

Decision of the European Ombudsman on complaint 1500/2007/VIK against the European Personnel Selection Office

Decision

Case 1500/2007/VIK - Opened on 03/07/2007 - Decision on 10/07/2008

Strasbourg, 10 July 2008

Dear Mr X,

On 31 May 2007, you submitted a complaint to the European Ombudsman against the European Personnel Selection Office ("EPSO") concerning your exclusion from Open Competition EPSO/AST/14/06 for Bulgarian assistants in the secretarial field (AST 1).

On 3 July 2007, I informed the Director of EPSO of your complaint and asked him to submit an opinion on it by 30 September 2007. EPSO sent its opinion on 21 September (French original) and 28 September 2007 (translation into English).

On 3 October 2007, I forwarded this opinion to you with an invitation to make observations, which you sent on 14 November 2007.

On 20 February 2008, I sent you a copy of my decision in case 1993/2007/RT, which raised issues similar to the ones covered by your complaint and I invited you to comment on its relevance to the present case. You sent your further observations on 1 April 2008.

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

THE COMPLAINT

The complainant applied to take part in Open Competition EPSO/AD/14/06, which was organised by the European Personnel Selection Office ("EPSO") in order to constitute a reserve list of Bulgarian assistants in the secretarial field (AST 1).

On 3 April 2007, the complainant was informed, through his EPSO profile, that he could not be admitted to the Open Competition since his university diploma was not relevant to the duties described in the Notice of Competition.



On 20 April 2007, the complainant wrote to EPSO requesting that his application be re-evaluated and that he be admitted to the Open Competition. The complainant took the view that his university degree in English Philology (British and American Studies) corresponded to the requirements set out in the Notice of Competition.

On 22 May 2007, EPSO responded to the complainant upholding its original decision. EPSO explained that the Selection Board did not contest the level of his studies, but continued to consider that his diploma in English Philology was not relevant to the duties that were described in the Notice of Competition. EPSO pointed out that these duties included secretarial tasks associated with organizing meetings, preparing missions, filing documents and mail, sorting post, keeping appointments, preparing documents using word-processing software in the applicant's main language and potentially in another official language of the EU and performing various administrative tasks associated with file management.

On the basis of the above, the Selection Board confirmed its decision that the complainant's degree in English Philology did not cover subjects relevant to the above-mentioned secretarial duties.

The complainant did not agree with EPSO's view and, on 31 May 2007, he lodged the present complaint with the Ombudsman. He noted that, during his studies in English Philology, he had followed a number of courses, such as English linguistics and translation, audiovisual information technology, academic and business writing, which corresponded to the majority of the tasks described in the Notice of Competition. He furthermore stated that he was currently employed as an assistant in the secretarial field (temporary agent) at the European Commission.

The complainant made the following allegations and claim:

(1) The Notice of Competition did not clearly state what post-secondary education is required for assistants in the secretarial field.

(2) The Selection Board/EPSO wrongly excluded him from the Open Competition and failed to provide sufficient reasons for its decision that a diploma in English Philology is not in a field relevant to the duties for the post of assistant in the secretarial field, as described in the Notice of Competition.

The complainant claimed that EPSO should reconsider his application, admit him to the Open Competition and mark his practical test.

THE INQUIRY

EPSO's opinion

EPSO's opinion can be summarised as follows:

The complainant participated in the Open Competition. He successfully took part in admission



tests (a) and (b) and, on 21 December 2006, was invited to complete the official application form and to send the supporting documents referred to in the Notice of Competition. In the meantime, and pending a decision concerning the complainant's eligibility, he was also invited to sit the practical test. He had, however, been informed that this did not mean that his application was deemed eligible for the Open Competition.

On 3 April 2007, EPSO informed the complainant that his application could not be considered eligible for the Open Competition and that his practical test could therefore not be marked. EPSO based its decision on the fact that his post-secondary education diploma was not relevant to the job description laid down in section A.I. of the Notice of Competition and that he had not obtained a minimum of three years of professional experience relevant to the duties set out in this Notice after having obtained his diploma.

On 20 April 2007, the complainant asked EPSO to reconsider its decision.

On 22 May 2007, the Selection Board maintained its initial decision.

In its opinion on the complaint, EPSO confirmed its view that the complainant did not fulfil the admissibility criteria mentioned in the Notice of Competition.

As regards the first allegation, EPSO pointed out that the Open Competition was held in order to recruit assistants in the "*secretarial field*". The duties of an assistant in the secretarial field were clearly, precisely and unambiguously set out in the Notice of Competition (section A.I). These duties included various secretarial and administrative tasks. Concerning the type of qualification required, the Notice clearly stated that the candidates should have obtained a diploma relevant to these duties. EPSO argued that the wording of the Notice was thus unambiguous and that the field of the Open Competition was clearly defined.

