

Decision of the European Ombudsman closing her inquiry into complaint 2163/2011/ER against the European Personnel Selection Office (EPSO)

Decision

Case 2163/2011/ER - **Opened on** 30/11/2011 - **Decision on** 11/11/2013 - **Institutions concerned** European Personnel Selection Office (No maladministration found) | European Personnel Selection Office (No further inquiries justified) |

The background to the complaint

1. The present case concerns the complainant's alleged unlawful exclusion from Open Competition EPSO/AD/197/10 for Lawyer-linguists ('the competition') [1] , organised by the European Personnel Selection Office (EPSO), due to the alleged misattribution of the relevant test papers.
2. The complainant is a Romanian citizen who took part in the competition. He sat a computer-based preliminary test, which consisted of a translation from French into English. The translation was drafted with word-processing software, identified by a secret number, and submitted electronically.
3. Following EPSO's decision not to admit him to the next phase of the competition because of his performance in the computer-based test, the complainant wrote to EPSO, on 23 and, again, on 30 September 2011, asking for a copy of his test and of the evaluation sheet, and requesting a review of the decision.
4. On 10 October 2011, EPSO sent the complainant the requested documents. However, because of a transmission error, EPSO also sent him copies of the written tests of other participants in the competition.
5. On 13 October 2011, the complainant contacted EPSO via its web-interface and stated that EPSO had wrongly attributed another candidate's written test to him (number XXXXXXXX). He furthermore pointed to another test which was among those EPSO had sent by mistake and identified that test as his. In view of these circumstances, he asked EPSO to take immediate action and to remedy the alleged misattribution.



6. In its reply of 14 October 2011, EPSO confirmed that the complainant's written test indeed bore test numberXXXXXXX. Invoking the secrecy of the selection procedure, it stated that it could not provide any further explanation concerning the handling of written tests and the allocation of secret numbers.

7. On 17 October 2011, the complainant sent another letter to EPSO, in which he argued that it had failed to take any action following his previous letter. He also asked for a review of the method used to identify candidates' written tests.

8. By identical letters of 14 and 20 October 2011, EPSO informed the complainant that because of the high number of participants in the competition, a reply to the complainant's request for review might take " *longer than usual* ".

9. On 24 October 2011, the complainant wrote to EPSO to ask for the competition to be suspended and the issue to be clarified.

10. In late October 2011, EPSO announced on its website that the Assessment Centre tests for Open Competition EPSO/AD/197/10 would take place between 8 and 17 November 2011.

11. On 26 October 2011, the complainant lodged the present complaint with the European Ombudsman.

The subject matter of the inquiry

12. The Ombudsman opened an inquiry into the following allegations and claims:

Allegations

1. By conducting the present procedure in a way that resulted in confusing the complainant's written test with that of another candidate, EPSO failed to conduct Open Competition EPSO/AD/197/10 with due diligence.

2. By refusing to provide information on the procedure to secure anonymity in the computer-based test, EPSO failed to conduct Open Competition EPSO/AD/197/10 in a transparent manner.

3. By failing to provide an immediate response to the complainant's allegations or to suspend the competition, and considering the seriousness of the issue raised by the complainant, EPSO failed to conduct Open Competition EPSO/AD/197/10 with due diligence.

Claims



1. Competition EPSO/AD/197/10 should be suspended until the alleged case of maladministration has been settled.
2. When organising future competitions, EPSO should adopt rules and procedures to avoid instances of maladministration such as the ones referred to in the present case.

The inquiry

13. On 30 November 2011, the Ombudsman asked EPSO to submit an opinion on the complainant's allegations and claims by 29 February 2012. On 23 February 2012, EPSO made a request for an extension of this period until 31 March 2012, which the Ombudsman granted. EPSO's opinion was submitted to the Ombudsman on 13 April 2012. It was forwarded to the complainant with an invitation to make observations. The complainant did so on 29 May 2012.

14. After a careful analysis of the parties' arguments and the evidence presented during the inquiry, the Ombudsman decided that an inspection of EPSO's file concerning the competition was necessary. The inspection was carried out by the Ombudsman's services on 11 January 2013. A copy of the inspection report was sent to EPSO, and a copy was sent to the complainant with an invitation to submit observations by 28 February 2013. The complainant submitted no observations on that report.

