

EPSO's decision to exclude the complainant from a competition on the grounds that it did not consider his diploma relevant

Case opened

Case 1333/2015/MDC - **Opened on** 07/10/2015 - **Recommendation on** 17/07/2017 - **Decision on** 23/05/2018 - **Institution concerned** European Personnel Selection Office (Maladministration found) |

Allegation(s)

1) The Selection Board in Open Competition EPSO/AD/177/2010 (AUDIT 2013 edition) failed to give sufficient reasons for its decision to exclude the complainant from the Assessment Centre phase of the competition. This failure was not remedied by the Board's reply to his request for review.

2) EPSO did not handle the complainant's complaint submitted in accordance with Article 90(2) of the Staff Regulations properly since the facts should have led it to re-examine the documents he submitted and to reach a completely different conclusion.

3) EPSO refused to readmit the complainant to the Assessment Centre phase of the competition despite the judgment of the Civil Service Tribunal in Joined Cases F-1/14 and F-48/14 *Kakol v Commission* [1] (concerning another candidate who participated in the same competition as the complainant and whose grievances were very similar to those of the complainant), in which the Tribunal annulled the decision of the Selection Board on the candidate's request for review.

Supporting arguments

The complainant submitted the following arguments in support of the first allegation:

1) The Selection Board considered the complainant's diploma irrelevant, despite the fact that he had informed it in his request for review that two other selection boards in two other identical audit competitions had considered his diploma relevant and sufficient. Case-law of the Court of Justice of the European Union requires a selection board to give specific and clear reasons for its decision to depart from appraisals concerning the fulfilment of conditions in competition notices made previously by other selection boards in similar competitions [2] . When sufficient reasons are not given, the decision is tainted



with a procedural defect which entails its annulment [3] .

2) The Board did not provide the complainant with any information about the precise criteria it applied and the method it used in order to evaluate his diploma, despite the commitments EPSO had made to the Ombudsman in the context of case 814/2012/TN (paragraphs 29 and 30).

The complainant submitted the following arguments in support of the second allegation:

3) By virtue of Article 1(2) of Decision 2002/621/EC on the organisation and operation of EPSO [4] , one of EPSO's tasks is to organise competitions "on the basis of harmonised criteria". EPSO should therefore be in a position to check the evaluation criteria used and, above all, the validated diplomas/qualifications. In view of the significant difference between the diplomas and nationalities of the candidates admitted to the 2010 and the 2013 [5] editions of the Competition at issue, it is evident that EPSO failed to ensure internal consistency between the conditions applied in the two editions of that Competition. It also failed to ensure external consistency with previous and subsequent audit competitions since the complainant's same diplomas (as well as those of other candidates who were not admitted to the 2013 edition) were considered sufficient in other audit competitions.

4) These differences also signify that EPSO breached the principle of equal treatment since it assessed the same diploma differently in respect of different candidates. EPSO declared that the complainant's diploma in economics and finance from the *IEP Paris Sciences Po* was not relevant to an audit competition. However, several other admitted candidates held an equivalent diploma in economics or finance [6] .

5) In its decision on the Article 90(2) complaint, EPSO made contradictory statements: In point 7, it stated that the Board took into account the information which the complainant provided on 9 December 2013, whereas in point 8, it stated that the Board took a decision on all the requests for review, including the complainant's, on 21 October 2013.

The complainant submitted the following argument in support of the third allegation:

6) In light of the judgment in the *Kakol v Commission* case, the principles of good administration required EPSO to readmit to the next phase of the competition all the candidates who were in a similar situation to that of the applicant in that case, or at least those who had submitted a complaint in accordance with Article 90(2) of the Staff Regulations.

[1] Judgment of the Civil Service Tribunal of 22 January 2015, *Kakol v Commission* , F-1/14 and F-48/14, ECLI:EU:F:2015:5, paragraphs 48, 49 and 53 (currently under appeal).



[2] See, for example, judgment of the Court of Justice of 12 July 1989, *Bellardinelli v Court of Justice*, 225/87, ECLI:EU:C:1989:309, paragraphs 21, 22 and 27 and, more recently, judgment in *Kakol v Commission*, cited above, ECLI:EU:F:2015:5, paragraphs 48, 49 and 53 (currently under appeal).

[3] See judgment in *Kakol v Commission*, cited above, ECLI:EU:F:2015:5, paragraph 77.

[4] Decision of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and the Representative of the European Ombudsman of 25 July 2002 on the organisation and operation of the European Communities Personnel Selection Office, OJ 2002 L 197, p. 56.

[5] In the 2010 edition, many types of diplomas were accepted and 8 or 9 French candidates were admitted, whereas in the 2013 edition the diplomas accepted were mainly those in economics, finance or law and only 1 French candidate was admitted.

[6] Several candidates whose name appears on the reserve list of the 2010 edition held identical diplomas granted by the same " *grande école* " as the complainant. One of them had even chosen the same optional subjects. Moreover, the sole French candidate whose name appears on the reserve list of the 2013 edition held a diploma equivalent to that of the complainant granted by the *IEP Bordeaux*.

Claim(s)

EPSO should readmit the complainant to the Assessment Centre phase of the competition.

The Ombudsman invites EPSO to submit an opinion by 31 January 2016.