

MORAIS BISMARQUE GASPAR Ana Gloria

From: [REDACTED]
Sent: 10 February 2014 16:22
To: HIRSCH-ZIEMBINSKA Marta
Subject: Re-submission
Attachments: Answer to appeal rejection Maternity Leave.pdf

Dear Ms Hirsch-Ziembinska,

I am afraid that one of the document previously sent was not user friendly. Please see attached the version which should be easy to read.

Kind regards,
[REDACTED]

Warsaw, 3rd September 2013

Dear Head of Mission,

I am glad to observe that, honoring my contract and the EC Communication, it is clear to both of us that the Polish labor law is the applicable law to my employment contract and that any dispute has to be, consequently, discussed following its relevant provisions related to the case.

Regrettably, **it becomes apparent that you did not receive the proficient legal opinion in this matter.** In this regard I can only express my frustration. As you can understand, this is extremely important moment of my life, both professionally and personally which can determine my future career and well-being of my just born son. I would, therefore, respectfully ask you to request your services to give more attention to the matter, especially when your decisions are directly affecting my fundamental rights.

I would like to bring to your attention that Good Administration as a right of European Union Citizens is enshrined in the EU Charter of Fundamental Rights (CFR), which, after the entry into force of the Treaty of Lisbon, has the same legal value as the Treaties. *According to Article 41 par 1 (CFR) "Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union".*

I have been working in EULEX from the very beginning for 5 years, making significant contribution to positive image of the Mission. I have conducted my duties always with high commitment and loyalty towards the Mission, facing many challenges with an enthusiasm and positive attitude. The office itself was organized by me from scratch with very limited guidance and assistance. This effort and determination resulted in many successful visits and events which were highly appreciated by the VIP visitors and recognized by your predecessors. I strongly believe, considering the above, that I deserve better treatment in handling my matter.

Allow me to kindly share an excerpt from the extensive legal analysis issued by a reputable Polish lawyer, Ms Alicja Swiczewska, Legal Counsel No. WA — 8458, expert in European Union Labor Law who I have recently hired to handle my case:

"...5. Detailed legal analysis and possible claims under Polish labor law having drawn the preliminary conclusions on the law applicable to both contractual and non-contractual obligations, it is now necessary to outline the detailed legal analysis and possible claims under Polish labor law.

There are two key acts of Polish labor law that shall apply in the Client's case in question. The first one is the Labor Code enacted on June 26, 1974 (consolidated text published in Journal of Laws as of 1998, No. 21, item 94, as amended; hereinafter referred to as LC"). The second one is the act on specific terms and conditions for terminating employment relationships with employees for reasons not related to the employees, enacted on March 13th, 2000 (Journal of Laws No. 90, item 844, as amended; hereinafter referred to as the 2000 Act")

“...General rule prohibiting exercising one’s rights contrary to their socio economic objective principles of community co-existence.

Art.8LC

No one is allowed to exercise any rights in the manner that would be contrary to their socio economic objective or the principles of community co-existence. Any such act or omission by a person exercising their right is not considered an exercise of that right and is not protected.

The Polish Supreme Court in its decision as of January 12th, 2011 (No. II PK 89/10 highlighted that the disposition of art. 8 LC enables a court to apprise an extent to which in a certain examined case, at issues where an act or omission by a person exercising their right is not considered as an exercise of that right and is not protected.

An application of this regulation is inseparably connected to the whole plot of circumstances in the case in question.

General rule providing that in an event that the provisions of the employment contract are less favorable for the employee than the provisions of labor law, the latter shall prevail.

Art. 18LC

1. The provisions of employment contracts and other acts on the basis of which an employment relationship is established may not disadvantage an employee more than the provisions of labor law.

2. Any provisions of the contracts and acts defined in that are less favorable to an employee than the provisions of labor law are invalid; the appropriate provisions of labour Law shall apply instead.

3. The provisions of employment contracts and other acts on the basis of which an employment relationship is established and which violate the principle of equal treatment in employment are null and void; the appropriate provisions of labor law shall apply instead, and if there are no such provisions, then the appropriate provisions of a non-discriminator character shall apply instead.