The Ombudsman's analysis and conclusions

Preliminary Remarks

15. In his observations, the complainant expressed concern about the time taken by EPSO to "provide an answer". He stated that given that the attribution of test papers is central to the competition, information about that attribution should be readily available. The Ombudsman understands the complainant's statement as referring to the time taken by EPSO to submit its opinion to the Ombudsman. It is true that EPSO only submitted its opinion on 13 April 2012, that is to say, nearly two weeks after the (extended) period for doing so had expired. It is also true that EPSO did not apologise for this delay. Nevertheless, the Ombudsman considers that this slight delay did not have a negative impact on the inquiry into the issues raised by the complainant. There is therefore no need further to inquire into this aspect of the present case.

16. Given that they are factually and logically connected, the Ombudsman finds it appropriate to consider the complainant's first and third allegations, as well as his first claim, together. The complainant's second claim will be considered together with the complainant's second allegation.

A. Allegations that EPSO failed to conduct the competition



with due diligence and to take immediate action to resolve the issue and the related claim for suspension

Arguments presented to the Ombudsman

17. The complainant alleged that by conducting the selection procedure in a way that resulted in confusing his written test with that of another candidate and by failing to provide an immediate response to his allegations or to suspend the competition, EPSO failed to conduct the competition with due diligence. He claimed that Open Competition EPSO/AD/197/10 should be suspended until the alleged case of maladministration has been settled.

18. In its opinion, EPSO explained how candidates' computer-based translation tests are identified and processed throughout the competition procedure.

19. As regards the alleged misattribution of the test papers, EPSO stressed that, following the complainant's e-mail of 13 October 2011 and, again, following the opening of the inquiry by the Ombudsman, it verified the records related to the identification and the processing of the computer-based translation tests. EPSO underlined that the verification confirmed that no mistake had occurred, since the translation bearing number XXXXXXXX is the one that was generated at the workstation assigned to the complainant (workstation no. XX in the test centre) at the time of his testing appointment.

20. In support of its position, EPSO provided the Ombudsman with: (i) a screenshot of the complainant's EPSO account; (ii) a list of the candidates in competition EPSO/AD/197/10 who sat the test at the same test centre and on the same day as the complainant; (iii) an excerpt of the roster signed by the complainant at the test centre; (iv) the .xml file of the complainant's preliminary translation test; and (v) the text of the translation bearing number XXXXXXXX.

21. EPSO did not specifically address the complainant's request for suspension of the competition.

22. In his observations, the complainant reaffirmed that he could not recognise the written test that had been attributed to him and that he considered the software used by EPSO to be unreliable because of possible technical problems. In this regard, the complainant argued that there should have been a signed copy of the test paper. He also took the view that EPSO failed to handle his case properly and in a timely manner by not taking additional measures to guarantee the correct attribution of tests.

The results of the inspection of EPSO's file

23. In the course of the inspection of EPSO's file, the Ombudsman's representatives were given a detailed explanation regarding the functioning of the computer-based software and were provided with copies of the relevant documents. In addition, the Ombudsman's representatives



were able to compare the test attributed to the complainant with the one that he identified as his and to check the personal data associated with the latter. EPSO's representatives explained that when candidates book their written test for a given date at the chosen test centre, they are assigned to a specific room in that test centre and to a specific computer in that room. When candidates arrive at the test centre, their identity is checked by a member of the test centre's staff. Candidates are again asked to confirm their identity on the computer screen. When a candidate does so, the system associates the session being opened on the workstation to the specific candidate via the eligibility code, the competition number and the personal identity card. All these data are subsequently saved in an individual file, which is then electronically transferred to EPSO through a secure site. Specific software retrieves the written test from each file and, by using the information in the general file, produces copies of the tests which are identified only by the candidates' secret numbers. Once the tests are corrected, the reverse operation is carried out, and the marks are associated with the names of the candidates. According to the representatives of EPSO present at the inspection, it would only be possible for a written test to be associated with the wrong candidate if the two candidates concerned were sitting the test at the same centre, on the same day and at the same hour and if they exchanged the workstations they were using after the test session had started.

24. The complainant did not submit any observations on the inspection report.

The Ombudsman's assessment

25. When assessing the complainant's first allegation, the Ombudsman needs to consider whether there was a misattribution of the relevant test papers in the complainant's case.

