



24.7.2019

NOTICE TO MEMBERS

Subject: Petition No 1211/2018 by R.C. and M.R. (Italian), legal representatives, on behalf of the Association of Italian Officials of the European Patent Office, bearing 26 signatures, on the transfer of pension contributions paid in Italy to Eurocontrol and the European Patent Office

1. Summary of petition

The petitioners are presenting a group petition on the protection of the pension rights of their clients, 26 international civil servants currently working for Eurocontrol and the European Patent Office. They are all Italian citizens who worked in Italy and in the EU before joining these international organisations. As there is no agreement between Italy and Eurocontrol or the European Patent Office which provides for the transfer of pension entitlements, or the aggregation of contributions, with a view to acquiring an entitlement to a single pension, the Italian citizens in question may lose the contributions they paid in Italy, because Italian law allegedly makes no provision for their reimbursement. The petitioners invoke: a series of articles of the Treaties (9, 20, 45, 145, 146, 147 and 151 TFEU) and of the EU Charter of Fundamental Rights (15 and 34), the preambles to Directive 2004/58/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, and Regulation (EC, Euratom) No 723/2004 amending the Staff Regulations of EU officials, as well as other documents drawn up by the Commission (COM(2012) 153 final on the external dimension of EU social security coordination) and Parliament (resolution of 25 October 2011 on promoting the mobility of workers within the EU, in particular paragraphs 27 and 33) and, last but not least, the CJEU judgment of 4 July 2013 in Case C-233/12, *Gardella v. INPS*.

The petitioners are calling on Parliament to halt this discrimination as regards access to pension entitlements, so that contributions paid in the country of origin can be combined with those paid to the international organisations referred to above. They also ask that the issue be made the subject of a European Parliament resolution.

2. Admissibility

Declared admissible on 18 April 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 24 July 2019

This petition is similar to Petition No 0679/2017 and to the case which culminated in the Court of Justice of the European Union (CJEU) handing down its Gardella judgment of 4 July 2013 (C-233/12, ECLI:EU:C:2013:449). The Commission would point out that that was a case between Mr S. Gardella, an employee at the European Patent Office (EPO) in Munich, Germany, and the Istituto nazionale della previdenza sociale (INPS) (the Italian National Social Security Institute) concerning the latter's refusal to transfer to the EPO's social security scheme the capital value representing the pension rights Mr Gardella had acquired during his periods of employment in Italy. In its judgment the CJEU stated the following:

'It is thus not apparent from Article 45 TFEU, read in the light of Article 48 TFEU, that there is an obligation for a Member State to provide for the option for an official of an international organisation, such as the EPO, of transferring the capital value representing previously-acquired pension rights to the pension scheme of that international organisation, or that there is an obligation to conclude an international agreement to that effect. Consequently, the absence of such an option for officials of an international organisation such as the EPO cannot be considered to be an impediment to the free movement of workers for the purposes of Article 45 TFEU.' (paragraphs 35-36)

In the light of the above, it must be concluded that Italy is under no obligation to transfer the pension rights acquired there by the petitioners to international organisations' schemes.

On the other hand, Italy does have an obligation to take account of periods of employment in international organisations when assessing eligibility for an Italian pension.

It follows from the Gardella judgment that depriving workers of the right to accumulate contribution periods completed in accordance with the statutory requirements of more than one Member State – a right enjoyed, as a rule, by all workers who are in employment in a Member State, except those employed by international organisations – constitutes a restriction of their freedom of movement within the meaning of Article 45 of the Treaty on the Functioning of the European Union. The same applies to aggregating periods for the purposes of entitlement to an early retirement under a national scheme (Gregorio My judgment, C-293/03, ECLI:EU:C:2004:821).

In 2019, one of the petitioners lodged a complaint with the Commission concerning the same subject as this position and registered as CHAP(2019)307. In that connection, the Commission wrote to the petitioner in May 2019 to ask her to provide details about the

specific cases referred to and about the legal provisions adopted in Italy as a result of the Gardella judgment.

Conclusion

The Commission is keeping an eye on the issue raised by the petitioners and, depending on the information it receives, in connection with complaint lodged with it, will provide appropriate follow-up.