According to art. 18 LC, an article 23.3 of the employment contract (which provides that in case of any conflict between the provisions of this contract and its annexes, the order of precedence is established as follows: the Commission Communication, the present contract, OPLAN and Code of Conduct, Annex 1 [Job description], Annex 2 [Beneficiary form] and the high risk insurance policy”) should be interpreted by taking into account that Polish labor law shall prevail over every other provision binding parties, resulting out of their will, including OPLAN...”

“...B. Consequences of conclusion of a third contract for a definite period of time

According to Polish labor law, conclusion of a third contract for a definite period of time implies certain legal consequences, that are determined upon art. 251 LC, as follows:

Art. 251 LC

1. The conclusion of a subsequent employment contract for a definite period of time has the equivalent legal effects as the conclusion of an employment contract for an indefinite period

of time, if the parties had previously concluded two employment contracts for a definite period of time in succession, where the interval between the termination of the preceding and the establishment of the subsequent employment contract was no longer than 1 month.

Please be informed, that the conditions set forth in art. 251 1 LC are met in the Client's case in question. Since the third consecutive contract was concluded on 15th June, 2010, from that moment on, the employment relationship for an indefinite period of time between the Client and the HoM has arisen...".

"...C. Dismissal of a woman who is pregnant and on sick leave or on maternity leave

Please be informed, that Polish law is very clear in respect of dismissal of a woman who is pregnant and on sick leave or on maternity leave. According to Polish law, such acts are contrary to the law. Therefore a woman is entitled to demand reinstatement. Relevant regulation regarding the aforementioned issues are set forth in the art. 45 and art. 177 LC as follows:

Art. 45 LC

1. If the labor court determines that the termination of an employment contract concluded for an indefinite period of time is unjustified or violates the provisions of law on serving Notice on employees, the labor court at the demand of an employee will declare the notice of termination ineffective, and if the contract has already been terminated - will decide on reinstating the employee in his job on the previous conditions...

Art. 177 LC

1. An employer may not terminate an employment contract with a female employee during her pregnancy or while on maternity leave, with or without notice, unless there are reasons justifying termination without notice through her fault, and an enterprise trade union representing the employee has consented to the termination of the employment contract. The termination of an employment contract with notice by an employer during pregnancy or while on maternity leave may occur only in the event of the declaration of bankruptcy or the liquidation of the employer..."

Furthermore it shall be mentioned, that Labor Code provides appropriate application of the provisions of the Civil Code.

Art. 300 LC

In cases not regulated by the provisions of labor law, the provisions of the Civil Code apply accordingly to an employment relationship, provided they are not contrary to the principles of labor law.

An unlawful act is invalid (null and void) according to art. 58 I of the Civil Code. The same sanction is foreseen when an act is contrary to the principles of community life.

Art. 58 of the Civil Code

1. A legal act which is contrary to the law or which is designed to circumvent the law is invalid unless a relevant regulation envisages a deferent effect in particular that the invalid

provisions of the legal act be replaced with relevant provisions of the law.

2. A legal act contrary to the principles of community life is invalid

Consequently, an act of terminating a contract with a female employee during her pregnancy or while on maternity leave is to be considered null and void...”

Based on the above professional analysis it is very difficult for me to understand your statement of “EULEX fulfilled all its obligations under the contract and all its actions are in full compliance with the Polish legislation”

Please be informed that I am registered in ZUS (the polish public social security system as you rightly point out in your letter) with the number 5211178080. Honoring my contract, I have been regularly contributing to the system with my corresponding proportion for the last five years.

As per your suggestion, I am determined to request from the institution the corresponding financial support and entitlements.

In order, therefore, to apply for the above referred financial support and entitlements, **I would kindly ask you to confirm before the end of the week that you have contributed with your mandatory proportion to the polish social security structures or to any other EU public social security institution.**

Finally I would like to reiterate my absolute disposition to find an amicable solution to our dispute. However the result of any discussion has to necessarily respect the fundamental rights that any EU citizen is entitled to and which are extensively regulated in any modern Rule of Law State.

Sincerely

