

## **Decision of the European Ombudsman on complaint 2053/2005/IP against the European Personnel Selection Office**

Decision

**Case 2053/2005/IP - Opened on 13/07/2005 - Decision on 14/12/2006**

Strasbourg, 14 December 2006

Dear Mr B.,

On 24 May 2005, you submitted to the European Ombudsman a complaint against the European Personnel Selection Office ("EPSO"). The complaint concerned your participation in Open Competition EPSO/LA/18/04 for assistant translators of Italian language (1) .

On 20 June 2005, my service invited you by e-mail to send me a copy of the correspondence conducted between you and EPSO in the framework of the above-mentioned Open Competition. You sent the requested documents to me on 22 June 2005. On 13 July 2005, I forwarded the complaint to the Director of EPSO. On 21 October 2005, EPSO sent to me the Italian translation of its opinion, which I forwarded to you on 4 November 2005 with an invitation to make observations by 30 November 2005, if you so wished. I have received no observations from you.

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

### **THE COMPLAINT**

From the information submitted with the complaint, the relevant facts can be summarised as follows.

The complainant participated in Open Competition EPSO/LA/18/04 for assistant translators of Italian language. By letter of 21 March 2005, the European Personnel Selection Office ("EPSO") informed the complainant that, since he had failed written test c), the Selection Board had excluded him from the Open Competition. On 29 March 2005, the complainant wrote a short message to EPSO asking to be informed of the relevant procedure to submit a request for access to his corrected written test c), which he had failed. On 4 April 2005, the complainant received a model letter from the "EPSO team" which read as follows:



" Dear candidate,

*EPSO follows the principle of access to documents and transparency as well as the principle of confidentiality in the Selection Board works. (...) EPSO gives access to candidates to their original examination papers as well as to the evaluation sheet drafted by the Selection Board. The aim of the evaluation sheet is to inform you of the general evaluation criteria and help you to have a global view of your performance in the test.*

*In view of the principle of secrecy of the work of the Selection Board as set out in Article 6 of the Staff Regulations and defined by the Court, these are the only documents that the Selection Board can make available to candidates.*

*In the Italian language assistant translators' competition the global evaluation of each translation test was done on the basis of a correction grid, which is reflected upon on the evaluation sheet you have received. The grid is established by the Selection board whose works are bound by confidentiality.*

*The correction of the tests is part of the confidential, independent and impartial works of the Selection Board and cannot therefore be disclosed. Please note that the Council regulation on public's access to documents concerns documents of general interest. Therefore this Regulation cannot be applied to the examination papers.*

*The texts for translation test were available on the day of the exam in the examination centres. For reasons of good management and sound use of resources we do not send them at all to participants after the tests have taken place. "*

On 27 April 2005, the complainant submitted a request for access to his corrected written test c) and to the accompanying evaluation sheet. On 29 April 2005, the complainant received a copy of his original test without corrections, and a copy of the evaluation sheet.

The complainant alleged that EPSO had failed to grant him access to his own marked examination paper concerning Open Competition EPSO/LA/18/04. In support of his allegation, the complainant argued that the documents sent to him by EPSO, namely, the examination paper without corrections and the evaluation sheet, were useless for the purpose of understanding his errors.

The complainant claimed that EPSO should grant him access to a copy of his marked written test.

## **THE INQUIRY**

### **EPSO's opinion**

In its opinion on the complaint, EPSO made the following points.

The complainant participated in Open Competition EPSO/LA/18/04 for Italian-language



assistant translators.

The pre-selection tests a) and b) were taken by the complainant in "language 2", which he had chosen in his application. Test a) comprised a series of multiple-choice questions which were designed to assess the general ability of the candidate, in particular his verbal reasoning skills. The maximum number of points in this test was 20, the minimum necessary for a pass mark being 10. Test b) comprised a series of multiple-choice questions designed to assess the knowledge of the candidate about the main developments of the European unification process and the different Community policies. The maximum number of points in this test was 10, the minimum necessary for a pass being 5.

