

## Decision of the European Ombudsman closing the inquiry into complaint 582/2013/DK against the European Personnel Selection Office

Decision

**Case 582/2013/DK - Opened on 24/04/2013 - Decision on 09/03/2015 - Institution concerned** European Personnel Selection Office ( No maladministration found ) |

The case concerned the complainant's request for access to the partial marks awarded by the selection board in an EPSO open competition.

The Ombudsman inquired into the issue and found that the selection board did not award partial marks. She also found that EPSO had duly disclosed a copy of the complainant's translation test (before marking) and a copy of the evaluation sheet used by the selection board. It thereby fulfilled its obligation to state reasons for a decision rejecting a candidate's application.

She therefore closed the case with a finding of no maladministration.

### The background to the complaint

1. The complaint originally concerned the complainant's request for access to his test papers in an Open Competition organised by the European Personnel Selection Office (EPSO).
2. In 2011, the complainant participated in an open competition [1] for Polish language lawyer-linguists. On 25 January 2013, EPSO informed him that his marks obtained in the preliminary tests were not sufficient for the selection board to admit him to the next phase, the assessment centre.
3. By e-mail of 27 January 2013, the complainant asked EPSO to provide him with the corrected copy of her translation so that he could verify why he received a very low score. In reply, EPSO sent him an unmarked copy of his translation and a copy of the evaluation sheet used by the selection board. It pointed out that no further details about the evaluation could be disclosed due to legal requirement to maintain the secrecy of the works of the selection board. The complainant replied stating that he wanted to see his corrected translation. He argued that the secrecy of the work of the selection boards concerned the evaluation process, but not the results themselves, and that the information so far provided by EPSO did not allow him to



understand why he received a very low score. EPSO replied to the complainant that no further details could be disclosed.

4. The complainant then turned to the Ombudsman. He alleged that EPSO wrongly refused to provide him with an annotated version of his translation test and claimed that EPSO should provide him with it.

5. The Ombudsman opened an inquiry by carrying out an analysis of the information submitted to her by the complainant and the replies given to her by EPSO. Further to that analysis, the Ombudsman noted that EPSO had already sent the complainant a copy of his unmarked test paper together with a copy of the individual evaluation sheet drawn up by the selection board and that, according to the established case-law of the Union courts, providing candidates with a copy of the tests as they drafted it (without corrections), together with the communication of the marks constitutes a sufficient statement of reasons for decisions of selection boards. The Ombudsman therefore asked the complainant to explain in detail why he considered that EPSO's refusal to provide him with an annotated version of his translation test was wrong.

6. Further to the receipt of the complainant's clarifications, the Ombudsman decided to proceed with her inquiry by asking EPSO to submit an opinion on the complaint.

## The inquiry

7. On the basis of the complainant's clarifications, the Ombudsman decided to reformulate the complainant's initial allegation and claim as follows:

Allegation:

EPSO wrongly refused to provide the complainant with the partial marks [2] awarded by the selection board for each criterion specified in the notice of competition.

Claim:

EPSO should provide him with the above information.

8. In the course of the inquiry, the Ombudsman received the opinion of EPSO and, subsequently, the comments of the complainant in response to EPSO's opinion. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

## **Allegation that EPSO wrongly refused to provide the complainant with the partial marks awarded by the selection board**



## Arguments presented to the Ombudsman

9. In support of his allegation, the complainant argued that the evaluation sheet used in the competition does not indicate how many points the selection board awarded to the specific skills evaluated. He noted that he received an overall score of 35 out of 80 points. However, the selection board evaluated four competences and found that her performance was 'insufficient' with regard to all four of them. It did not specify to what degree it was insufficient for each competence (he was not informed of the precise mark awarded for each specific competence). He stated that it was difficult to understand how the disclosure of this information could interfere with the deliberations of the selection board. The complainant added that EPSO's refusal to give access to the marked copy of the examination paper makes it impossible to verify whether the selection board made a manifest error of assessment. This fact deprives candidates of the possibility to use their rights to lodge a request for review or challenge the decision of the selection board to exclude them from the competition.

10. In its opinion, EPSO stated that, on 30 October 2013, it provided the complainant with a copy of his unmarked translation paper and a copy of the evaluation sheet. The evaluation sheet contained the evaluation criteria and the level of performance attained, ranging from *excellent* to *insufficient*. The complainant's performance was assessed *insufficient* in all four criteria assessed. He was also informed that he received a global mark of 35 points out of 80. This was, EPSO stated, the only mark the selection board used during the evaluation. It added that the selection board did not award any partial marks per criterion. Such partial marks therefore do not exist. Consequently, EPSO cannot disclose them. The evaluation sheets filled in by the individual markers, who did use partial marks, are covered by the secrecy of the proceedings. They cannot therefore be disclosed. EPSO noted that the case-law of the EU courts provides that observance of this secrecy precludes the disclosure of both the attitudes adopted by individual members of selection boards and of any factors relating to individual or comparative assessments of candidates. [3].

