

Decision of the European Ombudsman closing his inquiry into complaint 1282/2007/DK against the European Personnel Selection Office

Decision

Case 1282/2007/DK - Opened on 04/07/2007 - Decision on 28/11/2008

THE BACKGROUND TO THE COMPLAINT

1. The complainant participated in Open Competition EPSO/AD/62/06 for Administrators (AD5) with Slovak citizenship, organised by the European Personnel Selection Office (EPSO) in 2006 [1]. He sat the computer based admission tests (CBT) on 6 December 2006 at a Bratislava test centre.

2. By letter of 1 February 2007, EPSO informed the complainant that he did not obtain the pass mark in admission test b). The pass mark was 20 points and the complainant obtained 19.31 points. He was therefore not admitted to the next stage of the competition.

3. On 8 February 2007, the complainant requested EPSO to clarify how it was possible to achieve 0.31 points for a question. Since he was of the opinion that every correct answer was marked with one point, he requested a re-evaluation of his admission test b).

4. On 15 February 2007, EPSO replied that test a) consisted of 30 questions, to which corresponded a total of 20 points. Accordingly, each correct answer was worth 0.6666 points. Test b) consisted of 30 questions, to which corresponded a total of 40 points. As a result, 1.3333 points were allocated for each correct answer. EPSO added that "*you would have to divide your mark with what each question is worth (...) [this] will show that indeed you answered correctly to 23 questions in [admission test a)] and 19 questions in the [admission test b)]*". In another e-mail sent on the same day, EPSO apologised for having made a mistake in its previous e-mail [2], and clarified that the complainant had obtained 12 points for test a), and 19.31 for test b). EPSO pointed out that the rest of the information in its previous e-mail was correct.

5. On 16 February 2007, the complainant replied that, according to EPSO's above explanation concerning the calculation of the marks, if he indeed answered 19 questions correctly in admission test b), his score for that test should be $19 \times 1.3333 = 25.3327$ points, and not 19.31



points. He therefore asked for clarification. However, he did not receive a reply to his request.

6. On 9 May 2007, the complainant submitted the present complaint to the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY

7. On 4 July 2007, the Ombudsman opened an inquiry into the following allegation and claim:

Allegation :

Taking into account the contradictory information provided by EPSO on the calculation concerning his marks, the Office incorrectly evaluated the complainant's admission test b),

Claim :

EPSO should send him, by e-mail, its evaluation of test b), showing, per question, which answer was correct and which was not.

THE INQUIRY

8. On 4 July 2007, the Ombudsman asked EPSO to submit an opinion, which it did on 29 October 2007. EPSO's opinion was forwarded to the complainant, with an invitation to submit observations by 31 December 2007. No observations were received from the complainant.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation that EPSO incorrectly evaluated the complainant's admission test b)

Arguments presented to the Ombudsman

9. The complainant alleged that, taking into account the contradictory information provided by EPSO on the calculation concerning his marks, the Office incorrectly evaluated his admission test b),

10. EPSO explained that in admission test b), candidates had to answer 30 questions. However, after the tests had taken place, it found that one of the questions had to be removed, since it could have been misunderstood or perceived as ambiguous. Out of the remaining 29 questions, the complainant gave 14 correct answers. He therefore obtained 19.31 points out of 40. Following the removal of one question in the complainant's test, EPSO acted appropriately by redistributing the points allocated to the test between the remaining questions. This way, the



principles of proportionality and of sound administration were complied with.

The Ombudsman's assessment

11. The complainant's allegation is based on the assumption that EPSO incorrectly calculated his marks. The complainant's assumption was based on the contradictory information provided to him by EPSO. The 'contradictory information' referred to by the complainant was that EPSO had informed him: (i) that for test b), the total amount of points awarded for one correct answer was 1.3333; (ii) that he had correctly answered 19 questions; (iii) that the final mark given for his test b) was 19.31, whereas 19×1.3333 equals 25.3327. A final mark of 25.3327 would have meant that the complainant had passed the test.

12. In its opinion on the present inquiry, EPSO explained that the complainant had in fact correctly answered 14 questions, and not 19, as stated in its first e-mail of 15 February 2007.

13. The complainant did not submit any observations disputing that he had in fact correctly answered 14 as opposed to 19 questions. Furthermore, there is no information in this case to suggest that this information is not accurate. The Ombudsman therefore concludes that EPSO, whilst having initially given inaccurate information to the complainant (see previous paragraph), has, in the course of the present inquiry, adequately clarified why the complainant did not obtain a final mark of 25.3327.

14. It is appropriate, however, to point out here that the relevant explanations provided to the complainant were incomplete and partly inaccurate.

