

Decision of the European Ombudsman closing his inquiry into complaint 2965/2008/(VL)BEH against the European Personnel Selection Office

Decision

Case 2965/2008/(VL)BEH - **Opened on** 09/12/2008 - **Decision on** 27/10/2009

THE BACKGROUND TO THE COMPLAINT

1. The complainant is a doctor. He successfully took part in the admission tests of an Open Competition, organised by the European Personnel Selection Office ("EPSO") with a view to recruiting doctors. However, he was not admitted to the second stage of the selection procedure, that is, the oral test. According to EPSO, he did not fulfil the relevant eligibility criteria set out in point I.B.b).2 of the Notice of Competition.

2. The relevant section of point I.B.b).2) lays down the following conditions:

"...

Since obtaining the qualification required, you must have acquired at least ten years' professional experience; this experience must have been gained in at least two of the following areas: occupational medicine, general medicine, emergency medicine, internal medicine, tropical medicine, ergonomics, assessment of physical injury, any medical specialisation associated with the duties to be performed. "

The duties to be performed to which point I.B.b).2) refers are laid down in point I.A of the Notice:

"A. DUTIES

Carrying out the tasks required of a medical officer or occupational health officer within the European Union's institutions: pre-recruitment examinations, annual check-ups, invalidity committees, medical emergencies, medical consultations, preventive medicine, health advice, medical and administrative opinions. Participating in various committees: health and safety at work, ergonomic workplace design, invalidity, board of senior medical advisors of the European Union institutions."



3. On 8 September 2008, EPSO informed the complainant that it considered that he did not fulfil the eligibility criteria set out in point I.B.b).2).

4. On 10 September 2008, the complainant asked EPSO to reconsider its position. He argued that he had gained far more than the required 10 years of professional experience through his employment in the field of environmental medicine and hygiene at a German university. He stated that his professional experience in tropical medicine and his duties in environmental medicine, notably prevention, health advice and preparation of medical opinions, corresponded to the requirements in point I.B.b).2) of the Notice. In support of the above statement, he attached an excerpt of the relevant training regulation issued by the competent Medical Chamber in Germany.

5. EPSO replied on 9 October 2008. It referred again to the eligibility criteria of the Notice, and specified that it did not consider that the complainant's professional duties at a German university corresponded to the duties laid down in point I.A of the Notice. Furthermore, EPSO pointed out that the complainant's professional experience in surgery, gained at a German hospital, could not be considered as relevant either. In light of the above, EPSO confirmed its earlier decision that the complainant did not fulfil the eligibility criteria in point I.B.b).2) of the Notice.

THE SUBJECT MATTER OF THE INQUIRY

6. On 29 October 2008, the complainant turned to the Ombudsman and submitted the following allegation and claim:

EPSO refused to admit him to the next stage of the selection procedure, even though he fulfilled the eligibility requirements.

EPSO should immediately allow him to participate in the next stage of the selection procedure.

THE INQUIRY

7. The complaint was forwarded to EPSO for an opinion, which it sent on 6 March 2009. EPSO's opinion was forwarded to the complainant with an invitation to make observations, which he sent on 22 May 2009.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

Preliminary remarks

8. Given their close factual ties, it is appropriate to consider the complainant's allegation and



claim together.

9. The complainant stated that, in its opinion, EPSO quoted from his application form. He submitted that, by mentioning only certain of his duties and leaving others unmentioned, EPSO created the false impression that he was merely supervising a laboratory and managing quality control, which was not the case. The complainant added that, as was apparent from the certificates submitted by him, all the duties carried out by him involved treatment of patients and working with people. The Ombudsman notes that the application form which the complainant submitted to EPSO is part of the case file. In the following, he will, therefore, take into account all relevant information given on the complainant's application form, as well as all the other documents submitted to him by the complainant, and by EPSO.

A. Alleged failure to respect the eligibility requirements and related claim

Arguments presented to the Ombudsman

10. The complainant asserted that EPSO did not give any substantiated reasons for not admitting him to the oral test of the competition. He believed that it was obvious from his certificates of employment that his professional experience even exceeded the required 10 years (see paragraph 4 above). In view of these facts, he alleged that EPSO refused to admit him to the next stage of the selection procedure, even though he fulfilled the eligibility requirements. He claimed that EPSO should immediately allow him to participate in the next stage of the selection procedure.

11. In its opinion, EPSO pointed out that it examined the various certificates of employment which the complainant submitted with his application. It stated that the complainant's 1 year and 8 months' experience in internal medicine, gained at a German hospital, corresponded exactly to the requirements set out in the Notice. EPSO took the view, however, that the complainant's other professional experience, gained as a surgeon in another German hospital does not match any of the requirements listed in the Notice. As regards the complainant's employment at the Institute of Hygiene of a German university, EPSO noted that, according to the certificate submitted, the complainant worked in the following areas: environmental hygiene; medical consultations relating to vaccinations; hospital hygiene; medical opinions; scientific activities; lecturing, and examination activities. It concluded that these duties were unrelated to the duties defined by the Notice.