For organisational reasons, written tests c) and d) were held on the same day. Test c) consisted of a translation into the candidate's main language (using a non-electronic dictionary) of a general text that was approximately 45 lines long, related to the activities of the European Union, and was drafted in the language chosen by the candidate for the pre-selection tests. Test d) consisted of a translation into the candidate's main language, using a non-electronic dictionary, of a general text of approximately 45 lines in length, which concerned the activities of the European Union and was drafted in one of the languages referred to in point A.II.3 c) of the Notice of Competition. This language could not be the language chosen by the candidate for the pre-selection tests and for the written test c). The maximum number of points in each one of the written tests was 40, the minimum necessary for a pass mark being 20.

The complainant had obtained one of the 210 highest marks for both tests a) and b) combined, as well as the pass mark in each of them. In addition, he fulfilled the conditions of admissibility for the Open Competition. The Selection Board had therefore corrected his written test c), in accordance with point B.2 of the Notice of Competition. The complainant obtained 8,75 points out of 40 in test c). Since the minimum necessary for a pass mark was 20, the Board did not correct the complainant's written test d) and, consequently, did not admit him to the oral test.

By letter of 21 March 2005, EPSO informed the complainant of the results that he had obtained in his pre-selection tests and in written test c). In the same letter, EPSO also informed the complainant, on behalf of the Selection Board, that his written test c) had been corrected in an anonymous manner by at least two specialised markers having, as their main language, the language chosen by the complainant to make the relevant test and that the corrections had been made on the basis of the instructions given to the markers by the Board before the test. The letter also stated that, for each error or omission in the translation, a certain number of points were deducted, depending on the gravity of the error or omission involved.

Following the complainant's request of 29 March 2005, EPSO replied to him on 4 April 2005, and informed him that EPSO grants candidates access to their original examination papers as well as to the evaluation sheet drafted by the Selection Board. EPSO further emphasised the secrecy of the Board's work.

Concerning the allegation and claim submitted by the complainant, EPSO made a description of the relevant procedure followed in the correction of written tests in the field of translation. EPSO



explained that each test is corrected anonymously by at least two markers with an advisory role. In order to be able to assess and to compare the quality of the translations made by candidates, the Selection Board had established a certain number of correction criteria and had drawn up a list of possible errors: errors of meaning, omissions, errors in grammar, in vocabulary, in spelling, in punctuation or in syntax. These errors were penalised with a certain number of points depending on the gravity of the error. On the other hand, the Board could also have awarded positive points in the case of a very good-quality translation. In order to guide the markers in their work, the Board had provided them with its instructions and with the correction criteria which it had established before the tests.

Each marker informed the Selection Board of his or her remarks and of proposals for marking each of the tests by completing a sheet. These sheets represented opinions intended for the Board's internal use during its deliberations. They did not constitute a judgment of the Board and they were therefore not divulged.

After having taken note of the markers' remarks and having verified the correct application of the correction criteria by the latter, the Selection Board decided on the final mark for each test and recorded it on the evaluation sheet corresponding to the relevant test. If candidates so request, this sheet is provided to them.

EPSO further added that, by establishing the criteria which had been fairly applied during each correction of a test, the Selection Board was in a position to carry out a comparative examination of all the candidates' performances, in a fair and homogeneous manner. The Board is the sole competent body to decide on the admission of a candidate to the next stage of the relevant competition.

Concerning more specifically the complainant's test, EPSO stated that the Selection Board had judged his translation as insufficient in view of its many weaknesses in the knowledge of the language of origin and in the drafting of text in the main language. In real working conditions, very exhaustive re-working would be necessary.

EPSO took the view that the evaluation sheet provided to the complainant contained sufficient information to explain the reasons for which the Selection Board had given him a mark for his test that was lower than the minimum mark required.

