

Decision in case 628/2016/EIS concerning the decision of the European Personnel Selection Office (EPSO) not to allow the complainant to submit a new application after he failed to pass the first tests

Decision

Case 628/2016/EIS - Opened on 03/06/2016 - Decision on 01/12/2016 - Institution concerned European Personnel Selection Office (Settled by the institution) |

The case concerned the decision of the European Personnel Selection Office (EPSO) not to allow the complainant to submit a second application in the context of a call for expressions of interest which contained no specific deadline for the submission of applications. The complainant sought to submit a second application after failing to pass the test linked to his initial application under the same selection procedure. The complainant argued that EPSO failed to provide adequate replies to his letters concerning (i) the legal basis for not allowing candidates to reapply in selection procedures without any specific closing dates; and (ii) the conditions, including the behaviour of staff, at the test centre in Spain.

In its response, EPSO referred to the conditions set out in the call for expressions of interest as the legal basis for its actions. It also explained that it had investigated the matter concerning the behaviour of the staff at the test centre.

The Ombudsman found EPSO's explanation to be reasonable and adequate, so the case was closed.

The background to the complaint

1. The complainant submitted an online application in response to the call for expressions of interest EPSO/CAST/P/4/2015 [1] (hereinafter referred to as "the call"). His application was accepted and he sat the computer-based pre-selection tests at a test centre in Barcelona, Spain. On 1 February 2016, the European Personnel Selection Office (EPSO) informed him that he had failed to pass the pre-selection tests and would not be admitted to the following phase of the selection procedure. His overall mark was only one point below the required mark.

2. The complainant attempted to reapply to the call, given that it was ongoing and had no closing date. However, it was not possible to submit a new application via EPSO's online system, as he had already submitted an application. On 22 February 2016, the complainant



sent an e-mail to EPSO in which he claimed that his result was due to the stress caused by “very rude and unfriendly behaviour of the staff” at the test centre. He also asked how to proceed in order to submit a new application for the (ongoing) call.

3. On the same day, EPSO replied as follows: “[T] *thank you for your request that can't be honoured as you can't reapply*”.

4. The complainant responded by e-mail on 23 February 2016, asking about the legal basis for EPSO's position.

5. EPSO replied on the following day, stating that: (i) under the conditions set out in the call, it is not possible to amend an application that has been validated; and (ii) reapplying after an unsuccessful pre-selection test outcome implies making 'amendments'. There was thus no possibility to reapply.

6. The complainant replied on the same day, pointing out that the selection procedure at hand was ongoing, with no specific closing date. He accepted that his first application had been closed and could not be amended. However, in this case, unlike in EPSO competitions with specific cut-off dates, there should be no reason to prevent him from applying again. The complainant further wished to know the legal basis for not allowing him, or any other applicant, to apply again for the selection procedure.

7. On 25 February 2016, EPSO replied to the complainant stating that he would be “*shortly informed about the reasoned legal basis*”.

8. On 8 April 2016, the complainant sent a reminder to EPSO.

9. On 14 April 2016, EPSO informed the complainant that its legal service was still considering his complaint. It apologised for the delay but promised to get back to him as soon as possible.

The inquiry

10. The Ombudsman opened an inquiry into the complaint that EPSO failed to provide adequate replies to the complainant's letters concerning (i) the legal basis for not allowing candidates to reapply in selection procedures without any specific closing dates; and (ii) the conditions at the test centre in Spain.

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

Allegation that EPSO failed to provide adequate replies to the complainant's concerns

Arguments presented to the Ombudsman



12. In the course of the inquiry, EPSO provided replies to the complainant's concerns. As regards the legal basis for not allowing candidates to submit a new application in selection procedures without any specific closing dates, EPSO apologised that it had not been able to provide the complainant with a clear and timely answer on the reasons why a candidate cannot reapply in the context of a CAST selection procedure. It explained that the legal basis for its position was expressly stated in the call at stake, namely, under the heading "Grounds for disqualification linked to the application process": "*[I]f at any stage in the procedure EPSO finds that you have created more than one EPSO account, made more than one application per profile and function group to this selection procedure or that you have made any false declarations, you may be disqualified*". As a result, EPSO rejected the complainant's position in this regard.

13. Concerning the complainant's comments about the behaviour of the staff at the test centre, EPSO explained that it had investigated the matter. However, the report from the period concerning the day of the test showed that there had been no complaints about the behaviour of the staff at the test centre, including from the complainant. Moreover, EPSO has not received any feedback during 2016 that could indicate problems with the behaviour of the staff at the test centre in Barcelona. EPSO claimed that this demonstrated that the complainant's allegations about the behaviour of the test centre staff were "subjective" and did not call the selection procedure into question. It pointed out that the selection procedure had been organised in a proper manner, in accordance with relevant case law [2]. However, EPSO added that the complainant's feedback had been duly noted.

14. In response, the complainant stated that he found EPSO's replies "offensive" and "unacceptable". He considered that EPSO suggested that he had lied, as he had said to two persons at the test centre that he felt "humiliated". As regards the legal basis, he argued that there should be a "basic act", such as a Regulation, to enable EPSO to act the way it did.

The Ombudsman's assessment

15. As regards the legal basis for EPSO's actions, EPSO has referred to the text of the relevant call, which makes it clear that candidates were permitted to make one application only. According to the relevant case law, EPSO enjoys broad discretion in determining the rules and conditions under which competitions and selection procedures are organised [3]. The notice of competition or call for expressions of interest constitutes the legal framework for the competition or selection procedure and the Selection Board and EPSO are therefore bound by it [4]. In this case, EPSO was thus legally required to follow the conditions set out in the call, which clearly ruled out multiple applications. EPSO's position is thus reasonable.

16. EPSO disputed the complainant's allegations about the behaviour of the staff at the test centre. It referred to its records and stated that it received no complaints on the day when the complainant sat the tests. It also pointed out that it has received no complaints whatsoever about the behaviour of the staff at the test centre in Barcelona in 2016. Should candidates be dissatisfied with the conditions at test centres, it is reasonable to expect them to report the incident in writing to EPSO without delay. However, in this case, the complainant reported the



incident in writing only after he became aware of his results [5] .

17. On the basis of the inquiry, the Ombudsman finds that EPSO's position is reasonable and adequate, and the case is thus closed.

Conclusion

On the basis of the inquiry into this complaint, **the case is closed** [6] .

The complainant and EPSO will be informed of this decision.

Strasbourg, 01/12/2016

Marta Hirsch-Ziembinska

Unit 1- Inquiries and ICT

[1] Call for expressions of interest (Project/programme adviser – Function Group IV):
<http://europa.eu/epso/doc/call-cast-agencies/en-tra-cast-p-1-4-2015.pdf> [Link]

[2] Judgment of the Civil Service Tribunal in case F-7/07, *Angioi v Commission* ,
ECLI:EU:F:2011:97, paragraph 124.

[3] Judgments of the Court of First Instance in case T-132/89, *Gallone v Council* ,
EU:T:1990:60, paragraph 27; and in case T-207/95, *Ibarra Gil v Commission* , EU:T:1997:12,
paragraph 66.

[4] Judgment of the Civil Service Tribunal in Case F-125/11, *Isabel Mendes v Commission* ,
EU:F:2013:35, paragraph 59.

[5] The Ombudsman has enquired into complaints concerning the conditions at CBT centres (one of the investigations is ongoing), but in these cases the complainants did report incidents to EPSO without waiting for their results.

[6] Information on the review procedure can be found on the Ombudsman's [website](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark) [Link]:
<http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>
[Link].