

## Decision of the European Ombudsman closing his inquiry into complaint 2793/2009/MF against EPSO

Decision

**Case 2793/2009/MF - Opened on 21/12/2009 - Decision on 17/12/2010**

1. The complainant applied to take part in open competition EPSO/AD/157/09 for French-language lawyer-linguists, grade AD7, which was published in the Official Journal C 34 A of 11 February 2009.

2. Point A.II of the notice of competition ('the Notice') described the conditions of admission. One of the conditions set out in paragraph 4 of Point A.II (" *Eligibility - Profile sought* ") was that candidates had to be citizens of a Member State of the European Union.

3. Point C.2 of the Notice (" *How to apply - Submitting a complete application file by registered post* "), informed candidates of the following [1] [\[Link\]](#):

*" In addition to creating your own EPSO profile, you must print out and complete the full application form on the EPSO website and send it to EPSO by the closing date (Postmarked no later than 17 March 2009).*

*Documents to enclose with your application form:*

*Your application must give full details of your citizenship, studies, training, research and, where applicable, professional experience. You should also enclose the following documents:*

- a printed copy of your personal details from your EPSO profile,*
- a detailed curriculum vitae,*
- a copy of a document proving your citizenship (e.g. your passport, identity card or any other official document specifying your citizenship, which must have been obtained no later than the closing date for applications),*
- a copy of the diploma(s) attesting successful completion of your studies,*
- documents explaining how your language knowledge was acquired,*



— where applicable, employers' references clearly indicating the starting and finishing dates, and the level and exact nature of the duties carried out,

— a copy of any document that could help the selection board to assess your profile.

*You should also enclose a numbered index of these documents on a separate sheet. ..."*

4. In the corrigendum published in the OJ of 25 March 2009, the closing date for applications was postponed until **28 April 2009**.
5. On 15 April 2009, the complainant sent her application file by registered mail, which was received by EPSO on 17 April 2009. She submitted the supporting documents with her application. On a separate sheet, she made a list of the supporting documents, and ticked each of them on the list.
6. On 22 October 2009, EPSO informed the complainant that she was not admitted to the competition because she did not fulfil one of the eligibility conditions of admission, as set out in point A.II paragraph 4, of the Notice, namely, to have the citizenship of a Member State of the European Union. EPSO stated that she had not submitted any proof of her EU Member State citizenship with her application.
7. By letter dated 23 October 2009, the complainant asked EPSO to check her application file again and to review its decision not to admit her to the competition. To prove her French citizenship, she enclosed a copy of her Identity Card ('ID') issued by the French Republic.
8. On 30 October 2009, EPSO reminded the complainant about point C. 2 of the Notice, underlining that candidates were required to prove their citizenship by submitting the relevant document " *no later than the closing date for applications* ". EPSO upheld its decision not to admit the complainant's application.
9. In a letter to EPSO of the same date, the complainant stated that she was convinced that she had enclosed a copy of her ID because she had ticked it on the list of the supporting documents enclosed with her application. She assumed that EPSO had lost the document before examining the candidates' applications, that is, " *in the period of time between April and October 2009* ".
10. In its reply of 10 November 2009, EPSO admitted that her application file contained the list of the supporting documents. However, a copy of her ID was not among the documents submitted. It upheld its decision to reject the complainant's application for failure to submit the supporting document proving her citizenship.
11. The complainant was not satisfied with EPSO's reply, and submitted a complaint to the Ombudsman on 13 November 2009.



## **The subject matter of the inquiry**

12. In her complaint, the complainant alleged that EPSO unfairly rejected her application on the grounds that she had failed to enclose the supporting document proving her French citizenship.
13. The complainant claimed that EPSO should acknowledge its mistake.

## **The inquiry**

14. On 21 December 2009, the Ombudsman opened an inquiry regarding the complainant's allegation and the above claim.
15. The Ombudsman also asked EPSO to provide details concerning the following two points:
- (i) the number of applications that were rejected on the grounds that proof of citizenship was not attached; and
  - (ii) whether it could be within the margin of the selection board's discretion to accept the belated submission of a copy of the complainant's identity card.
16. On 24 March 2010, EPSO sent its opinion. The Ombudsman forwarded it to the complainant with an invitation to make observations by 31 May 2010. The complainant did not submit any observations.

