



Decisão no caso 454/2014/PMC - Resumo da decisão da Provedora de Justiça no caso 454/2014/PMC relativo à prática do Serviço Europeu para a Ação Externa de oferecer estágios não remunerados nas delegações da UE

Decisão

Caso 454/2014/PMC - Aberto em 18/03/2014 - Recomendação sobre 15/02/2017 - Decisão de 21/09/2017 - Instituição em causa Serviço Europeu para a Acção Externa (Recomendação aceite pela instituição) |

A Provedora procedeu a um inquérito sobre a prática do Serviço Europeu para a Ação Externa (SEAE) de oferecer estágios unicamente não remunerados nas delegações da UE. O inquérito surgiu no seguimento de uma queixa apresentada por uma jovem cidadã da UE que havia concluído um estágio não remunerado. A estagiária alegara que a prática do SEAE era discriminatória em relação a jovens mais desfavorecidos.

A Provedora considerou que os estágios nas delegações da UE deveriam ser facultados ao mais alargado número de pessoas possível, e não apenas aos que os podem financiar. Do ponto de vista da Provedora, os estágios não remunerados podem conduzir a uma situação discriminatória uma vez que as pessoas mais desfavorecidas podem não dispor de recursos financeiros para realizar este tipo de estágio. A Provedora considerou que a prática do SEAE, de não remunerar os estagiários nas delegações da UE, constituía má administração. Por conseguinte, recomendou ao SEAE que procedesse ao pagamento de uma remuneração apropriada a todos os seus estagiários, nomeadamente aos estagiários nas delegações na UE.

Em resposta à sua recomendação, o SEAE informou a Provedora de que havia solicitado fundos para pagar os seus estagiários nas delegações da UE, tendo suspenso, de momento, os estágios não remunerados.

A Provedora depreende da resposta do SEAE que este está a envidar todos os esforços possíveis ao seu alcance para pagar os estagiários nas delegações da UE. Por último, segundo o SEAE, a sua capacidade de pagar os estagiários em causa depende agora da disponibilização dos recursos financeiros necessários da parte das autoridades orçamentais. Por conseguinte, a Provedora encerra o caso com a conclusão de que o SEAE aceitara a sua recomendação.

The background



1. A young Austrian citizen worked as an unpaid trainee in an EU Delegation in Asia. Following her traineeship, she contacted the European External Action Service (EEAS), which operates the EU Delegations, to complain about the fact that trainees in the Delegations are not paid. She noted that the normal practice is that trainees in the EU institutions are paid. In her view, not paying trainees constitutes unjustified discrimination against young professionals coming from less well-off backgrounds.

2. The EEAS replied that the complainant had been given an unpaid traineeship " *at her request* ". She had also signed a traineeship agreement in which she affirmed that " *I am a volunteer with the Delegation and will receive no salary, wage or benefit [...]* ". The complainant turned to the Ombudsman with her concern that the EEAS should not offer unpaid traineeships. Her concern was with the EEAS's practice generally and had not to do with her own specific case.

3. In October 2014, the Ombudsman asked the EEAS to reply to the complainant's concern that it was offering unpaid traineeships in the EU Delegations. The complainant wished the EEAS to offer paid traineeships only, and for it to cease offering unpaid traineeships. In December 2014, the Ombudsman received the EEAS's reply on the complaint. Subsequently, the Ombudsman received the comments of the complainant on the EEAS's reply. The Ombudsman's inquiry team also met, on three occasions, with the EEAS to discuss the case: in May, September and December 2016. In January 2017, the EEAS submitted additional information in writing to the Ombudsman.

4. Following a careful assessment of all the arguments put forward, on 15 February 2017, the Ombudsman recommended to the EEAS that it pay an appropriate allowance to all its trainees in EU Delegations. [1]

The EEAS's failure to pay trainees in EU Delegations

The Ombudsman's recommendation

5. The Ombudsman found that the complainant's argument, that unpaid traineeships are discriminatory towards those coming from a less privileged social background, had some merit. Undeniably, a young graduate wishing to do an unpaid traineeship may encounter practical difficulties without financial backing, for example from his or her family. A traineeship in an EU Delegation involves not only travel costs, but also costs for accommodation, living and insurance. Therefore, unpaid traineeships in EU Delegations risk being reserved for a privileged few - namely, those with their own financial means.

