

## **Decision of the European Ombudsman on complaint 1200/2004/MHZ against the European Personnel Selection Office**

Decision

**Case 1200/2004/MHZ - Opened on 07/05/2004 - Decision on 12/04/2005**

Strasbourg, 12 April 2005

Dear Mr X.,

On 23 April 2004, I received your complaint against the European Personnel Selection Office (EPSO) concerning open competition COM/A/1/03 for assistant administrators in the field of law (for Cypriot nationals). In order to protect your interests, I decided that your complaint should be treated confidentially on the basis of Art.10 of the Ombudsman's Implementing Provisions.

On 7 May 2004, I forwarded the complaint to EPSO. On 3 September 2004, I received EPSO's opinion in French and on 16 September 2004 its translation into English. I forwarded the opinion to you with an invitation to make observations. On 8 October 2004, I received your observations.

On 9 November 2004, I asked EPSO to provide me with further information. On the same day, I informed you of my request to EPSO. On 17 November 2004, I received your comments concerning that request. On 22 November 2004, I received EPSO's answer, which I forwarded to you.

On 25 November 2004, I asked EPSO for additional information which EPSO sent on 9 December 2004. I forwarded a copy of EPSO's reply to you, for your information.

You also contacted my Office by telephone and e-mail (by telephone on 10 May 2004, 26 May 2004 and 15 September 2004, and by e-mail on 26 April 2004, 29 April 2004, 13 September 2004, 15 September 2004 and 28 March 2005.) In March 2005, during my visit to Cyprus, you called me as well. On 2 June 2004, you came to my Office and had the meeting with the official dealing with your case, at your request.

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:

On 12 December 2003, the complainant participated in the pre-selection and written tests of open competition EPSO/A/1/03 for assistant administrators (Cypriot citizens), held in Brussels.

On the day of the tests, he was not feeling as usual.

At the time of the 20 minute break and after having completed tests "a" and "b" of the examination he needed to go to the lavatory but a long queue there made it impossible for him to go during the break.

In discomfort and pain, he came back to the examination hall. Before test "c" was distributed, the complainant got out of his seat and asked the invigilator to allow him to go to the lavatory urgently, escorted or not. The invigilator refused him the permission to do so and pushed him back by force towards his seat.

He completed test "c" and in the next break was able to attend to his condition. He then used his mobile phone to call one of the EPSO officials, with whom he had previously clarified certain aspects of the competition, and referred to his treatment by the invigilator but did not receive any comments.

After this break the complainant completed his tests "d" and "e".

On 5 February 2004, EPSO informed the complainant of his results in the pre-selection tests and indicated that he had not been admitted to the other stages of the competition because in test "c" he had only obtained 12 points whereas the minimum required was 20 points.

On 16 February 2004, the complainant lodged a complaint with EPSO under Article 90 (2) of the Staff Regulations. He pointed out that he had passed with distinction tests (a) and (b) compared to his low mark in test (c) and that such a low mark resulted from his discomfort after not having been allowed to go to the lavatory. He also pointed out his academic qualifications and professional experience in order to demonstrate that his failure in test (c) was due to his discomfort.

On 26 February 2004, he once again addressed EPSO urging it to reply to his complaint as the competition would be completed on 17 April 2004. He sent a similar request to the Delegation of the European Commission to Cyprus.

On 1 April 2004, EPSO informed the complainant that his appeal had not been upheld.

On 23 April 2004, the complainant lodged a complaint with the European Ombudsman concerning the conditions under which he participated in Open competition EPSO/A/1/03 for assistant administrators. In summary, he alleged that during the examination an EPSO official did not allow him to go to the lavatory at the relevant time, whether escorted or not, and that his



refusal was accompanied by physical abuse. He also argued that as a result of this treatment, he failed test "c" of the examination.

He claimed that EPSO should take measures to rectify the treatment he received.

The complainant attached to his complaint copies of the documents concerning his academic qualifications and his work experience as a lawyer.

## THE INQUIRY

### The opinion of EPSO

The Ombudsman forwarded the complaint to EPSO and asked for an opinion on the complaint. In particular, the Ombudsman requested that EPSO 's opinion should include a response to the complainant's allegation of physical abuse by staff at the examination centre.

EPSO's opinion can be summarised as follows:

The complainant applied to sit open competition COM /A/1/03 published in Official Journal C120A of 22 May 2003 to constitute a reserve list of assistant administrators (for Cypriot citizens) and was invited to take part in the pre-selection tests. The complainant had chosen the field of law. The tests for the field of law were held on 12 December 2003 in two examination centres: in Nicosia and in Brussels. The candidate chose to sit the tests in Brussels. The tests had the following time schedule: tests (a) and (b) at 10.00-11.00; 20 minutes break; test (c) at 11.30-12.30; lunch break; test (d) at 14.15-16.30; test (e) at 16.30-17.00. The competition tests were organised simultaneously with the other nine competitions for the same type of reserve lists for candidates from all the acceding countries.

