

Decision of the European Ombudsman on complaint 2596/2007/RT against the European Personnel Selection Office

Decision

Case 2596/2007/RT - Opened on 07/11/2007 - Decision on 22/07/2008

Strasbourg, 22 July 2008

Dear Mr X,

On 15 October 2007, you submitted a complaint to the European Ombudsman against the European Personnel Selection Office ("EPSO"), concerning your exclusion from Open Competition EPSO/AD/47/06.

On 7 November 2007, I forwarded the complaint to the Director of EPSO. EPSO sent its opinion on 7 February 2008. I forwarded it to you with an invitation to make observations, which you sent on 13 February 2008.

On 3 March 2008, I asked EPSO for further information in relation to your case. EPSO sent its reply to my request for information on 1 April 2008.

I forwarded this reply to you on 18 April 2008 with an invitation to make observations, which you sent on 28 April 2008.

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

THE COMPLAINT

The complainant took part in Open Competition EPSO/AD/47/06 which was designated to constitute a reserve list of administrators (AD5) with Romanian citizenship in the fields of European public administration, law, economics and audit.

He sat the last written test of the Open Competition, that is, test (c), in Romanian as his main language. Due to his handicap, the complainant took test (c) on a computer. The computer he used had the spelling corrector activated in French and not in Romanian. Therefore, every element of his draft was automatically translated into French. The complainant indicated this problem to the competition organisers, but they did not react. Furthermore, one of the



organisers stated that " *he should not be to [sic] worry about the competition because as a candidate with a disability, he had all the chances [sic] to obtain a job in the European institutions* " (1) .

On 24 May 2007, EPSO informed the complainant that he did not obtain the pass-mark in test (c) (he scored 7 points, for test (c), which had a pass-mark of 8/10).

On 25 May 2007, the complainant wrote to EPSO to complain about the conditions of test (c) and to ask for a review of his candidature. Given that he received no reply from EPSO, the complainant submitted his first complaint to the European Ombudsman (reference 1711/2007/RT). Following the Ombudsman's intervention, EPSO replied to the complainant on 9 July 2007. In its reply, EPSO stated that the Selection Board had reviewed the complainant's test (c) and decided to raise his mark in test (c) from 7 to 8 points. Although the complainant obtained the pass-mark in all the written tests, he was not among the candidates who obtained the highest scores in the written tests. Therefore, he did not qualify for the oral test.

On 31 August 2007, the complainant contacted EPSO by telephone in order to obtain more explanations. According to the complainant, an EPSO official treated him with disrespect and stated that "he had made big errors in Romanian" (" *grosses erreurs de roumain* "). As regards the complainant's situation as being a handicapped candidate, the official stated that another candidate who was in "worse shape" (2) than he also failed to pass test (c), even though that candidate's errors were less serious than those of the complainant.

Following this conversation, the complainant wrote again to EPSO on 31 August 2007. He stated that the Selection Board failed to indicate the reasons for his new mark and to provide him with sufficiently precise information concerning the errors identified in his test (c). Moreover, the complainant argued that EPSO disregarded Parliament's "Code of good practice for the employment of people with disabilities" (3) which encouraged the recruitment of disabled people. The complainant also pointed out that he was treated with disrespect by EPSO officials.

On 11 September 2007, the complainant approached the Ombudsman again (reference 2230/2007/RT) concerning EPSO's failure to answer his letter of 31 August 2007. In his reply, the Ombudsman explained to the complainant that the required prior administrative approaches had not been completed because the institution had not had the time to reply to his letter dated 31 August 2007 before he submitted his complaint to the Ombudsman (4) .

Given that during the next two months, EPSO failed to reply, on 12 October 2007, the complainant lodged the present complaint with the Ombudsman, which was registered under the reference 2596/2007/RT.

The complainant alleged that:

(i) during and after the competition in question, EPSO's officials failed to treat him courteously and made disrespectful remarks concerning his condition as a handicapped candidate.



(ii) EPSO failed to provide him with sufficiently precise information on the errors identified in his written test (c).

(iii) EPSO failed to reply to his e-mail dated 31 August 2007.

The complainant claimed that EPSO should admit him to the final stage of the competition.

