

Decision of the European Ombudsman closing the inquiry into complaint 178/2013/LP against the Fundamental Rights Agency

Decision

Case 178/2013/LP - **Opened on** 12/02/2013 - **Decision on** 05/12/2014 - **Institution concerned** European Union Agency for Fundamental Rights (Critical remark) |

The case concerned the handling by the Fundamental Rights Agency ('FRA') of a complaint about psychological harassment allegedly suffered by a former member of staff of the FRA, and the FRA's alleged refusal to take any appropriate action in that regard.

The Ombudsman, having inquired into the issue, made a friendly solution proposal, according to which the FRA could consider proceeding to a proper and thorough investigation into the complainant's allegations of psychological harassment. In its reply, the FRA rejected the proposed friendly solution on the grounds that it had to carry out a balancing exercise between the interests of the complainant, who is no longer a member of its staff, and the interest of the service, and the fact that any new decision could expose the FRA to litigation before the EU courts and possibly to an action for damages.

The Ombudsman found the arguments of the FRA unconvincing. She thus made a critical remark finding that the FRA's refusal to carry out a proper and thorough investigation into the complainant's allegations of psychological harassment constituted maladministration.

The background

1. This complaint concerns the handling by the Fundamental Rights Agency ('FRA') of a complaint about psychological harassment.
2. The complainant worked for the FRA as a seconded national expert from 2000 to 2007. From 2004 to 2007, he worked at the FRA's internal audit department. According to the complainant, in the course of his work he came across indications of irregularities and prepared a number of audit reports.
3. In the complainant's view, his audit reports were not adequately handled by the FRA and he was subject to harassment by various means. In particular, according to the complainant, the



FRA had isolated him from his colleagues and started to question the validity of his accounting diploma in order to put pressure on him.

4. In view of these events, the complainant decided to resign and return to his previous employment in his home Member State in 2007.
5. In 2008, the complainant contacted the European Data Protection Supervisor ('EDPS') in relation to the allegedly unauthorised disclosure of some of his personal data by the FRA. The EDPS concluded that the complaint was at least partially well-founded.
6. In April 2012, the complainant received a copy of an internal e-mail sent to the management of the FRA by a member of its staff in relation to the above-mentioned complaint lodged with the EDPS. In this e-mail, its author suggested that the FRA had infringed the data protection rules and had engaged in psychological harassment, which ultimately led to the resignation of the complainant. In the view of that author, the case raised concerns and should not be left unaddressed by a body with a fundamental rights mandate such as the FRA.
7. In June 2012, the complainant raised the issue of his alleged psychological harassment with the FRA. Although he received an acknowledgment of receipt, the FRA did not address the substance of his allegation.
8. Thus, in early 2013, the complainant turned to the Ombudsman.

Allegation of failure to investigate adequately the complainant's allegations of psychological harassment

The Ombudsman's friendly solution proposal

9. The complainant argued that he had suffered psychological harassment within the FRA and unsuccessfully requested the latter to take adequate action.
10. The Ombudsman emphasised that the inquiry did not concern the issue as to whether the complainant was or was not subjected to psychological harassment. Instead, the focus of this inquiry was limited to the issue as to whether the FRA took adequate investigative measures once it was informed of the allegations of psychological harassment by the complainant.
11. When proposing the friendly solution, the Ombudsman took into account the arguments and opinions put forward by the parties. The Ombudsman was unconvinced by (i) the arguments put forward by the FRA to explain why it was unable to deal with the complainant's concerns and (ii) the arguments put forward by the FRA to show that it adequately dealt with these concerns. Namely, as regards the second set of arguments, the Ombudsman took the view that the complainant's allegations were sufficiently precise to enable the FRA at least to consider certain measures of inquiry. In the complainant's view, the psychological harassment



resulted in particular from (a) his alleged isolation and from (b) the questioning of the validity of his academic degree.

12. Although the FRA contended that the complainant did not submit sufficient evidence, the complainant provided to the FRA specific indications of the manner in which the isolation allegedly took place, such as warnings issued by the alleged harasser to members of staff not to interact professionally or socially with the complainant, questioning staff who met the complainant as to their reasons for doing so, and even installing a security camera which recorded who had entered the complainant's office. The complainant also identified by name three witnesses. Moreover, according to the complainant, the FRA did not comply with the principle of equal treatment since it did not question the diplomas of other members of staff who were in a comparable situation.

13. In view of the above, the Ombudsman took the view that the complainant did provide " *at least some evidence* " as required by the case-law, and that the FRA was thus obliged to carry out a proper inquiry into his allegations of harassment.

