

Decision of the European Ombudsman closing the inquiry into complaint 840/2013/(RT)AN against the European Personnel Selection Office (EPSO)

Decision

Case 840/2013/AN - Opened on 20/05/2013 - Decision on 31/07/2014 - Institution concerned European Personnel Selection Office (No maladministration found) |

The complainant, a Romanian citizen, responded to an EPSO Call for expressions of interest, but failed one of the tests he was required to take. He requested a copy of the evaluation sheet used to correct the test he had failed. EPSO refused that request. During the inquiry, EPSO explained that the Selection Board had not used an evaluation sheet, but a detailed marking grid. Since such documents are covered by the secrecy of the Selection Board's proceedings, the Ombudsman concluded that no maladministration had occurred.

The background to the complaint

1. The complainant responded to Call for expressions of interest [...], organised with a view to setting up a reserve list of successful candidates from which to recruit [...] contract staff. After having successfully gone through the pre-selection process (Talent screener), the complainant was informed that he had not obtained the pass mark in one of the written tests, namely, an essay.
2. The complainant made a request for a review of his essay and asked EPSO to provide him with more information about the evaluation of his essay in order to enable him to understand his errors. In reply, EPSO confirmed the decision not to place the complainant's name on the reserve list. It explained that the complainant's essay was initially marked by two independent markers, both of whom awarded a failing mark. Subsequently, a third, independent marker corrected the essay and also gave a failing mark. EPSO provided the complainant with a copy of his unmarked essay, but refused to give him the corrected version, arguing that the marking proceedings are confidential and cannot be disclosed, in accordance with Article 6 of Annex III to the Staff Regulations.
3. The complainant thus contacted the European Ombudsman.



The inquiry

4. The Ombudsman opened an inquiry into the complainant's allegation that EPSO wrongly refused to grant the complainant access to the evaluation sheet in respect of competency test "b", and the claim that EPSO should provide him with a copy of the said evaluation sheet.
5. The inquiry was initially channelled through the Ombudsman's expeditious procedure, aimed at obtaining a rapid reply to the complainant's grievances. Given that the Ombudsman was not satisfied with EPSO's reply, EPSO was subsequently requested to provide a formal opinion on the above allegation and claim. The Ombudsman also requested EPSO to clarify why, in this case, the Selection Board had used evaluation sheets instead of the competency passport [1] .
6. Having received EPSO's opinion, the Ombudsman invited the complainant to submit observations on it, but he did not submit any. In reaching this decision, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Alleged wrongful refusal to disclose the evaluation sheet and related claim

Arguments presented to the Ombudsman

7. The complainant argued that since EPSO did not provide him with the requested information, its handling of his request lacked transparency and objectivity. He pointed out that in another open competition organised by the European Parliament, the notice of competition provided that *" upon request, candidates will receive a copy of their written tests, as well as a copy of their personal evaluation sheet setting out the selection committee's remarks on their performance ."*
8. As regards the fact that the Selection Board did not use the competency passport for the selection procedure in which the complainant participated, EPSO clarified that contract agent selection procedures (CAST procedures) do not entail an assessment centre phase and, therefore, no competency passport can be issued.
9. Moreover, CAST procedures are not governed by a notice of competition published in the *Official Journal* . Consequently, EPSO considered that the commitment it undertook following the Ombudsman's own-initiative inquiry OI/5/2005/PB, namely, to use an evaluation sheet detailing specific evaluation criteria on the basis of the general ones contained in the notice of competition, did not apply to such procedures.
10. EPSO stated that in the CAST procedure in question, the Selection Board prepared and used a detailed marking grid in order to assess candidates. However, EPSO pointed out that the proceedings of selection boards are secret [2] , in order to guarantee their independence and the objectivity of their proceedings by protecting them from any external interference and pressure. This secrecy also covers the *" correction methods and marking criteria [which] form*



an integral part of the comparative assessment performed by the selection board with regard to the candidates' merits " [3] . Therefore, EPSO was unable to disclose the marking grid used to assess the complainant's essay.

The Ombudsman's assessment

11. This inquiry was triggered by the fact that EPSO's refusal to provide the complainant with the evaluation grid concerning his essay appeared to be contrary to the commitments EPSO undertook following the Ombudsman's own-initiative inquiry OI/5/2005/PB, mentioned in paragraph 9 above.

12. EPSO's opinion, however, clarified that no evaluation grid was used in the CAST procedure in question, which was different in nature from the open competitions its commitments in case OI/5/2005/PB referred to. The said procedure was also organised in a different manner. EPSO clarified that candidates were assessed on the basis of detailed marking grids prepared by the Selection Board which, as EPSO rightly mentioned, are indeed covered by the secrecy of the Selection Board's proceedings according to case-law of the Court of Justice.

13. EPSO has thus adequately clarified why it could not provide the complainant with a copy of the evaluation sheet he requested. The Ombudsman also welcomes EPSO's clarifications as regards the reasons why the competency passport was not used in the CAST procedure in question.

Conclusion

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

There was no instance of maladministration in this case.

The complainant and EPSO will be informed of this decision.

Emily O'Reilly

European Ombudsman

[1] In reply to the Ombudsman's critical remark in case 2050/2011/RT, EPSO had informed the Ombudsman that, as from 2010, it replaced the evaluation sheets with the competency passports, with an eye to enhancing transparency in its selection procedures.

[2] Article 6 of Annex III to the Staff Regulations of the EU.

[3] Cases C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, paragraphs 29-32; F-46/12



Höpcke v

Commission , judgment of 16 September 2013, not yet published in the ECR, paragraphs 38 and 39; and F-16/07 *Dragoman v Commission* [2008] ECR-SC I-A-1-139 and II-A-1-737, paragraph 63.