

Decision in case 2033/2015/ZA on the European Personnel Selection Office's (EPSO) handling of a request for review of a language proficiency exam

Decision

Case 2033/2015/ZA - Opened on 16/03/2016 - Decision on 14/12/2016 - Institution concerned European Personnel Selection Office (No further inquiries justified) |

EU officials are required to demonstrate the ability to work in a third language before their first promotion. When the complainant, who works in an EU Agency, failed a language proficiency exam in his third language, he asked EPSO to give him reasons for the relatively low grade in the writing test of the exam and also inform him of possible review mechanisms. In his view, EPSO's explanations concerning his grade seemed inconsistent, while its initial reply about review possibilities was incorrect. Following the complainant's insistence, EPSO agreed to reassess his writing test. The second evaluator confirmed the initial grade.

The Ombudsman inquired into the issue. She examined the complainant's test, as well as the assessments of the two evaluators. The Ombudsman did not find any manifest error or indications of partiality in the assessment of the complainant's writing test. Concerning the erroneous information about the review possibilities, EPSO recognised its mistake and apologised to the complainant. The Ombudsman did not consider that further inquiries were necessary and closed the case. However, she made a suggestion for improvement concerning the information given to participants in language proficiency tests about the procedure and their review/appeal rights.

The background to the complaint

1. The complainant, an official who works in an EU Agency, sat an exam to test his proficiency at the required level in his third language (Dutch), organised by EPSO [1] . When he was informed that he had failed to obtain the minimum pass score (60/100), he asked to be informed of the marks awarded in each section of the exam [2] , as well as of possible appeal options.
2. EPSO informed the complainant of his marks in each section of the exam [3] . Concerning the appeal possibilities, it stated that no appeal procedure was provided for in the case of assessment tests of third language proficiency.
3. The complainant maintained that the mark awarded in the writing test was below his



expectations. Following his insistence, EPSO agreed to a review of the writing test by a second assessor. Subsequently, EPSO informed the complainant that the second assessor had awarded him one point less. Moreover, the second assessor had said that the complainant's text was very similar to a text available on a testing website and, therefore, EPSO could have considered the text as not having been "*produced independently*". EPSO, however, granted the complainant the benefit of the doubt and did not disqualify him from this part of the exam.

4. Dissatisfied with EPSO's reply, the complainant complained to the Ombudsman on 22 December 2015.

The inquiry

5. The Ombudsman opened [4] an inquiry into the following allegation and claims:

EPSO failed to, first, ensure an impartial and independent review of the complainant's writing test and, second, provide him with a consistent explanation of his mark.

EPSO should take appropriate steps so as to rectify the foregoing allegations.

EPSO should clarify the review/appeal options in place as regards the assessment tests for third languages, in light of the relevant rules [5] .

6. In the course of the inquiry, the Ombudsman received EPSO's opinion on 5 July 2016 and, subsequently, the comments of the complainant in response to EPSO's opinion on 17 July 2016. Following the Ombudsman's request, EPSO sent additional information on 27 October and 10 November 2016. The Ombudsman's inquiry team also inspected the following documents: the complainant's exam (all sections) and the respective assessments of the two assessors. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that EPSO failed to ensure an impartial re-assessment of the complainant's writing test and to give a sound explanation for his mark and related claim.

Arguments presented to the Ombudsman

7. The complainant argued that the grading of his writing test was not impartial because the assessors were influenced by the relatively poor results in the other sections of the same exam. He also questioned the independence of the second assessor, as the fact that both assessors worked for the same contractor [6] did not ensure the impartiality of the reassessment process. According to the complainant, the re-assessment should have been carried out by a third party.

8. The complainant maintained that EPSO's explanations concerning his grade in the writing test were inconsistent. It was only after a number of e-mail exchanges and the Ombudsman's intervention, that EPSO clearly stated that his text had grammatical and syntax errors that justified his mark. Meanwhile, EPSO had argued that the complainant's text might not have



been produced independently, an argument that it eventually withdrew. Finally, the complainant argued that EPSO lacked professionalism in handling his case, which undermined its credibility.