6. During the various meetings with the Ombudsman's inquiry team in 2016, the EEAS argued that offering unpaid traineeships does not constitute discrimination based on social origin. The EEAS referred to the fact that unpaid trainees in EU Delegations all consider that the traineeship is useful for their future. Through such traineeships, they gain valuable experience which helps build up their professional profile, making them more attractive on the labour market.

7. The Ombudsman did not doubt that trainees in a Delegation value the traineeship. Indeed,



such opportunities can constitute a significant stepping stone in their careers. In fact, it is for this very reason that traineeship opportunities should be made available to as broad a range of persons as possible - and not only to those who can afford it. In the Ombudsman's view, unpaid traineeships may perpetuate social exclusion, since persons from less privileged backgrounds are likely to lack the financial means to undertake a traineeship. They will thus miss out on this valuable opportunity to enhance their qualifications and skills. This may, eventually, lead to fewer future job opportunities for the less privileged, initiating a vicious circle where "privilege follows privilege".

8. The Ombudsman expressed the view that EU Delegations gain from the input of trainees and may even depend on their contribution. With this in mind, the Ombudsman observed that the system of unpaid traineeships may possibly lead to the undesired consequence that the EU Delegations fail to attract all of the best candidates for traineeships; it will attract only those with sufficient financial resources of their own to pay for themselves. This is clearly not in the interest of EU Delegations.

9. The Ombudsman referred to the example of the European Parliament, which had addressed the issue of unpaid traineeships. In a Resolution from 2010, Parliament called on the EU institutions to set a good example by paying a minimum allowance, based on standard-of-living costs of the place where the traineeship is undertaken, to all their trainees. [2] The Ombudsman noted that Parliament no longer offers unpaid traineeships, even in the case of student placements. It now pays an allowance to all its trainees, despite the budgetary constraints on the EU institutions.

10. The Ombudsman found it relevant also to note the extent to which the EEAS makes use of traineeships in the EU Delegations. The EEAS has a network of 139 EU Delegations which, between EEAS and Commission staff, employ 5,800 people (end-2015 figures). [3] In 2016, the EEAS offered approximately 800 unpaid traineeships. It seems likely that the EEAS is to some extent reliant on the availability of trainees to supplement the work of the full-time staff in its Delegations. The Ombudsman understood that the payment of such a number of trainees will create budgetary issues for the EEAS. However, she noted that this is a matter which the EEAS could decide to raise with the budgetary authorities, namely the European Parliament and the Council.

11. Against this background, the Ombudsman found that the EEAS's practice of providing unpaid traineeships in its Delegations constitutes maladministration. Therefore, the Ombudsman recommended to the EEAS that it pay all its trainees, including those in EU Delegations, an appropriate allowance. While the nature of this allowance will be a matter for the EEAS, the Ombudsman believed that the allowance should be such as to respect the principle of non-discrimination and should ensure that young people will be encouraged to apply for a traineeship irrespective of their (or their family's) financial status.

12. The Ombudsman asked the EEAS to provide an opinion within three months from the date of her recommendation. She subsequently invited the complainant to comment, which the complainant did.



The EEAS' opinion and the complainant's comments

13. In its opinion on the Ombudsman's recommendation, the EEAS stated that offering traineeships to young graduates and students had proven to be very valuable, both for the trainees and the EU Delegations. In light of the Ombudsman's recommendation, it had decided to restructure its traineeship programme and to temporarily suspend the recruitment of new trainees. The EEAS said it had also requested the budgetary authorities to provide funds for future trainees.

14. The EEAS had also decided to increase the number of partnerships between Delegations and universities. Under the new draft scheme, traineeships would be offered under three separate programmes: (i) to trainees who will be paid an allowance by the EEAS(provided that the EEAS receives the requested resources from the budgetary authorities) and a specific selection procedure will be established for this purpose; (ii) to students , in the context of an agreement with a local university, who undertake a compulsory or recommended training period as part of their course and are already residing in the place of training, and (iii) to trainees receiving financial support from a university or another institution but located elsewhere in the world. The EEAS does not propose to pay allowances in the latter two cases.

