

Decision of the European Ombudsman concerning complaint 939/2009/DK against the European Research Council

Decision

Case 939/2009/DK - **Opened on** 28/05/2009 - **Decision on** 14/10/2010

The background to the complaint

1. The complaint concerns a proposal submitted to the European Research Council ('the ERC') for an "ERC Advanced Grant". Council Decision 2006/972/EC [1] provides for the establishment of the ERC, which " *shall consist of an independent Scientific Council, supported by a dedicated implementation structure* ". The structure referred to is the European Research Council Executive Agency ('the ERCEA'), which was established by Commission Decision 2008/37/EC [2] , and which has legal personality. The Scientific Council does not have legal personality.

2. The Scientific Council is responsible [3] for establishing (i) the Work Programme for the implementation of specific programme ideas (which are adopted by the European Commission), and (ii) the methods and procedures for peer review and proposal evaluation (of ERC grants). The Commission [4] entrusted the ERCEA to (i) implement the Work Programme, and (ii) " *award grants, conclude and manage the ensuing grant agreements, involving all the operations required to launch and conclude grant procedures* " [5] . The Commission is responsible for ensuring the proper execution of the tasks entrusted by it to the ERC as a whole (that is, the Scientific Council and the ERCEA).

3. In the beginning of 2008, the complainant submitted, in response to the *Call for submission of Advanced Grant Proposals ERC-2008-AdG* , a proposal for an Advanced Grant to the ERC.

4. On 24 July 2008, the ERCEA informed the complainant that his proposal had not been proposed for funding, and provided him with a copy of the relevant evaluation report.

5. On 24 August 2008, the complainant submitted a request for redress, in which he raised the following points:

1) The reviewer's comments on his feedback sheet were too brief, " *not supported* ", and " *misrepresent[ed] and downgrade[d his] qualifications and the project's scope and importance.* "



2) The reviewers' comments lacked transparency and did not contain an individual breakdown per item,

3) The reviewers' comments failed to take into account " *the evaluation criterion, professed by ERC itself, of the 'inter and trans-disciplinary impact' of the research proposed by [him] and of the research performed by [him] in various areas/fields.* "

4) The reviewers made " *unsupported allegations* " against him. The statements that he did not " *demonstrate clear scientific leadership on an international level* " and that " *his publication record is significantly less extensive than for other, more highly ranked applicants for* " ERC Advanced Grants were not only " *untrue but they also indicate the inferior manner with which this unacceptable evaluation was carried out.* " Furthermore, the panel " *unduly stopped short of revealing how other applicants were rated higher.* "

5) The " *criteria of scientific leadership and of excellence in research involving research collaborators and research students are totally unwarranted and invalid* ", since " *leadership and excellence in research are obviously no prerequisites to motivate students well and have good research collaborators.* "

6) The " *criterion of funding ... is not a genuine criterion of excellence because most frequently funding is granted on the basis of legitimate -or not- expedencies regardless of excellence.* "

7) The reviewers were " *not experts i) in spectroscopic techniques required to be employed for the detection of N 2 (A) and O 2 (a); and ii) ... in the proposed research* ". Their lack of experience " *might account for some (but not for all) of the failures pointed out in this appeal.* "

8) The reviewers made unsupported and untrue comments, and failed to recognise and acknowledge the wide impact of the complainant's proposal.

9) The reviewers " *blatantly disregarded even the explicit scientific leadership criterion of the ERC itself* ".

10) The ERC's claim that the redress committee will not call into question the scientific judgment of the individual peer reviewers is arbitrary and non-constructive.

11) The reviewers breached the ERC's " *declared evaluation principles such as excellence, fairness and impartiality, transparency and efficiency* ".

6. The complainant's redress request was examined by the ERC's Redress Committee on 24 October 2008. On 14 November 2008, the Commission (Directorate-General for Research) informed the complainant that the ERC had rejected his redress request and that the decision not to fund his proposal was therefore final.

7. On 14 April 2009, the complainant turned to the Ombudsman to complain about the



evaluation of his proposal and the subsequent redress procedure.

The subject matter of the inquiry

8. On 28 May 2009, the Ombudsman opened an inquiry into the following allegation and claim:

Allegation:

The ERC failed to conduct a fair evaluation and a fair redress procedure concerning the complainant's proposal.