EPSO also recalled that, according to the case-law concerning this matter, and as observed by the Ombudsman in his decision on complaint 324/2003/MF (2) , there is no rule obliging a Selection Board to make annotations to the copy of the candidate's test and that corrections do not need to appear on the copy of the candidate's test. Furthermore, and as far as decisions taken by a Board in a competition are concerned, the mark itself constitutes a sufficient statement of reasons for an evaluation made by the Board (3) . A Board is by no means obliged to explain in what way a candidate's performance was not sufficient or to give more detailed reasons for its evaluation by indicating, for example, in which part of his translation (as was the case with the complainant's test) the candidate made a specific error.



EPSO expressed the hope that its comments on the present complaint would enable the complainant better to understand the working method used by the Selection Board in the correction of his test and in deciding on his results.

EPSO emphasised that the goal of an open competition is not pedagogical in nature but consists in allowing institutions to recruit high-level officials, in accordance with the provisions of the Staff Regulations.

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

No observations were received from the complainant.

## **THE DECISION**

### **1 The complainant's allegation and his related claim**

1.1 The complainant participated in Open Competition EPSO/LA/18/04 for Italian-language assistant translators. He failed written test c) and was excluded from the Open Competition. On 29 March 2005, he therefore asked EPSO for access to his corrected test and to the accompanying evaluation sheet. On 4 April 2005, EPSO sent to the complainant a copy of his original test c), without corrections, and a copy of the Selection Board's evaluation sheet concerning that test.

In his complaint to the Ombudsman, the complainant alleged that EPSO had failed to grant him access to his own marked examination paper concerning Open Competition EPSO/LA/18/04. In support of his allegation, the complainant argued that the documents sent to him by EPSO, namely, the examination paper without corrections and the evaluation sheet, were useless for the purpose of understanding his errors. The complainant claimed that EPSO should grant him access to a copy of his marked written test.

1.2 In its opinion, EPSO explained in detail the procedure followed by the Selection Board in correcting the translation tests. Each test is corrected anonymously by at least two markers having an advisory role. In order to be able to assess and to compare the quality of the translations made by candidates, the Board had established a certain number of correction criteria and had drawn up a list of possible errors: errors of meaning, omissions, errors in grammar, in vocabulary, in spelling, in punctuation or in syntax. These errors were penalised with a certain number of points depending on the gravity of the error. On the other hand, the Board could also have awarded positive points in the case of a very good-quality translation. In order to guide the markers in their work, the Board had provided them with its instructions and with the correction criteria which it had established before the tests.

Each marker informed the Selection Board of his or her remarks and of proposals for marking each of the tests by completing a sheet. These sheets represented opinions intended for the Board's internal use during its deliberations. They did not constitute a judgment of the Board and they were therefore not divulged. After having taken note of the markers' remarks and having verified the correct application of the correction criteria by the latter, the Board decided on the final mark for each test and recorded it on the evaluation sheet corresponding to the relevant test. If candidates so request, this sheet is provided to them.



Furthermore, and as far as decisions taken by a Selection Board in a competition are concerned, the mark itself constitutes a sufficient statement of reasons for an evaluation made by the Board . A Board is by no means obliged to explain in what way a candidate's performance was not sufficient or to give more detailed reasons for its evaluation.

1.3 Concerning the complainant's allegation that EPSO failed to comply with his request because it sent him an uncorrected copy of his test c) instead of a corrected one as he had requested, the Ombudsman wishes to consider that, as pointed out by EPSO in its opinion, the Court of First Instance has indeed held that a Selection Board is under no obligation to write its comments relating to the assessment of a candidate on the candidate's test paper itself (4) .

1.4 In previous inquiries he conducted (5) , the Ombudsman referred to the Court's case-law and considered that the position adopted by the institution in question (in the concerned cases the Commission) appeared to be reasonable. In keeping with this position, the Ombudsman again considers that, in the present case, the position of EPSO appears to be reasonable. The complainant's claim that EPSO should grant him access to a copy of his marked written test cannot therefore be sustained.

