

Decision in joint cases 897/2019/JAP and 1360/2019/JAP on how the European Institute for Gender Equality addressed the complainant's concerns about unfair treatment of temporary interim employees and its alleged misleading public statements

Decision

Case 897/2019/JAP - Opened on 18/06/2019 - Decision on 05/08/2019 - Institution concerned European Institute for Gender Equality (No maladministration found) |

Case 1360/2019/JAP - Opened on 05/08/2019 - Decision on 05/08/2019 - Institution concerned European Institute for Gender Equality (No maladministration found) |

Background to the complaint

1. A number of former interim staff, employed by a temporary work agency but working at the European Institute for Gender Equality (EIGE), filed a complaint with the Lithuanian State Labour Inspectorate (Inspectorate) for infringement of the national labour law and the principle of equal treatment. The Inspectorate sided with the complainants and awarded them compensation. The staffing company in question challenged the decision before the national court. In February 2019, the Vilnius City District Court ruled in favour of the former interim staff members, who had the right to the same remuneration as EIGE's statutory staff.

2. In March 2019, EIGE made a public statement concerning the court ruling. It noted that it had ensured that the entire process regarding the provision of interim services was “ *legal and appropriate* ”. The selection of the staffing agencies was based on an open public procurement procedure. Moreover, interim staff do not fill permanent positions, nor are they allowed to carry out tasks, which should be assigned to statutory staff only. Finally, EIGE stated that it was committed to fair and equal treatment of all staff, in full respect of the legal framework governing their employment contracts.

3. Against this background, the complainant used to work as an interim staff at EIGE but was employed by two different staffing companies. When he found out about the Lithuanian court's judgment, he felt he had been treated unequally. He therefore wrote to EIGE with request for compensation, in April 2019, arguing that the scope of his tasks at EIGE was similar to those of the statutory staff.



4. Subsequently, having read EIGE's public statement on the Lithuanian court's ruling, the complainant felt deceived. In June 2019, he wrote to EIGE anew, arguing that it had disseminated misleading public statements on the working conditions of interim staff.

EIGE's response to the complainant

5. In May 2019, EIGE noted that in the absence of direct contractual relationship, his request "*would be better placed with [the] temporary agencies [he used to work for]*". It also clarified that the Conditions of Employment of Other Servants of the European Union (CEOS) did not apply to him. Therefore, the financial rights derived from the CEOS by temporary staff members did not extend to interim employees.

6. EIGE's reply was silent on the issue of similarities of the complainant's tasks and those of the statutory staff. Moreover, the complainant did not receive any reply to his e-mail on the misleading public statements. Dissatisfied with EIGE's conduct on the matter, the complainant turned to the Ombudsman in May and July respectively.

7. The Ombudsman requested EIGE to address the complainant's arguments on similarity of tasks performed, and his concerns over the alleged misleading nature of EIGE's public statements.

8. In July 2019, EIGE apologised for the delay and addressed the issues raised in both complaints. EIGE noted that the court proceedings in the case referred to by the complainant were still ongoing. EIGE was a third party to these ongoing proceedings, currently pending before the Lithuanian Supreme Court. The enforcement of the initial judgment under appeal was thus suspended.

9. Regarding the arguments on the similarity of tasks, it noted that his "*role was to support the [statutory staff member] in the technical production of EIGE's publications*". The list of tasks, as outlined to the temporary work agency, included, inter alia, managing the production flow and editorial checks. Although certain tasks were similar to those of the statutory staff member, their overall scope was not, and could not, be the same. EIGE further referred to examples of the limitations imposed on the complainant's tasks, for instance in the budgetary domain.

10. Although the complainant was involved in the initial phase of such tasks, they were further verified by the statutory staff members and approved by the Authorising Officer. Under the applicable legal framework, including the EU Financial Regulation, interim staff cannot perform tasks and responsibilities of a financial actor. Therefore, EIGE concluded that the complainant's tasks were limited in scope, as compared to those of its statutory staff members.

11. EIGE further disagreed with his arguments on misleading information in its public statements. Its' statement was clear that interim staff cannot perform tasks, which should be assigned to the statutory staff members, including budget implementation. This was in line with



the practice of assigning tasks of limited scope to interim staff members. EIGE noted that this conclusion was based on a thorough analysis of the differences between the tasks.

The European Ombudsman's findings

12. EIGE has now replied to the complainant's e-mail and addressed the outstanding issues. It has therefore settled the procedural aspect of both complaints.

13. Regarding EIGE's substantive replies, the Ombudsman finds them reasonable. Given that the complainant was hired by the temporary work agencies, there was no direct contractual relationship between him and EIGE. It is thus clear that he could not be considered a statutory staff member or benefit from the rights under the CEOS. Its reply to this end was correct. EIGE's suggestion to contact the complainant's former employer directly with a request for compensation was also accurate.

14. Moreover, EIGE provided the complainant with an exhaustive reply, addressing all the arguments raised. The explanation concerning differences between tasks performed by the interim and statutory staff is convincing. Finally, EIGE's public statement reflects its official position and is in line with the examples of differences in tasks referred to in its reply to the complainant.

15. The general issue of alleged unequal treatment of interim staff is subject to ongoing legal proceedings. Therefore, the Ombudsman is unable to obtain the results the complainant is expecting. He may therefore consider contacting its former employers, the Inspectorate or seek legal advice on the available avenues of redress, with a view to obtaining the desired compensation.

16. Based on the information provided by the complainant, the Ombudsman finds no maladministration by EIGE in this case. [1]

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Strasbourg, 05/08/2019

[1] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of the [Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]