

Decision of the European Ombudsman closing his inquiry into complaint 1566/2007/DK against the European Personnel Selection Office

Decision

Case 1566/2007/DK - Opened on 21/08/2007 - Decision on 09/06/2009

The complainant, a Romanian citizen, wished to participate in Open Competition EPSO/AD/47/06 to recruit administrators with Romanian citizenship. On 25 October 2006, he presented himself to sit the pre-selection tests in the designated test centre in Bucharest. However, as his name did not appear correctly on the computer screen, following the instructions provided, he clicked the 'NO' button, which then terminated his participation in the competition.

In his complaint, he alleged that EPSO did not reply to his complaint of 25 October 2006 regarding the above matter, and claimed that he should be allowed to sit the pre-selection tests again.

The Ombudsman made a preliminary finding that EPSO failed to reply properly to the complainant's complaint of 25 October 2006, and also failed to allow the complainant to resit the tests. He therefore made a proposal for a friendly solution, according to which EPSO should provide the complainant with a substantive reply to his complaint of 25 October 2006 and invite him to sit the pre-selection tests again.

EPSO accepted this proposal, provided a detailed reply to the complaint of 25 October 2006, and contacted the complainant to arrange a suitable test appointment so that he could resit the pre-selection tests. However, the complainant was not satisfied with the friendly solution proposal. The Ombudsman therefore concluded that it was not possible to bring about a friendly solution.

The Ombudsman welcomed EPSO's acceptance of his friendly solution proposal and found that there was no longer any instance of maladministration by EPSO. He therefore closed the case.

THE BACKGROUND TO THE COMPLAINT

1. The complainant participated in Open Competition EPSO/AD/47/06 for Administrators (AD5)



with Romanian citizenship, organised by the European Personnel Selection Office (EPSO) in 2006 [1]. The private company Thomson Prometric ('the contractor') was responsible for organising the computer based admission tests (CBT).

2. On 25 October 2006, the complainant presented himself at a test centre, with a view to sitting the admission tests. As his name did not appear correctly on the computer screen, the complainant, in accordance with the instructions given, clicked on the 'NO' button and subsequently on the 'END' button. This meant that he was not able to carry out the tests. An invigilator subsequently told him that the incident would be reported to the contractor, which would contact him regarding the matter. On the same day, the complainant sent an e-mail to EPSO, in which he both explained and complained about the above incident.

3. On 31 October 2006, the contractor contacted the complainant by telephone informing him that he could sit the tests on 2 November 2006 and that he would receive an e-mail confirming the time and place when they would be held. On 1 November 2006, the complainant informed EPSO about this and complained that he had not received a confirmatory e-mail in this regard. As a result, he did not know where and when the tests would take place the following day.

4. The complainant did not resit the tests on 2 November 2006. Nevertheless, on 14 December 2006, EPSO informed him that he had failed the test of 25 October 2006. On 4 June 2007, he complained to the Ombudsman.

THE SUBJECT MATTER OF THE INQUIRY

5. On 21 August 2007, the Ombudsman opened an inquiry into the following allegation and claim:

Allegation

EPSO failed to reply to his complaint of 25 October 2006.

Claim

EPSO should provide him with a substantive reply on two issues: (i) that he was not allowed to sit the admission tests and should therefore be allowed to sit them again, and (ii) about the "*threatening and intimidating*" behaviour of the invigilators at the test centre.

THE INQUIRY

6. On 21 August 2007, the Ombudsman asked EPSO to submit an opinion. On 7 December 2007, EPSO submitted its opinion, which was forwarded to the complainant with an invitation to submit observations. The complainant submitted his observations on 6 February 2008.



7. After a careful consideration of EPSO's opinion and the complainant's observations, the Ombudsman was not satisfied that EPSO had responded adequately to the complainant's allegation and therefore made a proposal for a friendly solution to EPSO.

8. In its reply of 28 January 2009, EPSO stated that, in accordance with the Ombudsman's proposal, it sent the complainant another communication. This was in addition to the one it sent on 26 October 2006 concerning the complainant's right to retake the access tests for Open Competition EPSO/AD/47/06. EPSO further stated that, given the circumstances surrounding both the first and second appointments for the complainant's tests, it agreed to the Ombudsman's request for the complainant to be invited to take the tests for the competition in question. EPSO added that it would do all in its power to enable the complainant to retake the admission tests in the near future. On 14 February 2009, the complainant sent his observations on EPSO's reply, in which he stated that he was not satisfied with EPSO's approach.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. EPSO's alleged failure to reply and related claim

Arguments presented to the Ombudsman

9. The complainant alleged that EPSO failed to reply to his complaint of 25 October 2006, and claimed that EPSO should provide him with a substantive reply on two issues: (i) that he was not allowed to sit the admission tests and should therefore be allowed to sit them again, and (ii) about the "threatening and intimidating" behaviour of the invigilators at the test centre.