14. In addition, when an EU institution or body is confronted with harassment allegations which, in its view, are not sufficiently precise to justify the taking of appropriate measures of inquiry, it is, in any event, in accordance with the principles of good administration for that EU institution or body to request additional information or details from the alleged victim of such practices rather than simply rejecting outright the complaint without even attempting to establish the relevant facts.

15. In view of the foregoing, on 24 June 2014, the Ombudsman made a friendly solution proposal, according to which the FRA could consider proceeding to a proper and thorough investigation into the complainant's allegations of psychological harassment.

The Ombudsman's assessment after the proposal for a friendly solution

16. After having obtained an extension of time in order to be able to seek the advice of an external lawyer, the FRA rejected the friendly solution proposal. In its view, the complainant had failed to provide *prima facie* evidence of harassment, and the allegations were unsubstantiated. According to the FRA, having considered the issues at stake, it came to the conclusion that there was no evidence to justify opening an investigation into the allegations in question.

17. More particularly, as regards the issue of the diploma, the FRA explained that the files of almost all staff members were reviewed in 2007, and irregularities were found in relation to eight other members of staff as well. Therefore, the allegation that the complainant had been specifically targeted was incorrect.

18. As far as the issue of the complainant's alleged professional isolation is concerned, the FRA admitted that " *the complainant [was] extremely precise, making concrete allegations which*



are really hard to believe [...] but without providing the slightest indication of the veracity of his words, let alone testimonies/declarations or any other kind of evidence ".

19. Moreover, the FRA noted that the present complaint was made more than four years after the complainant had left the Agency. In these circumstances, the FRA had to balance the legitimate interest of the former member of staff to have an investigation carried out and the need for the FRA to avoid any undue deterioration of the working environment as a result of such an investigation.

20. Finally, the FRA also pointed out that were it to accept the Ombudsman's friendly solution proposal, it would have to adopt a new decision which could then be challenged by the complainant before the EU Courts, reopening thus again a time-limit that had already expired. In the FRA's view, in such a case the possibility existed that it could also be found liable and be obliged to pay damages, which would be "undesirable".

21. In his observations, the complainant expressed his disappointment with the FRA's legalistic arguments, which showed ignorance of the consequences of psychological harassment towards staff. Moreover, as the Civil Service Tribunal noted in a recent judgment concerning a case of psychological harassment that involved the FRA, the investigator appointed by the FRA in that case had concluded that there was indeed an "*intense atmosphere of fear*" in the relevant department of the FRA. [1]

22. The Ombudsman regrets the rejection by the FRA of her friendly solution proposal. Although the Ombudsman takes the view that the FRA has adequately explained and justified its behaviour concerning the issue of the diploma, the fact remains that the FRA still refuses to conduct a proper and thorough investigation as regards the issue of the complainant's alleged isolation. The arguments put forward by the FRA in support of its position are however unconvincing.

23. First, the FRA admits that, in this respect, the complainant's allegations are very precise. In particular, it should be noted that the complainant mentioned warnings and the installation of a security camera. The FRA did not express any position as to the veracity of those allegations. Moreover, the complainant identified several witnesses by name who could support his allegations. In such circumstances, it is very difficult to accept that the FRA should not be required to conduct an investigation in order to establish the veracity of the alleged facts.

24. Second, even if the FRA was allowed, or even required, to carry out a balancing exercise between the interests of the complainant who no longer is member of its staff, and the interest of the service, it is not clear why in the present case the FRA should still refuse to carry out the appropriate investigation in the interest of the service. If the complainant's allegations were actually well-founded, it would then be in the interest of the service to take the measures that are necessary precisely in order to prevent similar events from recurring in the future.

25. Third, as regards the possible financial consequences of the re-examination of the case by the FRA, the Ombudsman considers that, if the complainant's allegations were to be



well-founded, it would be in line with the principles of good administration to take adequate measures, including providing appropriate compensation for the harm allegedly suffered.

26. Taking into account the fact that the FRA has carefully considered the Ombudsman's friendly solution, and has even sought external legal advice before providing its reply, it appears that it would not be useful to make a draft recommendation at this stage since it appears unlikely that it would be accepted. Therefore, the Ombudsman will close the present inquiry with a critical remark finding maladministration.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following critical remark:

The Fundamental Rights Agency committed maladministration by refusing to carry out a proper and thorough investigation into the complainant's allegations of psychological harassment.

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

Emily O'Reilly

Done in Strasbourg on 05 December 2014

[1] Case F-58/10 *Allgeier v FRA*, judgment of 18 September 2012, not yet published in the ECR, paragraph 35. This case related to allegations of psychological harassment within the FRA involving some of the persons also involved in the facts underlying the present case.