12. EPSO stated that, in view of the above, the Selection Board concluded that the complainant's professional experience did not correspond to the specific profile set out in the Notice. It also referred to the case-law of the Community courts which states that the professional experience of candidates is to be interpreted exclusively in light of the aims of the competition. The aims are outlined in the Notice under general explanations of the nature of duties. As regards the nature and duration of duties performed in previous employment, EPSO is bound by the conditions stipulated in the Notice. The Selection Board could not, therefore,



add a further eligibility criterion.

13. In conclusion, EPSO stated that the Selection Board had correctly concluded that the complainant did not fulfil the selection criteria foreseen in point I.B.b)2.

14. In his observations, the complainant submitted that it was obvious that EPSO's decision was incorrect. He stated that he had meticulously explained why he fulfilled the conditions in the Notice, and that he had never asked EPSO to add a further eligibility criterion. It was, in his opinion, clearly evident that EPSO had not respected the eligibility criteria in his case.

15. The complainant drew attention to the Notice requirements regarding professional experience (see paragraph 2 above). He asserted that his professional experience fitted into the following four areas specified in the Notice: "emergency medicine", "internal medicine"; "tropical medicine"; and "any medical specialisation associated with the duties to be performed." As regards the duties specified in the Notice (see paragraph 2 above), he submitted that his duties as a "Specialist Doctor for Hygiene and Environmental Medicine" related to the following duties described in the Notice: "medical emergencies, medical consultations, preventive medicine, health advice, medical and administrative opinions." This notwithstanding, EPSO only recognised his professional experience in internal medicine (see paragraph 11 above).

16. The complainant made precise references to the certificates of employment he had submitted and sought to establish that EPSO had erred in not recognising his main professional experience. In relation to "emergency medicine", he stated that, according to a certificate submitted by him, he had worked in the emergency service of a surgical ward. He considered that it would be clear to even a layperson that an emergency doctor dealt with emergency medicine. He submitted that during his 2 years, 9 months and 29 days working as a surgeon, he had acquired relevant professional experience in emergency medicine. Moreover, there was a clear connection with the duty of "medical emergencies".

17. He further submitted that the certificates of employment concerning his work at a German university clearly showed that, over a period of 16 years and 10 months, he had gained professional experience in "tropical medicine" and "medical consultations", including "health advice". In relation to "medical opinions", he considered that these certificates clearly established that he had gained the relevant professional experience over a period of 16 years, 9 months and 1 day. He further submitted that, during the same period of time, he had been active in the area of "preventive medicine", including "health advice". He also specifically referred to the relevant training regulation for specialist doctors in hygiene and environmental medicine, issued by the competent Medical Chamber in Germany. In his view, it was obvious from this regulation that preventive medicine and health advice fell within the area of hygiene and environmental medicine.

18. In conclusion, the complainant submitted that he had provided documentary evidence of more than 19 years of professional experience, which corresponded extensively, even verbatim, to the conditions stipulated in the Notice.



The Ombudsman's assessment

19. The Ombudsman points out from the outset that, according to the established case-law of the Community courts, the Appointing Authority and the Selection Board are bound by the wording of the Notice of Competition: "*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.*" [1]

20. Furthermore, according to the established case-law, the Appointing Authority and the Selection Board enjoy a wide margin of discretion in establishing the requirements for a post, assessing candidates' qualifications, and judging whether the qualifications are sufficient for admission to the relevant competition [2]. In view of this, the Ombudsman's task is, therefore, limited to ascertaining whether the Selection Board's judgment was vitiated by a manifest error of assessment. The Ombudsman's role is not, therefore, to substitute his own judgment for that of the Selection Board.

21. The Ombudsman carefully analysed the Notice of Competition. He notes the stipulation that candidates must have acquired at least ten years' professional experience in at least two of the following areas: occupational medicine, general medicine, emergency medicine, internal medicine, tropical medicine, ergonomics, assessment of physical injury, and any medical specialisation associated with the duties to be performed. As regards the duties to be performed by successful candidates, the Notice contains the following: "Carrying out the tasks required of a medical officer or occupational health officer within the European Union's institutions: pre-recruitment examinations, annual check-ups, invalidity committees, medical emergencies, medical consultations, preventive medicine, health advice, medical and administrative opinions. Participating in various committees: health and safety at work, ergonomic workplace design, invalidity, board of senior medical advisors of the European Union institutions."

22. The complainant essentially contests EPSO's refusal to recognise that (i) his experience as a surgeon at a German hospital and (ii) his experience as a research associate ("*wissenschaftlicher Mitarbeiter*") at a German university, meet the conditions of eligibility. According to the complainant, his experience mentioned under (i) lasted for 11 months and 15 days. Thus, it is clear that, even if EPSO were to recognise this professional experience, its duration would not be sufficient to meet the threshold stipulated in the Notice. The Ombudsman takes the view that it is, therefore, necessary to ascertain whether the Selection Board's assessment, regarding his experience mentioned under (ii), was vitiated by a manifest error of assessment, since only this professional experience could, in view of its duration, enable the complainant to meet the requisite conditions.