Claim:

The ERC should take appropriate steps to provide the complainant with genuine redress.

The inquiry

9. On 28 May 2009, the Ombudsman asked the ERC to submit an opinion on the above allegation and claim by 31 August 2009.

10. By letter dated 16 June 2009, the European Commission informed the Ombudsman that it would provide him with the requested opinion. This was because (i) the ERC has no legal personality and the ERCEA would only obtain its legal personality on 15 July 2009, and (ii) at the time of the evaluation of the complainant's proposal, the tasks entrusted to ERCEA were still being carried out by the Commission's Directorate-General for Research.

11. By letter dated 14 September 2009, the Commission asked for the deadline to submit its opinion to be extended until 31 October 2009. The Commission finally sent its opinion on 12 November 2009. The Commission's opinion was forwarded to the complainant with an invitation to submit observations. The complainant submitted his observations on 13 December 2009.

The Ombudsman's analysis and conclusions

A. Allegation of failure to conduct a fair evaluation and a fair redress procedure concerning the complainant's proposal

Arguments presented to the Ombudsman

12. In its opinion, the Commission first summarised the background to the case. It explained that the procedure for the award of grants is governed by:



(i) Regulation (EC) No 1906/2006 of the European Parliament and of the Council [6] ('the FP7 Rules for Participation');

(ii) the Financial Regulation;

(iii) the Work Programme, established by the Scientific Council and adopted by the Commission ;

(iv) the Commission Decision on " *the ERC Rules for submission of proposals and the related evaluation, selection and award procedures relevant to the Ideas Specific Programme* " ('the ERC Rules for submission of proposals'); and

(v) the Guidelines for internal use of the Commission: (a) the ERC Grant Schemes Guide for Peer Reviews and (b) the ERC Redress Guidelines.

13. As regards the procedure for ERC grants in practice, each year the Commission adopts the 'Ideas Work Programme', established by the Scientific Council. This programme specifies the criteria for evaluation of proposals under the funding schemes. In the case of the ERC Advanced Grants, the Work Programme provides that the evaluation is " *conducted by ... peer review panels* ". The members of the peer review panels are independent experts, " *appointed by the Commission on the basis of a proposal from the Scientific Council of the [ERC]*". The evaluation procedure is carried out by the peer review panels in accordance with the provisions of the ERC Grant Schemes Guide for Peer Reviews.

14. When a proposal for an ERC Advanced Grant is not awarded funding, applicants have the possibility to initiate a redress procedure in accordance with Articles 16 and 17 of the FP7 Rules for Participation and with the provisions of the ERC Rules for submission of proposals. The redress procedure is carried out by the Redress Committee. However, the Redress Committee does not re-evaluate the proposals. It only reviews the CVs of the experts, the individual comments, and the Evaluation Report in accordance with point 3.1.9 of the ERC Rules for submission of proposals.

15. In fact, the Redress Committee is not in a position to evaluate proposals on their merits because that task is entrusted to the panel of independent experts appointed in accordance with the provisions of the specific Ideas Work Programme. The task of the Redress Committee is two-fold: (i) to verify whether the panel of independent experts carried out the evaluation in accordance with the above mentioned provisions and with the ERC Rules for submission of proposals; and then (ii) to recommend the authorising officer responsible for the call in question to take a certain position. The final decision on a request for redress is taken by the authorising officer. If the Redress Committee finds that there was a procedural error, it recommends to the authorising officer a total or partial re-evaluation of the proposal concerned.

16. The Commission explained that, in reply to the call for submission of Advanced Grant Proposals ECR-2008-AdG, the complainant submitted a proposal for the funding of a project



entitled " *ActiveONenhEmissions* ". The complainant's proposal was assessed between 28 and 30 April 2008 by a peer review panel composed of independent experts. In accordance with Article 17 of the FP7 Rules for Participation, the Commission appointed these experts on the basis of a proposal from the Scientific Council.

