

Decision of the European Ombudsman on complaint 1143/2007/(MHZ)RT against the European Personnel Selection Office

Decision

Case 1143/2007/(MHZ)RT - Opened on 31/05/2007 - Decision on 13/12/2007

Strasbourg, 13 December 2007

Dear Mr K.,

On 24 April 2007, you submitted a complaint to the European Ombudsman against the European Personnel Selection Office (EPSO) concerning your exclusion from Open Competition EPSO/AD/39/05 (French-language linguistic administrators in the field of translation) because of your insufficient results in written test (a).

On 31 May 2007, I forwarded the complaint to the Director of EPSO. EPSO sent its opinion on 18 July 2007 and I forwarded it to you with an invitation to make observations, if you so wished. No observations have been received from you.

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:

The complainant took part in Open Competition EPSO/AD/39/05, which was organised with a view to drawing up a reserve list of French-language linguistic administrators in the field of translation. He sat the pre-selection tests and written tests in the above competition, but failed written test (a) (since he obtained 2/40 points while the pass-mark was 20 points). Therefore, he was not admitted to the next stages of the competition.

By letter of 9 February 2007, the complainant asked the European Personnel Selection Office ("EPSO") for a copy of his marked test paper and of the evaluation grid used by markers as regards test (a) in order to understand the reasons for the mark awarded and to improve his future performance. He also requested a review by the Selection Board of his written test (a).

On 19 March 2007, EPSO replied that the Selection Board had reviewed the complainant's test



(a) but maintained its original decision. The Board found that the complainant's knowledge of the French language was not sufficient to translate the institutions' documents into this language and that the complainant's translation contained "*barbarismes, non sens et contresens*". EPSO also stated that the complainant's test (a) was corrected, in an anonymous manner, by two markers on the basis of a correction grid established by the Board.

Following the complainant's further request of 19 March 2007, EPSO sent the complainant an unmarked copy of his written test (a) together with the evaluation sheet, and explained that, because of the secret character of the Selection Board's work, it could not provide the complainant either with a marked version of his test or with the evaluation grid.

The complainant was not satisfied with the reply that he received and turned to the European Ombudsman.

He alleged that EPSO wrongly refused to send him a copy of his marked test paper and failed to provide him with sufficiently precise information on the errors identified in his test (a).

In support of his allegation, the complainant argued that the evaluation sheet was too general and that, on the basis of the evaluation sheet, he could not learn about his errors.

He claimed that EPSO should send him his marked test paper and provide him with more precise information on the errors identified in his test (a) than that contained in his evaluation sheet.

THE INQUIRY

EPSO's opinion

The opinion adopted by EPSO can be summarised as follows:

The complainant applied to participate in Open Competition EPSO/AD/39/05. For organisational reasons, the pre-selection tests and the written tests were held simultaneously for all candidates on 29 September 2006. As he was among the best 140 candidates in the pre-selection tests, the complainant was admitted to the competition and invited to fill in an application form. He was also informed that the Selection Board would proceed with the correction of his written tests.

Written test (a) aimed at assessing the candidates' ability to write in French. The complainant failed written test (a), since he obtained 2/40 points while the pass-mark was 20 points.

On 6 February 2007, the complainant was informed that his results in test (a) were insufficient and that he was not admitted to the oral tests.

On 9 February 2007, the complainant requested a copy of both his marked test paper and of the evaluation grid used by markers as regards test (a), as well as a review of his written test (a), by the Selection Board.



On 21 February 2007, EPSO sent the complainant an unmarked copy of his written test (a), together with the evaluation sheet.

On 19 March 2007, EPSO informed the complainant that the Selection Board had reviewed his test (a) but maintained its original decision. The Board found that the complainant's knowledge of the French language was not sufficient to translate the institutions' documents into this language and that his translation contained " *barbarismes, non sens et contresens*. " On the same day, the complainant replied to EPSO that he was not satisfied with the reply and that he wished to know the errors that he had made.

On 23 March 2007, EPSO explained to the complainant that, because of the secret character of the Board's work, it could not provide him with either a marked version of his test or the evaluation grid.

EPSO points out that, following the written tests, all the test papers were corrected anonymously by, at least, two examiners, in accordance with criteria established in advance by the Selection Board. The Board then checked the correct application of the criteria and reviewed the remarks and assessments made by the examiners. EPSO stressed that the Board set the final marks which were communicated to the candidates.

As regards the complainant's allegation that EPSO wrongly refused to send him a copy of his marked test paper and failed to provide him with sufficiently precise information on the errors identified in his test (a), EPSO pointed out that the test papers of the candidates who sit the written tests are not annotated. The annotations made by the examiners are written down in the evaluation sheet. The Selection Board takes into account these evaluation sheets when preparing its assessment of the candidates. Given that these evaluation sheets do not express the Board's judgement, but are part of its deliberations, they are not communicated to the candidates. The assessment of the Board as a whole only appears on the final evaluation sheet. In the present case, the final evaluation sheet was sent to the complainant. According to the case-law of the Community Courts, the Board is not required to include its remarks on the test papers.

