

Decision of the European Ombudsman on complaint 432/2004/(IP)PB against the European Personnel Selection Office

Decision

Case 432/2004/(IP)PB - Opened on 31/03/2004 - Decision on 23/03/2005

Strasbourg, 23 March 2005

Dear Mr M.,

On 2 February 2004, you made a complaint to the European Ombudsman concerning the exclusion of Mr S., your client, from competition EPSO/B/4/03.

On 31 March 2004, I forwarded the complaint to the Director of the European Personnel Selection Office (EPSO). Due to an oversight at EPSO, I only received the translation of EPSO's opinion on 7 September 2004. I forwarded it to you with an invitation to make observations, which you sent on 22 October 2004.

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

THE COMPLAINT

The complainant is an Italian lawyer who complained on behalf of his client, Mr S., who had participated in recruitment competition EPSO/B/4/03 organised by the European Personnel Office (EPSO) to create a reserve list of Italian language assistants. Since Mr S. had failed test c), obtaining 9 points out of 20 when the minimum required was 10, he had been excluded from the competition. Mr S. had asked EPSO to reconsider his candidature and to give him access to a copy of his examination paper and of the test that he had failed.

In his complaint to the Ombudsman, the complainant stated that his request for a re-evaluation had not been accepted by the selection board. He also stated that his request for a copy of test c) had only been responded to in part in that Mr S. had merely received a copy of the optical form containing his answers, and not of the text containing the test itself. The complainant made the following allegations:

(1) The pre-selection tests were not related to the nature of the functions of the posts to be filled, but were solely aimed at reducing the number of candidates irrespective of their



professional ability.

(2) There were no guarantees of equality between the candidates, in particular as regards the knowledge held by the individual candidates before the start of the competition.

The claims were the following:

(1) A re-evaluation of Mr S.'s candidature.

(2) A better future organisation of recruitment competitions to make it possible for the candidates' professional ability to be taken into account, and to avoid that competitions are organised on the basis of generic tests aimed solely to reduce the number of candidates.

The Ombudsman understood, however, the complainant's allegations to be the following: *(i)* EPSO failed to provide full access to the documents requested by his client; *(ii)* the contents of the preselection tests were not related to the nature of the functions of the posts to be filled.

As for the claims, the Ombudsman identified the following: *(i)* EPSO should reconsider the candidature of Mr S.; *(ii)* EPSO should give Mr S. access to all the documents he had requested; *(iii)* in future competitions, the contents of the tests should be related to the nature of the functions of the posts to be filled.

THE INQUIRY

The Ombudsman's approach

On the basis of the Ombudsman's reading of the complaint, the inquiry was opened as follows:

The first allegation identified by the Ombudsman, as well as the first and the second claims, were found to be admissible. EPSO was therefore requested to give its opinion on these parts of the complaint.

With regard to the second allegation and the third claim identified by the Ombudsman, it appeared that no prior administrative approaches had been made by the complainant. The Ombudsman therefore declared the complaint inadmissible in these respects on the basis of Article 2(4) of the European Ombudsman's Statute.

EPSO's opinion

The complaint was submitted to EPSO, which in summary made the following remarks:

On 2 December 2003, the complainant had asked the selection board to reassess his test c). On 9 January 2004, the selection board had informed him that it had reassessed test c) and that it had confirmed its previous marking. EPSO therefore considered that a re-examination of Mr S.'s candidature had already been carried out.

In its letter of 9 January 2004, EPSO had also sent the complainant a copy of the optical form containing his client's answers as well as the grid containing the correct answers.



In its opinion, EPSO enclosed a copy of the questionnaire, to be passed on to the complainant. It stated that it had previously not released copies of the questionnaire because it had been used in nineteen other "parallel" competitions, the differences between which were in some respect only the language of the tests. It would not have been in the interest of the candidates participating in the first competitions to release copies of a questionnaire the content of which would be used in subsequent competitions.

The complainant's observations

EPSO's opinion was sent to the complainant for observations.

In his observations, the complainant maintained his allegation that the pre-selection tests were not related to the nature of the functions of the posts to be filled, but were solely aimed at reducing the number of candidates irrespective of their professional ability. He also appeared to maintain and elaborate on his allegation that there were no guarantees of equality between the candidates, in particular as regards the knowledge held by the individual candidates before the start of the competition. As regards the latter, the complaint appeared to suggest that no measures had been adopted to guarantee that candidates did not know the content of the tests before the competition.

