



Entscheidung in der Sache 726/2016/PMC - Entscheidung im Fall 726/2016/PMC betreffend den Rat der Europäischen Union, der Praktikanten eine Vergütung unterhalb des Mindestlohns zahlt

Entscheidung

Fall 726/2016/PMC - Geöffnet am 24/05/2016 - Entscheidung vom 29/09/2016 -

Betroffene Institution Europäischer Rat (Kein Missstand festgestellt) |

Ein ehemaliger Praktikant beim Rat der Europäischen Union beschwerte sich, dass die von den EU-Organen gezahlte Vergütung von Praktikanten unangemessen sei, da sie unterhalb des Mindestlohns liege und den Praktikanten keinen angemessenen Lebensstandard gewährleiste.

Die Bürgerbeauftragte leitete eine Untersuchung zu dieser Frage ein. Die Untersuchung ergab, dass der Rat hinreichend detailliert erläutert hatte, wie die Höhe der Praktikantenvergütung festgelegt wird. Die Bürgerbeauftragte befand, dass die Entscheidung, eine Vergütung in Höhe von 25 % des Gehalts eines Beamten der Besoldungsgruppe AD5.1 zu zahlen, angemessen sei. Der Rat traf diese Entscheidung im Rahmen seines Ermessensspielraums unter Berücksichtigung der administrativen Notwendigkeiten und der verfügbaren Haushaltsmittel.

Die Bürgerbeauftragte bemerkte, dass der Rat zwischen Praktika und Beschäftigungsverhältnissen unterscheide. Aus diesem Grund erhalte ein Praktikant eine Vergütung und kein Gehalt, da die Rechte und Pflichten eines Praktikanten nicht mit denen eines Bediensteten vergleichbar seien. Die Bürgerbeauftragte war der Ansicht, dass die Erläuterung des Rates angemessen ist.

Daher schloss sie den Fall mit der Feststellung ab, dass die Praxis des Rates keinen Missstand in der Verwaltungstätigkeit darstellt.

The background to the complaint

1. A former trainee at the Council of the European Union complained that the allowance paid by EU institutions to its trainees is inappropriate, as it is below the minimum wage and thus does not guarantee them a decent standard of living.
2. In an email to the Council, dated 25 January 2016, the complainant asked it to explain (i) on what basis it had decided to pay trainees an allowance that is exactly 25% of the salary paid



to a staff member at the grade AD5, and (ii) what laws regulate traineeships in Belgium.

3. On the same day, the Council replied to the complainant's second question. It stated that that traineeships in Belgium are governed by the Royal Decree of 21 September 2004 on the protection of trainees, and the Royal Decree of 3 May 1999 on the protection of young people at work. The Council further referred to Article 104 of the "loi-programme" of 2 August 2002 [1], which defines a traineeship contract as an agreement by which a person, as part of his training, acquires knowledge or skills through work services provided to an employer. The Council added that it appears that the minimum compensation to be paid to trainees older than 21 years in Belgium is currently around Euro 750.

4. On 27 January 2016, the Council replied to the complainant's first question, stating that, in accordance with Article 11(1) of the Council decision 118/07 on traineeships, "*a paid trainee shall be awarded a maintenance grant. The amount of the grant shall be decided every year by the Secretary-General of the Council, in the light of budget availability.*" The grant is calculated in the same way by the Council, the Commission, the Committee of the Regions and the Social and Economic Committee, that is, as 25% of the salary of a staff member at grade AD5/1. This amount has been decided on as an informal arrangement between these institutions and it is considered a reasonable amount of money, compatible with budget availability.

