

Recommendation of the European Ombudsman in the inquiry into complaint 1510/2014/PHP against the Research Executive Agency concerning the rejection of an application for a fellowship

Recommendation

Case 1510/2014/PL - **Opened on** 01/10/2014 - **Recommendation on** 22/10/2015 - **Decision on** 17/08/2016 - **Institution concerned** European Research Executive Agency (Draft recommendation accepted by the institution) |

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

The case concerned the rejection of an application for a fellowship position in the context of the Seventh Framework Programme for Research & Development. After having initially been offered the position by the Project in question, the complainant was informed that his past internship in a private company rendered his application "ethically unacceptable". The complainant complained to the Research Executive Agency that the recruitment process was neither transparent nor fair. The Agency argued that the recruitment of researchers is the sole responsibility of the beneficiaries of the grants and denied having had any involvement in the decision.

The Ombudsman inquired into the issue and found that the Agency had failed to ensure the transparency and fairness of the procedure. She has therefore made a recommendation to the Agency.

The background to the complaint

1. The complainant was an applicant for a fellowship position in a project funded in the context of the Seventh Framework Programme for Research & Development (FP7), under a call for proposals for Marie Curie Initial Training Networks (ITN) [2] ("the project").

2. The complainant was initially selected by the Project Selection Committee and offered the fellowship position in June 2014. A few days later, the fellowship supervisor informed the complainant that the Scientific Board of the project had rejected his application. The Scientific Board concluded that, although he fulfilled the academic requirements for the position, "after consultation with Marie Curie advisors in Brussels" his past work for a private company (the



"Company") was deemed "ethically unacceptable" for three reasons: (i) there was an ongoing juridical conflict between members of the project team and the Company; (ii) the Marie Curie scheme did not allow any links to private companies that may be in litigation with other companies or scientific staff of the Marie Curie projects; and (iii) the Company was internationally known to be a "questionable" company.

3. The complainant appealed the decision to the project coordinator, explaining that he had been wrongly treated as an employee of the said company when he had only been an intern. He stressed that he no longer had any links with the Company, that the internship had been funded at the time by the European Union, [3] and that his tasks had been limited to archival and documentary research. However, after contacting a project officer in Brussels, the project coordinator confirmed the rejection of the complainant's application.

4. In August 2014, the complainant complained to the Research Executive Agency (hereinafter "the Agency"), arguing that he had been unfairly treated as an employee of the said private company. In its reply, the Agency explained that it was not involved in the recruitment of ITN fellows, which was the sole responsibility of the beneficiaries. Moreover, the Agency could not intervene due to the lack of a contractual relationship between the complainant and the project.

5. On 26 August 2014, the complainant turned to the Ombudsman.

The inquiry

6. The Ombudsman opened an inquiry into the complaint and identified the following allegations and related claims:

Allegations

1) The Agency failed to explain clearly its involvement in the recruiting procedure of fellows in the project.

2) The Agency failed to ascertain that the responsible entities for the project had carried out a fair and transparent selection procedure.

Claims

1) The Agency should properly clarify who was involved in the selection procedure for the project.

2) The Agency should encourage the responsible entities to reconsider the complainant's application.

7. In the course of the inquiry, the Ombudsman received the opinion of the Agency on the complaint and, subsequently, the comments of the complainant in response to the Agency's



opinion. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that the Agency failed to explain clearly its involvement in the recruitment procedure and the related claim

Arguments presented to the Ombudsman

8. The complainant argued that it was unclear which entity had been in charge of assessing his application. He pointed out that the project coordinator had confirmed the negative decision, after consulting with the "project officer in Brussels".

9. In its opinion, the Agency stated that it was never involved in or provided advice on the recruitment of the complainant. It further explained that, after the complainant's application had been rejected, the project coordinator requested advice on the matter and a meeting took place between one of the scientists in charge of the project and one of the Agency's Project Officers. The Agency told the Ombudsman that it had not provided any advice on the decision not to recruit the complainant, and had simply stated that the responsibility lay with the project consortium and its members. In support of this, the Agency provided copies of the correspondence it had exchanged with the project coordinator concerning the selection procedure.

10. In his observations, the complainant stressed that he still did not know the composition of the Scientific Board or who had been involved in the recruitment process.

The Ombudsman's assessment

11. The Ombudsman notes that the project coordinator's replies to the complainant referred to consultations with officers in Brussels several times. The coordinator stated, for instance, that the application was deemed ethically unacceptable by the Scientific Board, "after consultation with Marie Curie advisors in Brussels". In its opinion, however, the Agency stated that it did not advise or take part in the recruitment procedure.

12. In the correspondence exchanged between the Agency and the project coordinator, the Ombudsman found no proof that the Agency was indeed involved in the recruitment procedure. She also notes that, after the Agency had informed the complainant of this fact, it invited the complainant to address his query concerning the entity responsible for the procedure to the project coordinator.

13. The Ombudsman notes that the duty to provide members of the public with the information they request is a general principle of good administrative behaviour. [4] In this case and in the



light of the information provided by the Agency, the Ombudsman takes the view that the Agency fulfilled this duty and duly informed the complainant that it had not been involved in the recruitment of researchers, nor had influenced the decision to reject the complainant's application. She also considers that, as regards the identity of the members of the Scientific Board, the Agency correctly referred the complainant to the project coordinator as the right person to provide him with such information. The Ombudsman therefore finds no maladministration by the Agency as regards this aspect of the complaint.