1.5 Nevertheless, the Ombudsman considers important to analyse the concrete evaluation sheet used by the Selection Board which was forwarded to the complainant in light of the Ombudsman recommendations concerning transparency in recruitment procedures and of the issue of candidates' access to information in relation with their performances, namely concerning the seriousness and the extent of the various types of errors or deficiencies identified by the Board in the candidates' tests for translators.

1.6 The Ombudsman notes that, in its opinion, EPSO emphasised that the purpose of an Open Competition is not pedagogic in nature but is meant to allow institutions to recruit high-level officials, in accordance with the provisions of the Staff Regulations.

In this regard, the Ombudsman wishes to recall that, on 18 October 1999, he addressed a special report to the European Parliament (6) following his own-initiative inquiry ( 1004/97/(PD)GG) into the secrecy which formed part of the Commission's recruitment procedure and that the Report included, among others, a formal recommendation that, in future recruitment competitions, the Commission should grant candidates access to their own marked examination papers on request.

1.7 More recently, the issue referred to in point 1.5 above was addressed in the Ombudsman's inquiry into complaint 674/2004/(MF)PB. In the course of this inquiry, the Ombudsman stated that providing candidates with a copy of the Selection Board's final evaluation sheet could be an adequate indication of the Board's assessment regarding the errors and weaknesses it identified in a candidate's examination paper. The adequacy of the information provided in the evaluation sheet is to be appraised in view of the purpose of providing a candidate with a copy of his/her marked examination paper, set out in the above-mentioned special report. Hence, the evaluation sheet must provide the candidate concerned with sufficiently clear and detailed



information in light of those purposes. This requirement implies that, where the evaluation sheet concerns a translation test, it must provide information not only on the types, but also on the seriousness and the extent of the errors or weaknesses identified by the Board in the candidates' paper, without, however, imposing an unreasonable administrative burden on Boards. Such information would be particularly useful to candidates who, like the complainant in the present case, may wish to know in which respects they should seek to improve their performance in future competitions. The Ombudsman also pointed out that, in light of the above and in view of the wide margin of discretion that the Board enjoys when it evaluates the performance of candidates in tests, the Board is under no legal obligation or any obligation deriving from principles of good administration, to provide candidates with a detailed opinion on the *specific* errors or weaknesses that it has identified.

As a result of his inquiry into this complaint, the Ombudsman addressed a draft recommendation to the Commission and to EPSO, in which he considered that where, as in the present case, the evaluation sheet prepared by the Selection Board concerned a translation test, it must provide information not only on the types, but also on the seriousness and the extent of the errors or weaknesses identified by the Board in the candidate's paper, without, however, allowing this procedure to impose an unreasonable administrative burden on its operations. The Commission and EPSO responded by providing more information on the *types* of errors committed by the complainant in the test. However, EPSO stated that it is not the Board's responsibility to indicate the gravity and importance of the different types of errors identified during the correction of the paper concerned. EPSO, thus, did not accept the Ombudsman's draft recommendation. Considering that EPSO had not indicated any valid reasons for its failure to give the relevant information to the complainant, the Ombudsman maintained his finding of maladministration and made a critical remark in his closing decision.

1.8 The Ombudsman notes that, in the present case, the evaluation sheet developed and used by Selection Board for assessing test c), consisted simply of four boxes, each of them containing what the heading for these boxes described as "general comments". These comments were pre-printed and were standard. In the complainant's case, the box with the lowest ranking mark (0-19) was ticked (7) . The information contained in this box was a standard text, namely, "*translation is insufficient. Weaknesses with regards to the knowledge of the language of origin and to the drafting in the language of translation. In real working conditions, very exhaustive re-working would be necessary*" (8) .

It should be observed, in this regard, that the complainant wished to know his errors in order to understand better the points awarded to him (8,75 out of 40), so that he could improve his performance in future competitions.