10. In its opinion, EPSO provided the following remarks and information regarding the incident in question. If candidates click on the 'END' button during the computer tests (deliberately or otherwise), the staff present at the test centre cannot, for technical reasons, allow them to resit the tests immediately. The only possibility for candidates to resit tests is if they are invited to do so on another day. This is what happened in the present case.

11. EPSO underlined that, by e-mail of 26 October 2006, it had indeed replied to the complainant's e-mail of 25 October 2006. In its e-mail, EPSO informed the complainant that:

(a) it had received his e-mail describing the problems that he had encountered and that it would need to discuss the situation with the contractor;

(b) his e-mail was forwarded to the contractor, with a request to provide a report on the alleged circumstances;

(c) in light of the reply to be received from the contractor, EPSO would take appropriate action; and



(d) it would keep him informed of any developments.

12. The circumstances brought to EPSO's attention by the complainant were subsequently verified by the contractor. It was clear therefore that a problem did occur during the tests that the complainant sat on 25 October 2006. He had clicked on the wrong button and, as a result, his test was effectively ended before it actually began. EPSO decided, therefore, that the contractor should issue a new invitation, and provided it with instructions to that effect.

13. On 31 October 2006, the contractor contacted the complainant by telephone, and invited him to sit the tests on 2 November 2006. Given that the contractor had contacted the complainant rapidly and arranged for a new appointment, EPSO concluded that the problem had been resolved and that the complainant's request had been met. For these reasons, EPSO considered that a reply containing the above explanations would have been superfluous.

14. EPSO's offices were closed on 1 and 2 November 2006. Therefore, it did not immediately see the complainant's e-mail of 1 November 2006, outlining the new problems regarding his second appointment. It was only *after* the date of the second appointment (2 November 2006) that EPSO learned about the problems the complainant encountered when the contractor contacted him by telephone. However, by e-mail of 7 November 2006, EPSO gave the complainant all of the above-mentioned explanations and stated that it hoped that he had been able to contact the person at the test centre to obtain the details of his (second) invitation. EPSO pointed out that, since it had not heard from the complainant after 1 November 2006, it assumed that he had been able to resit the admission tests in the meantime. Since the complainant did not reply to its e-mail of 7 November 2006, EPSO assumed that the complainant had in fact sat the admission tests.

15. With regard to the alleged attitude of the invigilators at the test centre, EPSO stated that no other candidates complained about this matter. Nevertheless, EPSO apologised to the complainant for any attitude on the part of the invigilators, which the complainant perceived as "*threatening and intimidating*".

16. Finally, EPSO mentioned that the complainant used several e-mail addresses in his correspondence with it and stated that this may have been the reason why he felt that his message (or messages) had remained unanswered. He had written to EPSO from two separate e-mail addresses, one with a full stop between his first name and surname and ending @idr.ro and the other with no full stop between the names and ending @yahoo.com. In addition, following contacts made with the contractor in connection to the present complaint, it became apparent that he used a third e-mail address, ending @hotmail.com (with the order of the last two letters in his surname reversed) when registering for the admission tests.

17. In his observations, the complainant maintained his complaint. He recalled that he had neither received a substantive reply to his complaint of 25 October 2006, nor to his e-mail of 1 November 2006, asking for confirmation of his (second) appointment on 2 November 2006. He also argued that the fact that he had used several e-mail addresses did not excuse EPSO for not informing him about the test centre location, as well as the date and time when he would be



able to resit his admission tests.

The Ombudsman's preliminary assessment leading to a friendly solution proposal

18. The Ombudsman first noted that Article 14 of the European Code on Good Administrative Behaviour provides that:

" 1. Every letter or complaint to the Institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period.

2. The reply or acknowledgement or receipt shall indicate the name and the telephone number of the official who is dealing with the matter, as well as the service to which he or she belongs ... "

19. Furthermore, Article 17 of the Code provides that:

" 1. The official shall ensure that a decision on every request or complaint to the Institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt ...