26. The Ombudsman notes that, throughout the inquiry, EPSO insisted that no misattribution of the complainant's written test had occurred.

27. In its opinion and specifically during the inspection, EPSO provided detailed explanations as to how candidates' tests are being processed and how secret numbers are allocated to candidates in an automated way. In particular, EPSO made it clear that a misattribution of test papers could only occur if two candidates, who are sitting their test at the same centre on the same day and at the same hour, exchange workstations after the test has begun. On the basis of the technical explanations provided by EPSO, the Ombudsman considers EPSO's position to be plausible.

28. Furthermore, it emerged during the inspection that the test paper the complainant identified as his was written at a test centre and on a date that differed from the complainant's test centre and test date. It follows that, based on the explanations provided by EPSO, it would not be possible for a misattribution of test papers to have taken place in the complainant's case, regardless of whether or not the test paper the complainant asserted to be his was of a sufficient quality.

29. The complainant also stated that the electronic attribution of test papers by way of specific



software was not sufficiently reliable and that test papers should therefore be signed electronically or otherwise. However, the inspection showed that each candidate must confirm his or her identity on the workstation assigned to him or her. This would appear to provide sufficient guarantee that the author of the test paper can indeed be properly identified.

30. In view of these considerations, the Ombudsman considers that no maladministration can be found as regards the complainant's first allegation. Given that this allegation cannot be sustained, the related claim, that is to say, the complainant's first claim, cannot succeed. Finally, on the basis of these findings and taking into account that no mistake in attributing the complainant's test could be ascertained, the Ombudsman considers that EPSO cannot be reproached for not suspending the competition. The Ombudsman will consider the remainder of the complainant's third allegation (that is to say, that EPSO did not provide an immediate response to the complainant's allegations) in her assessment of the second allegation and her further remark.

B. Allegation that EPSO failed to conduct the competition in a transparent manner

Arguments presented to the Ombudsman

31. The complainant alleged that by refusing to provide information on the procedure to secure anonymity in the computer-based test, EPSO failed to conduct the competition in a transparent manner.

32. In its opinion, EPSO explained in detail the methodology used to assess the candidates' tests. With regard to the anonymisation of the test, EPSO explained that at the end of the computer-based test all data generated by each workstation and containing the candidates' translations are saved in an individual file. The files of all candidates are then electronically transferred via a secure connection to EPSO who store and process them by means of a special algorithm. The translation is dissociated from the other data that would make it possible for the candidate to be identified, and a secret number is allocated to each translation for the purpose of identification during the marking process, which is anonymous. The markers correct the translation on the basis of pre-defined objective criteria and make a proposal for the scoring. Afterwards, the Selection Board takes its decisions on the final scoring. The scored test copies are then re-matched to the corresponding candidate profiles on the basis of the secret number, by means of the software algorithm mentioned above, and the test results are communicated to the candidates.

33. In his observations, the complainant argued that the answers he received from EPSO lacked clarity, "*while in their answer to you, it looks as if they had been systematic and clear*".

The Ombudsman's assessment



34. The Ombudsman observes that EPSO initially invoked the secrecy of the competition procedure as a reason for refusing to disclose any information concerning the handling of written tests and the allocation of secret numbers.

35. However, in the course of the inquiry, EPSO provided detailed information on the procedure used to secure anonymity in computer-based tests. In his observations, the complainant acknowledged that these explanations were sufficiently informative and clear. In these circumstances, there are no grounds for further inquiries into the complainant's second allegation.

36. This finding notwithstanding, the Ombudsman takes the view that nothing would have prevented EPSO from providing these explanations at the time the complainant first raised the issue. The Ombudsman will therefore make a further remark in this regard.

37. In view of her findings in relation to the complainant's allegations, the Ombudsman considers that no further inquiries into the complainant's second claim are justified.

C. Conclusions

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

There has been no maladministration as regards the complainant's first allegation and his first claim.

There are no grounds for further inquiries as regards the remainder of the complainant's complaint.

The complainant and EPSO will be informed of this decision.

Further remark

It would be useful if, in the future, EPSO could provide candidates who express the view that their test papers may have been mixed up with those of other candidates with a proper description of the measures it has taken to prevent such a situation from arising.

Emily O'Reilly

Done in Strasbourg on 11 November 2013



[1] OJ 2010 C 248A, p.1.