15. EPSO initially informed the complainant that test b) consisted of 30 questions to which corresponded a total of 40 points. This meant that each correct answer was worth 1.3333 points. However, it appears from EPSO's opinion that this was incorrect. In its opinion, EPSO explained that one of the 30 questions in admission test b) had had to be removed because it could have been misunderstood or perceived as ambiguous. Initially, admission test b) was to be marked out of 40 points, that is, if a candidate gave 30 correct answers, he/she would receive 40 points. Following the removal of one question, the 40 points had to be allocated between the remaining 29 questions. As EPSO has pointed out, this method of reallocating points is in accordance with the established case-law of the Community courts [3]. In the present case, it meant that the accurate amount of points per question in test b) was 1.3793 ($40 \text{ (points)} / 29 \text{ (questions)} = 1.3793 \text{ point per question}$), and not 1.3333. As a matter of fact, the complainant's final mark was calculated on the basis of 1.3793 points per question ($14 \times 1.3793 = 19.3103 \text{ points}$) and not 1.3333. The above-mentioned inaccuracy in EPSO's explanation was therefore not reflected in the outcome.

16. In light of the above findings (specifically those in paragraphs 14 and 15), the present complaint to the Ombudsman would probably have been unnecessary if EPSO had, from the outset, provided the complainant with accurate and clear explanations for the mark that he was awarded for test b). The Ombudsman does not, however, find any instance of maladministration, in respect to the specific allegation that test b) had been incorrectly



evaluated.

B. Claim that EPSO should provide the complainant with its evaluation of test b), showing, per question, which answer was correct and which was not

Arguments presented to the Ombudsman

17. The complainant claimed that EPSO should provide him with its evaluation of test b), showing which individual answers were correct and which were not.

18. EPSO explained that the test in question was computer based. For this type of test, candidates can choose the date on which they wish to sit the tests. Necessarily, each candidate receives different questions, which are selected randomly by a computer from a database. This database was set up specifically for this purpose, in collaboration with the different Community Institutions and with the support of a contractor. It contains a series of verbal and numerical reasoning questions, and questions designed to assess the candidates' knowledge of the European Union. Questions are fed into the database, amended and updated on a regular basis. These admission tests are therefore held exclusively on computers, online, and in a secure and protected room. Candidates are not allowed to take the questionnaire away with them, and cannot obtain a print-out of their questions and answers. The questions in the database are used for a whole range of competitions and selection tests, both for ongoing and for planned competitions. It is therefore not possible to disclose any of the information contained in the database without prejudice to the equal treatment of candidates and competition procedures in general. For these reasons, EPSO cannot provide the complainant with a copy of his answers and the list of correct answers.

The Ombudsman's assessment

19. The complainant's claim raises an issue that was already examined by the Ombudsman in cases 2626/2006/MHZ, 3746/2006/MHZ, 370/2007/MHZ, and 3819/2006/DK. In these cases, EPSO, in essence, invoked the same arguments in support of its challenged refusals to grant access. In his decisions on these complaints [4], the Ombudsman found that EPSO had failed adequately to justify its contested refusal and that this constituted an instance of maladministration. This finding is also made *mutatis mutandis* in the present case.

20. In his above-mentioned decisions, the Ombudsman also noted that he was already dealing with a considerable number of similar complaints, in relation to which EPSO had, in essence, adopted the same position and supporting argumentation. In these circumstances, he considered it appropriate to launch an own-initiative inquiry into the overall structure of the computer-based testing used in EPSO competitions. The own-initiative inquiry would provide EPSO with an opportunity to review its policies on the matter, search for ways to address the problems identified by the Ombudsman, and, more broadly, to arrive at an equitable solution.



21. In light of the above, the Ombudsman will close the present case and all other on going cases dealing with the same question by referring to his critical remark in case 370/2007/MHZ [5] . The Ombudsman will, in due course, also inform the concerned complainants, including the complainant in the present case, of the outcome of his above-mentioned own-initiative inquiry.

C. Conclusions

Allegation:

In light of the above findings (specifically those in paragraphs 14 to 16), the present complaint to the Ombudsman would probably have been unnecessary if EPSO had provided the complainant from the outset with accurate information and explanations for the mark that he was awarded for test b). The Ombudsman does not, however, find any instance of maladministration, in relation to the specific allegation that test b) had been incorrectly evaluated.

Claim:

For the reasons explained in paragraph 20 above, the Ombudsman considers that no further inquiries are justified into the complainant's claim. The Ombudsman refers, however, to his critical remark in case 370/2007/MHZ, pointing out that EPSO has failed adequately to justify its refusal to give the complainant access to the CBT questions/answers and that this constitutes an instance of maladministration.

The Ombudsman therefore closes the case. The complainant and the Director of EPSO will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 28 November 2008

[1] The competition notice was published in OJ 2006 C 172A, p. 3., and the corrigenda were published in OJ 2006 C 240A, p.3., and OJ 2006 C 286A, p.3.

[2] The Ombudsman notes that the mistake referred to by EPSO was that in test b) the complainant did not answer 19 questions correctly but only 14.

[3] Case T-49/03 *Schumann v Commission* [2004] ECR II-1371, paragraph 53-55.

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



[5] " *EPSO has failed adequately to justify its refusal to give the complainant access to the CBT questions/answers. This is an instance of maladministration.* "