As regards the complainant's second allegation, EPSO pointed out that section A.II of the Notice of Competition sets out the conditions of eligibility which should have been met by the closing date for online registration. The candidates had to have obtained a post-secondary education relevant to the field of the Open Competition (secretarial field) or, alternatively, accumulated at least three years of professional experience relevant to the duties described in the Notice.

EPSO stressed that the complainant had obtained a Bachelor of Arts degree as a philologist and teacher of English and English literature. In EPSO's view, this diploma is not relevant to secretarial work.

EPSO explained that it had then examined whether the complainant had the professional experience required by the Notice of Competition. EPSO noted that in his application, the complainant indicated that he had a total of seven months of professional experience and only two months of professional experience as an administrative assistant. EPSO had thus concluded that the complainant clearly did not have the minimum professional experience required under section A.II.1 of the Notice.



EPSO reiterated its view that it had correctly considered that, in accordance with the conditions set out in the Notice of Competition, the complainant was not eligible for the Open Competition.

The complainant's observations

In his observations, the complainant stated that he did not understand why his diploma did not correspond to the duties listed in the Notice of Competition. He argued that the Notice did not mention any specific examples of diplomas relevant to the duties described and that it was therefore not clear what diplomas would be suitable for the post of assistant.

The complainant further submitted that his diploma had been considered relevant by the European Commission when the latter recruited him as a temporary agent for exactly the same position, that is, that of an assistant in the secretarial field, with the same job description and the same duties as those set out in the above-mentioned Notice. The complainant considered this to be in breach of the principle of equal opportunities and to constitute discrimination.

After considering EPSO's opinion and the complainant's observations, it appeared that further information regarding the types of diplomas that, in EPSO's view, were relevant for the post of a secretarial assistant was needed in order to deal with the case. However, the Ombudsman had, in the meantime, dealt with a similar case (complaint 1993/2007/RT), where further inquiries had been made and where EPSO had provided further information on the types of diplomas accepted. This information appeared relevant for the present case as well. The Ombudsman therefore drew the complainant's attention to this case and invited him to express his views on this further information provided by EPSO and the potential relevance of the Ombudsman's decision in case 1993/2007/RT (1) to his complaint.

The complainant's further observations

In his further observations, the complainant noted that none of the diplomas that had been enumerated by EPSO in case 1993/2007/RT, such as "*diplôme en secrétariat de direction, diplôme de secrétaire international, diplôme de secrétaire de direction bilingue, diplôme de documentaliste/libraire*" existed in the higher education system in Bulgaria. Further, similar courses could be taken only at the secondary educational level but none of them was considered to be a university degree. The complainant therefore wondered whether all Bulgarian university graduates would be prevented from taking part in EPSO competitions for secretarial assistants, in case they do not have the relevant working experience. He took the view that this was an extremely unfair way of selecting candidates.

THE DECISION

1 Preliminary remark

1.1 The complainant applied to take part in Open Competition EPSO/AST/14/06, which was organised by the European Personnel Selection Office ("EPSO") in order to recruit Bulgarian-language assistants in the secretarial field. He was excluded from the Open Competition on the grounds that his degree in English Philology did not meet the requirements of the Notice of Competition.

In his complaint to the Ombudsman, the complainant alleged that the Notice of Competition did



not clearly state what post-secondary education was required for assistants in the secretarial field. The complainant claimed that EPSO should reconsider his application and admit him to the Open Competition.

1.2 In his observations on EPSO's opinion, the complainant added one further allegation, namely, that EPSO's rejection of his application was discriminatory. He argued in this context that he was currently employed as a temporary agent by the European Commission and that his current post had the same job description as that contained in the Notice of Competition and that he performed the same duties as those that were described in the Notice.

1.3 The Ombudsman notes that the further allegation of discrimination has not yet been submitted to EPSO. However, Article 2(4) of the Statute of the European Ombudsman stipulates that a complaint needs to be preceded by appropriate prior administrative approaches to the Community institution or body concerned. The Ombudsman therefore takes the view that he cannot deal with this further allegation at present. The complainant remains free to renew this allegation after having made the appropriate approaches to EPSO. It appears useful to add, however, that even if the complainant's current post at the Commission has the same job description as the one announced in the Notice of Competition in question, the fact that the Commission may have considered that he fulfilled the conditions for the post does not necessarily mean that the contrary conclusion, which the Selection Board/EPSO reached in the present case, was wrong.

