

Decision of the European Ombudsman closing her inquiry into complaint 1187/2013/VL against the European Personnel Selection Office (EPSO)

Decision

Case 1187/2013/VL - Opened on 26/06/2013 - Decision on 21/11/2013 - Institution concerned European Personnel Selection Office (Settled by the institution) |

The complainant was a candidate in competition EPSO/AD/212/11 for lawyer-linguists, which was organised by the European Personnel Selection Office (EPSO). The competition in question took longer than expected, due to the need to repeat the preliminary testing phase as a result of problems with the keyboards supplied to certain candidates (including the complainant).

In January 2013, the complainant was invited to participate in the assessment centre stage, which was to take place between 18 and 24 March 2013. She informed EPSO that these dates were not possible for her because she was, at that time, based in New York and was not medically cleared to fly due to her pregnancy. She thus suggested that she could take part by videoconference or join a group scheduled for the assessment centre in May 2013, a month after her expected delivery date. EPSO provided the complainant with a substantive feedback only in June 2013. The complainant turned to the Ombudsman, who opened an inquiry.

In its opinion on the complaint, EPSO explained why it considered that it was not possible to find any other ways to reasonably accommodate the complainant. However, and after repeated contacts by the Ombudsman's services, EPSO asked the Selection Board to re-admit the complainant, given the unintended delay that had resulted from the repetition of the preliminary tests and the fact that, as a result, the competition lasted for more than three years. The Selection Board accepted this request. The complainant informed the Ombudsman that her problem had thus been solved.

The Ombudsman took the view that EPSO took steps to settle the matter and commended EPSO for the action it had taken. She therefore closed the case.

The background to the complaint

1. The complainant was a candidate in competition EPSO/AD/212/11 for lawyer-linguists, which



was organised by the European Personnel Selection Office (EPSO). [1] In November 2011, she was informed that the Selection Board had decided to invite her to the preliminary test.

2. In January 2012, she travelled from a city in France (where she was based at the time) to Luxembourg (where the examination centre was) in order to participate in the test. However, in June 2012, she was informed that the preliminary test would have to be repeated, owing to EPSO's failure to provide appropriate keyboards to a number of candidates. The complainant again travelled from Strasbourg to Luxembourg to take part in the rescheduled test in September 2012.

3. On 17 January 2013, she was invited to participate in the assessment centre stage, which was to take place between 18 and 24 March 2013.

4. On 19 January 2013, she informed EPSO that between 18 and 24 March 2013 she would be pregnant (at an advanced stage) and that her pregnancy was considered "high risk". Given that she was now living in a country on a different continent, it was not possible for her to come to Brussels at the time envisaged by EPSO. She thus asked EPSO to facilitate her participation in the competition by either making it possible for her to take the test in a country on a different continent or postponing the test until after the date on which she was likely to give birth to her child, which would be around April 2013.

5. On 28 January 2013, EPSO replied that "*due to the nature of the group exercise and the very limited duration of the assessment period it will not be possible to arrange special test conditions*". Thus, on 19 February 2013, the complainant received an invitation to the assessment centre stage for 20 and 21 March 2013.

6. On 24 February 2013, the complainant sent another request to EPSO in order to ask it to accommodate her specific needs as a pregnant candidate. Therein, she referred to two cases already dealt with by the Ombudsman, 717/2012/CK [2] and 1303/2007/(WP)(BEH)KM. [3]

7. On 25 February 2013, EPSO informed her that her request would be forwarded to the competition secretariat.

8. On 7 March 2013, the complainant reminded EPSO that she was still waiting for a reply.

9. On 11 March 2013, EPSO replied that it would get back to her as soon as possible.

10. Still on 11 March 2013, the complainant sent EPSO the latest medical opinion, according to which she was not allowed to travel by plane.

11. On 12 March 2013, EPSO replied that the said medical opinion would be added to her file.

12. On 20 and 21 March 2013, the assessment centre stage, to which the complainant had been invited, took place.



13. On 30 April 2013, the complainant informed EPSO that she had given birth in April 2013. She indicated that she would be able to resume her professional activities at the end of May 2013, and asked for a date to be set for her participation in the second stage of the competition. She suggested that she could join the francophone group in Luxembourg which was scheduled to meet at the end of May 2013 as, to her knowledge, interpreters were used during the competition for candidates with English as a second language.

