

8 Summary of the assessment of the Ministry

8.1 Regarding statutory authority

Point 5.1.1. Legal basis for the work of DCSD:

The opinion enclosed with the complaint of 13 February 2003 states the view that the legal basis for the DCSD making rulings regarding whether specific researchers have acted with scientific dishonesty is doubtful.

The Ministry considers that the establishment of the DCSD was clearly provided for in the remarks on section 4e(4) of the Danish Act on Research Advice, and that the duties of the DCSD can be included under the advisory function, which was located in the Board of the Danish Research Councils and its sub-committees.

With this background, the Ministry considers that the DCSD did have the necessary statutory authority for its general work.

Point 5.1.2. Basis for statutory authority in Order no. 933 of 15 December 1998 and use of the term 'good scientific practice'

The opinion enclosed with the complaint of 13 February 2003 argues that the authority of the DCSD is exclusively laid down in the Order concerning the DCSD. This means that the DCSD cannot take a position on whether the respondent has neglected standards for good scientific practice. The special aspect of this case is that the DCSD has included its position on breach of good scientific practice in the conclusion to their ruling.

Irrespective of whether or not the Ministry finds that the DCSD has grounds to take a position on the issue of good scientific practice, there is an independent point of criticism if, in its assessment, the DCSD has applied a standard for good scientific practice in the individual specialist area that is not true and fair.

The Ministry considers that the DCSD has not applied a completely true and fair standard for good scientific practice within social sciences in its examination, and that on the current basis it cannot be ruled out that this delusion could have led to an incorrect assessment of the work of the respondent. The seriousness of this situation is emphasised by the DCSD itself in that it makes this issue the pivot for the ruling in its conclusion.

Errors such as these, that can influence the result of a ruling, must lead to the case being remitted so that the situation can be rectified.

Point 5.1.3. The concept of 'objective scientific dishonesty'

The DCSD divides scientific dishonesty into objective and subjective parts. Thus, the Ministry understands that, as part of its working methodology, the

DCSD use the concept 'objective dishonesty'. The Ministry considers this the usual legal working methodology.

However, the Ministry does not consider that the methodological division can be repeated in the conclusion, as this could present a misleading picture of the actual conclusion; namely that in the opinion of the DCSD there is no scientific dishonesty in terms of the Order.

In the opinion of the Ministry, it is a mistake that the DCSD allows the methodological division to appear in the conclusion, but not to the extent that the mistake results in the case being remitted.

Point 5.1.4. The ruling has not been made by one of the three committees under the DCSD

With the basis that the complaints were aimed at the specialist areas of all three committees, in the opinion of the Ministry the three committees are jointly competent to address the complaint on the grounds stated. At the same time the Ministry must emphasise that this is a scientific issue, outside the authority of the Ministry. However, the Ministry points out that the procedures chosen to decide whether or not a case should be addressed by the committees jointly was, in the opinion of the Ministry, not correct. According to the information in the DCSD statement of 5 May 2003, the ruling was made by the committees jointly following recommendations from the chairman.

The Ministry finds that the ruling must be made by the individual committee within whose area the respondent works, in that there is otherwise a risk that the relevant committee will be overruled by the two other committees on a question regarding whether the ruling should be made by the committees jointly. However, in this case this has no importance as the ruling was unanimous.

The Ministry also stresses to the DCSD that the rules for the number permitted to take part in hearing a case must always be observed. With regard to the question of the consequences of not complying with these rules for the case in question, this will require knowledge of the internal discussions within the DCSD, which the Ministry does not have, and, as the case is to be remitted back to the DCSD at all events, the Ministry does not consider that there are adequate grounds to take this matter further.

Point 5.1.5 The territorial delimitation of the competence of the DCSD

In the case in question, the place of publication of *'The Skeptical Environmentalist'* is located outside of Denmark, and this may mean that the Danish administrative authorities do not have competence to try the case. Whether the case has such links with Denmark that the DCSD is competent to

address the matter anyway cannot be determined by the Ministry on the basis of the information currently available.

In summary, the Ministry considers that, to the extent it has not yet done so, the DCSD should examine its competence in the case, and the results of this examination should be included in the grounds for the ruling. At the same time, in future rules for the work of the DCSD, the Ministry will seek to clarify the territorial competence of the DCSD.

As the question is about the actual competence of the DCSD to address the case, this situation should also lead to a remission.

8.2 Case processing by the DCSD

Point 6.1 The principle of inquisitorial procedure

Here the Ministry must point out that the DCSD has not documented where the respondent (BL) has allegedly been biased in his choice of data and in his argumentation, and that the ruling is completely void of argumentation for why the DCSD find that the complainants are right in their criticisms of BL's working methods. It is not sufficient that the criticisms of a researcher's working methods exist; the DCSD must consider the criticisms and take a position on whether or not the criticisms are justified, and why.

These are precisely the tasks the DCSD has a fundamental duty to carry out and as this has not happened, the ruling must be remitted back to the DCSD, cf. the above quote from the administrative law on the consequences of neglecting the principle of inquisitorial procedure. This type of significant neglect in case processing by the DCSD deserves criticism in itself.

Point 6.2. The complainants' status as parties

The Ministry finds that there is a clear error in that the DCSD has not examined the issue of status as parties, but has merely acted on the grounds that the complainants were parties. This could have had the consequence that the DCSD have attached too great an importance to the relevant complainants' assessments, and this could have meant that the time for case processing was extended as complainants were allowed a longer hearing than they were entitled to. The hearing in cases that do not include parties should also consider the interest of the respondent in having the case concluded.