THE INQUIRY

EPSO's opinion

EPSO'S opinion can be summarised as follows:

EPSO noted that the complainant was the only candidate who sat the written tests separately from the other candidates, in EPSO's office. He had been supervised by an EPSO official. Before the tests took place, that official informed the complainant about the time-limit for each test, including the additional minutes allowed because of his handicap, as previously agreed with the complainant. EPSO stated that, during the tests, the EPSO official made no remarks to the complainant. EPSO did not exclude the possibility that the official could have spoken with the complainant after the tests. However, EPSO pointed out that the official's behaviour was, in any case, correct and convivial. Moreover, in his correspondence with EPSO, before submitting his complaint to the Ombudsman, the complainant made no comments as regards an improper behaviour on the part of EPSO staff. As regards the calls made by the complainant to EPSO after the written tests, the EPSO officials informed him that the marks are the sole responsibility of the Selection Board and indicated the appeals procedures that he might use, in the event that he were not satisfied with the Board's decision. EPSO pointed out that the internal inquiry concerning the complainant's allegations did not reveal any misconduct on the part of its staff.

As regards the spelling corrector, EPSO remarked that this option is switched off only for competitions organised to recruit secretaries. Given that the complainant took part in a competition for administrators, the spelling corrector was not switched off. EPSO also noted that this constitutes a " *current practice* ". EPSO emphasised that the complainant had asked to take the written tests on a computer. Therefore, he should have been familiar with its different options, including the spelling corrector.

As regards the complainant's second allegation, EPSO pointed out that the marking of the tests is the sole responsibility of the Selection Board. EPSO also remarked that, according to the case-law of the Community Courts, the 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 its opinion, EPSO also commented on the point made by the complainant concerning the respect of the principle of equal opportunities. EPSO pointed out that competition procedures are adjusted where appropriate in order to permit disabled persons to sit the tests in similar circumstances as the other candidates. In this respect, EPSO noted that, in the present case, the complainant sat the written tests on a computer and was granted extra time. EPSO also



stressed that the tests are corrected anonymously. Finally, EPSO stated that it is continuing to explore ways designed to improve the conditions under which disabled persons sit the tests in the selection procedures.

The complainant's observations

The complainant stated that EPSO failed to explain in its opinion the errors he had made in test (c). In the complainant's view, these errors were caused by the malfunctioning of the spelling corrector.

The complainant wondered whether, at the time when he took the tests, he was allowed to switch off the spelling corrector himself. If so, it could indicate that the handicapped candidates were required to possess additional IT competence in comparison with the other candidates. He also stated that, in another EPSO competition (5), the spelling corrector was switched off by EPSO's officials before the tests started.

The complainant also stated that he had informed EPSO's official during the tests about the problems resulting from the fact that the spelling corrector was activated but that official failed to assist him and stated instead that "*the Selection Board will take into consideration the fact that he is handicapped*".

Further inquiries

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

The Ombudsman's letter to EPSO dated 3 March 2008

On 3 March 2008, the Ombudsman sent EPSO a copy of the complainant's observations and asked EPSO:

(i) to take a stance on the complainant's new allegation, submitted in his observations, that he had informed EPSO's official during the tests about the problems resulting from the fact that the spelling corrector was activated in French but that official failed to assist him and stated instead that "*the Selection Board will take into consideration the fact that he is handicapped*".

(ii) to explain the distinction made in its opinion, according to which the spelling correctors are deactivated in competitions for secretaries, while in competitions for administrators (as in the complainant's competition) they are not. Does this mean that the administrators should know how to deactivate the spelling correctors activated in a particular language while the secretaries should not? Does EPSO consider therefore that the ability to deactivate the spelling corrector is part of computer abilities the candidates should possess for administrator competitions?

(iii) to clarify why it stated in its opinion, when commenting on the French spelling corrector problems, that "*the complainant alone wanted to take the test on [a] computer*".

(iv) to explain whether it considered that the complainant took the test in Romanian under conditions equal to those which faced the other candidates who were not handicapped or that EPSO's special arrangements to accommodate the complainant's handicap were designed only to make his participation in the tests factually possible?



(v) to provide a copy of the complainant's test (c) and of the evaluation grid used by markers. If EPSO considers these documents to be confidential, the Ombudsman shall treat them accordingly, namely, by not disclosing them to the complainant.