Allegation that the Agency failed to ascertain that the responsible entities had carried out a fair and transparent selection procedure and the related claim

Arguments presented to the Ombudsman

14. The complainant argued that the rejection of his application was the result of an unfair and non-transparent process and that the decision was not based on his merits, but rather on his alleged links with the Company.

15. In its opinion, the Agency referred to the Marie Curie legal framework, according to which beneficiaries shall select the researchers following open, transparent, impartial and equitable selection procedures. [5] It explained that in order to ensure that recruitment processes are conducted in line with these values, it provides beneficiaries with guidance and training and checks the recruitment processes by monitoring and yearly reporting. It pointed out that it had carried out such a review of this recruitment process in November 2014, and had concluded that the selection procedure had met the requirements of the relevant rules and regulations. The Agency clarified however that, contrary to the coordinator's claim, the relevant rules *"neither forbid the recruitment of researchers who have or had links with companies which are in litigation with the beneficiaries of Marie Curie projects, nor declare such links as unethical"*.

The Ombudsman's assessment

16. The Regulation governing the Seventh Framework Programme [6] provides that recruitment in projects funded under this programme must respect the principles of transparency, fairness and impartiality. [7] These basic principles are also enshrined in the Grant Agreement which states that beneficiaries must select researchers according to the eligibility criteria, following open, transparent, impartial and equitable recruitment procedures.

17. In its opinion, the Agency has acknowledged these obligations and explained that, in order to ensure respect for these values, it organises training sessions and carries out yearly monitoring. The Agency has also referred to its supervisory rights, under the Grant Agreement, in particular its monitoring activities and discretionary power to carry out *ad hoc* checks on the implementation and execution of projects.



18. Therefore, the Agency does not dispute that it has a general duty to control the use of the funding it grants. It is the Ombudsman's understanding that this duty includes taking appropriate action when, on the basis of sufficiently substantiated information or concerns submitted to it by third parties, it becomes aware of a possible failure by a beneficiary to comply with its obligations under the Grant Agreement.

19. In this case, the Grant Agreement provided that the recruitment must be on the basis of a series of requirements such as the applicants' scientific skills and the relevance of their research experience. [8] The complainant was informed however that his application had been rejected on "ethical grounds". The Agency has clearly stated in this regard that, contrary to the coordinator's claim, there are no legal constraints or rules that forbid the recruitment of researchers who have or had links with certain private companies. Despite this, the Agency came to the conclusion that the recruitment had been carried out in line with the applicable rules, and insisted that, in any event, the responsibility lay with the project consortium and its members.

20. The Ombudsman must agree with the complainant that the Agency's reply appears to acknowledge that the grounds provided to the complainant for the rejection of his application were not in line with the applicable rules. The Ombudsman cannot, therefore, understand how the Agency could come to the conclusion that the recruitment procedure was nonetheless in line with the Grant Agreement's requirements. The Ombudsman also notes that the Agency's review of the recruitment process was not carried out until November 2014, several months after the complainant's complaint.

21. Finally, the Ombudsman notes that the Agency repeatedly stated in its correspondence with the coordinator and the complainant, as well as in its reply to the Ombudsman, that it has no responsibility as regards the recruitment procedure. With this statement, the Agency appears to deny having any responsibility to deal with a possible failure by a beneficiary to comply with the Grant Agreement.

22. In light of the above, the Ombudsman considers that the Agency failed in this case to fulfil its general duty to supervise a project it funds, first, by not carrying out a proper investigation into the matter (despite having already identified a possible shortcoming in the recruitment procedure), and, second, by waiving its responsibility to supervise the beneficiary. This constituted maladministration.

23. In the normal course, where the Ombudsman finds maladministration, she tries to find a solution which will put the complainant back into the position he or she would have been in had there not been any maladministration. In this case, the complainant has informed her that his circumstances have in the meantime changed and that he no longer wishes his application to be reconsidered. Thus, the Ombudsman considers that there is no solution possible in this particular case.

24. However, having found that the Agency committed maladministration, the Ombudsman



underlines that, according to the principles of good administrative practice, the Agency should take the necessary measures to ensure that bad practice, of the kind evidenced in this case, will not negatively affect future grant agreements. She will therefore make a recommendation in this respect.

The recommendation

When the Agency receives reliable information from third parties and identifies possible irregularities or inconsistencies in the recruitment procedure under grant agreements it funds, the Agency should carry out a proper and timely investigation into the matter with a view to ensuring that the recruitment of researchers by the particular grant recipient is conducted in a fair and transparent manner.

The complainant and the Research Executive Agency will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Agency shall send a detailed opinion by 31 January 2016. The detailed opinion could consist of the acceptance of the recommendation and a description of how it has been implemented.

Emily O'Reilly

Strasbourg, 26/10/2015

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] FP7-PEOPLE-2013-ITN (OJ C 202 of 10 July 2012).

[3] Lifelong Learning Programme Leonardo da Vinci,
http://ec.europa.eu/education/tools/llp_en.htm [Link]

[4] Article 22 of the European Code of Good Administrative Behaviour.

[5] FP7 Marie Curie Grant Agreement – Annex III, Articles III.2.2(a) and III.3.4(b)

[6] Regulation (EC) 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down 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 L 391, p.1

[7] See Article 19(6) thereof.

[8] Article III.3.4(b) of the Grant Agreement