



24.7.2019

NOTICE TO MEMBERS

Subject: Petition No 1068/2018 by Oliver Lücke (German) on the compliance of Switzerland with its obligations under the agreement on the free movement of persons

1. Summary of petition

The petitioner calls for political action by the EU to ensure that Switzerland respects its obligations under the EU-Swiss agreement on the free movement of persons, in particular as regards the prohibition on discrimination (Art. 2) and the right to an effective complaints mechanism (Art. 11). The petitioner is a practicing attorney in the city of Bern, specialising in human rights law. He claims that certain authorities within the Swiss judicial system have exerted undue financial pressures on him, as well as undertaken other actions, which the petitioner describes as concerted mobbing efforts, including written communications urging him to stop practicing law in Switzerland and return to Germany. The petitioner reports that a claim on this matter is pending before the European Court of Human Rights. He also refers to other petitions submitted to the European Parliament on similar issues concerning the discrimination of EU citizens working or residing in Switzerland.

2. Admissibility

Declared admissible on 25 February 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 24 July 2019

The Commission's observations

The petitioner asks the EU to take political action to ensure that Switzerland complies with the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons (FMOPA), in particular with the principle of

non-discrimination (Article 2) and processing of appeals (Article 11).

The petitioner claims that since the beginning of 2017 he experienced pressure from Swiss authorities that he describes as concerted mobbing efforts. He explains that legal aid was either revoked or denied to his clients in legal proceedings causing financial pressure. In addition, he received two written communications, in one of which an official of Swiss cantonal authority asks him to stop practicing law in Switzerland and return to Germany.

The petitioner argues that such conduct goes along with the newly introduced article 121a of the Swiss Constitution, which speaks against the freedom of movement of persons.

Similarly to his previous petition 0826/2018, the petitioner also states that Switzerland does not guarantee effective means of redress. He informs that his action against the state for damage caused when the authorities made public court rulings with the petitioner's name and therefore infringed data protection rules was not admitted either at the Swiss Federal Court or at the Federal Department of Finances.

Articles 2 and 7(a) FMOPA oblige the Contracting Parties to ensure the right to equal treatment with nationals in respect of access to, and pursuit of, an economic activity, and living, employment and working conditions.

With regard to the introduction of article 121a to the Swiss Constitution, Switzerland has implemented it by adopting the amendments to the Law on Foreigners (Article 21a) on 16 December 2016 and to the Ordinance on employment service¹ (Articles 51a-53e) on 8 December 2017. These address, in particular, the publication of and access to job vacancies for jobseekers registered at public employment offices and are not directly linked to the present allegations or situation of the petitioner. The Commission is closely monitoring the implementation of the above laws at the Joint Committee established under Article 14 FMOPA that is responsible for the management and proper application of the Agreement. Up until now, the Commission has not identified that Swiss laws and/or practice would be contrary to FMOPA.

The Commission considers that this case could concern at the utmost an individual instance of incorrect application of FMOPA, in the absence of any indication of a general practice or of a problem of compliance of Swiss legislation with FMOPA. The Swiss courts, which have access to all the pertinent facts, are better placed than the Commission to deal with the matter.

Article 11 FMOPA provides for the right to appeal to competent authorities (and ultimately to competent judicial authorities) in respect of the application of the provisions of the Agreement. It also requires that appeals have to be processed within a reasonable period of time. The petition does not include any information that these provisions are not complied with.

¹ <https://www.admin.ch/opc/fr/classified-compilation/19910007/201807010000/823.111.pdf>

The Agreement does not stipulate data protection rules and consequently, it does not cover situations related to state liability claims in case such rules are not respected as claimed in the petition. In addition, the Commission has no powers to decide on the jurisdiction of Swiss national authorities. The petitioner is invited to contact once again the competent institutions to clarify the jurisdiction question. In case the petitioner still is not able to determine the competent authority, the Commission is ready to bring this issue to the attention of Swiss authorities.

Conclusion

The Commission considers that this case could concern at the utmost an individual instance of incorrect application of FMOPA, which is a matter that the Swiss courts are best placed to deal with. The petition does not include any information regarding the alleged violation of the right to appeal as guaranteed under Article 11 FMOPA.