

Decision of the European Ombudsman closing the inquiry into complaint 827/2014/PL against the European Personnel Selection Office (EPSO)

Decision

Case 827/2014/PL - Opened on 12/06/2014 - Decision on 19/03/2015 - Institution concerned European Personnel Selection Office (No maladministration found) |

The case concerned the procedure CAST/S/1/2011 for translators. EPSO refused to provide the complainant with (i) the names of the members of the selection panel and (ii) a copy of the text that had to be translated during the test. The Ombudsman opened an inquiry, following which EPSO decided to disclose in the future the names of the selection panel members in CAST procedures. EPSO also provided the complainant with a copy of the requested document.

The background to the complaint

1. The complainant was a candidate in EPSO's selection procedure CAST/S/1/2011 to recruit staff in the field of translation.
2. In October 2012, the complainant was informed that her mark for the translation from Greek into English was insufficient and, therefore, she would not be included in the database of successful candidates. She subsequently lodged a request for review contesting the test results and requesting a copy of the translation script.
3. In December 2012 EPSO confirmed the complainant's marks and provided her with a copy of her unmarked translation into Greek. It did not provide her, however, with a copy of the original text in English.
4. In February 2013, the complainant lodged a complaint under Article 90(2) of the Staff Regulations, requesting a new assessment of her English into Greek translation, the names of the members of the selection panel, and a copy of the original English text.
5. In July 2013, EPSO dismissed the complainant's request for a new assessment and refused to provide the names of the selection panel members. EPSO did not address the complainant's request for a copy of the English text. In May 2014, the complainant turned to the Ombudsman.



The inquiry

6. The Ombudsman opened an inquiry into the complaint and identified the following allegations and claims:

1) EPSO failed to disclose to the complainant or to publish the names of the members of the Selection Board as it does in other competitions. The complainant claimed that EPSO should disclose the names of the members of the Selection Board for every language of the competition.

2) EPSO wrongly denied access to the text that had to be translated during the test from English into Greek. The complainant claimed that EPSO should give access to the text.

7. In the course of the inquiry, the Ombudsman received EPSO's opinion on the complaint 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.

The alleged failure of EPSO to disclose the names of the members of the Selection Board

Arguments presented to the Ombudsman

8. In its opinion, EPSO explained that, up to now, CAST procedures did not include any provision regarding the disclosure of the names of the selection panel members. Consequently, members of the selection panel in the CAST/S/1/2011 had not been informed that their names would be disclosed to candidates and had not given their consent to such disclosure. [1] EPSO argued that, in such circumstances, in order to disclose this personal data a recipient must put forward a specific interest in, or demonstrate the necessity for obtaining this data. The complainant had failed to do so in the present case.

9. However, EPSO had decided, after analysing the Good Practice Guidelines regarding disclosure of the names of selection board members issues by the Ombudsman, [2] that it would in the future disclose the names of selection panel members in CAST procedures.

The Ombudsman's assessment

10. The Ombudsman welcomes EPSO's decision to proactively publish in the future the names of the selection panel members in CAST procedures, as it does in open competitions. As the Ombudsman has stated in the past, such a practice guarantees transparency in selection procedures and helps build and maintain public trust in the EU institutions, reassuring



candidates that the selection procedure has not been vitiated by conflicts of interest. [3]

11. As regards the names of the selection panel members in the CAST/S/1/2011 selection procedure, the Ombudsman accepts EPSO's position on the matter. Pursuant to the established case-law of the Court of Justice, [4] when a request is made for access to documents containing personal data, the Data Protection Regulation [5] is applicable. Thus, the person seeking access must provide an express and legitimate justification or convincing arguments in order to demonstrate the necessity for that personal data to be transferred. This was not the case with the complainant. EPSO was thus required to withhold the said information.

The alleged failure of EPSO to give access to the text that had to be translated during the test from English into Greek

12. As regards the original English text that had to be translated into Greek, EPSO informed the Ombudsman that it was reviewing its policy concerning the disclosure of source texts. In the case of the requested document, EPSO had concluded that the text in question would not be reused in the future and, therefore, a copy of it would be provided to the complainant.

13. In her observations, the complainant contended that, in the light of the original English text and the copy of her unmarked translation, she should have received a passing mark.

The Ombudsman's assessment

14. The Ombudsman welcomes EPSO's decision to release the requested document. She notes that EPSO reserves the possibility to refuse access if it intends to reuse the same text. However, the Ombudsman is not convinced that there is indeed a need to reuse a specific text for translators' competitions. In light of this, EPSO could consider in future translation competitions, to proactively provide the original text when the unmarked translated text is provided.

15. As regards the complainant's observations, the Ombudsman recalls the wide margin of discretion which the Selection Board enjoys in evaluating a candidate's knowledge and competencies. It is not the Ombudsman's role to substitute her own assessment for that of the Selection Board. Moreover, the Ombudsman finds that, on the basis of the information provided to her, the Selection Board did not commit any manifest error in assessing the quality of the complainant's translation.

Conclusion

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



As regards the access to the test paper the issue has been settled. The Ombudsman finds no instance of maladministration by EPSO as regards the remainder.

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

Further remark

EPSO should consider in future translation competitions, to proactively provide the original text when the unmarked text is provided.

Emily O'Reilly

Strasbourg, 19/03/2015

[1] Article 5 of Regulation (EC) No 45/2001 establishes that "Personal data may be processed only if (d) the data subject has unambiguously given his or her consent.

[2] <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54521/html.bookmark>
[Link]

[3] Decision of the European Ombudsman in his own-initiative inquiry OI/4/2012/CK concerning the European Centre for the Development of Vocational Training (Cedefop), par. 32.

[4] Judgment of 29.6.2010 in Case C-28/08 P, *Bavarian Lager*.

[5] Regulation (EC) No 45/2001 of the European Parliament and of the Council