

Decision of the European Ombudsman on joint complaints 878/13.9.96/TT/it/PD and 905/26.9.96/AGS/it/PD against the European Commission

Decision

Case 878/96/PD - Opened on 19/09/1996 - Decision on 28/09/1998

Strasbourg, 28 September 1998 Dear Mr Chairman, On 24 September 1996 the Grantholders Association lodged a complaint with the European Ombudsman, concerning the European Commission. It was put forward that the European Commission had committed maladministration by suddenly reducing the grants of the grantholders and by the way in which it had proceeded with the reduction. On 1 October 1996 I forwarded the complaint to the President of the European Commission. At the same time I decided that the complaint would be dealt with jointly with complaint 878/13.9.96/TT/it/PD, which had been lodged on 13 September 1996 by an individual grantholder. The Commission sent its opinion on 14 January 1997 and I forwarded it to the Association with an invitation to make observations if it so wished. By letters of 6 February 1997 and 24 February 1997, the Association forwarded its observations on the Commission's opinion. By letter of 13 August 1997 I suggested to the Commission that it could review its position on your complaint. The Commission forwarded its second opinion on 17 October 1997 which I forwarded to the Association with an invitation to make observations if it so wished. No observations on the second opinion appear to have arrived. I am now writing to let you know the results of the inquiries that have been made. I apologize for the length of time it has taken to deal with the Association's complaint.

THE COMPLAINT

In 1994, the Council and the European Parliament adopted Decision No 1110/94 concerning the fourth framework programme of the European Community activities in the field of research and technological development and demonstration (1) . Under the Euratom Treaty, the Council adopted a parallel decision, Decision No 94/268 concerning a framework of Community activities in the field of research and training for the European Atomic Energy Community (2) . According to the recitals to the two Decisions, the Communities' actions within the framework programmes shall amongst others aim at stimulating and promoting the training and mobility of researchers, particularly young researchers. Furthermore, it appears that the Joint Research Centre of the Communities shall contribute to the implementation of the framework programmes. The role of the Joint Research Centre is laid down in more detail by Council



Decision No 94/918 adopting a specific programme for research and technological development, including demonstration, to be carried out for the European Community, on the one hand, by the Joint Research Centre and, on the other hand, by means of activities within the framework of a competitive approach and intended for scientific and technical support to Community policies (3) and by Council Decision No 94/919 adopting a specific programme of research and technological development, including demonstration, to be implemented by the Joint Research Centre for the European Atomic Energy Community (4) . It appears from the recitals to these two Decisions that the Joint Research Centre, with its laboratories and installations, shall make an effective contribution to the training and mobility of researchers. Under these acts, the Joint Research Centre entered into contracts with researchers from the different Member States of the Community. The individual contract is a standard form to be filled in with the individual elements of each case and is entitled "Individual fellowship contract between the European Community and Mr (X)". To the contract there is attached an annex, containing general conditions applicable. Both documents are drafted by Commission services. The standard form provides for the duration of the fellowship at the Joint Research Centre which is normally two years. During the fellowship, the researcher receives a monthly grant from the Community. In all contracts concerned in this case, Article 4.1 of the standard form used provides: *"The Commission shall pay the Contractor, throughout the duration of the fellowship, a monthly amount of ECU.....This sum will be modified, either up or down, following approval by the European Commission of the new general conditions governing research training fellowships. This modification will not be backdated."* Art. 9 in the standard form establishes that the general conditions attached form an integral part of the contract and that "These general conditions will be replaced, following approval of the new general conditions governing research training fellowships. The replacement will not be backdated." (*Bold and underlining in the original*). On 29 July 1996 the Commission adopted a decision establishing new standard contract forms, new amounts of grants and new general conditions. The Commission also approved that the decision should be applied to all existing contracts containing the above quoted clauses. According to the decision, it should take effect as from 1 August 1996. It is established that as a result of this decision, the running grants of roughly 50 grantholders suffered a reduction of 30 %. By letters of 6 August 1996 the individual grantholders were informed about the decision taken and that it became effective as from 1 August 1996. The letter was drafted in French. Attached to the letter were the new general conditions in French as well as an unofficial translation of them into English. The letter ended by asking the individual grantholder to make contact with the Commission services for the signing of new contracts, but not until 9 September 1996, given the summer vacations. Thereafter, the grantholders undertook considerable activity, consulting lawyers and contacting Commissioners and Commission services with a view to making the Commission refrain from reducing the running grants and in order to seek clarification on some clauses in the new general conditions. Apart from this last aspect, these contacts were apparently fruitless. Against this background, the researchers assembled in the Grantholders Association decided to lodge the complaint with the European Ombudsman. In the complaint it is stated that the decision taken completely upsets the fundament on which the individual grantholder had entered into the research programme, in particular for researchers with families. Furthermore, it is stated that the decision taken made it materially very difficult for the researcher to continue his stay at the Joint Research Centre. The Association's allegations are in substance - that the Commission, prior to the Commission's



