate in a European competition becomes, from that moment, a potential official of the European



institutions which, according to the case law, are not necessarily required to answer a request or complaint from a potential official in the language of the person concerned. EPSO builds on this point by putting forward that Article 6 of Regulation 1/58 and the case-law of the European courts (5) recognise the possibility of an internal language regime, which also concerns candidates in competitions, as an exception to the general principle governing communication with citizens.

Finally, EPSO argues that the Court of Justice recognised that limiting the use of languages to those which are most widely known in the European Union is appropriate and proportional.

2.3 The Ombudsman first notes that principles of good administration require that decisions which affect the rights or interests of individuals shall have a basis in law and that their content shall comply with the law (6). The Ombudsman considers that candidates in a competition have an interest in receiving correspondence from EPSO in their own language and that the contested decision therefore affects the interests of candidates who are not native speakers of English, French or German. The Ombudsman will therefore evaluate the reasons and explanations put forward by EPSO for the contested decision.

2.4 The Ombudsman notes that EPSO's arguments concerning the contested decision appear to be of three kinds: (i) the need for the European institutions to adopt "linguas francas"; (ii) the situation of candidates as potential officials; (iii) the case-law of the Court of Justice recognising that limiting the use of languages to those which are most widely known in the European Union is appropriate and proportional.

The Ombudsman will examine these three arguments in turn.

2.5 As regards the first argument, the Ombudsman is not persuaded that it has any relevance to the question of justification of the contested decision since, as the complainant correctly points out, the rules of the competition did not require candidates to know any of the three languages concerned.

2.6 As regards the second argument, the Ombudsman wishes to point out that it does not explain the underlying justification of the contested decision, but merely gives a reason why EPSO considers that candidates are not entitled to object to that decision.

In this context, the Ombudsman notes that the judgement of the Court of First Instance cited by EPSO in its opinion (7) concerns communication with candidates who invoke the remedies available under Articles 90 and 91 of the Staff Regulations. The Ombudsman is not convinced that the fact that a certain condition applies when a remedy is invoked justifies imposing that same condition on all persons who could potentially invoke the remedy, in circumstances where they have not done so. However, it does not seem possible fully to evaluate EPSO's proposed interpretation of the case law in the absence of an underlying justification for the contested decision.

2.7 As regards the third argument, the Ombudsman notes that EPSO did not specify a particular



judgement of the Court of Justice. However, the Ombudsman presumes that EPSO refers to the judgement in Case C-361/01 P, *Christina Kik v. Office for Harmonisation in the Internal Market* (8) . The Ombudsman points out that the judgement in that case concerned a situation in which the linguistic regime regulated not only communication between a Community body and a private party, but also communication between different private parties. Moreover, the Court in that case found that the provisions of Council Regulation No 40/94 (art. 115.3) (9) on the Office's language regime were sufficient to indicate the underlying justifications and to enable those justifications to be reviewed. As already mentioned, the Ombudsman does not consider that EPSO has provided a clear indication of the underlying justifications of the contested decision in the present case.

2.8 In light of the above, the Ombudsman takes the view that EPSO's decision to restrict the languages used in its communication with candidates in the competition in question affects the latter's interests and that EPSO should therefore put forward an adequate basis in law for the decision. The Ombudsman considers that EPSO's explanation of the decision is inadequate, because it does not include its underlying justifications, so as to enable those justifications to be reviewed. This is an instance of maladministration and the Ombudsman therefore make a critical remark below.

2.9 In view of the conclusion in the preceding paragraph, the Ombudsman does not consider it necessary to take a position on the complainant's arguments concerning Council Regulation 1/58, Article 21 EC and Article 41 of the Charter of Fundamental Rights. The Ombudsman notes, however, that EPSO is not a Community institution and that the three provisions mentioned thus do not appear to apply directly to EPSO. The Ombudsman also notes that, in its judgement in Case C-361/01 P, the Court of Justice indicated that the references in the Treaty to the use of languages in the European Union cannot be regarded as evidencing a general principle of Community law that confers a right on every citizen to have a version of anything that might affect his interests drawn up in his language in all circumstances (10) .

Conclusion

On the basis of the Ombudsman's inquiries into this complaint, it appears necessary to make the following critical remark:

Principles of good administration require that decisions which affect the rights or interests of individuals shall have a basis in law and that their content shall comply with the law (11) . The Ombudsman takes the view that EPSO's decision to restrict the languages used in its communication with candidates in the competition in question affects the latter's interests and that EPSO should therefore put forward an adequate basis in law for the decision. The Ombudsman considers that EPSO's explanation of the decision is inadequate, because it does not include its underlying justifications, so as to enable those justifications to be reviewed. This is an instance of maladministration.

Given that this is an "actio popularis" complaint, it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman therefore closes the case.

The Director of EPSO will be informed of this decision.



Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Decision of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and the Representative of the European Ombudsman of 25 July 2002 on the organisation and operation of EPSO 2002 OJ L197/56 (26 July 2002).

(2) Case T-118/99, *Boinati Brighina v. Commission* (2001) ECR II-00097, paragraph 13-19.

(3) Case T-118/99, *Boinati Brighina v. Commission* (2001) ECR II-00097, paragraph 13-19.

(4) OJ B017, 06/10/1958 P.0385-0386.

(5) Case T-118/99, *Boinati Brighina v. Commission* (2001) ECR II-00097, paragraph 13-19.

(6) Article 4 of the European Code of Good Administrative Behaviour, available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link].

(7) See case T-118/99, *Bonaiti Brighina v. Commission* , (2001) ECR II-00097, paragraph 16.

(8) 2003 ECR I-08283.

(9) Article 115(3) of Regulation No 40/94 (OJ L01/14/01/1994, P. 001-003): "The applicant must indicate a second language which shall be a language of the Office the use of which he accepts as a possible language of proceedings for opposition, revocation or invalidity proceedings. If the application was filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application, as described in Article 26 (1), translated into the language indicated by the applicant."

(10) 2003 ECR I-08283, paragraph 82.

(11) Article 4 of the European Code of Good Administrative Behaviour, available on the Ombudsman's website: <http://www.ombudsman.europa.eu> [Link].