The candidates were informed of the tests' schedule and that it was forbidden to leave their places without permission during the distribution of the tests, when the tests were actually taking place and when the test papers were collected. This information was provided in the instructions sent to the candidates with the invitation to take part in the tests via their EPSO electronic profile. The same information was also provided in paper form and placed on the tables at which the candidates sat during the tests.

EPSO underlined that every test lasted only one hour and was followed by a break. EPSO stressed that given the number of test participants (on the same date about 14,000 candidates from all acceding countries took part in the same tests and 2,000 of them sat tests in the examination centre in Brussels) rules of conduct restricting the movement of candidates in the examination hall were necessary to ensure the proper running of the tests. Exceptions from such rules were possible in the following cases: (1) the candidates with disabilities (physical problems) and those in special conditions (pregnant, breast-feeding) could inform EPSO previously of their condition and then a special place (out of the large examination hall) would be assigned to allow them to go to the lavatory without disturbing other candidates; (2) the candidates who felt unwell during the tests should inform the invigilators in the examination hall about it and then they would be allowed to leave the examination room accompanied by an



invigilator (sometimes it could be necessary to wait a moment for an invigilator to be available).

EPSO concluded that in urgent cases a solution for a candidate who felt unwell could always be found.

As regards the complainant's allegation that he was pushed back in rough manner by an invigilator, EPSO stated that after consulting the examination centre and block reports, it did not find any trace of such an incident. In this context, EPSO put forward that the invigilators receive clear instructions concerning communication with candidates and that they must remain polite and courteous but obviously they cannot attend to all the candidates' requests, especially during the key moments of the competition such as the distribution and collection of tests.

EPSO also pointed out that there were several invigilators in the examination hall and one person responsible for the block whom the complainant could address for permission to go to the lavatory if he did not want to speak again to the invigilator whom he had addressed initially with his problem.

Finally, EPSO took the view that the complainant's good performance in the first two tests does not imply a positive result in the third one. The complainant's academic qualifications and experience cannot constitute a reason to change his marks. Training and experience are taken into account at the stage of admission to the competition but they are irrelevant for the evaluation of the exams.

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

In his observations the complainant reiterated, in summary, his original allegations and claim.

He stated that in its opinion EPSO mostly presented the general rules of conduct applicable during the alleged tests and failed to refer to his case as such. He also took the view that these rules did not apply to his specific condition during the tests when he suffered from discomfort related to the impossibility of going to the lavatory. He stressed that he was not able to attend to his condition during the 20 minute break, given the very long queue for the toilets.

He also pointed out that he indeed left his seat in order to speak to an invigilator and explained his condition to him/her and that he needed to go to the lavatory urgently but he was not allowed to and was pushed back to his seat. The complainant also challenged EPSO's statement that no trace concerning such an incident was found in the centre and block reports. He took the view that no invigilator would report voluntarily to the head of the examination centre that he /she committed an act of physical abuse. He also stated that he was not aware that the head of the examination centre was present at the examination hall.

Finally, he argued that his phone conversation with a member of EPSO's staff during a break could constitute evidence of such physical abuse.

The complainant stated that the invigilators were not polite towards the candidates and argued that such behaviour could be the result of the excessive number of candidates sitting tests on that day.



The complainant concluded that EPSO distorted the arguments he presented in his complaint to the Ombudsman and his letters to EPSO.

### **Further inquiries**

After careful consideration of EPSO's opinion and the complainant's observations, it appeared that further inquiries were necessary.

#### *Request for further information*

The Ombudsman therefore asked EPSO to send him copies of the examination centre and the block reports concerning the tests in which the complainant took part on 12 December 2003 in Brussels. The Ombudsman also forwarded to EPSO a copy of the complainant's observations.

#### *EPSO's reply*

EPSO sent copies of the reports requested by the Ombudsman. These reports consisted of factual data (such as the number of candidates who attended and finished the tests and the number and time of candidates who left the tests). There was also a blank space to report incidents, which was left empty in the report of the centre. In the report of block 2B, one incident was reported but it did not concern the complainant.

#### *The complainant's comments*

In his comments on the Ombudsman's request for further information, the complainant reiterated his view that the invigilators would not voluntarily report and admit that they pushed him by force after not having authorised him to go to the lavatory. He also stressed that the only evidence of his physical abuse was the telephone call from his mobile phone to a member of EPSO's staff which he made during the lunch break reporting the incident.