## **The Ombudsman's analysis and conclusions**

### **A. Alleged unfair rejection of the complainant's application and relevant claim**

#### **Arguments presented to the Ombudsman**

17. In support of her allegation, the complainant stated that she was convinced that she had enclosed a copy of her ID because she had ticked it on the list of supporting documents.
18. She assumed that EPSO received the document in question " *in April 2009* ", but only started examining her application " *in October 2009* ". Therefore, it could not be excluded that, during such a long period of time, EPSO might have lost the document.
19. In its opinion, EPSO clarified that, on 22 June 2009, two EPSO officials checked her application and assessed whether the complainant had complied with the condition of



admissibility relating to EU Member State citizenship (point A. II. 4. of the Notice). Given that it was found that she did not fulfil the eligibility condition relating to EU Member State citizenship, EPSO did not carry out any further assessment of her file. As a result of the large number of applications received, the Selection Board did not conclude its assessment of candidates' applications until October 2009. Pursuant to its usual practice, EPSO informed all the candidates on the same date, in this case, 22 October 2009, whether or not they had been admitted to the competition and written tests. Even though EPSO was not responsible for the long delay in informing all the candidates whether their applications had been admitted, it apologised to the complainant for not informing until October 2009 her that she was not admitted to the competition.

**20.** EPSO further stated that, for each competition, its services proceed carefully with the opening of envelopes containing candidates' applications. Each candidate's application is put into an individual folder. The envelope in which the candidate's application and supporting documents were sent, is also put into the candidate's folder.

**21.** The complainant's application was treated in the same way. It was put into a folder bearing her name, along with all the documents she submitted, and the envelope in which they were sent. EPSO's services checked the content of the envelope to ensure that no documents were left inside it.

**22.** The complainant's application contained the following enclosures:

- Application form (5 pages);
- Personal information from " *My EPSO account* " (2 pages).
- List of the documents enclosed (1 page) indicating:
  - enclosure 1: CV;
  - enclosure 2: copy of the complainant's Identity Card;
  - enclosures 3 to 6: copies of the complainant's Law degree;
  - enclosure 7: copy of her contract of employment and relevant amendments;
  - enclosures 8 and 9: supporting documents on her knowledge of languages.
- The complainant's CV (3 pages): enclosure 1;
- Copy of her Master Degree in Law (1 page) - enclosure 3;
- Copy of her 'Maîtrise' of Law (1 page) - enclosure 4;
- Copy of her 'Licence' of Law (1 page) - enclosure 5;
- Copy of Certificate of knowledge of Business law (1 page) - enclosure 6;
- Hiring/starting letters and amendments to her contract of employment in "BPERC" [\[2\]](#) [\[Link\]](#) (8



pages) enclosure 7;

- Copy of Philology degree- teacher of French language (6 pages) - enclosure 8;

- Copy of Certificate of Secondary Studies (1 page): enclosure 9.

**23.** Enclosure 2, the copy of the complainant's ID, was not attached to the application form, despite the fact that complainant had included it in the list of documents enclosed.

**24.** In its opinion, EPSO concluded that no administrative mistake was made in the handling of the complainant's file. EPSO considered that there was no justification for its having to apologise to the complainant, because it was not responsible for the loss of any document.

**25.** In reply to the first point which the Ombudsman asked EPSO to address in detail, the latter explained that the number of applications rejected on the grounds of lack of supporting documents regarding candidates' citizenship amounted to 12 out of a total of 778 applications received for the competition.

**26.** As regards the second point which the Ombudsman asked EPSO to address in detail, the latter explained that, pursuant to Article 4 of Annex III to the Staff Regulations [\[3\] \[Link\]](#), only the Appointing Authority (that is, EPSO) may assess whether candidates fulfil the condition regarding citizenship. The Appointing Authority, as well as the selection board, is bound by the wording of the Notice.