17. The complainant's proposal was evaluated in accordance with the ERC Rules for submission of proposals, and was ranked 88th out of 90 proposals submitted to the panel. Out of the 90, only 30 proposals passed to the second stage of the procedure. On 24 July 2008, the ERCEA informed the complainant about the result of the evaluation, and provided him with a copy of the evaluation report. On 24 August 2008, the complainant submitted a request for redress, which was examined by the Redress Committee on 24 October 2008. On 18 November 2008, the final decision on the complainant's request for redress was communicated to the complainant.

18. As regards the complainant's allegation, the Commission first recalled that the evaluation criteria were established by the Scientific Council in the specific Work Programme, in accordance with Article 15 of the FP7 Rules for Participation. The Scientific Council, which is composed of " *scientists, engineers and scholars of the highest repute, representing the European research community in all its breadth and depth* ", proposed these criteria with the aim of identifying those proposals which reflected the most ambitious goals of the specific Ideas Work Programme. The complainant may disagree with the choice of the Scientific Council. However, they were made clear to the complainant at the time he submitted his proposal.

19. During the redress procedure, the Redress Committee verified that the peer review panel complied with the procedure established by the Work Programme and the ERC Rules for submission of proposals. In its report, the Redress Committee acknowledged that the comments, the scores, the ranking and the discussion on the proposal of the peer review panel were made in accordance with the established framework and the ERC Grant Schemes Guide for Peer Reviews. The Redress Committee also verified that the independent experts were specialists in the relevant field of expertise covered by the complainant's proposal. Since it did not detect any procedural errors, the Redress Committee did not propose any further action. In any case, the Redress Committee was not in a position to evaluate the proposal on its merits, since that task is entrusted to the panel of independent experts.

20. The Commission rejected the complainant's argument that the procedure lacked transparency, and pointed out that a copy of the evaluation report was provided to him. It added that the way the panel's marks are broken down is established by the legal framework and the independent experts have to comply with it. As regards the complainant's statement that the panel made unsupported and untrue comments, the Commission considered that this statement contested the evaluation on its merits. However, the experts' comments were based on their professional knowledge and background. The complainant might naturally disagree with them because of his different interpretation of research approaches. The reason why the evaluation procedure requires at least three independent experts is based on the fact that the specific Ideas Work Programme finances frontier research, which goes beyond well established and consolidated research. In fact, it is a field of research in which " *high risk pioneering projects* "



are involved. This peculiarity of frontier research implies that a margin of appreciation, within the limits established by the legal framework, be given to the experts. Finally, the Commission concluded by emphasising that the three different experts reached the same conclusion, namely, that the complainant's proposal did not qualify for funding.

21. In his observations, the complainant maintained his complaint and made the following comments. The Commission's opinion clearly intended to cover up unfair evaluation and redress practices. It falsely claimed that the evaluation process was transparent. Despite the fact that he was provided with a copy of the evaluation report, if such a report does not disclose how the evaluation was actually carried out, it cannot be a transparent procedure. Moreover, the Commission intentionally failed to disclose how the panel and the reviewers assigned marks and evaluated his proposal. The Redress Committee also failed to take into account the more than ten specific grievances he raised in his request for redress. Finally, the published guidelines provided that the sole evaluation criterion would be " *excellence* ", and this would be applied to the evaluation of both the applicant and his/her research proposal. These made the complainant expect an honest, competent and fair evaluation.

22. The complainant concluded that the blatant violations reported in his redress request, and the cover-up perpetrated by the Commission suggested that the latter's research funds are not granted on the basis of excellence in research, but on the basis of unacceptable expediencies. In addition, the Commission has not offered any redress. The arbitrary, irrelevant and inadequate criteria of alleged excellence, and the lack of transparency in the marks and grading in the entire evaluation process, including the report, were intentional. These fraudulent practices should be exposed and condemned.

The Ombudsman's assessment

23. The Ombudsman notes that the complainant's allegation consists of two aspects: (i) the alleged failure of the ERC to conduct a fair and transparent evaluation; and (ii) the allegedly unfair redress procedure.

The alleged failure of the ERC to conduct a fair and transparent evaluation

24. As regards the first aspect, the Ombudsman understands the complainant to put forward two arguments as regards the *fairness* of the evaluation: (a) some of the criteria set out in the ERC Work Programme 2008 [7] for evaluation of ERC Advanced Grant proposals are not criteria of "scientific excellence" and (b) the evaluation was not, in fact, carried out in accordance with the criteria set out in the ERC Work Programme 2008. The Ombudsman will consider these two arguments in turn.