decision, should have made contact with the grantholders and informed them in advance about the possible forthcoming reduction of grants, - that the letter of 6 August 1996 should have been addressed to the individual grantholder in his language, and - that the clauses in the contracts allowing for the reduction of grants are illegal and unfair and run against the spirit of the mobility programmes.

THE INQUIRY

The Commission's opinion As concerns the Association's first grievance, the Commission has stated that the administration of the Joint Research Centre kept the grantholders informed, either directly or via the Association, of the progress of discussion on the new grant amounts. The Commission has in particular stressed that a meeting took place on 11 July 1996 at the Ispra site of the Joint Research Centre, during which grantholders were informed about the forthcoming Commission decision. As concerns the letter of 6 August 1996, the Commission has recognized that it was wrong to send only a French version of the letter to the grantholders and has undertaken not to repeat the error in future. It has also undertaken to have contracts translated into the other Community languages. As concerns the Association's third grievance, the Commission has stated that the new amounts of grants were adopted for the sake of coherence and uniformity, so that the amount of the grants would be identical to the ones used in training through research contracts under other programmes of the fourth framework programme established by the above-quoted Decisions. The Commission has furthermore stated that new amounts were determined after close consultation with representatives of the Member States; they were calculated in such a way as to ensure, as far as possible, that grantholders receive a net amount comparable to what a researcher of an equivalent level would earn in the host country. It was decided that the new amounts should also be applied to running contracts which contained the above-quoted clauses. However, in order to allow the 47 grantholders at the Ispra site and the 4 grantholders at the Seville site of the Joint Research Centre to prepare for the substantial reduction in their grants, the Commission decided on 16 December 1996 to suspend the application of the decision until 31 March 1997. Thus, until that date, there was no reduction of the running grants. **The Association's observations** As concerns the first grievance, the Association has stated that the local administration at the Ispra site of the Joint Research Centre did everything in its power to keep grant holders informed about developments which would concern them. However, the Association has stated that the local administration was faced with a lack of information from the Commission's services in Brussels. In any case, it was not until the meeting of 11 July 1996 that the grantholders were informed about the forthcoming reduction of their grants. As concerns the second grievance, the Association has stated that it accepts the Commission's apology for sending only a French version of the letter of 6 August 1996 to the individual grantholders. As concerns the new amounts of grants, the Association has stated that it did not question the Commission's entitlement to establish new amounts. It was even prepared to accept the considerations underlying the new amounts and the aim purported by the new amounts, i.e. amounts comparable to what a researcher of an equivalent level would earn in the same country. However, the Association strongly questioned why new amounts had to be applied to running contracts. In this context, it was underlined that the reduction of grants in running contracts was not aimed at compensating for, e.g. lower living costs or lower taxes; in that case, the reduction of the grant would not imply a net reduction of the grant. The Commission decision adopted did



not refer to such possibly justifiable circumstances. The decision, on the contrary, implies a 30% net reduction of grants in running contracts. In some cases, the reduction completely frustrated the conditions underlying the researcher's taking up of the research programme. As for the suspension that the Commission adopted on 16 December 1996 of the decision taken, the Association has welcomed this but stated that those researchers, whose contracts would not terminate until the end of 1997, would still suffer severe negative effects of the decision taken.