2. If a request or a complaint to the Institution cannot, because of the complexity of the matters which it raises, be decided upon within the above-mentioned time-limit, the official shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified to the author in the shortest time. " (emphasis added)

20. The Ombudsman pointed out that the above rules mean that a complaints-handling procedure implies, in principle, three phases. First, following receipt of a complaint, an institution must send the author of the complaint an acknowledgement of receipt, indicating that it has received the correspondence and confirm that it is being treated as a complaint. Second, the institution must examine the matter and conduct an appropriate follow-up, if necessary and possible. Third, the institution must, within a reasonable time, take a decision on the matter. It must also communicate its findings and decision to the author of the complaint, including its decision on any concrete action it took, if the complaint was justified.

21. The Ombudsman noted that, in the present case, the following actions were taken by EPSO.

22. First, by e-mail of 26 October 2006, EPSO acknowledged receipt of the complainant's e-mail of the same day, and replied to him as follows: *" Thank you for your message. We will forward this to Thomson Prometric and ask them to investigate the matter fully and report back to us. Once we have their response, we will decide what, if any, measures may need to be taken and will contact you as soon as possible. "* Although EPSO did not specifically state that the complainant's e-mail was being treated as a complaint, it did not dispute that it had intended to do so. Moreover, the complainant had expressly stated on two occasions (in his second e-mail of 26 October 2006, and his e-mail of 14 December 2006) that he was still waiting for a reply to his 'complaint'.



23. Second, although EPSO did not submit any supporting evidence in this regard, it did initiate an appropriate follow-up regarding the matter when it contacted the contractor and asked it " *to investigate the matter fully and report back* " to it.

24. However, with regard to the third phase of the complaints-handling procedure, the Ombudsman noted that none of EPSO's relevant subsequent replies to the complainant addressed the substance of his complaint of 25 October 2006, namely, that he should be allowed to resit the tests. EPSO's reply of 7 November 2006 expressed its presumption that the complainant had managed " *to reach the lady [sic] to get the details* " and that he would, in the meantime, sit the admission tests " *as [it had] no further news from [the complainant]* ". EPSO's reply of 18 December 2006 only stated that " *we thought that everything was in order, especially as we received no further news from [the complainant] following our last e-mail dated 7 November.* "

25. The Ombudsman welcomed the fact that EPSO contacted the contractor quickly, with a view to solving the problem experienced by the complainant. However, the Ombudsman also noted that EPSO's above-mentioned replies did not provide the complainant with its findings and decision on his complaint, namely, to set a new date for the tests. In its opinion in the present inquiry, EPSO stated that:

- (a) it initially held the impression that the complainant's problem had somehow been resolved;
- (b) as its offices were closed on 1 and 2 November 2006, it was not aware of the problem encountered by the complainant regarding his second appointment; and
- (c) it learned about the problems encountered by the complainant only after the date of the second appointment (2 November 2006) and as a result of his telephone conversation with the contractor.

26. However, EPSO was the responsible Community body for the organisation of the open competition here concerned. Accordingly, the complainant expressed his grievances to EPSO (and not the contractor), and naturally expected it to provide him with a concrete and substantive response to his complaint.

27. In light of the above, the Ombudsman considered that EPSO was clearly bound by its above-mentioned obligation to provide the complainant with a substantive reply to his complaint of 25 October 2006. EPSO also had an obligation, which it recognised, to let the complainant resit the tests. Accordingly, the Ombudsman's preliminary finding was that EPSO's failure to provide the complainant with such a reply constituted an act of maladministration.

28. The Ombudsman underlined that this finding could not be influenced by the fact that no candidates complained regarding the attitude of the invigilators. Nor could it be affected by the fact that EPSO apologised to the complainant for any attitude on the part of the invigilators, which he perceived as " *threatening and intimidating.* " Similarly, EPSO's reference to the fact



that the complainant used different e-mail addresses was of no apparent relevance to the possible instance of maladministration found in this case.

29. In view of the above, and since EPSO had not addressed the substantive issue of the complaint in the course of the present inquiry, on 16 December 2008, the Ombudsman made the following proposal for a friendly solution to EPSO:

" EPSO should provide the complainant with a substantive reply to his complaint of 25 October 2006 and invite him to sit the CBT tests again. If he succeeds, EPSO could take appropriate measures to allow him to participate in the competition or, if this is no longer possible, consider providing the complainant with reasonable compensation for his loss of opportunity, which could be EUR 2 000. "

The arguments presented to the Ombudsman after his friendly solution proposal

30. In its reply of 28 January 2009, EPSO stated that, in accordance with the Ombudsman's request, it sent the complainant another communication. This was in addition to the one it sent on 26 October 2006 concerning the complainant's right to retake the access tests for Open Competition EPSO/AD/47/06. EPSO further stated that, given the circumstances surrounding both the first and second appointments for the complainant's tests, it agreed to the Ombudsman's request for the complainant to be invited to retake the tests for the competition in question. EPSO added that it would do all in its power to enable the complainant to retake the admission tests as soon as possible.