25. As regards the first argument, the Ombudsman notes that Subsection 2 (Evaluation and selection of proposals and award), Article 15 ('Evaluation, selection and award') of Regulation (EC) No 1906/2006 of the European Parliament and of the Council [8] ('the FP7 Rules for Participation') provides as follows:



" 1. The Commission shall evaluate all the proposals submitted in response to a call for proposals on the basis of the principles for evaluation, and the selection and award criteria set out in the specific programme and the Work Programme.

[...]

(c) For support for 'frontier' research actions under the 'Ideas' Programme the sole criterion of excellence shall apply. For coordination and support actions, project-related criteria may apply.

Within this framework the Work Programmes shall specify the evaluation and selection criteria and may add additional requirements, weightings and thresholds, or set out further details on the application of the criteria. "

26. The Ombudsman understands the above provision to require that ERC Advanced Grant proposals must be evaluated using the sole criterion of "excellence" and that the criteria as to what constitutes "excellence" must be set out in the Work Programme. In this regard, the Ombudsman notes that point 3.8 of the ERC Work Programme 2008 provides as follows:

3.8 Evaluation criteria

Excellence is the sole criterion of evaluation. It will be applied to the evaluation of both the Principal Investigator and the research project. The evaluation will also assess the extent to which the research environment enables the excellence of the project to be achieved.

The detailed elements applying to the 3 sections of the proposal are as follows:

1. Principal Investigator

Quality of research output/track-record: How well qualified is the Principal Investigator (and any co-Investigator if applicable) to conduct the project (reviewers are expected to evaluate the quality of the prior work such as published results in top peer review journals as well as other elements of the Principal Investigator's CV). To what extent are the publications and achievements of the Principal Investigator groundbreaking and demonstrative of independent creative thinking and capacity to go significantly beyond the state of the art? To what extent does the quality and quantity of funding the Principal Investigator has attracted during the last ten years demonstrate his/her reputation as a performer of ground-breaking research?

Intellectual capacity and creativity: To what extent does the Principal Investigator's record of research, collaborations, project conception, supervision of students and publications demonstrate that he/she is able to confront major research challenges in the field, and to initiate new productive lines of thinking?

2. Research project



Ground-breaking nature of the research: Does the proposed research address important challenges at the frontiers of the field(s) addressed? Does it have suitably ambitious objectives, which go substantially beyond the current state of the art (e.g. including inter- and trans-disciplinary developments and novel or unconventional concepts and/or approaches)?

How well conceived and organized is the proposed activity?

Potential impact:

(a) Does the research open new and important, scientific, technological or scholarly horizons?

(b) Will the project significantly enhance the research environment and capabilities for frontier research in Europe (including the host institution)?

Methodology:

a) is the outlined scientific approach (including the activities to be undertaken by the individual team members) feasible?(step 1)

b) is the proposed research methodology (including when pertinent the use of instrumentation, other type of infrastructures etc.) comprehensive and appropriate to the project? Will it enable the goals of the project convincingly to be achieved within the timescales and resources proposed and the level of risk associated with a challenging research project? (step 2)

High-gain/High-risk balance:

a) does the proposed research involve highly novel and/or unconventional methodologies, whose high risk is justified by the possibility of a major breakthrough with an impact beyond a specific research domain/discipline?

27. The Ombudsman notes that the above criteria (“detailed elements”) as to what constitutes “excellence” for purposes of ERC Advanced Grants were established by the Scientific Council of the ERC, which consists of scientific experts. The complainant, who disagrees with some of the criteria, is also a scientific expert. However, in order to show that there is maladministration, it would be necessary for the complainant to demonstrate that the criteria contain a manifest error, which would make it obvious that they are not (or not all) criteria for “excellence” as required by Regulation 1906/2006. The mere fact that the complainant contests the criteria does not constitute evidence of such an error. The Ombudsman, considers, therefore that the complainant’s first argument as regards fairness does not succeed.

