



Emily O'Reilly
European Ombudsman

Ms [REDACTED]

Strasbourg, 26/03/2014

Complaint 1356/2013/AN

Dear Ms [REDACTED]

On 23 and 24 January 2014, you submitted a request for review of the Ombudsman's decision concerning your above complaint. On 10 February 2014, you sent additional information to the Head of Unit in charge of your request, Ms Marta Hirsch-Ziemińska.

In your request for review and further correspondence, you argued that the Ombudsman:

(i) inaccurately stated that your employment contract with EULEX Kosovo was not renewed, since, in fact, your contract was terminated.

(ii) waited until early 2014 to close your case, although she was informed about the pending court case in August 2013.

(iii) unwarrantedly accepted that your office on EULEX Kosovo's premises was needed in the interest of the service, since the office was assigned to a person who subsequently went on leave.

(iv) has not taken a stance on the fact that the Head of Mission failed to apply your national law (Polish) and grant you maternity leave on that basis.

(v) did not inquire into the Mission's failure to pay the necessary contribution to the Polish insurance schemes, thus preventing you from receiving unemployment and pension benefits.

(vi) did not inquire into what you consider to be an unlawful process leading to the termination of several contracts with EULEX Kosovo, including those of two pregnant women.

You highlighted that aspects (iv) to (vi) are not subject to the ongoing judicial procedures in Case T-410/13. You also asked whether there is any appeal against the Ombudsman's final decisions.



Concerning your argument (i), I note that the court application that you and other colleagues in the same situation lodged with the General Court also refers to the non-renewal ("*décisions... de ne pas renouveler le contrat*"). In any event, however it is described, the end of your employment relationship with EULEX Kosovo is subject to the scrutiny of the courts of the EU in Case T-410/13. The Treaty and the European Ombudsman's Statute are clear as to my obligation not to carry out inquiries into matters that are, or have been the subject of court proceedings. Therefore, there is no possibility for me to inquire into this matter.

As regards (ii), please note that contrary to your statement, I only became aware of the existence of the parallel judicial proceedings on the occasion of the inspection carried out at the European External Action Service's premises, through the latter's representatives. This explains why I closed your complaint, and the related ones, in early 2014. Had any of the complainants informed me earlier that they had turned to the Court, I would have closed the cases immediately.

With regard to your argument (iii), in my closure letter dated 21 January 2014 I mentioned two reasons why I did not consider it justified to carry out inquiries into the fact that your personal belongings were removed from your office during your maternity leave, and the office was assigned to another colleague. First, because this is an internal organisational matter that is for the Head of Mission to assess, provided that he does not take manifestly arbitrary decisions. It is therefore for the Head of Mission to decide whether the interest of the service is better served by keeping your former office occupied with your personal belongings throughout your maternity leave, or by assigning it to someone else. The fact that the colleague to whom the office was reassigned was not physically present on EULEX's premises does not change the above. Second, because in any event, your employment contract was extended only due to, and for the duration of, your maternity leave. In the current state of things, you are not expected to return to the Mission, and thus will not require an office on the premises. Therefore, even if I opened an inquiry into this matter, this could not lead to any useful outcome, such as having your office returned to you.

As far as your argument (iv) is concerned, I note that in reply to your appeal concerning the duration of your maternity leave, the Head of Mission seems to admit that Polish law is applicable to this matter. It thus appears that the applicability of Polish law is not in dispute, but rather whether it entitles you to the whole duration of maternity leave you have requested. However, the long-standing practice of the European Ombudsman as regards the interpretation and application of national law is to limit any inquiry to examining whether the Union institution, body, office or agency has provided a coherent and reasonable account of the legal basis for its actions. I thus strongly encourage you to consider the legal actions you might have access to in order to defend your interests in this regard.

Concerning your argument (v), I do not find in the file any evidence that may support your statement that EULEX has not made the required contributions to the appropriate social security schemes. I note that in your correspondence with the HoM you required him to confirm whether EULEX has made the necessary contributions. There is no indication in the exchange of correspondence that this has not been so. In such circumstances, the necessary prior administrative approaches do not appear to have been completed.



As regards your argument (vi), I note that the court application in case T-410/13 clearly refers to the unlawful procedure leading to the termination of the relevant employment contracts, including the violation of the principles of consultation of staff representatives, staff protection in collective dismissals, equal treatment and non-discrimination between seconded and contracted staff, as well as abuse of power in the use of successive fixed-term contracts. As regards your specific case, the court application explicitly mentions the violation of Article 8 of the European Social Charter concerning the protection of employed women in case of maternity. Therefore, I can only conclude that the breaches that you allege to have occurred during the procedure which led to your non-renewal are also subject to court proceedings and, as such, excluded from my scrutiny.

In light of the above, I do not find any reasons to revise my decision on your complaint, as communicated to you on 21 January 2014.

Finally, as regards your question whether there is any appeal against the Ombudsman's final decisions, please note that neither the Treaty nor the Ombudsman's Statute provide for an appeal mechanism. For completeness, I would point out that the EU courts have considered inadmissible actions seeking to annul decisions of the Ombudsman on complaints. You could, however, consider lodging an action for non-contractual liability against the Ombudsman if you consider that you have been damaged by a failure to act in accordance with the institution's legal obligations.

Yours sincerely,

Emily O'Reilly

MALLEA JIMENEZ Juan Manuel

From: Euro-Ombudsman
Sent: 26 March 2014 10:50
To: [REDACTED]
Subject: Complaint 1356/2013/AN
Attachments: 1356-2013-AN-S2014-189591.pdf

Dear Madam,

Please find attached a letter from the European Ombudsman related to your complaint.

The Registry