14. On 3 June 2013, EPSO informed the complainant as follows: "*we have thoroughly checked your file and the possibilities of special arrangements for your Assessment phase exercises. Although we fully understand the problems you were facing, we would like to underline that the setting up of an Assessment Centre is a very complex operation with many constraints. We have to take into account equal treatment of candidates, the availability of assessors with the right language combinations and the minimum and maximum number of candidates per day per Assessment Centre, to ensure viable tests. Our task is also to deliver the results to the Institutions in the agreed timeframe. When it comes to rescheduling candidates' appointments, EPSO tries its best to find solutions to problems created especially for cases of serious illness, pregnancy or disability. In your competition, the total number of candidates to be invited to the Assessment phase was known at the publication of the results of the preliminary test and it was therefore normal that the entire testing window would not exceed three to four days. In parallel, it was decided that the testing would take place during March 2013. Extending the testing window would have been impossible due to the limited number of candidates invited. Joining a group of candidates from another competition would have proved impossible as the competencies to be measured might be different and, in any case, candidates cannot change their chosen language during the process. We hope that this clarification will help you to understand the reasons why we have been unfortunately unable to change the proposed date*".

15. On 20 June 2013, the complainant lodged the present complaint with the European Ombudsman.

The subject matter of the inquiry

16. The Ombudsman decided to open an inquiry into the following allegation and claim:

Allegation:

By failing to find an alternative solution enabling the complainant to participate in the assessment centre stage and to reply to the complainant's relevant requests in good time, EPSO failed to take into account the complainant's pregnancy and to comply with the principles of equal treatment and good administration.

Claim:



EPSO should take into account the complainant's pregnancy and take all necessary measures that could enable her to participate in the assessment centre tests. In the alternative, EPSO should reimburse the complainant EUR 400 for her expenses incurred in relation to the competition.

The inquiry

17. On 26 June 2013, the Ombudsman opened the present inquiry. In the weeks that followed, the Ombudsman's services entered into and maintained informal contact with EPSO's services with an eye to finding a rapid and satisfactory solution to the complaint.

18. On 12 September 2013, EPSO sent its opinion to the Ombudsman.

19. On 24 September 2013, the Ombudsman forwarded EPSO's opinion to the complainant and invited her to make her observations on it by 31 October 2013.

20. On the same day, the complainant informed the Ombudsman's services that the subject of her complaint had been resolved by EPSO, since the latter had decided to invite her to the assessment centre phase of the competition.

21. On 26 September 2013, the Ombudsman's services asked the complainant if she nevertheless wished to submit any observations on EPSO's opinion. In her reply sent the same day, the complainant noted that she might want to do so.

22. No observations were received from the complainant by the expiry of the deadline.

The Ombudsman's analysis and conclusions

Arguments presented to the Ombudsman

23. In her complaint, the **complainant** referred to the prohibition of discrimination in Article 21 of the Charter. She pointed out that she had informed EPSO of her pregnancy as early as January 2013 so as to enable it to set a different date and, if necessary, consult other candidates. However, EPSO did not do so.

24. The complainant pointed out that if EPSO had provided appropriate keyboards to all candidates at the time for which the preliminary test had been scheduled, the competition would have been completed by the time she was about to give birth. EPSO's failure to reply to her in a timely manner made it impossible for her to participate in the test in March 2013, deprived her of the possibility to make an informed decision and was disrespectful.

25. In her view, whilst the Ombudsman had recognised in previous cases that there was always



a risk that reasonable efforts would not suffice to enable a pregnant woman to participate in a competition, in the present case, EPSO failed to make any such efforts.

26. In its opinion, **EPSO** informed the Ombudsman that having regard to the decision of its Management Board of 17 July 2013, whereby the latter agreed, in principle, to the application of special measures to accommodate the needs of pregnant candidates, it decided to propose to the Selection Board that the latter should invite the complainant to an assessment centre session. EPSO underlined that this decision was taken with regard to the very specific circumstances of the present case, namely the unintended delay that resulted from the repetition of the preliminary tests, and the fact that, as a result, the competition lasted for more than three years.

27. On 24 September 2013, the complainant informed the Ombudsman's services that the subject of her complaint had been resolved by EPSO, since the latter had decided to invite her to the assessment centre phase of the competition.

The Ombudsman's assessment

28. The Ombudsman commends EPSO for taking, after the present inquiry was opened, the necessary steps to accommodate the legitimate interests of the complainant. In view of the comments made by the complainant, the Ombudsman concludes that EPSO has thus taken steps to settle the matter.

29. Therefore, the Ombudsman closes the case.

B. Conclusions

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

EPSO has taken steps to settle the matter.

The complainant and EPSO will be informed of this decision.

Emily O'Reilly

Done in Strasbourg on 21 November 2013

[1] OJ 2011 C 140A, p. 1

[2] <http://www.ombudsman.europa.eu/cases/decision.faces/en/48786/html.bookmark> [Link]



[3] <http://www.ombudsman.europa.eu/cases/decision.faces/en/4297/html.bookmark> [Link]