5. On the following day, the complainant made a "*complaint on traineeship grant amount*" to the Council. He was unconvinced by the explanation as to why the traineeship grant is 25% of an AD5 salary. He requested "*to know specifically why this amount was chosen and why it was thought to be reasonable that highly qualified trainees working at the European Union (coming from all parts of Europe, near and far), speaking several languages, beating thousands of other applicants to do the same should be paid below local minimum wage level*". He thus requested further clarifications "*as to why 25% of AD5 was chosen, and why this was decided to be more appropriate than 24% of AD5; and more appropriate than 26% of AD5, and why any level other than AD5 was not chosen*". In the complainant's view, the grant paid to trainees should be at least equivalent to the minimum salary paid in the country of traineeship, given that the current grant is not sufficient to cover the travel and living expenses incurred by trainees in EU institutions.

6. As the Council did not reply to the complainant's request for clarifications, he turned to the Ombudsman on 17 May 2016.

The inquiry

7. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

The Council failed to reply to the complainant's request for further clarifications in his correspondence of 28 January 2016 in which he argued that the Council failed to offer appropriate remuneration to trainees working in its institution, which does not sufficiently cover travel and living expenses.



The Council should reply to his correspondence and pay trainees an allowance which is at least equal to the national minimum wage.

8. The Ombudsman's inquiry team contacted the Council. The Council then replied to the complainant's request for clarifications and the complainant made comments on that reply.

Allegation that the Council does not pay trainees appropriately

Arguments presented to the Ombudsman

9. On 21 June 2016, the Council replied as follows to the complainant's request for clarifications: "*[The] method of calculation [concerning the allocation to be paid to trainees] is the result of an attempt among the institutions to harmonise their approach (although a formal agreement was not reached at the meeting of Heads of Administration) further to an initiative from the Commission, launched on 9 January 2006, to align the amount of the grants across the institutions using a common method of calculation . The Commission proposal was to fix the amount of the grant at 25% of AD5/4, which had been the calculation method in use at European Parliament and the European Ombudsman. [...].*

It appears that during their meeting of 30 March 2006, the Heads of Administration agreed that ideally all trainees should be paid the same grant. Unfortunately, they did not agree on the amount or method of calculation of such grant. Nevertheless, despite the lack of agreement at that meeting, all institutions follow the same method of calculation, but with a certain divergence on the references for such calculation [...]. [C]alculating the grant in the manner provided for allows us to welcome, on an annual basis, around 100 trainees [...] which correspond to the DGs' needs and, at the same time, does not exceed the Council's absorption capacity.

*For what regards the non-application of the local minimum wage to trainees, we must bear in mind that the position of a trainee is in no means comparable to that of an employee . A traineeship is a position that combines educational and training purposes within a working experience. The trainee contributes to the work of the institution but does not hold a post in the organigramme [...]. The rights and obligations of a trainee are therefore in no way comparable to those of a member of staff. **Thus, if a comparison has to be made, it should be with the grant levels of local trainees and not with the salary of employees [...].** Today, it seems that the minimum allowance to be paid to a trainee older than 21 years of age is around 800 Euro [...].*

*You allege , in your e-mail of 28 January 2016, **that the grant is currently too low "to make it feasible for all qualified persons to apply for this opportunity" but you do not provide any element to substantiate that claim.** On the contrary, the high number of applications that the GSC receives annually suggests that the conditions offered by the GSC do not deter prospective applicants but are sufficiently attractive. **What is more, higher grants will not make the Council a more inclusive institution, as you seem to suggest, but rather decrease the number of places on offer owing to the limited budget available "** (emphasis added).*



10. On 23 June 2016, the complainant sent the Ombudsman the following comments on the Council's reply:

" [I]t still seems arbitrary to me that they chose 25% of AD5/4 and I wonder why there is no calculation provided of the expected costs of moving to Brussels for European citizens [...].

In my experience, of course the traineeship was a learning experience but I was expected to work the same hours as a regular full-time employee and my work was never considered secondary, or less important. It required application of knowledge from my university training and it was used for my department's actual work [...].