#### *Request for additional information*

Given the complainant's suggestion that the only evidence of his physical abuse was his telephone call to a member of EPSO's staff, the Ombudsman asked EPSO to inform him whether EPSO had any record of that conversation and to include in its reply any useful information from the official mentioned by the complainant as having received that telephone call. The Ombudsman also forwarded to EPSO a copy of the complainant's comments.

#### *EPSO's reply*

EPSO stated that the official named by the complainant is a member of its staff in the Info-Recruitment sector which deals with a large number of telephone calls and requests for information relating to competitions and working conditions in the institutions. However, none of these telephone calls are recorded by its staff. Given the lapse of time, the official in question is not able to confirm with any certainty that on 12 December 2003 he received a telephone call from the complainant in respect of the issues raised by him.

The Ombudsman forwarded a copy of EPSO's reply to the complainant, for information.

## **THE DECISION**

### **1 Alleged improper treatment and related claim**

1.1 The complaint concerns the conditions under which the complainant participated in open competition EPSO/A/1/03 for assistant administrators.

The complainant alleges that during the examination an EPSO official did not allow him to go to



the lavatory at the relevant time, whether escorted or not, and that his/(her refusal was accompanied by physical abuse. He also argued that as a result of this treatment, he failed test "c" of the examination.

In support of his allegation, the complainant states that he spoke by mobile telephone about the matter with a member of EPSO's staff on the day of the tests.

In support of his argument that he failed test "c" as a result of the treatment he received the complainant put forward two considerations: (1) his high academic and professional qualifications and (2) the fact that he was able to get higher marks in the first two tests.

The complainant claims that EPSO should take measures to rectify the treatment he received.

1.2. EPSO explains in detail how the tests were organised. In particular, EPSO points out the conditions under which the candidates could leave their places during the tests. Candidates who felt unwell during the tests could inform the invigilators in the examination hall about it and would then be allowed to leave the examination room accompanied by an invigilator. The candidates with disabilities (physical problems) and those in special conditions (pregnant, breast-feeding) could inform EPSO of their condition in advance and a special place (out of the large examination hall) would then be assigned to allow them to go to the lavatory without disturbing other candidates.

As regards the complainant's allegation, EPSO states that after consulting the examination centre and block reports, it did not find any trace of such an incident. As regards the complainant's statement that he spoke by mobile telephone about the matter with a member of EPSO's staff on the day of the tests, EPSO states that the official concerned is a member of its staff in the Info-Recruitment sector which deals with a large number of telephone calls and requests for information relating to competitions and working conditions in the institutions. According to EPSO, the member of its staff named by the complainant is not able to confirm with any certainty that on the day of the tests he received a telephone call from the complainant in respect of the issues raised by him. Again according to EPSO, telephone calls to the Info-Recruitment sector are not recorded by its staff.

1.3. The Ombudsman considers it important to emphasise at the outset that candidates in a test should be properly treated and that this requires that the tests should be organised in a way that takes into account the physical comfort of candidates and their possible special individual needs in this respect. Candidates, like any other citizens, should be treated with courtesy and respect.

1.4. The Ombudsman has therefore taken the complainant's allegation very seriously, especially as regards the alleged physical abuse by an invigilator and has conducted two rounds of further inquiries in order to seek evidence to clarify the matter. The Ombudsman notes with approval that EPSO also appears to have taken the allegation seriously and that it has co-operated fully in the inquiry.

1.5. However, it appears from the documents submitted to the Ombudsman and the statements



of the complainant and EPSO that the complainant did not inform the head of the examination centre or block about what he experienced on the day of the tests and that the reports of the examination centre and block contain no evidence, from the complainant or any other person, to support the complainant's account of the invigilator's behaviour.

1.6. As regards the complainant's telephone conversation with a member of EPSO's staff, it appears that no record of that telephone call exists. Moreover, the Ombudsman takes the view that the content of such a telephone call, even if confirmed by its recipient, could not provide convincing evidence that the distress and discomfort experienced by the complainant during test "c" were the result of misconduct by an invigilator.

1.7. Furthermore, the Ombudsman takes the view that EPSO's general explanation of how it organised the tests appears to give proper weight to the physical comfort of candidates and their possible special individual needs in this respect. The Ombudsman therefore finds no evidence of any systemic maladministration by EPSO in this regard.

1.8. In these circumstances, although the Ombudsman regrets the stressful and uncomfortable situation of the complainant during the examination, he considers that no further inquiries into the complaint are justified.

#### **Conclusion**

For the reasons stated above, the Ombudsman considers that no further inquiries into the present complaint are justified. The Ombudsman therefore closes the case.

The Director of EPSO will be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS