



## **Decision of the European Ombudsman closing the inquiry into complaint 1019/2014/PHP concerning the European Commission's duty to ensure that the selection procedure for a fellowship programme complied with the UN Convention on the Rights of Persons with Disabilities**

Decision

**Case** 1019/2014/PHP - **Opened on** 25/06/2014 - **Decision on** 03/11/2015 - **Institution concerned** European Commission ( No maladministration found ) |

The case concerned the complainant's unsuccessful application for a fellowship position under the European Holocaust Research Infrastructure project, funded by the Seventh Framework Programme for Research. The complainant, a deaf researcher, complained to the Commission that the decision not to admit him to the fellowship programme was discriminatory and infringed the UN Convention on the Rights of Persons with Disabilities. The Ombudsman inquired into the issue and found no maladministration by the Commission. She has therefore decided to close the case.

The background to the complaint

- 1.** The complainant, a deaf researcher, applied for a fellowship position under the European Holocaust Research Infrastructure (EHRI) project, funded by the European Union's Seventh Framework Programme for Research (FP7). [1] In his application to the EHRI, the complainant requested to undertake his research at Yad-Vashem, the EHRI's partner in Israel. However, following the evaluation of the applications by an external selection panel, his application was not successful and he was instead offered a fellowship in the Netherlands.
- 2.** The complainant complained to the EHRI that he was not familiar with the sign language of the Netherlands. In its reply, the EHRI informed him that his application for the Institute in Israel had not been among the best 10 per cent, and expressed its regret that the other option offered was not a feasible alternative.
- 3.** Since the EHRI project was funded by the FP7, the complainant turned to the European Commission, which is responsible for ensuring that the EHRI projects are administered fairly and in compliance with the requirements of good administration. The complainant alleged that the EHRI's decision was discriminatory and infringed Article 30(4) of the UN Convention on the Rights of Persons with Disabilities (UN CRPD). [2]  
The inquiry



4. Initially, the Ombudsman opened an inquiry into the allegation that the Commission had failed to reply to the complainant's correspondence. The Ombudsman was not satisfied with the Commission's reply, when provided, and thus requested the Commission to provide a formal opinion on the following allegation and related claim.

### **Allegation**

The Commission failed to ensure that the EHRI's procedure for choosing fellows for the International Institute for Holocaust Research Yad-Vashem was in line with the UN Convention on the Rights of Persons with Disabilities.

### **Claim**

The Commission should ensure that the EHRI's procedure is in line with the UN Convention on the Rights of Persons with Disabilities.

5. In the course of the inquiry, the Ombudsman received the opinion of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's opinion. The Ombudsman also inspected the Commission's file in this case. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

Allegation that the Commission failed to ensure that the EHRI's selection procedure was in line with the UN CRPD and related claim

## **Arguments presented to the Ombudsman**

6. The complainant argued that the treatment he had received was not in line with the UN CRPD. In his opinion, Article 30(4) UN CRPD meant that, even if he was not among the highest rated applicants for the fellowship in Israel, he should have been granted that fellowship. Moreover, he argued that the possibility to conduct the research in the Netherlands was not a real alternative for him, as he was not familiar with the sign language in the Netherlands.

7. In its opinion, the Commission explained that the complainant's application had been evaluated by an external selection panel, following the procedure in Annex III of the grant agreement. That procedure requires the selection panel to apply the principles of transparency, fairness and impartiality, and to base its decision on scientific merit. The Commission argued that, after the complainant's complaint, it had launched an inquiry into the matter and had satisfied itself that no administrative errors had occurred in the selection procedure. Moreover, the Commission did not find any evidence of discrimination.

8. The Commission also mentioned that the complainant had in the past successfully applied to attend other events organised by the EHRI. On those occasions, he had received financial assistance under the EHRI grant agreement to cover the costs of sign language interpretation. The Commission thus considered that the complainant's allegation that the EHRI's selection procedure was not in line with the UN CRPD was inconsistent.