1.4 In his observations, the complainant further argued that none of the types of diplomas that EPSO had mentioned in the framework of the Ombudsman's inquiry into complaint 1993/2007/RT as being acceptable existed in the higher education system in Bulgaria and that such diplomas could be obtained in Bulgaria only at the secondary educational level. According to the complainant, this meant that all Bulgarian university graduates would be excluded from EPSO competitions for secretarial assistants, unless they had the necessary professional experience. The Ombudsman notes that the complainant thus appears to suggest that Bulgarian university graduates are disadvantaged and therefore discriminated against *vis-à-vis* nationals of other Member States in competitions for secretarial assistants. Given that this issue does not appear to have been addressed to EPSO yet, the Ombudsman takes the view that he cannot deal with it in the framework of the present inquiry. The complainant remains free, however, to renew this aspect of his complaint after having made the appropriate administrative approaches to EPSO.

2 As regards the allegation concerning the Notice of Competition

2.1 The complainant alleged that the Notice of Competition did not clearly state what post-secondary education was required for assistants in the secretarial field.

2.2 In its opinion, EPSO stated, in substance, that the Notice of Competition clearly, precisely and unambiguously outlined the requirements of post-secondary diplomas and described the duties of the post concerned.

2.3 In his observations, the complainant reiterated his view that the Notice of Competition did not mention any specific examples of diplomas relevant to the duties described and that it was



therefore not clear what diplomas would be suitable for the post of an assistant and why his diploma was considered not to be relevant.

2.4 While examining the complainant's case, the Ombudsman recalled that he had dealt with a similar case (complaint 1993/2007/RT), in which EPSO had provided further information on the types of diplomas to be accepted. In its comments in that case, EPSO had mentioned that diplomas such as "*diplôme en secrétariat de direction, diplôme de secrétaire international, diplôme de secrétaire de direction bilingue, diplôme de documentaliste/libraire*" had been accepted for a competition in the secretarial field. Accordingly, the Ombudsman considered that this information appeared relevant for the present case as well. He, therefore, drew the complainant's attention to this case and invited him to express his views on this further information provided by EPSO and on the potential relevance of the Ombudsman's decision in case 1993/2007/RT (2) to his complaint. In his further observations, the complainant submitted that none of these diplomas referred to by EPSO existed in the higher education system in Bulgaria and that such diplomas could be obtained in Bulgaria only at the secondary educational level. In his view that meant that all Bulgarian university graduates were thus excluded from similar EPSO competitions, unless they had the necessary professional experience.

2.5 The Ombudsman recalls that, according to established case-law of the Community courts (3), "*the essential function of a notice of competition is to give those interested the most accurate information possible about the conditions of eligibility for the post in question so as to enable them to judge whether they should apply for it. The appointing authority enjoys a wide discretion in deciding upon the criteria of ability required for the posts that are to be filled and in determining, in the light of those criteria and in the interests of the service, the rules and conditions under which a competition is organized (...)*".

2.6 The Ombudsman has carefully examined the Notice of Competition in question and notes that it envisages two alternative conditions for being admitted to the competition for assistants in the secretarial field, namely, that the candidates should have (i) completed a post-secondary education attested by a diploma "*in a field relevant to the duties described in section A.I*" of the Notice or (ii) obtained a level of secondary education attested to by a diploma giving access to higher education followed by at least three years of full-time professional experience relevant to those duties listed in A.I.

The Ombudsman also notes that section A.I of the Notice of Competition describes the duties to be carried out as follows:

" The position will entail the following tasks: secretarial tasks associated with organizing meetings, preparing missions; a range of other standard secretarial tasks (filing documents and mail, sorting post, keeping appointments, diaries); word-processing in your main language and possibly another official language of the EU; preparing documents using word-processing software (e.g. page layout, formatting, tables); various administrative tasks associated with file management using office software packages. "



2.7 The Ombudsman considers therefore that the Notice of Competition in question contained sufficient elements for the candidates to decide whether their qualifications were suitable for the posts they applied for and does not find any instance of maladministration as regards the complainant's allegation that the Notice did not clearly state what post-secondary education was required for assistants in the secretarial field.

2.8 The Ombudsman, however, considers it appropriate to recall his further remark to EPSO, made in the framework of his decision on complaint 1993/2007/RT. In that further remark, the Ombudsman stated that, in order to avoid possible misunderstandings that could result from the diversity of qualifications related to the secretarial field in the Member States, EPSO could consider including in the Guide for Applicants examples of relevant fields of studies related to the posts in the secretarial field.

3 As regards the appraisal of the complainant's diploma by the Selection Board (first part of the second allegation)

3.1 The complainant alleged that the Selection Board/ EPSO wrongly considered that his diploma in English Philology did not give him access to the Open Competition. He claimed that EPSO should reconsider his application, admit him to the Open Competition and mark his practical test. The complainant argued in this context that, during his studies in English Philology, he had followed a number of courses, such as English linguistics and translation, audiovisual information technology, academic and business writing, which corresponded to the majority of the tasks described in the Notice of Competition.