23. In its opinion, EPSO explained that the complainant's employment at a German university involved the following duties: environmental hygiene; medical consultations in relation to vaccinations; hospital hygiene; medical opinions; scientific activities; lecturing; and examination activities. In its view, none of these duties related to the duties defined by the Notice.

24. The complainant submitted three certificates relating to his employment at the relevant



university to both EPSO and the Ombudsman. On the copies submitted to the Ombudsman, he highlighted certain words which, in his view, attested to the fact that he fulfilled the eligibility criterion. In the following, the contents of these certificates will be analysed only to the extent that the complainant referred to them.

25. The first certificate states that the aim of his employment was for him to achieve recognition as a "Specialist Doctor in Hygiene and Environmental Medicine". According to this certificate, the complainant's training comprised the entire area of hygiene, with particular emphasis on hospital and environmental hygiene, as well as environmental medicine. The certificate goes on to list different areas of hygiene in which the complainant was active, such as hospital hygiene, water, air and foodstuff hygiene, as well as individual hygiene. The certificate, therefore, confirms that the complainant supervised the operation of hospitals, their disinfection and sterilisation, as well as the operation of water treatment plants and public baths. As regards individual hygiene, the certificate states that emphasis was laid on the prophylaxis of infections in connection with travel and tropical medicine. The certificate also mentions that the complainant was in charge of a weekly consultation for vaccinations. This included advising on tropical and travel medicine, and administering vaccinations. The complainant carried out 1500 consultations where vaccinations were administered. The certificate further refers to 11 detailed scientific opinions written by the complainant.

26. The second certificate was issued when the complainant's superior retired. It states that the complainant passed the necessary examinations to become a specialist doctor in hygiene and environmental medicine, and thereafter continued working in the area of hygiene and environmental medicine. The certificate attests, in particular, that the complainant was active in the appraisal of bathing and drinking waters, and of harmful substances in the air. He continued to advise hospitals in hygiene-related matters. He also continued his consultations relating to vaccinations and participated extensively in a telephone consultation service for travellers.

27. The third certificate submitted is a job description for the complainant's post. The certificate lists a number of areas in which the complainant works. On the copy submitted to the Ombudsman, the complainant underlined the following areas: consultations relating to vaccinations; hospital hygiene; environmental medicine; and medical opinions.

28. In its opinion, EPSO pointed out that the professional experience of candidates is to be interpreted exclusively in light of the aims of the competition, as described in the Notice [3] under the general explanation of the nature of duties to be performed. The Ombudsman shares this view. It appears from point I of the Notice that the open competition was held to recruit doctors carrying out the tasks required of a *medical officer or occupational health officer* within the EU institutions. The Notice lists specific duties in this respect which, overall, relate to providing medical services to staff employed by the EU institutions, and to participating in relevant committees.

29. The duties listed in the Notice indicate that the aim of the competition is to recruit doctors who will provide medical services to staff recruited by EU institutions and participate in relevant committees. The Ombudsman understands EPSO's position to be that, in view of the aim of the



competition, the complainant does not fulfil the conditions set by point I.B.b).2) of the Notice. In assessing whether the complainant possessed at least 10 years of relevant professional experience, EPSO could only go by the documentary evidence submitted by the complainant. As appears from the certificates submitted, the complainant worked as a specialist doctor in hygiene and environmental medicine. It is further apparent from these documents that the complainant's professional experience was gained mainly in the area of hygiene which, for instance, involved supervising the operation of hospitals.

30. On the certificates submitted to the Ombudsman, the complainant underlined certain words, such as "prophylactic". So, for instance, to prove his experience in preventive medicine, he referred to his advising on prophylactic measures to combat infection in the planning of hospitals. He also highlighted, for instance, that he was in charge of a weekly consultation for vaccinations, which involved advising on tropical and travel medicine and administering vaccinations. Even if individual references to certain tasks performed could be considered as supportive of the complainant's view, the Ombudsman needs to bear in mind the aim of the competition, as well as the fact that the Selection Board enjoys a wide margin of discretion in judging whether an applicant's qualifications are sufficient for admission to the relevant competition. Taking all of these factors into consideration, the Ombudsman is unable to find that the decision of the Selection Board is vitiated by a manifest error of assessment.

32. In view of the above, the Ombudsman considers that the Selection Board's assessment of the complainant's professional experience was not tainted by a manifest error. The Ombudsman takes the view that the Selection Board remained within the bounds of the discretion it enjoys when it decided that the complainant's professional experience was not relevant in the field of the competition. Therefore, the complainant's allegation cannot be sustained. It follows that his claim cannot succeed either.

B. Conclusions

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

There has been no maladministration in EPSO's activities regarding the complainant's allegation and claim.

The complainant and EPSO will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 27 October 2009

[1] 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 II-429, paragraph 47.

[2] 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.

[3] See Case T-146/99 *Teixera Neves v Court of Justice* [2000] ECR II-731, paragraphs 34 and 36.