



28.9.2012

NOTICE TO MEMBERS

Subject: Petition 0042/2012 by Jacek Kuzma (Polish), on the Polish justice system's alleged negligent conduct in relation to the handling of his case and the related breach of the requirements of EU law

1. Summary of petition

The petitioner, who feels that he has been a victim of negligent conduct on the part of the Polish justice system in relation to the handling of his case concerning the enforcement of the Working Time Directive and the payment of outstanding wages, refers to the judgment of the Court of Justice of the European Union in the Case C-173/03 (Non-contractual liability of Member States - Damage caused to individuals by infringements of Community law attributable to a national court adjudicating at last instance - National legislation limiting State liability to cases of intentional fault and serious misconduct on the part of the court - Liability excluded in connection with the interpretation of provisions of law or assessment of facts or evidence in the exercise of judicial functions). The petitioner has already brought his case, in vain, before the European Court of Human Rights, but as he believes that the Court of Justice of the European Union's decision in the above-mentioned case may also apply in his case, he is requesting the European Parliament to intervene.

2. Admissibility

Declared admissible on 27 April 2012. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 28 September 2012

The petitioner was designated as an administrator (*zarządca komisaryczny*) of a public entity in insolvency, which eventually was declared bankrupt. In the course of the bankruptcy proceedings the wages of the petitioner were classified as belonging to the 6th class of priority

debt and, eventually, were not paid from the bankruptcy estate. The petitioner contested this decision in the Polish courts without success.

The petitioner considers that he has been victim of a negligent conduct on the part of the Polish justice system in relation to the handling of his case. He complained that by the decision of the Polish courts he has lost his remuneration. He considers that the Polish courts by approving the classification of his remuneration as a 6th priority debt have breached the European Convention of Human Rights (ECHR), in particular the rights to property, as well as the right to effective remedy.

He complained to the Strasbourg Court but his complaint has been rejected by the ECtHR.

In his petition to the European Parliament he argues that the Polish courts, including the last instance court, have ignored the obligations imposed on them by international law, namely the ECHR, which resulted in a judgment causing him a pecuniary damage. Relying on the Court of Justice of the European Union rulings (Cases C-173/03 *Traghetti del Mediterraneo* and C-224/01 *Köbler*) he claims that Poland should be obliged to compensate him for the damage which is a result of a Polish court final judgment breaching his fundamental rights, recognized in the ECHR and the EU legal system.

In the rulings quoted by the petitioner the Court of Justice of the EU recognized the existence of liability of a Member State for a national court ruling of the last instance where the ruling infringes the rule originating in EU law intended to confer rights on individuals, where the breach is sufficiently serious and there is a direct causal link between that breach and the loss or damage sustained by the injured parties.

This principle cannot be applied in the case raised by the petitioner as there is no link between the court ruling and EU law.

Under the Treaties on which the European Union is based¹, the Union has no general powers in the area of fundamental rights. In accordance with Article 6 of the Treaty on European Union (TEU) the fundamental rights constitute, indeed, general principles of the EU law. The fundamental rights recognized by the EU are spelled out in the Charter of Fundamental Rights of the EU. The Charter is legally binding, as clarifies its Article 51, on the EU institutions and EU Member States when implementing EU law. Article 6 of the TEU clearly states that the provisions of the Charter do not extend in any way the competences of the Union as recognized by the Treaties. Therefore, on the basis of EU law a Member State may be declared liable for breach of fundamental rights only if such a breach appeared when a Member State was applying the EU law.

On the basis of the information provided, it does not appear that the matter referred by the petitioner is related to the implementation of Union law. The EU Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, which lays down common rules on the jurisdiction of the courts, the recognition of judgments and the applicable law, and compulsory coordination of proceedings opened in several Member States is not relevant in this context. The center of gravity of the complaint is the allegedly unjust qualification of the petitioner as the 6th priority creditor. The Regulation does not contain rules on the

¹ Treaty on European Union and Treaty on the Functioning of the European Union.

categorization of creditors.

The Polish courts deciding in the case of petitioner, qualifying him as creditor of 6th category, have not applied EU law but national law. Therefore such a decision of Polish courts cannot raise in any case the liability of Poland for breach of EU law.

In the present case, it is thus for the concerned Member State to ensure that its obligations regarding fundamental rights - as resulting from international agreements such as the European Convention of Human rights and from their internal legislation - are respected.

Based on the elements provided in the complaint, the Commission cannot pursue this case.

Additionally, it is to be noted that the EU institutions do not have power in any case to adjudicate the compensation for pecuniary damage due to breach of the EU law by the ruling of a court of a Member state. Such compensation can be sought by the individuals in the national courts.