



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Petitions

27.6.2014

NOTICE TO MEMBERS

Subject: Petition 0737/2013, by Benoît Perrussel (French), on behalf of the Fédération Autonome des Sapeurs Pompiers Professionels on volunteer firefighters' working hours in France

Petition 0966/2013 by Cyrille Jouteux (French), on behalf of the autonomous union of firefighters of Saône-et-Loire, on the working time of volunteer firefighters

Petition 1178/2012, by Emilie Labeyrie (French), on alleged violation of European rules governing working times and conditions

1. Summary of petition

Petition 0737/2013

The petitioner maintains that French Law 2011-851 of 20 July 2011, which governs the work of volunteer firefighters, is at odds with Directive 2003/88/EC, in particular as regards the length of the working week and minimum daily and weekly rest periods. He contends that the current arrangement places both the firefighters themselves and the general public at risk, given the nature of the work that fire services perform.

He says that that law is also at odds with Directive 1999/70/EC in that it discriminates between voluntary firefighters and professional firefighters.

In his view, voluntary firefighters should be deemed workers within the meaning of Directive 89/391/EEC.

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Petition 0966/2013

According to the petitioner, Law No 2011-851 of 20 July 2011 on the employment of volunteer firefighters shows that volunteer firefighters are, to all intents, employees.

The law breaches several provisions laid down by Directive 2003/88/EC, which, in particular, defines: the maximum weekly working time, minimum weekly rest and minimum daily rest periods.

Moreover, the French law in question is also in breach of Directive 1999/70/EC, as it discriminates between firefighters on indefinite contracts and firefighters on fixed-term contracts.

Petition 1178/2013

The petitioner is Chair of a firefighters' trade union in the Landes region of France. She states that the French Government, in its legislation on working times and conditions for voluntary firefighters, is violating several European directives. She refers in particular to Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work, Directive 1999/70/EEC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and Directive 2003/88/EC concerning certain aspects of the organisation of working time. The petitioner calls for these violations of European law to be investigated.

2. Admissibility

Petitions 737/2013, declared admissible on 19 December 2013.

Petitions 966/2013 declared admissible on 11 February 2014.

Petitions 1178/2013 declared admissible on 18 March 2014.

Information requested from Commission under Rule 216(6).

3. Commission reply, received on 27 June 2014

Petitions 737/2013, 966/2013 and 1178/2013

The petitions

The petitioners state that French law 2011-851 of 20 July 2011 which governs the work of volunteer fire-fighters is not in conformity with the Working Time Directive (Directive 2003/88/EC). According to the petitioners, limitation of weekly working time and minimum rest periods as provided for in the Working Time Directive are not respected for volunteer fire-fighters. The petitioners state that this may cause accidents while they assume that according to the *Feuerwehr Hamburg* case¹, all French firefighters are to be treated as 'workers'. They also question conformity of the above mentioned French law with Fixed Term

¹ Ref. C-52/04, ' *Personalrat der Feuerwehr Hamburg v Leiter der Feuerwehr Hamburg*', ECR I-07111.

Work Directive (Directive 1999/70/EC) and suspect in particular the violation of the non-discrimination principle between workers with fixed term contracts and those with permanent contracts. They are of the opinion that France has failed to correctly transpose those two Directives in the case of volunteer fire-fighters.

The Commission's observations

The Working Time Directive sets down common minimum standards for the protection of workers' health and safety across all Member States, including a limit to working time (maximum 48 hours/week on average, including any overtime), minimum daily and weekly rest periods, and 4 weeks' minimum paid annual leave.

As regards the question whether volunteer fire-fighters are considered 'workers' for the purposes of the Working Time Directive, the following should be noted:

- a) In the *Feuerwehr Hamburg* case¹, the European Court of Justice did not rule on the personal scope of the Working Time Directive (i.e. on whether all firefighters are to be regarded as 'workers') but on its material scope, by ruling that the normal activities of a public fire service are subject to the rules of the Directive. In this case, the Court clarified that only when the gravity and scale of events are exceptional (i.e. disasters, attacks, serious accidents, etc.), the need not to undermine the overriding objective of preserving the safety and health of the community at large must temporarily prevail over the aim of the Working Time Directive.
- b) According to another CJEU judgment in the *Isère* case², the concept of 'worker' under the Directive has an autonomous meaning specific to EU law. However, while the essential feature of an employment relationship is that '*for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration*', the concept must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The Court has held that it is for the national court to apply that concept of a 'worker' in specific cases, and the national court must base that classification on objective criteria and make an overall assessment of all the circumstances of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved. It would therefore depend on the working arrangement under the applicable national law and practice and factual circumstances whether a volunteer fire-fighter is to be regarded as a 'worker' under the Working Time Directive.

According to clause 2(1), the provisions of the Fixed Term Work Directive only apply where there is '*an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State*'. According to this provision, and with reference to the CJEU's judgement in the *Sibilio* case³, it would therefore depend on the working arrangement under the applicable national law and practice whether a volunteer fire-fighter is to be regarded as a 'fixed-term worker' under the Fixed Term Work Directive.

¹ See reference in the above footnote.

² Ref. C-428/09, *Union syndicale Solidaires Isère v Premier ministre and Others*, ECR I-09961.

³ Ref. C-157/11, *Giuseppe Sibilio v Comune di Afragola*, not yet published.

The Commission is not aware of a decision by a national court in France which would regard volunteer fire-fighters as 'workers' or persons under an 'employment relationship'.

Conclusion

It depends on the working arrangement under the applicable national law and practice and factual circumstances whether a volunteer fire-fighter is to be regarded as a 'worker' under the Working Time Directive and as 'fixed term worker' under the Fixed Term Work Directive.

In the context of the current impact assessment on a possible revision of the Working Time Directive, the Commission will closely examine the particular situation of voluntary firefighters and will seek to guarantee both the overall effectiveness of 24-hour emergency services and the adequate protection of their workers.