28. As regards the complainant’s second argument (that the evaluation of his proposal was not carried out in accordance with the criteria set out in the ERC Work Programme 2008), the Ombudsman has carefully examined the points made by the complainant in his request for redress. Again, the Ombudsman finds that, although the complainant *disagrees* with the evaluation made by the experts who carried out the peer review of his proposal, he has not



provided evidence that could show either that the experts failed to apply the criteria set out in point 3.8 of the ERC Work Programme 2008, or that, in applying those criteria, the experts made a manifest error of assessment. The Ombudsman therefore considers that the complainant's second argument does not succeed either.

29. As regards the *transparency* of the evaluation, the Ombudsman notes that the Treaty on the Functioning of the European Union, in Article 15 (under the heading 'Provisions having general application'), provides that " *each institution, body, office or agency shall ensure that its proceedings are transparent...* ". Similar provisions are found in the Financial Regulation [9] and the ERC Rules for submission of proposals. The latter in fact establishes several principles in Point 2.1., which govern " *the process from proposal submission to the award of grants* ". One of these principles is *transparency*, which is defined as follows: " *funding decisions must be based on clearly described rules and procedures, and applicant legal entities and principal investigators should receive adequate feedback* ".

30. In the present case, the relevant rules and procedures requiring transparency were clearly established in the applicable rules. As regards the second condition set out in Point 2.1 of the ERC Rules for submission of proposals, namely, the provision of adequate feedback on the outcome of the peer review evaluation, the Ombudsman notes that the evaluation report consists of the following three parts: (i) panel marks; (ii) panel comments; and (iii) reviewers comments (reviewer 1; 2; and 3 separately).

31. The first part ('panel marks') is divided into two sections: the 'Principal investigator' and the 'Research project'. Both sections provide that different aspects have to be taken into account in the evaluation [10]. Under each aspect, several questions guide the evaluators when awarding points for the proposal under evaluation. For both sections, a maximum of four points can be awarded.

32. The second part ('panel comments') contains the following statement: " *This evaluation report contains the final marks awarded to the proposal by the ERC review panel in its meeting in April 2008. The panel basis its appraisal on prior individual reviews conducted by ERC panel members. The comments of these individual reviews are reproduced below* [under part three 'reviewers comments']". On the complainant's evaluation report, the following comments were made:

"The principal investigator has done some interesting work in the past and shown a high degree of independence in his work (as evidenced by a number of single author papers). Nevertheless, he has not demonstrated clear scientific leadership on an international level. His publication record is significantly less extensive than for other, more highly ranked applicants for ERC Advanced Grants considered by the panel. The proposed research investigates an interesting and important phenomenon - the mechanism of enhanced emissions in flowing active nitrogen and oxygen - but it is relatively narrow in its scope. Its successful completion would solve this important problem but would not open new frontiers of research. The objectives of this proposal are clearly articulated. By contrast, the experimental methods needed to reach these objectives have not been clearly explained in Section 1, making it difficult to judge the probability of



success. Overall this good proposal was judged by the panel not to be as innovative and ground breaking as some of the other applications. The panel has therefore decided to award the marks as given above. The proposal will not be retained for the second step of the review." [11]

33. The third part ('reviewers' comments') contains the individual comments of the three independent experts, which are divided into comments on the 'principal investigator' and the 'research project' [12] .

34. In the Ombudsman's view, the evaluation report described above is detailed enough so as to achieve the aim pursued by the second condition, namely, to provide adequate feedback on the evaluation itself.

35. In light of the above, the Ombudsman finds that the principle of transparency has been adequately respected with regard to the evaluation of the complainant's proposal.

The allegedly unfair redress procedure

36. The complainant alleged that the ERC failed to conduct a fair redress procedure concerning his proposal. In support of this allegation, he specifically argued that (i) the findings of the redress committee were wrong; (ii) the redress committee failed to take into account the eleven points he raised in his redress request; and (iii) the redress committee's position that it cannot call into question the scientific judgment of the individual peer reviewers is wrong [13] .