**27.** The Notice clearly stipulated that candidates had to send the supporting documents when submitting their application, which had to be filled in and signed before the closing date for application. The Notice also stated that candidates would not be admitted to the written tests if, on the closing date for application, they had failed to submit all the necessary supporting documents.

**28.** EPSO stated that this provision was applied to all candidates in the same way by the Appointing Authority.

**29.** It is settled case-law that a selection board can request a competition candidate to provide complementary information if there are doubts about a document that has been provided. Such case-law applies by analogy to the Appointing Authority when carrying out its duties in connection with administrative competitions. However, in the present case, there was *no* supporting document regarding the complainant's citizenship. Therefore, there were no grounds for the Appointing Authority to ask the complainant for further documentation.

## **The Ombudsman's assessment**

**30.** At the outset, the Ombudsman would like to thank EPSO for clarifying its procedure in dealing with documents submitted with applications. He notes that a folder is created for each



candidate, and that the envelope containing the application is also placed in this folder. He also notes that two officials carry out the assessment of the applications. He finds these rules to be reasonable and considers that, if they are applied correctly, accidental loss of documents submitted by candidates in a competition should not occur.

31. The Ombudsman notes, however, that 12 out of 778 applications were rejected on the grounds of lack of supporting documents concerning EU citizenship. Even if it is highly unlikely that these documents were, in fact, submitted to EPSO and then lost, the possibility, nevertheless, remains that they may have been lost.

32. In the present case, however, the Ombudsman is not able to verify whether or not the complainant submitted a copy of her ID to EPSO. On the one hand, the complainant is convinced that she did so. However, her arguments in this respect appear to be merely speculative, namely, she relied on the fact that she ticked the list of documents, and that EPSO took a long time, that is, seven months, from "April to October 2009", to deal with her application. On the other hand, EPSO denies that the candidate submitted the ID, and has provided the Ombudsman with a detailed description of its procedure, which he found to be reasonable. EPSO explained that it dealt with the complainant's application on one specific day, two months after she submitted it.

33. In such a situation of *non liquet*, the Ombudsman considered that he could not reach a reliable conclusion on the basis of the parties' diverging arguments. Even if the Ombudsman were to give the complainant the benefit of the doubt that she did indeed submit the document in question, she could not require EPSO to take any further action in light of the relevant case law. According to the relevant case law, (i) candidates must ensure that the selection board is provided with all the information and documents necessary to enable it to check that candidates satisfy the conditions laid down in the notice of competition [\[4\] \[Link\]](#); and (ii) the selection board and, therefore, by analogy, EPSO acting as the Appointing Authority, cannot be required to make enquiries itself in order to ensure that candidates satisfy all these conditions [\[5\] \[Link\]](#).

34. In light of the above, the Ombudsman considers that no further inquiry is justified into the complaint.

35. Finally, the Ombudsman notes with approval that EPSO apologised to the complainant, on its own initiative, for the fact that it did not inform her until 22 October 2009, that is, three months after it had reached that conclusion, that her application had been rejected.

## B. Conclusions

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

**There are no grounds for further inquiries into the complaint.**



The complainant and the Director of EPSO will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 17 December 2010

[1] [\[Link\]](#) Translation from the French original version by the Ombudsman's services.

[2] [\[Link\]](#) BPERC stands for *Bureau Parisien d'Expertise et Révision Comptables* .

[3] [\[Link\]](#) Article 4 of Annex III to the Staff Regulations reads as follows: " *The appointing authority shall draw up a list of candidates who satisfy the conditions laid down in Article 28(a), (b) and (c) of the Staff Regulations and shall send it, together with the candidates' files, to the chairman of the Selection Board.* "

[4] [\[Link\]](#) Case T-214/99 *Carrasco-Benitez v Commission* [2000] ECR-SC I-A-257 and II-1169 paragraph 76.

[5] [\[Link\]](#) See Case T-145/02 *Armin Petrich v Commission* [2004] ECR-SC I-A-101 page II-447 paragraph 76.