3.2 EPSO contended that the complainant's degree in English Philology was not in a field relevant to the secretarial duties described in the Notice of Competition.

3.3 The Ombudsman recalls that, according to established case-law of the Community Courts (4), the appointing authority enjoys wide discretion in assessing the candidates' qualifications and thus in judging whether these qualifications are sufficient for admission to a competition.

3.4 In light of this case-law, the Ombudsman considers that the Selection Board remained within the bounds of its discretion when deciding that a Bachelor of Arts degree as a philologist and teacher of English and English literature with its respective curriculum is not relevant to the duties for a post of assistant in the secretarial field.

3.5 The complainant has argued that a number of courses he had followed during his studies in English Philology, such as English linguistics and translation, audiovisual information technology, academic and business writing, corresponded to the majority of the tasks described in the Notice of Competition. The Ombudsman considers that the knowledge and skills acquired following the courses taken by the complainant could indeed be useful for the post of a secretarial assistant. However, the complainant himself does not appear to argue that these courses provided him with all the knowledge and skills that he needed in order to perform his duties as an assistant in the secretarial field, as indicated in the Notice (see point 2.6 above). It should be noted that the complainant has submitted that these courses corresponded to the "majority" of these tasks. In these circumstances, and in light of the above-mentioned case-law, the Ombudsman considers that the complainant has not established that the Selection Board



went beyond the bounds of its discretion when deciding that his Bachelor of Arts degree as a philologist and teacher of English and English literature was not relevant to the duties for a post of assistant in the secretarial field.

3.5 Following from the above, the Ombudsman does not find any instance of maladministration as regards the complainant's allegation that the Selection Board/ EPSO wrongly considered his diploma in English Philology as a diploma that could not give him access to the Open Competition.

4 As regards the alleged failure to provide sufficient reasons (second part of the second allegation)

4.1 The complainant alleged that the Selection Board/ EPSO failed to provide sufficient reasons for its decision concerning the non-eligibility of his application on the grounds of his diploma.

4.2 In its opinion, EPSO stated that, in its letters dated 3 April 2007 and 22 May 2007, it had explained to the complainant the reason why his diploma was not considered relevant. In its opinion, EPSO provided further explanations on this matter.

4.3 The Ombudsman notes that, in its reply of 22 May 2007 to the complainant's query concerning the relevance of his diploma, EPSO limited itself to stating that "*your diploma in English Philology is not in a field relevant to the duties described in section A.I of the Notice of Competition. (...) Studies in English Philology do not include these subjects*".

In its opinion on the present complaint, EPSO provided the following brief explanation:

"It should, however, be noted that the post-secondary education diploma that [the complainant] obtained in 2006 in English Philology is not relevant to secretarial work. As indicated in the copy of his diploma, he obtained a Bachelor of Arts degree as a philologist and teacher of English and English literature".

4.4 The information provided by EPSO to the complainant was thus indeed very limited and it is understandable that the latter took the view that he needed further information in order to be able to understand EPSO's decision. The Ombudsman recalls, however, that, in the course of his inquiry into complaint 1993/2007/RT, which raised the same issue, EPSO provided further information as to what diplomas are considered relevant for the secretarial duties (see point 2.4 above). In these circumstances, the Ombudsman takes the view that there are no grounds for further inquiries into this aspect of the present complaint.

5 As regards the complainant's claim

5.1 The complainant claimed that EPSO should reconsider his application, admit him to the Open Competition and mark his practical test.

5.2 In view of the above-mentioned finding concerning the complainant's allegations, the Ombudsman considers that the complainant's claim cannot be sustained.

6 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there are no grounds for further inquiries as regards the complainant's allegation that EPSO failed to provide him with sufficient



reasons for its decision concerning the non-eligibility of his application. As regards the other allegations and the claim, there appears to have been 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

(1) Decision of the European Ombudsman on complaint 1993/2007/RT against EPSO, available on the Ombudsman's website (<http://www.ombudsman.europa.eu> [Link]).

(2) See footnote 1.

(3) See Case T-132/89 *Gallone v Council* [1990] ECR II-549, paragraph 27; and Case T-237/95 *Carbajo Ferrero v Parliament* [1997] ECR-SC I-A-141 and II-429, paragraph 47.

(4) See Case T-54/91 *Antunes v Parliament* [1992] ECR II-1739, paragraph 39; and Case T-249/01 *Boixader Rivas v Parliament* [2003] ECR II-749, paragraph 29.