However, the Ministry does not consider that the circumstances of this specific case are of such a nature, that these alone can lead to a remission. However, complainants I and II in a new examination cannot be afforded authority as parties, while the DCSD must decide the question of complaint III after a specific assessment.

Point 6.3. Should complaint II have been dismissed?

Without taking a position on the actual question of whether the complaint should have been dismissed or not, the Ministry considers that the fact that the DCSD did not take an independent position on this issue disregarded the principle of inquisitorial procedure, which was a mistake. The situation was not of such a nature that it can reason a remission. However, if the DCSD decides that the case should be dismissed, naturally this cannot be included in a new hearing of the case.

Point 6.4. The question of whether BL's book 'The Skeptical Environmentalist' is of a nature that could justify an assessment of scientific dishonesty

The Ministry must repudiate that the DCSD has documented that the relevant book falls within the field covered by the DCSD's competence. For this reason the case must also be remitted back to the DCSD.

Point 6.5. The significance of whether or not BL's book 'The Skeptical Environmentalist' has been subject to a peer review.

At all events the Ministry must point out that the question cannot be included in the present assessment of BL's working methods as it has not been investigated by the DCSD. This circumstance cannot lead to a remission in that the Ministry must assume that a circumstance that the DCSD has not investigated cannot be included in the DCSD's assessment of the case in question.

Point 6.6. Hearing of the parties

Point 6.6.1. Should the DCSD have heard BL regarding the position of the working party/sub-committee?

From the rest of the Ministry's review of the case, it does not seem that the sub-committee has carried out an examination that has not been made the subject of a full examination by the DCSD. In this connection, the Ministry refers to the main question for the sub-committee, according to which the sub-committee were to take a position on whether a book of this nature could justify an assessment on scientific dishonesty on the basis of the standards that are otherwise applied to scientific works. Here the ruling by the DCSD deviated from the recommendation by the sub-committee, cf. the ruling by the DCSD pages 11 and 12.

On the basis of this, the Ministry does not consider that BL should have been heard regarding the recommendation of the sub-committee. However, the Ministry does not know the reason why the chairman of the sub-committee was elected from the health sciences and not from the social sciences, from where the respondent comes. For any new sub-committee, the Ministry must require that the chairman comes from the respondent's main area, unless there are special circumstances.

Point 6.6.2. Should the DCSD have heard BL regarding the draft of the final ruling before it was made?

With regard to the specific case, the Ministry considers that the error lies in the wording of the conclusion and the reasons for the conclusion, cf. point 5.1.2, and that a duty to hear the parties only arises as a consequence of the wrong conclusion. However, it cannot be ruled out that a hearing of the parties could have rectified the conclusion.

As the scope of the non-statutory hearing duty is, however, doubtful, the Ministry does not find that this circumstance alone can give grounds for remission of the ruling, but it is part of the Ministry's overall assessment of the case.

Point 6.7. The choice of language in the ruling

With reference to *Hans Gammeltoft-Hansen et al., Forvaltningsret*, Copenhagen, 2002, p. 593, on the requirements for choice of language within public administration, the Ministry finds that much of the wording in the ruling does not meet the linguistic standards of good administrative practice.

Therefore, the Ministry urges the DCSD to follow linguistic standards for good administrative practice in its rulings in the future. These are defined above.

The choice of language in the specific ruling deserves criticism, but it cannot lead to a remission.

Point 6.8 Public disclosure of the DCSD's ruling

With regard to making the ruling public, the Ministry regards it as clearly wrong that BL was not consulted regarding possible public disclosure, and on the basis of the lack of consultation, and thus in the absence of any objections from BL, it is not possible to determine whether the ruling could have been made public in accordance with the rules on additional access. However, it is the Ministry's immediate perception that it would have been possible to make the ruling public, if the conclusion in the ruling had been drawn up in accordance with the Ministry's understanding, cf. above.

As any damage caused by the public disclosure will already have happened, this circumstance cannot lead to a remission, but the Ministry must express its criticism of the lack of consultation.

Point 7.1. The question of legal capacity in connection with remission of the case to the DCSD

In the opinion of the Ministry, the situation where an authority reopens a case generally does not mean that those who worked on the first hearing of the case are not competent to hear the reopened case.

Any questions of legal capacity should be clarified according to section 6 of the Administrative Act, and in practice should be determined by the chairman of the DCSD, cf. section 9(5) of the Order under which the chairman makes decisions on questions of law. The capacity of the chairman is indisputable in the opinion of the Ministry in that the chairman did not take part in the original ruling by the DCSD of 6 January 2003.

Point 7.2 Hearing regarding public disclosure of this ruling

The hearing was carried out with a letter of 15 December 2003. In his letter of 16 December 2003, BL has agreed to a publication of this decision.

Following this the Ministry has decided that.....

8.3 The ruling of the Ministry:

On the basis of the grounds mentioned above, the Ministry finds that the case must be remitted to the DCSD with an injunction that the DCSD should allow itself to be advised by the Danish Social Science Research Council in matters regarding good scientific practice. In summary, the Ministry must also state that, in its opinion, the treatment by the DCSD of this case deserves criticism.

A copy of this ruling has been sent to the DCSD for further processing.

Yours sincerely

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Head of division

Appendix: Statement by the Ombudsman of the Folketing (The Danish Parliament) of 5 April 2001, FOB file no. 1999-2401-701.