

## Decision of the European Ombudsman closing the inquiry into complaint 328/2013/AN against the European Commission

Decision

**Case 328/2013/AN - Opened on 20/03/2013 - Decision on 17/06/2015 - Institutions concerned** European Commission ( No maladministration found ) | European Commission ( Settled by the institution ) |

The case concerned the exclusion of a Spanish citizen from an open selection competition on the ground that she did not have a sufficient knowledge of Spanish. The complainant rejected this explanation and requested a copy of the evaluation sheet concerning her linguistic competencies. During the Ombudsman's inquiry, the Commission provided the complainant with the pre-established criteria used to mark all candidates' written tests, thus settling this part of the complaint. Moreover, the recent case-law of the Civil Service Tribunal concerning the secrecy of the evaluation sheets justified the Commission's refusal to disclose them. Therefore, no maladministration was found as regards this aspect of the case.

### The background to the complaint

1. The complainant, a Spanish citizen, took part in an open competition which the European Personnel Selection Office (EPSO) organised on behalf of the European Commission. After the complainant took the written tests, she was informed that she had been excluded from the competition because she did not fulfil one of the eligibility criteria, namely, a thorough knowledge of her main language, Spanish. EPSO informed the complainant that, in the context of the written exam, her knowledge of her language 1 was assessed by two native speakers of Spanish. On the basis of its "*relevant evaluation report*", the Selection Board concluded that her knowledge of that language was not thorough.
2. The complainant requested a review of this decision. She pointed out that she was a native speaker of Spanish and had obtained her university diplomas in Spain. Therefore, she was astonished to note that her knowledge of Spanish could be considered insufficient. She requested that she be informed of the criteria applied to assess her knowledge of her main language and that she be provided with the "*relevant evaluation reports*" drawn up by the markers, to which EPSO had referred.



3. EPSO maintained its view. It stated that, pursuant to the Notice of Competition, the candidates' knowledge of their main language was assessed through the written test. In the complainant's written summary drafted in Spanish, the markers, who were expert linguists, identified badly constructed sentences, a systematic lack of accents and errors of punctuation. Their final marks were validated by the Selection Board and were reflected in the competency passport of which the complainant had received a copy. Moreover, due to the confidential nature of the Selection Board's proceedings, EPSO could not provide the complainant with more detailed information.

4. The complainant thus contacted the European Ombudsman.

## The inquiry

5. The European Ombudsman opened an inquiry into the complainant's **allegation** that EPSO had failed to provide her with (a) the pre-established evaluation criteria and (b) the evaluation sheet concerning her knowledge of Spanish, and her **claim** that EPSO should provide her with both documents.

6. The inquiry was initially addressed to EPSO as the body which organised the competition. However, EPSO informed the Ombudsman that, since the competition was organised on behalf of the Commission, it was for the latter to reply to the Ombudsman's inquiry. The Ombudsman thus requested the Commission to submit an opinion on the above allegation and claim.

7. The Commission did so. The Ombudsman then asked the Commission for a more comprehensive opinion [1] , which the Commission provided. The complainant submitted observations on the Commission's views.

8. The Ombudsman subsequently conducted further inquiries into this complaint, by requesting the Commission to clarify certain aspects. The Ombudsman's services also inspected the Commission's files, including the complainant's written test and the markers' assessments of that test. The complainant was informed of all these steps and submitted observations.

9. In reaching her decision on this case, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

## **Alleged failure to provide the complainant with (a) the pre-established evaluation criteria and (b) the evaluation sheet concerning her knowledge of Spanish, and related claim**

### Arguments presented to the Ombudsman



**10.** As regards aspect (a), in its first opinion, the Commission stated that the language markers assessed whether (i) the language used by the candidates was clear and comprehensible, and (ii) the sentences were well constructed. The evaluation also covered (iii) the candidates' mastery of grammar, punctuation and vocabulary. Moreover, prior to this exercise, the language markers received specific training in order to ensure the uniform application of the evaluation criteria.