I think nobody has actually researched the actual costs involved for a trainee to come to Brussels, and trainees have not been consulted with this decision. I think if actual costs were calculated, it would be clear to see that trainees, who come from all over Europe (and indeed the whole world), need to invest considerable finances well above the amount they are remunerated [...].

*[The Council] is right in asserting that I have not provided any evidence to substantiate my claim that the amount of remuneration to trainees is not high enough to attract all qualified persons. However, [the Council] asserts the opposite without sufficient substantiation either. **My claim is based on my personal experience on how expensive it is to move to Brussels and my empathy to be able to realise that people from poorer families may not be able to do this.** Furthermore, it is widely known that the trainees at the European institutions, while they attract many people from many EU countries (especially member states with weaker economies), they fail to attract a high number of trainees from Scandinavian countries, the UK and Ireland. This is widely believed to be the case due to the low remuneration of traineeships, in comparison with the high cost of living in Brussels" (emphasis added).*

The Ombudsman's assessment

11. At the outset, and in the interests of transparency, the Ombudsman wishes to declare that the arrangements for paying allowances to trainees in her own Office are broadly the same as those operated by the Council, the Parliament and the Commission. [2]

12. In the course of the Ombudsman's inquiry, the Council replied to the complainant's request for clarifications of 28 January 2016. Hence, it has resolved that aspect of the complainant's concern.

13. As regards substance, the complainant wished to know how the amount of the traineeship allowance was decided and he argued that the amount is not adequate, given that it does not sufficiently cover the costs incurred by trainees moving to, and living in, Brussels. Hence, he claimed that the Council should pay at least the minimum salary at national level.

14. Concerning the first aspect, the Council has explained in a sufficiently detailed way how the amount of the traineeship allowance is determined. The mere fact that a decision to set a traineeship allowance at 24% or 26% of an AD5/1 salary might also have been reasonable



does not imply that the decision to set the allowance at 25% of an AD5/1 salary was not reasonable. The Council took this decision acting within the margin of its discretion, based on its administrative needs and the available budget.

15. Concerning the second aspect, the Council distinguishes between traineeships and employment. It states that "*a traineeship is a position that combines educational and training purposes within a working experience*". Therefore, a trainee receives an allowance and not a salary, because the rights and obligations of a trainee are not comparable to those of a member of staff. The Ombudsman considers the Council's reply to be reasonable. The fact that the working hours for trainees are the same as for staff, and that the trainee is given real tasks requiring the trainee to apply knowledge from his or her university education, are just normal aspects of gaining work experience in the context of a traineeship.

16. As to the argument that the allowance paid to trainees is inadequate, the Council made the pertinent point that the complainant did not base his argument on any objective grounds but merely referred to his personal experience regarding "*how expensive it is to move to Brussels*". In this regard, the Ombudsman notes that, in addition to the traineeship allowance, the Council covers its trainees' travel expenses, thus supporting them financially towards the costs they incur when moving to and from Brussels. [3]

17. The Ombudsman is conscious of the point, made by the complainant, that traineeships in EU institutions should be organised in a fashion which supports equal opportunities and diversity. The Ombudsman accepts that the Council's decision regarding the rate of the trainee allowance strikes a reasonable balance between the need to promote equal opportunity and diversity, on the one hand, and the need to remain within budget while maximising the number of traineeships, on the other hand. The Ombudsman finds, therefore, there was no maladministration in this case.

Conclusion

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

There was no maladministration in this case

The complainant and the Council of the European Union will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 29/09/2016



[1]

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002080245&table_name=lo

[2] In fact, the allowance for Ombudsman Office trainees is somewhat higher than those of the other institutions as it is based on 25% of the salary of an official at grade AD6.1 (rather than AD5.1).

[3] See Article 12 of Council Decision No 118/07 concerning rules relating to traineeships at the General Secretariat of the Council; available online:

http://www.consilium.europa.eu/en/general-secretariat/jobs/traineeships/Decision-118_07-EN-sn02323-