EPSO's reply of 1 April 2008

In its reply, EPSO made, in summary, the following comments:

As regards the spelling corrector, EPSO drew a distinction between competitions for secretaries and administrators. In this respect, it explained that this option is turned off in the written tests administered in competitions organised to recruit secretaries. EPSO stated that these tests are designed to evaluate both the ability of candidates to prepare documents using word processing and their capacity to draft. If the spelling corrector were activated for the competitions to recruit secretaries, the candidates could easily correct their grammar or spelling mistakes. As regards the present case, EPSO pointed out that the complainant took part in a competition to recruit administrators. Given his handicap, the complainant asked to take the written tests on a computer. EPSO considered such a request to be justified, given the complainant's situation and assumed that he was familiar with word processing.

EPSO added that the objective of the tests in question was to evaluate the candidates' ability to understand, analyse and summarise as well as their command of their main language. These tests for administrators were not designed to assess the candidates' computer abilities. The computer represented only a tool which allowed the complainant to sit the written tests. Given the nature of the competition, EPSO did not turn off the spelling corrector before the beginning of the tests and did not give any instruction to its official as regards the spelling corrector. On the same day, the organisers of the competition confirmed to the official present in the examination room that the spelling corrector was not turned off. EPSO's special arrangements to accommodate the complainant's handicap were designed to ensure that he would take the tests under conditions equal to those faced by the other candidates.

EPSO also provided a copy of the complainant's test (c) and of the evaluation grid used by markers, indicating that the latter document was confidential.

The complainant's observations

A copy of EPSO's reply was forwarded to the complainant, with the exception of the above confidential document. The complainant noted that, as regards the spelling corrector, a distinction should be made between the " *check spelling as you type* " option, which only underlines the misspelled words and the " *replace text as you type* " option which automatically detects and corrects typographical errors or misspelled words. The complainant pointed out that the first option is activated by default. As regards the second option, it is rarely activated because of the risk of wrongly replacing words and the additional attention it requires in order to avoid nonsense. He pointed out that this second option caused him difficulties during test (c) because the words typed in Romanian were automatically replaced by French words. Therefore, he had to rewrite the words in question, which made him lose time. The complainant reiterated that he had informed the EPSO's official during the tests about the problems resulting from the fact that the automatic correct option was activated. In his view, the official should have interrupted the chronometer and ask the organisers whether the complainant could turn off the automatic correct option in question. The complainant stated that he had made only four



spelling errors in his test (c), namely, " *he did not put some accents in Romanian* ". The complainant took the view that he could have avoided these mistakes had he had more time for test (c) and had the computer keyboard contained Romanian characters. In this respect, he stated that he had to introduce the Romanian characters separately.

THE DECISION

1 Preliminary remark *Scope of the Ombudsman's inquiry*

1.1 In the course of the European Ombudsman's inquiry the complainant informed the Ombudsman's services that he had, in the meantime, received a reply from EPSO on 14 November 2007 to his e-mail dated 31 August 2007. Consequently, the Ombudsman informed EPSO that he considered that the complainant's third allegation, raised in his original complaint, had, in the meantime, been settled.

1.2 In the course of the inquiry, the complainant submitted a new allegation to the effect that he had informed EPSO's official during the tests about the problems resulting from the fact that the spelling corrector was activated in French but that that official failed to assist him and stated instead that " *the Selection Board will take into consideration the fact that he is handicapped* ". The Ombudsman decided to include this allegation into his inquiry and asked EPSO for an opinion.

1.3 In light of the above, the Ombudsman will, in the present decision, deal with the following allegations and claim:

(i) the complainant alleged that during and after the competition in question, EPSO's officials failed to treat him courteously and made disrespectful remarks concerning his condition as a handicapped candidate;

(ii) the complainant alleged that the EPSO official present in the examination room failed to help him with his problems as regards the spelling corrector;

(iii) the complainant alleged that EPSO failed to provide him with sufficiently precise information on the errors identified in his written test (c).

(iv) the complainant claimed that EPSO should admit him to the final stage of the competition.

2 Alleged failure to treat the complainant courteously, and to assist him during the written tests of the competition

2.1 The complainant alleged that, during and after the competition in question, EPSO's officials failed to treat him courteously and made disrespectful remarks concerning his condition as a handicapped candidate. In his observations on EPSO's opinion, he also alleged that the EPSO official present in the examination room failed to help him with his problems as regards the spelling corrector.