37. With regard to the redress procedure, the Ombudsman first notes that Point 3.1.9 ('Assistance and redress procedures') of the ERC Rules for submission of proposals provides that:

"[R] equests for redress should be raised within one month of receipt of the results of the peer review evaluation ... For issues regarding the peer review evaluation, a committee may be convened under the authority of the ERC Scientific Council to examine the peer review evaluation process for the case in question. If the committee is required to consider eligibilities issues, it may seek advice of the eligibility review committee. The committee will bring together staff with the requisite scientific/technical and legal expertise. The committee itself, however, does not evaluate the proposal. Depending on the nature of the complaint, the committee may review the CVs of the experts, the individual comments, and [the Evaluation Report]. In the light of its review, the committee will recommend a course of action to the ERC DIS. "

38. On the basis of the above, it is clear that a redress procedure is not intended to re-evaluate the proposal itself. In fact, it is limited to verifying that no procedural error was made during the evaluation procedure.

39. As regards the complainant's argument that the concrete findings of the redress committee were wrong, the Ombudsman first notes the Commission's reply, dated 14 November 2008, to the complainant's redress request, which reads:



" You submitted a request for review following the evaluation of the above ERC Advanced grant proposal, for which you are the Principal Investigator. In line with the procedure set out in the ERC evaluation rules, your case has been carefully reviewed by an internal Redress Committee. The Committee's role is to consider whether there has been a failing in the evaluation process, and whether this failing is likely to jeopardise the decision whether or not to fund your proposal. Please recall that the committee do not evaluate the proposal itself, nor does it call into question the scientific judgment of appropriately qualified experts. The final conclusion of this Committee is enclosed in the box below.

[text in the box:]

The Redress Committee has examined your request and has verified that the ERC evaluation procedure has been fully respected in accordance with the ERC Work Programme, the legal document that comprises the rules set up by the Scientific Council of the ERC. Your proposal was reviewed by independent experts, i.e. experts external to the ERC and the European Commission, working in a personal capacity and representing no organisation in performing the evaluation. All the experts who did the evaluation were relevant specialists in the field of expertise of your proposal. When your proposal was discussed by the Panel during their meeting, the final decision and the final scores were based not only on the comments and scores of the reviewers, but also on this discussion and on the ranking against other proposals. The individual reviews constitute the independent opinion and scientific assessment of the respective reviewers. The final evaluation result of the proposal reflects the consensus decision of the panel and does not necessarily subscribe to every opinion expressed by all the individual reviewers. The Committee cannot call into question the scientific judgment of appropriately qualified experts. The Committee has concluded that no procedural error was made in the evaluation process. As a result, the Redress Committee recommends no further action to be taken on your redress request.

[box end]

Since the Committee did not find grounds to support your complaint, I am writing to inform you that the initial decision on your application stands. This outcome should not discourage you from applying to EU research programmes in the future. "

40. The Ombudsman points out that the redress committee made the following findings: (i) the evaluation procedure of the complainant's proposal was made in accordance with the ERC Work Programme; and (ii) no procedural error was made in the evaluation process. The complainant's appeal concerned the scientific judgment of the evaluation panel, and not procedural aspects of the evaluation itself. Since the redress committee's task is limited, and the complainant's redress request concerned issues that do not fall within the former's scope of duties, the complainant's argument that the concrete findings of the redress committee were wrong cannot stand.

41. As regards the argument that the redress committee failed to take into account the complainant's eleven points raised in his redress request, the Ombudsman notes that the



redress committee's duties are limited to the above-mentioned tasks, namely, verifying whether there has been a procedural error in the evaluation process and recommending possible further action. The Ombudsman therefore finds that the redress committee had an obligation to address the appropriateness of the administrative procedure, and not the individual points raised in the redress request that actually concern the evaluation itself.