**11.** As regards aspect (b), in its second opinion, the Commission endorsed EPSO's initial view that the evaluation sheets form part of the Selection Board's working documents and, as such, are covered by the secrecy of its proceedings. The Commission could thus not disclose these sheets to the complainant. In any event, in the Commission's view, the complainant's competency passport contained all relevant information necessary to understand the reasons why she had not passed the written test.

**12.** In reply to the Ombudsman's request "*(i) to reconsider [the] view that, in the present case, the information contained in the competency passport could have enabled the complainant to understand why her linguistic skills were deemed insufficient and (ii) to reflect, in general, on whether the structure of the competency passports is adequate to convey all the necessary information for the candidates*", the Commission sent in a further reply and, subsequently, further e-mail clarifications. As regards point (i), the Commission argued that the complainant had received "*comments on her two translation tests... in addition to the competency passport* ." As regards (ii), the Commission clarified that in the new structure of competitions, there are no more eliminatory linguistic tests at the assessment centre stage, with the exception of linguistic competitions. The language skills are now assessed through the first step of the competition. Therefore, it is no longer necessary to reconsider the structure and content of the competency passport as regards linguistic skills assessment.

## The Ombudsman's assessment

**13.** The Ombudsman notes that, in its first opinion, the Commission duly explained the evaluation criteria that the markers, and subsequently the Selection Board, used to assess the candidates' knowledge of their main language. This enabled the complainant to understand against which criteria her linguistic competencies in her main language were assessed. The Ombudsman thus considers that the Commission has taken steps to settle aspect (a) of the complaint.

**14.** As regards aspect (b), after the opening of the Ombudsman's inquiry into this complaint, the Civil Service Tribunal handed down a judgment in which it clearly stated that Selection Boards need not provide candidates with copies of the evaluation sheets used in the written and oral examinations, since they form part of the Board's comparative assessment and are covered by the secrecy of its proceedings [2] . While the Ombudsman considers that, in this way, the transparency of the selection procedures of the European Union is reduced even further, she can only acknowledge this recent development in the case-law of the Union Courts and abide by it, so long as it remains unchanged.



15. Therefore, the Ombudsman considers that no maladministration can be found as regards EPSO's refusal to provide the complainant with the evaluation sheets.

16. Regardless of the above conclusion, the Ombudsman considers that the case-law of the Civil Service Tribunal merely discharges institutions which organise selection procedures from the duty to disclose the evaluation sheets. However, it does not discharge them, and selection boards in particular, from the obligation to draw up detailed and clear evaluation and marking grids, which will ensure that the markers and board members will evaluate and mark candidates' papers fairly and objectively. Moreover, any EU institution that organises open competitions is required to provide candidates with an adequate statement of reasons allowing them to understand why they have been unsuccessful.

17. This is precisely the reason why the Ombudsman considered it necessary, in this case, to inspect the Commission's files as regards the complainant's performance in the written test. Indeed, prior to the Ombudsman's inquiry, the complainant had not received sufficient information regarding the reasons why her performance was deemed insufficient. The competency passport which the complainant received did not contain any reference whatsoever to her knowledge of Spanish or to the linguistic shortcomings of her written test. It was only in the course of the Ombudsman's inquiry that additional information was provided.

18. The inspection of the complainant's written test allowed the Ombudsman to ascertain that the markers' assessment was indeed based on the pre-established criteria which EPSO mentioned to the complainant. Having seen the documents, the Ombudsman can confirm the markers' statements that the complainant made systematic spelling errors, in particular with regard to accents, used phrasal structures which are not typical of Spanish and had several punctuation oversights. In addition, most likely due to time constraints, part of her exam was practically illegible.

## Conclusion

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

**The Commission has settled the first aspect of the complaint.**

**In light of the recent developments in the case-law of the Civil Service Tribunal and the conclusions drawn from the inspection of the Commission's files, no maladministration can be found as regards the second aspect of the complaint.**

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



Emily O'Reilly

European Ombudsman Strasbourg, 17/06/15

[1] The Commission's opinion dealt only with aspect (a) of the allegation, namely, the pre-established evaluation criteria, but did not address aspect (b) regarding the evaluation sheets.

[2] Case F-127/11 of 21 February 2014 *Gonzalo de Mendoza Asensi v European Commission* , not yet published in the ECR, paragraph 99.