11. In his observations, the complainant maintained his complaint. He argued that the selection board committed maladministration when it decided not to award partial marks despite the fact that the markers did use partial marks. He also pointed out what he considered to be a contradiction in EPSO's opinion, which states that the markers used partial marks but they cannot be disclosed because they do not exist. The complainant reiterated his argument that the limited amount of information disclosed by EPSO makes it impossible to verify whether the selection board had made a manifest error of assessment.

## The Ombudsman's assessment

12. The Ombudsman first notes that, in accordance with the established case law of the EU courts [4], EPSO needs to reconcile the obligation to state reasons for a decision rejecting a candidate's application with observance of the secrecy surrounding the proceedings of selection boards by virtue of Article 6 of Annex III to the Staff Regulations. Also, the legal obligation of



selection boards to give reasons for its decisions is fulfilled by providing the candidate with the marks obtained. Finally, the secrecy surrounding the work of the selection boards precludes (i) any divulging of the attitudes adopted by individual members of selection boards and (ii) revelation of all the factors relating to individual or comparative assessment of candidates.

**13.** The Ombudsman underlines that the Civil Service Tribunal further reinforced the above considerations in its judgment of 12 February 2014 in the *Mendoza* case. The Tribunal found in that case that selection boards do not need to give candidates (i) the corrected version of their tests, (ii) reasons why their replies were erroneous, or (iii) the evaluation grids used for the written and oral tests, since, according to the Tribunal, these documents form part of the selection board's comparative assessments and are covered by the secrecy of the selection board proceedings [5] .

**14.** However, the Ombudsman points out that the secrecy of the proceedings of selection boards does not prevent EPSO from disclosing to candidates the evaluation criteria or of a detailed breakdown of marks in respect of a particular test [6] . Thus, **if** partial marks were awarded **by a selection board as a whole** , candidates should be informed of those marks.

**15.** In this regard, the Ombudsman notes EPSO's statement that the selection board in the competition at hand did not award partial marks. Rather, it limited itself to deciding the level of performance attained by candidates for each competence, by ranking them from *excellent* to *insufficient* .

**16.** Consequently, given that no partial marks were awarded by the selection board, EPSO cannot be faulted for not disclosing them.

**17.** It is true that the **individual members of the selection board** awarded partial marks for the purposes of discussing the merits of candidates with other selection board members. However, the Ombudsman underlines that the views of the individual members within a selection board, in particular their **individual evaluations of the merits of candidates** , are covered by the secrecy of the selection board's proceedings. The views of the individual members cannot therefore be disclosed [7] .

**18.** As regards the complainant's view that the selection board should have chosen to award partial marks (rather than limiting itself to indicating the level of performance attained by candidates for each competence, ranging from *excellent* to *insufficient* ) the Ombudsman notes that a selection board has a wide margin of discretion when deciding on the method of evaluation. Thus, the selection board was entitled to decide not to award partial marks.

**19.** In light of the above considerations, the Ombudsman concludes that the complainant's allegation is not sustained and she therefore finds no maladministration by EPSO. As a consequence, the complainant's related claim cannot succeed either.

## Conclusion



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

**The Ombudsman finds no maladministration by EPSO.**

The complainant and EPSO will be informed of this decision.

Emily O'Reilly

Strasbourg, 09/03/2015

[1] Open Competition EPSO AD/212/11 - Polish language lawyer-linguists

[2] Partial marks are the break-down of the marks awarded for the individual elements of the overall test.

[3] EPSO referred to Case 89/79 *Bonu v Council* [1980] ECR I-553, paragraph 5; and Case C-254/95 P *Parliament v Innamorati* [1996] ECR I-3423, paragraph 24.

[4] Case T-72/01 *Pyres v Commission* [2003] ECR-SC I-A-169 and II-861, paragraphs 70-71.

[5] Judgment of 12 February 2014 of the Civil Service Tribunal (Full Court) in Case F-127/11, *Gonzalo de Mendoza Asensi v European Commission*, not yet published, paragraph 99.

[6] See in this regard the Ombudsman's decision in own-initiative inquiry OI/5/2005/PB, available at: <http://www.ombudsman.europa.eu/cases/decision.faces/en/3706/html.bookmark> [Link]

[7] See Case 89/79 *Bonu v Council* referred to above.