1.9 The Ombudsman considers that the evaluation sheet completed by the Selection Board and transmitted to the complainant is too general and does not comply with the requirements that in his opinion should be fulfilled in order to give candidates sufficient information, namely on the types, on the seriousness and on the extent of the errors or weaknesses identified by the Board in the candidate's test.





He also notes that neither EPSO's message of 4 April 2005 to the complainant nor EPSO's opinion on the present complaint contain any information on the errors or weaknesses identified by the Selection Board in the complainant's test c), not even on the types of the errors. Furthermore, the Ombudsman considers that EPSO has neither argued that the provision of the above information would entail an unreasonable administrative burden nor indicated any other valid reasons for its failure to give this information to the complainant.

The Ombudsman considers that EPSO's failure to provide the complainant with information on the types, the seriousness and the extent of the errors or weaknesses identified by the Selection Board in his test (without, however, imposing an unreasonable administrative burden on the Board) constitutes an instance of maladministration.

1.10 Nevertheless, taking into consideration EPSO's position in case 674/2004/(MF)PB and in its opinion on the present complaint, the Ombudsman considers that there is no reasonable prospect that EPSO would accept a friendly solution or react positively to a draft recommendation in the present case.

Furthermore, the Ombudsman recalls that, on 10 October 2005, he opened an own-initiative inquiry (OI/5/2005) into the issue of access to the evaluation criteria established by the Selection Boards. Given that the issue will be dealt with in detail in that inquiry, the Ombudsman considers that it would be reasonable to await the outcome of the inquiry. He therefore takes the view that, at present, there are no grounds to pursue the issue further in the context of the present complaint.

Nevertheless, the Ombudsman makes the critical remarks below.

## **2 Conclusion**

On the basis of the Ombudsman's inquiry into this case and also on the basis of the Ombudsman's findings in case 674/2004/(MF)PB, which is similar to the present one, it is necessary to make the following critical remark:

As stated in his decision on complaint 674/2004/(MF)PB, the Ombudsman considers that "*providing candidates with a copy of the Selection Board's final evaluation sheet can be an adequate indication of the Board's assessment regarding the errors and weaknesses it identified in a candidate's examination paper. The adequacy of the information provided in the evaluation sheet is to be appraised in view of the purpose of providing a candidate with a copy of his or her marked examination paper, as indicated in the Ombudsman's special report of 18 October 1999 to the European Parliament, which was accepted by the European Commission on 7 December 1999. Hence, the evaluation sheet should provide the candidate concerned with sufficiently clear and detailed information in light of those purposes. This requirement implies that, where the evaluation sheet concerns a translation test, it must provide information not only on the types, but also on the seriousness and the extent of the errors or weaknesses identified by the Selection Board in the candidates' paper, without, however, imposing an unreasonable administrative burden on Selection Boards.*" In the present case, the evaluation sheet concerning the complainant's test c) did not contain any of the above information. Moreover, in its opinion, EPSO also failed to provide such information. This was an instance of maladministration.





For the reasons stated in point 1.10 above, the Ombudsman closes the case.

The Director of EPSO will be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) OJ 2004 C 37A, p. 1.

(2) The text of this decision can be found on the Ombudsman's website (<http://www.ombudsman.europa.eu> [Link]).

(3) Case T-19/03 *Konstantopoulou v Court of Justice* [2004] ECR-SC I-A-25 and II-107, paragraph 61.

(4) See Case T-19/03, *Konstantopoulou v Court of Justice* [2004] ECR-SC I-A-25 and II-107, paragraph 61.

(5) Decisions on complaint 324/2003/MF and on complaint 774/2003/ELB can be found on the Ombudsman's website (<http://www.ombudsman.europa.eu> [Link]).

(6) The text of the special report can be found on the Ombudsman website (<http://www.ombudsman.europa.eu> [Link]).

(7) The other boxes indicated the following ranking points: 20-27 points, 28-35 points, and 36-40 points.

(8) The original text was in Italian. The translation has been made by the Ombudsman's service.