42. As regards the redress committee's position that it cannot call into question the scientific judgment of the individual peer reviewers, the Ombudsman recalls that it is not up to the redress committee to decide whether or not to call into question the scientific judgment of the reviewers. The ERC Rules for submission of proposals provide unequivocally that the "*Committee cannot call into question the scientific judgment of appropriately qualified experts.*"

43. Nevertheless, the Ombudsman considers it necessary to address the issue of transparency in this context as well. As discussed in paragraph 29 above, the first condition of transparency is clearly described in the rules. As regards the adequate feedback, the Ombudsman notes the explanations given in the Commission's letter quoted above in paragraph 39. Furthermore, in its opinion the Commission also explained [14] that the complainant's proposal: "*was reviewed by independent experts, i.e. experts external to the ERC and the European Commission, working in a personal capacity and representing no organisation in performing the evaluation. All the experts who did the evaluation were relevant specialists in the field of expertises of your proposal. When your proposal was discussed by the Panel during their meeting, the final decision and the final scores were based not only on the comments and scores of the reviewers but also on this discussion and on the ranking against other proposals. The individual reviews constitute the independent opinion and scientific assessment of the respective reviewers.*"

44. In view of the foregoing, the Ombudsman finds that the principle of transparency has been adequately respected with regard to the redress procedure. The relevant rules were clearly established, and adequate feedback was given to the complainant.

45. In light of the above, the Ombudsman considers that the Commission has given an adequate reply to the complainant's appeal. In these circumstances, he finds no instance of maladministration corresponding to the second aspect of the complainant's allegation.

46. In light of the above findings in paragraphs 27, 28 and 44, the Ombudsman finds no instance of maladministration corresponding to the complainant's allegation and therefore the related claim cannot be sustained.

C. Conclusions

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

The Ombudsman finds no instance of maladministration corresponding to the complainant's allegation. Consequently, the complainant's claim cannot be sustained.



The complainant and the Commission will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 14 October 2010

[1] Council Decision 2006/972/EC of 19 December 2006 concerning the specific programme: 'Ideas' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013), OJ 2007 L 54, p. 81.

[2] Commission Decision of 14 December 2007 setting up the 'European Research Council Executive Agency' for the management of the specific Community programme 'Ideas' in the field of frontier research in application of Council Regulation (EC) No 58/2003, OJ 2008 L 9, p. 15.

[3] Pursuant to Council Decision 2006/972/EC and Commission Decision 2007/134/EC establishing the European Research Council, OJ 2007 L 57, p. 14.

[4] Commission Decision C (2008) 5694 delegating powers to the European Research Council Executive Agency with a view to the performance of tasks linked to implementation of the specific programme Ideas in the field of research comprising in particular implementation of appropriations entered in the Community budget.

[5] Article 7 of Commission Decision C (2008) 5694.

[6] Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006, laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013), OJ 2006 L 391, p. 1.

[7] Available at: http://erc.europa.eu/pdf/WP2008_Final.pdf [Link]

[8] Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013), OJ 2006 L 391, p.1.

[9] Article 109 (Award principles): " 1. *The award of grants shall be subject to the principles of transparency and equal treatment.* "

[10] For the 'Principal Investigator' these are: (i) " *Quality of research output/track record* " and (ii) " *Intellectual capacity and creativity* ". For the 'Research project", these are: (i) " *Ground*



breaking nature of research "; (ii) " Potential impact "; (iii) " Methodology "; and (iv) " High-gain/High risk balance ".

[11] The Ombudsman notes that the complainant was awarded 1.12 / 4 points for the first, and 1 / 4 points for the second section of part 1 of the Evaluation Report (in total 2.12 / 8 points).

[12] Comments of reviewer 1:

' principal investigator ': *" The PI's previous publication record does not justify an important investment of funds from the ERC at this point, particularly in comparison with the strong field of applicant. "*

' research project ': *" While this proposal addresses important and intriguing questions, it is somewhat narrow in its scope. The PI does not make a convincing case that setting up an entire laboratory to make these measurements would be a wise investment of EU funds. "*

Comments of reviewer 2:

' principal investigator ': *" Very senior but still active. "*

' research project ': *" Classical study of Physical Chemistry. "*

Comments of reviewer 3:

' principal investigator ': *" PI's record doesn't demonstrate clearly how well qualified is the Principal Investigator. "*

' research project ': *" The project lacks challenging objectives, in particular in the experimental part. "*

[13] Point 10) of the complainant's redress request.

[14] Also in reply to the complainant's point 7): The members of the panel were *" not experts i) in spectroscopic techniques required to be employed for the detection of N₂ (A) and O₂ (a); and ii) ... in the proposed research "*. Their lack of experience *" might account for some (but not for all) of the failures pointed out in this appeal. "*