15. In her comments, the complainant stated that the Ombudsman was right in focusing on the aspect of " *anti-discrimination* " in her recommendation. However, in her opinion, the EEAS now seems to be trying to exclude the financially and socially weak when selecting trainees in order to solve the problem.

16. The complainant expressed the view that, if the EEAS cannot establish a sustainable and just system for paying trainees, it is best to abolish the traineeships in EU Delegations entirely.

17. The complainant fears that in the mixed model proposed by the EEAS, trainees who are unpaid or who receive financial support from an outside source will always be preferred to the ones paid directly by the EEAS, because of simple economic reasoning.

18. Concerning the proposal to extend partnerships with universities, the complainant argued that this is neither a new idea, nor does it contribute to solving the problem. It mostly leads to a shift of the exploitation of manpower towards local people, which are often more poorly organised and have no chance of claiming their rights.

19. The complainant pointed out that scholarships often do not include social security or health insurance, and that the living expenses of a student cannot be compared to those of a person doing a traineeship at an EU Delegation.

The Ombudsman's assessment after the recommendation



20. The Ombudsman recommended that the EEAS pay all its trainees an appropriate allowance. The EEAS has informed the Ombudsman that it has requested funds for paying its trainees in EU Delegations and that, in the meantime, it has suspended unpaid traineeships. The Ombudsman welcomes the steps taken by the EEAS to ensure it will be in a position to offer paid traineeships in EU Delegations.

21. The Ombudsman notes the complainant's concern that the EEAS might focus disproportionately on recruiting trainees with financial support from other sources (other than their family) rather than on trainees paid an allowance by the EEAS itself.

22. In the Ombudsman's view, it is reasonable for the EEAS not to pay an additional allowance to trainees who have a scholarship or other non-family financial support or to students, already based in the same country as the Delegation, and who must undertake a placement as part of their studies. In particular, a compulsory placement as part of university studies is not comparable to a standard traineeship, as they normally serve different purposes. It is important that a proper balance be struck between the different programmes. For the Ombudsman, it is important that the EEAS would continue to offer a significant number of "traditional", but paid, traineeships in Delegations which will be open on an equal opportunity basis to young people, irrespective of their own or their families' financial resources. The Ombudsman understands that to achieve this desired outcome the EEAS will need an appropriate budget allocation.

23. The Ombudsman sees the EEAS's response to her recommendation as a serious commitment by it to pay trainees in EU Delegations, subject to being given the appropriate budgetary resources by the budgetary authorities, that is, the European Parliament and the Council. Accordingly, the Ombudsman is happy to regard the EEAS's reply as, in effect, an acceptance of her recommendation. The Ombudsman will follow future developments in this area with great interest and is open to renewing her inquiries in the future if this seems warranted and useful.

24. It is very important that the EU institutions should lead by example and demonstrate a commitment to offering traineeship opportunities for young people on the basis of equal opportunity for all, irrespective of background and family resources. To do otherwise is to risk a loss of trust, to be perceived as not caring sufficiently for *all* young people who struggle to build up their professional profiles in order to compete in the labour market. The cost of promoting the younger generation's trust in the European project in this regard is comparatively small.

25. The Ombudsman encourages the budgetary authorities to examine this issue carefully and hopes they will grant the appropriate resources. With this in mind, the Ombudsman will inform the European Parliament and the Council of Ministers of this inquiry and of the recommendation she has made to the EEAS. She will also inform the European Commission.

Conclusion

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



By suspending unpaid traineeships in EU Delegations and, at the same time, requesting funds for paying trainees in EU Delegations, the EEAS has accepted the Ombudsman's recommendation.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 21/09/2017

[1] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please see the Ombudsman's recommendation available online at:

<https://www.ombudsman.europa.eu/en/cases/recommendation.faces/en/76079/html.bookmark>

[2] European Parliament's resolution of 6 July 2010 (2009/2221(INI)), point 72, available online:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010IP0262&from=EN> .

[3] https://eeas.europa.eu/sites/eeas/files/annual_activity_report_2015_en.pdf .