2.2 EPSO stated, in substance, that the internal inquiry concerning the complainant's allegations did not reveal any misconduct on the part of its staff. As regards the spelling



corrector, EPSO stated that this option was activated on the computer on which the complainant sat the written tests. EPSO considered that the complainant knew how to turn on/off the different options since he had requested to take the written tests on a computer. The computer constituted a tool which allowed the complainant to sit the tests and it was not designed to assess his computer abilities. EPSO concluded that the competition's procedures were adjusted in order to permit the complainant to sit the tests in conditions similar to those faced by the other candidates and, therefore, the principle of equal treatment had been respected.

2.3 In examining the present allegation, the Ombudsman finds it useful, to consider first the specific question of the spelling corrector and thereafter to examine more generally the treatment of the complainant by EPSO officials during and after the written tests in the competition.

The specific issue of the spelling corrector

2.4 At the outset, the Ombudsman recalls that, under the principles of sound administration and equal treatment, Community institutions have a duty to all candidates in a competition to ensure that the tests are conducted as smoothly and properly as possible. As the Community Courts have held, the administration is obliged to ensure that the competition is properly organised (6) .

2.5 In the present case, the Ombudsman notes that, given his particular situation, the complainant could only sit the written tests of the above competition on a computer. In this respect, the Ombudsman remarks that special arrangements, in particular, granting extra time for the written tests, were designed to accommodate the complainant's disability and were agreed upon in advance between EPSO and the complainant.

2.6 The Ombudsman understands that the issue of the spelling corrector in dispute in the present case concerns mainly test (c). The Ombudsman notes that, according to the Notice of Competition (7) , test (c) consisted of a short memo in Romanian and was designed to assess the complainant's command of his main language.

2.7 It is not disputed that the spelling corrector option was activated in French on the complainant's computer. The Ombudsman takes note of the complainant's argument that two different features should be distinguished as regards the automatic correct tool on a computer (with Microsoft Word), namely, the " *check spelling as you type* " option and " *replace text as you type* " option. The first option exists by default on a computer and it checks spelling and grammar using wavy red underlines to indicate potential spelling problems and wavy green underlines to indicate potential grammatical problems. As regards the " *replace text as you type* " option, the Ombudsman notes that, should this option be activated on the computer, it detects but also automatically corrects typographical errors or misspelled words.

2.8 The Ombudsman understands that this latter option was activated on the computer on which the complainant took test (c). The Ombudsman considers that, when activated, this second feature could hinder significantly the drafting of a text in a different language than the one in which this option is activated.

2.9 The Ombudsman takes note of EPSO's statement that the written tests in the present



competition were not designed to assess the complainant's computer abilities and that the computer constituted only a tool which allowed the complainant to sit the written tests under conditions equal to those faced by other candidates who were not handicapped. The Ombudsman considers, therefore, that the computer should not have made the complainant's performance more difficult. If the tests for administrators are carried out in order to verify, in EPSO's own wording, "*ability to understand, analyse, summarise and command of the language*", it follows that the "*replace text as you type*" option could considerably disturb the complainant if not harm his overall performance. The use of such an option by EPSO appears to constitute *prima facie* evidence of maladministration.

2.10 Consequently, the Ombudsman considers it necessary to assess whether that *prima facie* evidence of maladministration could have (i) general implications and (ii) implications for the complainant in particular.

2.11 As regards the potential general implications of the above *prima facie* evidence of maladministration, the Ombudsman notes and welcomes EPSO's initiative to examine how to improve the conditions under which disabled persons sit the tests in selection procedures. The Ombudsman trusts that EPSO will continue its efforts to ensure that the special measures taken with an eye to facilitating the participation of people with disabilities in the selection procedure do not generate additional difficulties which could render more difficult their overall performance. He will make a further remark below in this regard.

2.12 As regards the potential implications of the above *prima facie* evidence of maladministration for the complainant in particular, the Ombudsman considers, that on the basis of his service's examination of the complainant's test (c) in Romanian and of the evaluation grid used by the Selection Board, no manifest error of assessment has been committed. Moreover, it does not appear that the complainant's final performance in test (c) has been significantly influenced by the fact that the spelling corrector was activated on the computer on which he sat the tests. Moreover, in his observations, the complainant himself admitted that only his four accent mistakes were due to that. It appears, therefore, that no further inquiries are justified as regards this issue.