Further inquiries After due consideration of the Commission's opinion and the Association's observations, the Ombudsman addressed the Commission. In his letter, the Ombudsman stated that while the general aim pursued by the establishment of new grant amounts appeared understandable, the Commission had not specified why its decision had to be applied to running grants. The Ombudsman furthermore stated that researchers could assumedly expect the Commission not to make such a drastic use of the quoted contract clauses, and that a 30% reduction of grants in the running contracts had made it materially very difficult for a number of researchers to continue their work and in any case threatened their motivation. Finally, the Ombudsman stated that it could not be excluded that in future, researchers would abstain from joining the research schemes, if it became known that grants in running contracts may be drastically reduced. The Ombudsman concluded by suggesting that the Commission reviewed its position in the light of these considerations. In its answer to this letter, the Commission stated that it had very often been criticised on the grounds of the high amounts it allocated to grantholders and for failing to fully consider the existing conditions of the country where the research was carried out. According to the Commission, these issues had been discussed in the relevant programme committee, and taking into consideration the points raised by several delegations, the Commission decided the new amounts. The Commission pointed out that the new amounts were intended to provide coherence and equity with respect to grants used in other specific programmes of the fourth framework programme. **Other facts** It appears from a complaint lodged with the European Ombudsman on 23 September 1997, complaint 855/97/PD, that given the drastic reductions of the grants in running contracts, one researcher had to abandon his research programme and return to his home country with his family.

THE DECISION

1. As concerns the first grievance about lack of information and communication with the grantholders prior to the Commission's decision, it shall firstly be observed that principles of good administration require that the administration shall deal with citizens in a fair and just way. This implies i.a. that when the administration intends to take measures towards a limited and clearly identified number of citizens, the administration shall establish suitable contacts with the citizens concerned, making it possible for them to voice their opinion. It also implies that citizens shall be informed with due notice about the measures taken, so they can take adequate steps to adapt themselves to the changed situation. In this case it appears that there were no contacts between the Commission services responsible and the grantholders. At the meeting of 11 July 1996 the grantholders were simply informed about the possible reduction of their grants before the Commission actually took its decision to that effect on 29 July 1996. When the grantholders were informed about the actual reduction that the decision implied by the letters of 6 August 1996, the reduction had already taken effect. This way of proceeding appears to be high-handed and arrogant and thus, it does not comply with principles of good administration.
2. As concerns the letter of 6 August 1996, the Commission has acknowledged that the letter



should have been sent to the individual grantholder in his language and has apologized for this. Therefore, the Ombudsman does not find that there are grounds for pursuing the inquiry into this aspect of the complaint. 3. As concerns the allegation that the clauses which allowed for the drastic reduction of grants to take place are illegal, it shall be observed that this question must be assessed in the light of the applicable national law, which must be done by the competent national jurisdictions. The Ombudsman shall therefore not examine this question. However, the administration must always be accountable to the Ombudsman for its observance of principles of good administration and thus be able to provide the Ombudsman with a coherent account of its actions and why it believes them to be justified. Principles of good administration require i.a. as stated above that the Commission deals with citizens in a fair and just way. In this case it is established that the clauses which the Commission had inserted in the standard contract allowed for reduction of running grants without any limitations and without giving any indication as to the parameters that would underlie a reduction. The clauses must be deemed to make the taking up of a research traineeship very precarious and to make abuses possible. They cannot be qualified as fair. Considering this, there must at least be overriding reasons for resorting to the clauses. The Commission has not been able to indicate such overriding reasons. Against this background, the Ombudsman finds that by using unfair contract clauses, the Commission failed to act in accordance with principles of good administration. *Conclusion* 4. On the basis of the European Ombudsman's inquiries into these complaints, it appears necessary to make the following critical remark: Principles of good administration require that the Commission deal with citizens in a fair and just way. By failing to establish suitable contacts with the grantholders concerned, by a substantial reduction that the Commission envisaged making of their grants and by failing to inform them with due notice about the reduction, the Commission failed to meet this requirement. The Commission also failed to meet the requirement by using unfair contract clauses. Given that this aspects of the case concern procedures relating to specific events in the past - the grantholders concerned having ended their fellowship with the Joint Research Centre - it is not appropriate to pursue a friendly settlement of the matter. The Ombudsman has therefore decided to close the case. Yours sincerely Jacob SÖDERMAN Copy: Mr Santer, President of the European Commission Mr Eeckhout, Secretariat general of the European Commission

(1) OJ 1994 L 126/1.

(2) OJ 1994 L 155/31.

(3) OJ 1994 L 361/114.

(4) OJ 1994 L 361/132.