9. More particularly, the Commission argued that Article 30(4) UN CRPD does not automatically entitle the complainant to a different or special treatment. In the absence of any evidence of discrimination in the selection procedure, there was nothing to suggest a possible breach of Article 30(4).

## The Ombudsman's assessment

10. The Ombudsman considers that, in order to assess the merits of the complainant's allegation, two aspects need to be examined. First, whether the Commission took steps to verify that the EHRI had respected the applicable rules concerning the selection procedure, and, second, whether the Commission's conclusion that the EHRI's selection procedure was in line with the UN CRPD was reasonable.

11. As regards the first aspect, the Ombudsman notes that the Commission has a general duty to monitor the projects it funds. In particular, the Ombudsman notes that Article 19(6) of Regulation 1906/2006 [3] states that where the grant agreement requires participants to carry out activities that benefit third parties, the participants shall "*evaluate and select third parties transparently, fairly and impartially*." Moreover, in this case, Annex III of the grant agreement establishes that the selection panel must base its decision on scientific merit.

12. Following the complainant's complaint, the Commission requested the project coordinator to provide the relevant information concerning the selection procedure in question. The Commission examined the information and accepted, without finding any evidence of either an administrative error or discrimination, that the reason why the complainant had not been selected was that his application was not among the best 10 per cent.

13. Therefore, the Ombudsman takes the view that the Commission did take the necessary steps to verify that the selection procedure had complied with the applicable rules.

14. Concerning the second aspect of the allegation (that the selection procedure for the fellowship at the EHRI's partner in Israel was not in line with the UN CRPD), the Ombudsman notes that, although the applicable rules under the FP7 do not specifically refer to the UN CRPD, the Convention is part of the EU legal order, and therefore the Commission and any other EU institution, body or agency must take into due account the principles enshrined in that Convention.

15. In this regard, Article 27(a) UN CRPD requires the signatory parties to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, "*including conditions of recruitment, hiring and employment*". In this case, it appears that the complainant could not participate in the research programme carried out in Israel not because of his hearing difficulties but because his application was not successful following a selection procedure where applications were examined based on merits. Therefore, the decision not to grant the fellowship to the complainant does not appear to contradict Article 27(a) UN CRPD.



**16.** The complainant has not called into question the fact that his application was not considered to be among the best 10 per cent, and thus among the ones that were entitled to receive the fellowship in question. On the contrary, what the complainant has argued in his observations and previous correspondence with the EHRI is that in order to comply with the principle of non-discrimination enshrined in the UN CRPD, the Commission ought to have ensured that the selection procedure should adopt, where necessary, measures of positive discrimination.

**17.** The Ombudsman is unable to agree with the complainant's view that Article 30(4) UN CRPD automatically confers on him the right to receive special treatment (positive discrimination) compared to all the other applicants.

**18.** Article 5(4) UN CRPD states that specific measures necessary to " *achieve de facto equality of persons with disabilities shall not be considered discrimination* ". In its reply, the Commission stated that this provision does not impose an obligation to adopt this type of measure. This is correct. However, in any event , the Ombudsman considers that Article 5(4) contemplates the possibility of positive discrimination in favour of persons with disabilities only if such positive discrimination is *necessary* to achieve de facto equality.

**19.** In the present case, the complainant did not dispute that he had in fact been selected to take part in other programmes organised by the EHRI, and that on those occasions (where he had been previously selected on the basis of a comparative assessment) he had received financial support for sign language interpretation costs. The Ombudsman therefore does not see why allowing him to carry out research at Yad-Vashem would have been necessary to ensure de facto equality between the complainant and other applicants.

**20.** It follows thus that the Commission took the necessary steps to verify, first, that the selection procedure complied with the applicable rules and, second, that the selection procedure was not contrary to the UN CRPD. The Ombudsman therefore concludes that in this case the Commission's position was reasonable and justified.

Conclusion

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

**There has been no maladministration by the Commission.**

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

Emily O'Reilly

Strasbourg, 03/11/2015



[1] <https://portal.ehri-project.eu/about>

[2] Article 30(4) states that " *Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture .*"

[3] Regulation (EC) No 1906/2006 of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme (2007-2013)