

Decision in case 1517/2017/JF on the early termination of the complainant's contract as an accredited parliamentary assistant by the European Parliament

Decision

Case 1517/2017/JF - Opened on 08/02/2018 - Decision on 08/02/2018 - Institution concerned European Parliament (No further inquiries justified) |

The case concerned the early termination of the complainant's contract as an accredited parliamentary assistant. When the European Parliament failed to reply to his complaint about his contract being terminated, the complainant turned to the Ombudsman.

In the course of the Ombudsman's inquiry, the Parliament explained why it considered the termination of the complainant's contract to be justified. It also replied to the other concerns raised by the complainant.

After thoroughly examining the Parliament's reply, and in the absence of any arguments from the complainant that could call the Parliament's position into question, the Ombudsman concluded that no further inquiries into the complaint were justified.

Background to the complaint

1. Following the request of the Member of the European Parliament ('MEP') for whom the complainant worked at the time, the Parliament terminated the complainant's contract as an accredited parliamentary assistant ('APA').
2. On 25 April 2017, the complainant made a complaint to the Parliament, in accordance with the EU Staff Regulations (Article 90(2)) against the decision to terminate his contract.
3. As the Parliament did not reply within the applicable four-month deadline, the complainant considered his complaint implicitly rejected and turned to the Ombudsman on 28 August 2017.

The inquiry

4. The Ombudsman opened an inquiry into the complainant's concerns about the early



termination of his contract.

5. In the course of the inquiry, the Ombudsman's inquiry team duly considered the information provided in the complaint.

Arguments presented to the Ombudsman

6. In his complaint to the Parliament, the complainant claimed that his contract had been terminated early as a retaliatory measure for "whistleblowing" steps he had taken, notably in his decision to contact the Parliament's Secretary General, on 4 October 2016, to highlight certain concerns. As a result of this, he claimed that he was eligible for protection, according to the provisions of the Staff Regulations on whistleblowing. He also claimed he had suffered moral and material damages, and should be duly compensated.

7. In his complaint to the Ombudsman of 28 August 2017, the complainant, essentially, repeated the arguments raised in his complaint to the Parliament. He added that the Parliament had also failed to reply to a proposal for an agreement he had made in May 2017. Under this proposal, he suggested that the Parliament should pay him outstanding amounts that were still due, and ask the 'Comité des Actions Sociales' to examine a request for financial assistance he had previously submitted to the Parliament [1] .

8. On 21 and 24 September 2017, the complainant forwarded to the Ombudsman the replies he had subsequently received from the Parliament. On 19 November 2017, he also made a new complaint to the Parliament in accordance with Article 90(2) of the Staff Regulations, and put the Ombudsman in copy.

The Ombudsman's assessment

9. In its reply of 6 September 2017, the Parliament informed the complainant that there were no outstanding amounts in respect of leave not taken that could be still due to him, as he had claimed. It also took the view that the early termination of the complainant's contract is compatible with the applicable rules, as set out in the Conditions of Employment of Other Servants ('CEOS'). It added that the CEOS does not provide for any right to, or negotiation about, compensation. It further pointed out the different unemployment benefits for which the complainant could be eligible. Finally, it explained why it considers that the complainant is not eligible for financial assistance, and clarified the reasons why it did not consult the 'Comité des Actions Sociales' when assessing the complainant's financial assistance request.

10. In a subsequent reply of 19 October 2017, the Parliament explained that the termination of the complainant's contract was based on the fact that communication between him and the MEP was deemed to be no longer possible. It referred, in particular, to an e-mail exchange of late September 2016, which, according to the Parliament, clearly demonstrates a deterioration of the complainant's working relationship with the MEP. The Parliament found as legitimate the



reasons advanced by the MEP to demonstrate that the 'relationship of trust' [2] between him and the complainant had been broken. According to the Parliament, the complainant did not demonstrate that the MEP alone was responsible for the deterioration in the working relationship.

11. In the Parliament's view, the provisions of the Staff Regulations on whistleblowing do not prevent the adoption of administrative measures that are both objectively justified and unrelated to any possible illegal activity raised by a whistleblower. According to the Parliament, the complainant has not brought forward any evidence to demonstrate that the request for the termination of his contract was a measure taken in retaliation for his attempt to contact the Secretary General of the Parliament in October 2016 to report potential wrongdoing.

12. Regarding the complainant's request for compensation, the Parliament considered that the conditions for incurring 'non-contractual liability' [3] were not fulfilled, and that it was therefore not liable to compensate the complainant. It also made clear to the complainant that, in accordance with the applicable rules, he was entitled to receive an unemployment benefit for four months.

13. The Ombudsman thus finds that the Parliament has replied to the complainant's concerns in respect of the early termination of his contract, and to the related concerns he raised regarding the outstanding amounts he claimed were due to him, whistleblower protection and financial assistance.

14. In light of the fact that the complainant has not presented any arguments to the Ombudsman that could call into question the Parliament's position, the Ombudsman concludes that no further inquiries into the complaint are justified.

15. This notwithstanding, the Ombudsman notes that, on 19 November 2017, the complainant made a new complaint to the Parliament (in accordance with Article 90(2) of the Staff Regulations). In this complaint, he has asked the Parliament to annul its decision of 6 September 2017, by which it refused him compensation for leave not taken, and to pay him that compensation. Should the complainant be dissatisfied with how the Parliament handles this complaint, he could submit a new complaint to the European Ombudsman.

Conclusion

Based on the inquiry, the Ombudsman's inquiry team closes this case with the following conclusion:

No further inquiries are justified.

The complainant and Parliament will be informed of this decision .



Peter Bonnor

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Strasbourg, 08/02/2018

[1] According to the complainant, the “Comité des actions sociales” is a (in the original French) “*Comité interne... chargé de statuer sur les demandes d’aides sociales... convoqué par le Chef d’Unité...*”

[2] According to the Conditions of Employment of Other Servants of the EU (Article 139 (1)(d)), the breaking of the ‘trust’, which is the basis of the working relationship between APAs and MEPs, is a reason for terminating the contract of an APA.

[3] Under the concept of non-contractual liability, an EU institution would be liable to compensate an individual for damages caused under certain circumstances. More information: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Aai0040> [Link]