EPSO pointed out that the Selection Board assessed the form and the content of the candidates' tests. In the complainant's case, it was established that his test paper was insufficient as regards both form and content. The Board found that the complainant's knowledge of the French language was not sufficient to translate the institutions' documents into this language and that his translation contained " *barbarismes, non sens et contresens*. "

In accordance with established case-law of the Community Courts (1) , the Selection Board is not obliged, when justifying the failure of a candidate in one test, to specify which replies were considered insufficient or to explain why they were judged insufficient. In addition to the indication of the mark given to the complainant, the Board also sent him the evaluation sheet and a detailed explanation about how the tests had been corrected.

EPSO takes the view that the Selection Board fulfilled its obligation, as was stated in the *Guide*



for Applicants, to communicate to the candidate his test paper and the evaluation sheet.

The complainant's observations

No observations were received from the complainant.

THE DECISION

1 EPSO's alleged failure to send the complainant a copy of his marked test paper and to provide him with sufficiently precise information on the errors identified in his test (a)

1.1 The complainant alleges that EPSO (i) wrongly refused to send him a copy of his marked test paper and (ii) failed to provide him with sufficiently precise information on the errors identified in his test (a).

He claimed that EPSO should (i) send him his marked test paper and (ii) provide him with more precise information on the errors identified in his test (a) than are contained in his evaluation sheet.

1.2 In its opinion, EPSO stated, in summary, that it cannot provide the complainant with his marked test papers because these are not marked and there is no legal obligation that they should be marked. The examiners make their annotations on separate sheets of paper which form part of the Selection Board's deliberations, are thus secret and cannot be disclosed. The assessment of the Board as a whole only appears on the final evaluation sheet.

As regards the complainant's errors, EPSO stated that the Selection Board found that that the complainant's test paper was insufficient as regards both form and content. The Board considered that the complainant's knowledge of the French language was not sufficient to translate the institutions' documents into this language and that his translation contained "*barbarismes, non sens et contresens*". EPSO also referred to the case-law of the Community Courts that the Board does not need to give precise explanations for each error (2) .

1.3 At the outset, the Ombudsman points out that, in his understanding, the complainant wished to be informed about his errors by receiving from EPSO his marked test papers and/or the evaluation sheet.

1.4 As regards the marked test papers, the Ombudsman notes that EPSO explained its procedure for assessing the test papers and stated that it cannot disclose the marked papers because the papers are not marked. The Ombudsman finds this explanation reasonable.

1.5 As regards the evaluation sheet provided to the complainant, the Ombudsman points out that, in the context of the present complaint, such an evaluation sheet is to be appraised in view of the purpose of providing a candidate with information about his errors instead of providing him with a copy of his marked test paper. In this respect, the Ombudsman reiterates his view that, provided that it is sufficiently complete, the evaluation sheet can be an adequate indication of the Selection Board's assessment regarding the errors and weaknesses identified in a candidate's test paper (3) .



1.6 In the present case, the Ombudsman notes that the evaluation sheet sent to the complainant is a form consisting of three parts. The first part provides four boxes (*très bon* , *bon* , *suffisant* and *insuffisant*) that can be ticked as regards two aspects, namely " *Fond (Compréhension, omission, etc.)* " and " *Forme (Style, orthographe, grammaire, ponctuation, etc.)* ". In the complainant's case, the box foreseen for " *insuffisant* " was ticked as regards both aspects. The second part is labelled " *Commentaires* ". No comments are to be found in the complainant's form. The third part sets out boxes for four potential written assessments, which are as follows: (i) " *Très bonne traduction* ": 36-40 points; (ii) " *Bonne traduction* ": 28-35 points; (iii) " *Traduction suffisante* ": 20-27 points; and (iv) " *Traduction insuffisante. Lacunes dans la connaissance de la langue source et/ou traduction contenant de nombreuses erreurs de rédaction: 0-19 points.* " In the complainant's case, the last box was ticked.

The Ombudsman takes the view that the above described complainant's evaluation sheet was rather general and does not indeed contain precise information as regards the errors the complainant made.

1.7 In this respect, the Ombudsman recalls that the issue of access to the evaluation criteria, which is strongly related to the quality of the evaluation sheets used by EPSO to communicate to candidates their errors, has been raised in other complaints addressed to the Ombudsman, namely, in complaints 2097/2003/(ADB)PB, 2028/2003/(MF)PB and 413/2004/(MF1)PB (4) . The inquiries into these complaints were closed in September 2005.