9. EPSO stated that the initial evaluation of the complainant's writing test was carried out by a certified linguistic assessor and in compliance with pre-established correction criteria. It also reassured the complainant of the second assessor's independence and noted that the second assessor awarded him one point less than the first evaluator (20/30 instead of the initial 21/30 points) due to errors of grammar and syntax. EPSO repeated its statement that the second assessor found that the complainant's text was very similar to an online text, a fact that could cast doubt on the validity of the complainant's writing test. However, due to insufficient evidence, EPSO did not disqualify him on this basis. Finally, EPSO apologised for the “*unfortunate and imprecise wording of its message ... in communicating the results of the review procedure*” [7] .

The Ombudsman's assessment

10. The complainant's writing test was assessed against predetermined marking criteria such as: compliance with instructions; clarity of message; ability to argue a position; lexical range; grammatical accuracy; orthographic control; originality and style. Each assessor evaluated and marked the complainant's performance in each of these criteria in separate marking grids [8] . Their marks for each criterion did not coincide fully [9] but their overall evaluation of the complainant's written production shows consistency (21 and 20 points, respectively).

11 . The inspection of the complainant's writing test by the Ombudsman's inquiry team [10] indicated that the grading of both assessors reflected the quality of the complainant's text.

12. As regards the complainant's argument that the mark of the second assessor was influenced by his/her observation that the complainant's text was very similar to a text available on line [11] , the Ombudsman points out that the score given by the second assessor was in fact very similar to that of the first one. Secondly, it is understood that the observation of the second assessor was transmitted to EPSO as **additional** information in the context of the re-assessment (subcontractor's e-mail to EPSO summarising the result of the writing test). In any case, EPSO deemed there was not sufficient evidence to act on the observation.

13. Concerning the independence of the second assessor, the Ombudsman notes that the complainant has not submitted any concrete evidence that would call into question his/her impartiality. The mere fact that the second assessor was employed by the same contractor does not prove that he/she lacked impartiality.

14. In the light of the analysis above, the Ombudsman does not find any manifest error or indications of partiality in the assessment of the complainant's writing test.

Claim that EPSO should clarify the review/ appeal options available

Arguments presented to the Ombudsman



15. The complainant pointed out that in his correspondence with EPSO, he was provided with erroneous information twice: on 11 December 2015 when EPSO replied that "*the possibility to appeal is not foreseen in the 3rd language procedure*" and on 17 December 2015 when it stated that "*the 3rd language validation procedure does not envisage a review of the performance of candidates*". He also stressed that it was due to his persistence that EPSO eventually agreed to review his writing test.

16. The complainant argued that, due to the erroneous information EPSO had provided about the possibility to appeal, he did not ask for all parts of his exam to be reviewed [12] . Had he been provided with the correct information, he would have requested such a review.

17. EPSO recognised its mistake and apologised for it. It also confirmed that the Common Rules laying down the procedure for implementing Article 45(2) of the Staff Regulations do provide for review procedures. It noted, however, that despite its initial error, EPSO did review the complainant's writing test, thus rectifying its mistake and conforming to the applicable rules.

The Ombudsman's assessment

18. Article 12 of the Common Rules laying down the procedure for implementing Article 45(2) of the Staff Regulations provides for review and appeal procedures [13] . As such, it would seem that EPSO indeed provided misleading information to the complainant.

19. The Ombudsman notes, however, that EPSO rectified its mistake and, following the complainant's request, reviewed his writing test. Therefore, the complainant was not deprived of his right to have his test reviewed. Furthermore, following the Ombudsman's intervention, EPSO recognised its mistake and apologised to the complainant. As a result, the Ombudsman does not consider that further inquiries into the matter are necessary.

20. The Ombudsman further notes that the complainant did not challenge the results of the other parts of the exam either in the context of his correspondence with EPSO, or in his original complaint to the Ombudsman. Moreover, in his complaint to the Ombudsman, the complainant seemed to accept the results of the other parts of the exam, stating: "*for the reading part I run out of time and didn't have time to read the text so I was very low but the rest of the exams results was good*". Against this background it is difficult to assume that EPSO's conduct made the complainant refrain from asking for a review of other parts of his test.

