

Decision in case 1012/2020/MAS on the European Research Council Executive Agency's decision not to grant funding to a research project in the field of physics and the European Commission's legal review of that decision

Decision

Case 1012/2020/MAS - **Opened on** 28/07/2020 - **Decision on** 28/07/2020 - **Institution concerned** European Commission (No maladministration found) |

Background to the complaint

1. The complainant is a French researcher in the field of physics. He had applied for a European Research Council (ERC) [1] grant. [2] The European Research Council Executive Agency (ERCEA) replied that his research proposal had been rejected by the ERC selection panel in the first round of evaluations as being *of high quality, but not sufficient to pass to step 2 of the evaluation* . The complainant requested legal review of the ERCEA's rejection decision by the European Commission. [3]

2. In his request for legal review, the complainant argued that ERC selection panels in general are discriminatory and that his application therefore was treated unfairly. According to his observations, ERC selection panels usually select projects submitted by established scientists from famous institutions, whereas a researcher's 'pedigree' should be irrelevant. He was concerned that projects similar to his would have an advantage in the selection procedure if submitted by higher profile applicants.

3. The complainant criticised in particular the following statement of one of the members of the selection panel in his preliminary assessment of the application:

[...] *Given the huge current investment in this type of research, it would be surprising if the PI's [4] particular way of combining these known algorithms proves to be greatly superior to those of rival groups. [...] The proposal lacks the spark of a major breakthrough idea -- something genuinely disruptive -- that would give the PI an order of magnitude (or more) advantage over his competition.* [...]

4. The complainant argued that the statement that his proposal lacks the spark of a major



breakthrough would not have been made about a higher-profile applicant. He also considered the statement that it would be surprising if his method were superior to the rivalling approaches to be a personal attack on his research abilities rather than a scientific argument.

5. The complainant further criticised the following statement made by the panel in its final assessment of his proposal:

[...] Nevertheless, it is not fully clear to the panel how the major performance jump, three orders of magnitude, would be achieved. Based on preliminary studies, the added advantages of the new or combined methodologies should be spelled out in somewhat more detail. [...]

6. The complainant argued that the panel had misunderstood his proposal as his objective was not a performance jump of three orders of magnitude.

7. Finally, the complainant argued that the panel's statement that the advantages of his methodology should be spelled out in more detail did not take into account preliminary studies that were mentioned in the second work package of his proposal.

The Commission's legal review

8. The Commission rejected the complaint in its entirety, after having reviewed the ERCEA's rejection decision and the underlying procedure. The Commission said that its review is limited to checking whether the rules governing the procedure and the statement of reasons are complied with, that the facts are correct and that there is no manifest error of assessment or misuse of powers. The Commission explained that its review does not extend to the scientific merits of the evaluation.

9. The Commission found no indication that the decision of the ERCEA to reject the proposal was unlawful. It found that the evaluation of the proposal had been done in accordance with the applicable rules. The proposal was evaluated by a panel of independent experts including four experts-reviewers who individually assessed the merits of the proposal with respect to the selection and award criteria applicable to the call. The evaluation report reflected the panel's collegial assessment. The Commission further found that all experts had been appointed in line with the applicable rules and that all procedures had been duly followed.

10. As a general point, the Commission said that scientific disagreement between the complainant and the selection panel cannot be considered an indication of discrimination. The Commission did not find any element in the choice of panel members to assess the complainant's proposal that could be identified as discriminatory. The final decision to exclude a research proposal is made by the full panel and in comparison with other proposals. The opinions of individual panel members are merely a basis for the discussion in the panel.

11. The Commission considered that the complainant had provided no evidence to substantiate the claim that ERC panels are biased towards higher profile applicants and it therefore found



the complainant's claims in this regard to be unfounded.

12. The Commission further found that - contrary to the complainant's claim in this regard - the complainant's application could indeed be read in a way that a performance jump of three orders of magnitude is expected.

13. As regards the complainant's claim that the panel did not take into account the preliminary studies mentioned in the second work package of the proposal, the Commission said that the panel did acknowledge the information in the second work package, but considered the quality of that information insufficient.

14. The complainant was not satisfied with the Commission's response and therefore turned to the Ombudsman in June 2020, maintaining the arguments that he put forward in the application for legal review and arguing that the selection panel should have further substantiated its assessments. He acknowledged that the Commission's decision, being a strictly legal review, did not entail a full review of the evaluation of his proposal.

The European Ombudsman's findings

15. ERC grant selection panels enjoy a broad margin of discretion in their assessment of grant applications, given their expertise in the respective field. The Ombudsman's review is therefore limited to ensuring that all aspects of the procedure (whether foreseen by law or by other rules governing the specific procedure), as well as general principles of good administration, [5] were followed. It is not within the Ombudsman's remit to question scientific facts or the assessment made by the panel, unless there is an indication of a manifest error. The Ombudsman's assessment of the case therefore cannot go beyond the scope of the Commission's review decision. The Commission's review decision serves as a basis for the Ombudsman's assessment, given its particular role in the procedure.

16. In his complaint to the Ombudsman, the complainant did not put forward any arguments or facts that would challenge the Commission's review. There is nothing in the case to suggest that the Commission did not follow the procedure for legal review and it addressed all the complainant's claims in its response to him. The Commission's reasoning in the review decision is comprehensive and reasonable.

17. Regarding the complainant's claim that the selection panel should have further substantiated the statements made in its decision, the Ombudsman considers the panel's evaluation to be sufficiently detailed. Rather than the panel's statements being insufficient, it appears that the complainant disagrees with them. In that regard, the Ombudsman does not consider the statements made by the panel and its members to constitute personal attacks on the complainant's scientific abilities, but an assessment of the complainant's application.

18. On the basis of the above, the Ombudsman finds no indication of any procedural error or manifest error of assessment. The case is thus closed with a finding of no maladministration. [6]



Tina Nilsson Head of Inquiries - Unit 4

Strasbourg, 28/07/2020

[1] The European Research Council is a body that administers ERC research grants as part of the EU Horizon 2020 programme. It consists of the ERC President and Scientific Council who define funding strategy and methodologies, and the European Research Council Executive Agency (ERCEA), which is responsible for day to day grant administration. ERC selection panels are organised by and act on behalf of the ERCEA: <https://erc.europa.eu/>.

[2] ERC 2019 Advanced Grant, call for proposals ERC-2019-ADG.

[3] Under Article 22 of Regulation (EC) 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R0058>.

[4] Principal investigator, i.e. the applicant.

[5] As set out in the European Code of Good Administrative Behaviour,
<https://www.ombudsman.europa.eu/en/publication/en/3510>

[6] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of [the Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]