The treatment of the complainant

2.13 The Ombudsman notes that the complainant had informed the EPSO official during the tests about the problems arising from the fact that the spelling corrector was activated in French. The Ombudsman also notes EPSO's explanation that it had assumed that the complainant was familiar with the features of a computer and that the official who was present in the examination room did not receive any instruction as regards the spelling corrector. The Ombudsman understands from EPSO's reply to his further inquiries that, after the complainant took the written tests, the EPSO official present in the examination room asked the organisers of the tests about the spelling corrector issue. This approach appears to be reasonable. The Ombudsman further understands however that the "organisers" did not allow the official in question to switch off the spelling corrector. In light of his findings in points 2.11 and 2.12, the Ombudsman does not consider that any further inquiry is necessary in this respect.

2.14 As regards the complainant's submission that EPSO's officials failed to treat him



courteously by telephone, the Ombudsman first notes that, the complainant contacted EPSO to obtain more details as regards the review of his test "c". According to the complainant, an EPSO official treated him with disrespect and stated that " *he had made big errors in Romanian* " (" *grosses erreurs de roumain* ") and that another candidate who was in " *worse shape* " than he also failed to pass test (c), even though the errors of the candidate in question were less serious than those of the complainant. The Ombudsman also notes that, in its opinion, EPSO pointed out that the internal inquiry concerning the complainant's allegation did not reveal any misconduct on the part of its staff. On the basis of the evidence available, the Ombudsman is not able to take a position on the above divergences between the complainant and EPSO concerning possible inappropriate behaviour by EPSO officials.

Nevertheless, the Ombudsman trusts that EPSO will continue to instruct its staff to act and conduct themselves with utmost care when dealing with candidates having disabilities in order to avoid causing any offence to them and causing them distress. The further remark encompasses this issue as well.

3 Alleged failure to provide the complainant with sufficiently precise information on the errors identified in his written test (c)

3.1 The complainant alleged that EPSO failed to provide him with sufficiently precise information concerning the errors identified in his test (c).

3.2 In its opinion, EPSO pointed out that, according to the case-law of the Community Courts, 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.

3.3 The Ombudsman notes that, in his request for further inquiries, EPSO provided a copy of the complainant's test (c) and the evaluation grid used by the two markers which was treated as confidential (8) . A copy of EPSO's reply was forwarded to the complainant including his test (c) but not the examination grid. The Ombudsman further notes that, having received, the above documents, the complainant did not request, in his observations, additional information as regards the errors made in his test (c).

3.4 The Ombudsman understands therefore, that EPSO answered the complainant's query in the course of his inquiry. In light of the above, Ombudsman takes the view that no further inquiries are therefore justified as regards this allegation.

4 The claim

4.1 The complainant claimed that EPSO should admit him to the final stage of the competition. In light of the conclusions set out in points 2.11 and 2.12, the complainant's claim cannot be sustained.

5 Conclusion

For the reasons explained in points 2.12 and 3.4 above, no further inquiries are justified as regards the present case.

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



FURTHER REMARK

The Ombudsman trusts that EPSO will continue its efforts to ensure that the special measures taken in order to facilitate the participation of people with disabilities in the selection procedure do not generate additional difficulties which could render more difficult their overall performance.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) In French: "*il ne devait pas trop s'en faire pour le concours, car en tant que candidate handicapé il avait toutes ses chances d'être recruté par les institutions européennes*".

(2) In French: "*plus abîmé*".

(3) Decision of the Bureau of the European Parliament of 22 June 2005.

(4) Article 2(4) of the Ombudsman's Statute: "*A complaint shall be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint and must be preceded by the appropriate administrative approaches to the institutions and bodies concerned.*"

(5) The complainant did not give further details regarding this competition.

(6) Case T-159/98 *Torre and others v Commission* [2001] ECR-SC I-A-83 and II-395, paragraph 46.

(7) Notice of Competition section C.1, OJ 2006 C 145 A/12.

(8) This latter document was treated confidentially and was not disclosed to the complainant.