31. In his additional observations of 14 February 2009, the complainant stated that the " *very unhappy experience* " that he had on 25 October 2006 at the Bucharest test centre, and especially the lack of concern EPSO had showed in solving his complaint until he submitted the present complaint to the Ombudsman, " *make [him] say that a friendly solution has not been reached.* " He added that a " *right and satisfactory and friendly solution [would] be reached when EPSO provides 'the complainant with reasonable compensation for his loss of opportunity, which could be EUR 2000'.* "

The Ombudsman's assessment after his friendly solution proposal

32. The Ombudsman notes that EPSO has explicitly accepted his friendly solution proposal. He nevertheless has to verify whether EPSO implemented the friendly solution proposal, namely, by providing the complainant with a substantive reply to his complaint of 25 October 2006 and inviting him to sit the CBT tests again.

33. In this regard, EPSO contacted the complainant by letter of 15 January 2009, a copy of which EPSO forwarded to the Ombudsman on 16 January 2009 by e-mail. The letter stated the following:

" Further to a request received from the European Ombudsman and in addition to the message sent to you on 26 October 2006, kindly find herewith the supplementary information which you



requested in your message of 25 October 2006. Following your message, EPSO contacted Thomson Prometric immediately in order to obtain a full report on the situation which you faced the day of your appointment to sit our tests at the center in Bucharest (25 October 2006). After a thorough examination of the information received from the Contractor, EPSO concluded that the latter party should arrange a new appointment time with you as soon as possible. EPSO also gave its full attention to your comments regarding the behaviour of the invigilator present on 25 October 2006 and took the appropriate action to ensure that such an incident would not arise in the future. "

34. By letter of 11 February 2009, a copy of which EPSO forwarded to the Ombudsman on 2 March 2009 by e-mail, EPSO informed the complainant as follows:

" EPSO has decided that you should be given the possibility to pass the CBT tests again. If you wish to avail yourself of this opportunity, please send a brief message to EPSO on the matter by 20 February at the latest ([e-mail address]). If your reply is positive, do not forget to include a telephone number where you can be reached during the day, so that our contractor Prometric can rapidly contact you to set a suitable test appointment. "

35. By e-mail of 10 March 2009, EPSO informed the complainant as follows:

" On 11 February 2009 we have posted a letter in your EPSO-Profile inviting you to contact us at the latest on 20 February 2009 in order to rearrange new CBT tests for your EPSO/AD/47/06 competition. As you failed to contact us in due time, we are sorry to announce you that this puts an end to your participation in this competition.(sic) "

36. On the basis of the above, the Ombudsman concludes that EPSO has taken appropriate steps to implement the friendly solution he proposed. However, on the basis of the complainant's submissions in his letter of 14 February 2009, it appears that the complainant is not satisfied with the result of the friendly solution proposal. The Ombudsman therefore concludes that it has not been possible to achieve a friendly solution between the complainant and EPSO in the present case. It should be recalled, however, that the present complaint concerned the allegation that EPSO failed to reply to the complainant's complaint of 25 October 2006, and the claim that the complainant should be allowed to sit the CBT tests again.

37. Following the Ombudsman's friendly solution proposal, EPSO provided a further reply to the complainant's complaint of 25 October 2006. This reply addressed the points raised by the complainant appropriately, and the complainant has not submitted any arguments to challenge the appropriateness of EPSO's reply. Furthermore, by letter of 11 February 2009, EPSO contacted the complainant to arrange a suitable test appointment so that he could resit the CBT tests.

38. In light of the above, the Ombudsman takes the view that there is no longer any instance of maladministration by EPSO concerning the complainant's allegation.



B. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusions:

The Ombudsman welcomes EPSO's acceptance of his friendly solution proposal. However, considering that the complainant is not satisfied with the substance of EPSO's response, no friendly solution could be achieved in the present case.

There is no longer any instance of maladministration by EPSO. The Ombudsman therefore closes the case.

The complainant and EPSO will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 9 June 2009

[1] The competition notice was published in OJ 2006 C 145A, p.3, and its corrigendum was published in OJ C 152A, p. 3.