21. The Ombudsman does not find that further inquiry into this allegation is necessary. However, with a view to avoiding similar situations in the future, the Ombudsman suggests that EPSO includes, in its e-mails informing the candidates of their results, a link to the Common Rules laying down the procedure for implementing Article 45(2) of the Staff Regulations to inform them of both the overall procedure and their rights [14] .

Conclusions



On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion [15] :

There is **no maladministration** as regards the first allegation, and, as regards the second allegation, **no further inquiries are justified**.

The complainant and EPSO will be informed of this decision.

Suggestions for improvement

EPSO should include, in its e-mails informing the candidates of their results in language tests, a link to the Common Rules laying down the procedure for implementing Article 45(2) of the Staff Regulations to inform them of both the overall procedure and their rights.

Emily O'Reilly

European Ombudsman

Strasbourg, 14/12/2016

[1] According to Article 45(2) of the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Union “ *officials shall be required to demonstrate before their first promotion after recruitment the ability to work in a third language among those referred to in Article 55(1) of the Treaty on European Union. The appointing authorities of the institutions shall adopt common rules by agreement between them for implementing this paragraph. These rules shall require access to training for officials in a third language and lay down the detailed arrangements for the assessment of officials’ ability to work in a third language, in accordance with Article 7(2)(d) of Annex III.* ” A B2 level of the Common European Framework of Reference for Languages is required as a minimum level for confirming an official’s ability to work in a third language.

[2] The exam comprised five parts: listening comprehension; reading comprehension; use of language; writing; and speaking.

[3] Listening 10/15; reading 2/10; use of language 9/15; writing 21/30; and speaking 15/30; overall score 57/100.

[4] The opening letter was sent to EPSO on 17 February 2016.

[5] The Common Rules laying down the procedure for implementing Article 45(2) of the Staff Regulations adopted by all the institutions on 13 December 2006, provide for review procedures in Article 12 (Title IV, Appeals, Application for review and complaints).



[6] EPSO had subcontracted the 3rd language assessment tests in Dutch to a private company.

[7] EPSO had replied that “ *In fact the score achieved by you in the written exam (20/30) has been assigned on the principle of granting you the benefit of the doubt as the (...) linguistic assessor has pointed that the text produced by you shows very close similarity to a text that can be found on one of the testing websites. In such circumstances, there are sufficient grounds to treat the written production as not being produced independently by a candidate which gives grounds to disqualification from this part of the exam and score assigned should be 0 points* ”.

[8] The first assessor marked the text on 27 November 2015, while the second on 13 December 2015 following the complainant's request.

[9] The marking was the same in four criteria, while it differed in three.

[10] The Ombudsman's team included a native Dutch speaker.

[11] It is noted that first, the marking of the second assessor is very close to that of the first one and second, there are no relevant comments on the evaluation grid.

[12] In his e-mails of 11 December 2015 (at 11:20 and 12:01), the complainant requested the review of his written test only. EPSO said that “ *there are some parts of the exams that can be contestable: the written text and the speaking* ”. in an e-mail of 11 December 2015 (at 12:14).

[13] Title IV, Appeals, “ *1.Candidates who feel that their interests have been harmed by a decision taken within the context of the assessment provided for in Articles 7 and 8 may, within 20 calendar days of the date on which the letter notifying them of the result of the assessment was sent, ask for a review by sending a letter, giving their reasons, to the Appointing Authority of their institution or to the Director of the Office, as appropriate. The Appointing Authority or Director shall forward it to the Chair of the Assessment Committee where the matter falls within the Committee's competence. In all cases, a reply shall be sent to the candidate within 20 days of receipt of the letter. If at the end of that period no reply has been received, this shall be deemed to constitute an implied decision rejecting it. 2. The candidate may submit to the Appointing Authority a complaint, within the meaning of Article 90(2) of the Staff Regulations, against an implied decision of rejection pursuant to paragraph 1 of this Article.* ”

[14] This will also be in compliance with the Article 19 of the Code of Good Administrative Behaviour which stipulates that “ *A decision of the Institution which may adversely affect the rights or interest of a private person shall contain an indication of the appeal possibilities available ...and time-limits for exercising them* ”.

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