In the above-mentioned cases, the Ombudsman made three separate draft recommendations that the Commission and EPSO should reconsider refusals to give access to, respectively, the evaluation criteria, the selection criteria established by the Selection Board, and a copy of the detailed evaluation sheet.

In all three cases, the Commission and EPSO submitted joint opinions. In complaint 2097/2003/(ADB)PB, the two institutions responded to the Ombudsman's draft recommendation by providing a copy of the written test paper containing the Selection Board's remarks and corrections. In their opinion, the Commission and EPSO emphasised, however, that disclosure of the corrected test paper was an exception to the Commission's and EPSO's general practice and did not have precedential value.

In the context of complaints 2097/2003/(ABD)PB and 2028/2003/(MF)PB, the Commission and EPSO did not agree to disclose the selection criteria laid down by the Selection Board and, as regards complaint 413/2004/(MF)PB, they did not agree to disclose a copy of the detailed evaluation sheet. However, the Commission and EPSO stated that, as regards the future, they were examining the possibility of providing candidates with a more detailed evaluation sheet.

In his decision of 8 September 2005 closing his inquiry into complaint 2097/2003/(ADB)PB and in his subsequent decisions of 14 September and 22 September 2005 closing his inquiries into complaints 2028/2003/(MF)PB and 413/2004/(MF)PB respectively, the Ombudsman concluded that EPSO's position raises important factual and legal issues of a more general nature. For this reason, he announced his intention to open an own-initiative inquiry regarding access to



evaluation criteria.

Accordingly, on 10 October 2005, the Ombudsman launched an own-initiative inquiry (OI/5/2005/PB) into the issue of candidates' access to the evaluation criteria established by the Selection Boards and applied to written tests forming part of competitions organised by EPSO. The Ombudsman's own-initiative inquiry is ongoing. On 3 July 2007, the Ombudsman sent a letter of further inquiry to EPSO, asking it to provide its views on the Ombudsman's preliminary analysis and related suggestions made in his letter. Information on the outcome of the Ombudsman's own-initiative inquiry will be published on his website (www.ombudsman.europa.eu).

1.8 Finally, the Ombudsman regrets that, in its opinion on the complaint, EPSO did not add new information on the complainant's errors as provided in the evaluation sheet. The Ombudsman notes however that, in its opinion, EPSO relied on the case-law of the Community Courts that the Selection Board does not need to give precise explanations for each error (5) .

1.9 The Ombudsman considers that EPSO should provide the unsuccessful candidates with evaluation sheets that are more detailed than the one used in the present case and the failure to do so could *prima facie* constitute an instance of maladministration. However, based on the experience of EPSO's previous reactions to the Ombudsman's draft recommendations issued in connection with inquiries into similar cases, the Ombudsman considers that there is no realistic prospect of EPSO's changing its position within the framework of an inquiry into an individual complaint. Therefore and because he is conducting an own-initiative inquiry into the systemic problem, related to the complaint at hand, whose results might help solve all similar problems encountered by candidates, the Ombudsman considers that no further inquiries are justified as regards the present complaint.

2 The claim that EPSO should provide the complainant with the requested information

2.1 He claimed that EPSO should send him his marked test paper and provide him with more precise information on the errors identified in his test (a) than that contained in his evaluation sheet.

2.2 In light of his conclusion in point 1.9 above, the Ombudsman does not consider it justified further to inquire into the complainant's claim.

3 Conclusion

For the reasons explained in point 1.9 above, no further inquiries are justified to the present case.

The Director of EPSO will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS



(1) See Case T-291/94 *Pimley-Smith v Commission* [1995] ECR-SC I-A-209 and II-637; and Case T-494/04 *Neirinck v Commission*, judgment of 14 November 2006, OJ 2006 C 326.

(2) See note 1.

(3) See Decision on complaint 774/2003/ELB, which is available on the Ombudsman's website (<http://www.ombudsman.europa.eu> [Link]).

(4) The decisions on these complaints can be found on the Ombudsman's website (<http://www.ombudsman.europa.eu> [Link]).

(5) In French: " *Il ne relève toutefois pas de la responsabilité d'un jury de concours d'indiquer aux candidats la gravité ou l'importance des erreurs/omissions qu'un candidat aurait commises, comme c'est le cas dans le cadre des examens scolaires. Tel qu'il est reconnu par la jurisprudence en matière de concours, un jury ne saurait être tenu, en motivant l'échec d'un candidat à une épreuve, de préciser l'importance des erreurs et des faiblesses identifiées, ni leur niveau de gravité, un tel degré de motivation n'étant pas nécessaire.* " (See Cases T-291/94 *Pimley-Smith v Commission* [1995] ECR-SC I-A-209 and II-637, paragraph 64; and Case T-494/04 *Neirinck v Commission*, judgment of 14 November 2006, OJ 2006 C 326, paragraph 75)