THE DECISION

1 Introductory remarks

1.1 The complaint was submitted by a lawyer on behalf of an Italian citizen, Mr S., who was excluded from competition EPSO/B/4/03 for Italian language assistants because he had failed test c). Mr S. had asked EPSO for a reassessment of the test and for copies of his examination paper and of test c). The following allegations were made in the complaint to the Ombudsman: (1) The pre-selection tests were not related to the nature of the functions of the posts to be filled, but were purely aimed to reduce the number of candidates irrespective of their professional ability. (2) There were no guarantees of equality between the candidates, in particular as regards the knowledge held by the individual candidates before the start of the competition. The following claims were made: (1) A re-evaluation of Mr S.'s candidature. (2) A better future organisation of recruitment competitions to make it possible for the candidates' professional ability to be taken into account, and to avoid that competitions are organised on the basis of generic tests aimed solely at reducing the number of candidates. However, the Ombudsman understood the complainant's allegations to be the following: (i) EPSO failed to provide full access to the documents requested by his client; (ii) the contents of the preselection tests were not related to the nature of the functions of the posts to be filled. As for the claims, the Ombudsman identified the following: (i) EPSO should reconsider the candidature of Mr S.; (ii) EPSO should give Mr S. access to all the documents he had requested; (iii) in future competitions, the contents of the tests should be related to the nature of the functions of the posts to be filled. On the basis of these allegations and claims identified by the Ombudsman, the present inquiry was opened as follows:

The first allegation identified by the Ombudsman, as well as the first and the second claims, were found to be admissible. EPSO was therefore requested to give its opinion on these parts



of the complaint.

With regard to the second allegation and the third claim identified by the Ombudsman, it appeared that no prior administrative approaches had been made by the complainant. The Ombudsman therefore declared the complaint inadmissible in these respects on the basis of Article 2(4) of the European Ombudsman's Statute.

1.2 The Ombudsman sincerely regrets that the complainant's second allegation - i.e. that there were no guarantees of equality between the candidates, in particular as regards the knowledge held by the individual candidates before the start of the competition - was not identified and dealt with when the present inquiry was opened. Having realised the mistake that had occurred, the Ombudsman has examined whether it would be appropriate to ask EPSO for a supplementary opinion on this allegation in the present case. However, given that this allegation is of a very general nature and has not been supported by precise evidence or arguments, the Ombudsman has come to the conclusion that there are not sufficient grounds for extending the present inquiry so as to include the said allegation. The complainant remains free, however, to submit this allegation in a new complaint, enclosing relevant evidence or arguments. It should be pointed out that such a new complaint would, in accordance with Article 2.4 of the Ombudsman's Statute, have to be preceded by appropriate prior administrative approaches made to EPSO.

2 Access to documents

2.1 According to the complainant, Mr S. had only obtained a copy of the optical form containing his answers, and not of the text containing the test itself (in this case the questionnaire).

2.2 In its opinion, EPSO enclosed a copy of the questionnaire and explained the reasons for not initially disclosing it to the complainant. It stated that it had not previously released copies of the questionnaire because this document had been used in nineteen other "parallel" competitions, the differences between which were in some respect only the language of the tests. EPSO submitted that it would not have been in the interest of the candidates participating in the first competitions to release copies of a questionnaire the content of which was to be used in subsequent competitions.

2.3 The complainant has not commented further on this aspect of the complaint in his observations on EPSO's opinion.

2.4 In the light of the above, it appears that Mr S. has obtained access to the document that he requested, and that EPSO has given a reasonable explanation as to why it had not initially given access to the document concerned. The Ombudsman therefore finds that there appears to be no maladministration on the part of EPSO.

3 Claim for re-evaluation

3.1 The complainant claims a re-evaluation of Mr S.'s candidature.

3.2 In its opinion, EPSO stated that the selection board had informed the complainant on 9 January 2004 (i.e. before the submission of the present complaint) that it had reassessed test c) and that it had confirmed its previous marking. EPSO therefore considered that a re-evaluation



of Mr S.'s candidature had already been carried out.

3.3 On the basis of his examination of the complaint, EPSO's opinion and the complainant's observations, the Ombudsman considers that he is not in possession of any evidence or arguments that would show that there was maladministration in EPSO's evaluation of Mr S.'s candidature. The Ombudsman therefore considers that there are no grounds for proposing to EPSO that it should undertake a new evaluation.

4 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to be 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