



28.2.2018

## NOTICE TO MEMBERS

**Subject: Petition No 0729/2017 by Michael Ashbrook (German) on equal rights for EU Institutions employees**

### 1. Summary of petition

The petitioner asks for the introduction of a new article in the EU Staff Regulations whereby the EU Charter of Fundamental Rights, the Community Charter of Fundamental Social Rights of Workers, the Working Time Directive, the Fixed-Term Work Directive, the Temporary Agency Work Directive, the Part-Time Work Directive as well as the ILO Conventions nos. 87, 98, 100 and 20 shall apply to officials and other servants of the institutions, who shall be subject to disciplinary proceedings if they violate any of the rights conferred by the above-mentioned legal documents. The petitioner argues that, whether they are EU citizens or third country nationals, EU institutions employees should receive equal treatment and enjoy the same rights as national workers.

### 2. Admissibility

Declared admissible on 30 November 2017. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 28 February 2018

The Commission's observations

The petitioner claims that the Staff Regulations and Conditions of employment of other servants (CEOS) should be amended in order to include a provision stating that the following legal instruments shall apply to officials and other agents: the EU Charter of Fundamental Rights, the Community Charter of Social Rights of Workers, a series of directives in the field of safety and security at work and conventions concluded within the framework of the International Labour Organisation (ILO). According to the petitioner, thanks to this provision, officials and other agents would enjoy the rights enshrined in these instruments and thus be

treated in the same way as all the other EU citizens.

This petition can be understood as dealing with two separate – though related – issues: the one of the applicability of the Charter of Fundamental Rights to officials and other agents, on the one hand, and the one of the applicability to them of other legal instruments related to social rights, on the other hand.

### *Fundamental Rights*

The status of officials and agents of the E.U. is defined in the Staff Regulations of Officials and CEOS. The Staff Regulations and CEOS are established through an E.U. Regulation, adopted on the basis of Article 336 of the Treaty of the Functioning of the EU (TFEU). As any Regulation, they have to be in conformity with the Treaties, but also with the Charter of Fundamental Rights. As the petitioner himself reminds in his petition, article 51 of the Charter of Fundamental Rights states that "the provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union (...). They shall therefore respect the rights, observe the principles and promote the application thereof (...) respecting the limits of the powers of the Union as conferred on it in the Treaties". This means that the Charter is already fully applicable to the institutions, and that all the officials and other agents subject to the Staff Regulations and the CEOS already enjoy from all the rights guaranteed by the Charter.

In addition, it is important to stress that all official or other agent, irrespective of their nationality (which includes the derogatory cases where an official or agent does not have the nationality of a Member State), fully enjoy all the rights guaranteed by the Charter and the Staff Regulations and are also covered by the Protocol No 7 on the Privileges and Immunities of the European Union, which notably provides facilities for the settling of the official in their place of employment.

In conclusion, as demonstrated above, the Charter is already fully applicable to officials and other agents, in accordance with the hierarchy of legal norms. The addition of a provision in the Staff Regulations and the CEOS such as the one proposed by the petitioner would thus have no impact on their current situation in terms of fundamental rights.

### *Social Rights*

First of all, the Commission recalls that Article 31 of the Charter of Fundamental Rights, which is fully applicable to all officials and other agents and with which the Staff Regulations have to comply (cf. *supra*), provides that "every worker has the right to working conditions which respects his or her health, safety and dignity (...) [and] to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave".

Working conditions laid out in the Staff Regulations are fully compliant with these guarantees.

Also, according to Article 1e (2) of the Staff Regulations, applicable by analogy to contract and temporary agents, "officials in active employment shall be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties".

Although directives are addressed to the Member States, the relevant provisions of directives adopted in the field of health and safety at work are applicable, through Article 1<sup>e</sup> of the Staff Regulations, to officials and other agents. Thus, they enjoy health and safety standards that are at least equivalent to the standards laid out in these directives. Moreover, it is to be noted that the Court of Justice has adopted a broad interpretation of the notion of "health and safety standards", which includes notably the rights to paid leave.

Concerning the proposal to mention in the Staff Regulations the Community Charter of Social Rights of Workers, the Commission reminds that this Charter is a non-binding instrument which represents a commitment by the Member States to a set of social policy and labour law objectives; it has a merely declaratory character and thus does not create rights for the citizens. However, this Charter stimulated the adoption of a series of directives in the field of health and security at work like pregnancy and maternity or working time – and the officials and other agents already enjoy appropriate standards of protection in these fields.

Finally, for what concerns the conventions concluded within the framework of the International Labour Organisation, it should be pointed out that the EU is not a party to this international organisation. The EU Treaties establish a specific and autonomous legal order, which is proper to the EU. Although the 28 Member States have ratified these conventions, any mechanical transposition of a set of rules from outside would compromise its integrity and coherence.

In conclusion, the Staff Regulations already provide for a high level of protection of the subjective rights of officials and other agents while taking into consideration the specificities of the European Civil Service. In this regard, the fact that the ILO conventions are not mechanically transposed into the EU staff rules does not mean EU officials and other agents enjoy a lesser protection. For example, Article 4 of the ILO Convention No 158 concerning termination of employment at the initiative of the employer “inspired” Article 24(a) of the European Social Charter (No 163), which, in turn, “inspired” Article 30 of the Charter of Fundamental rights (see Case F-1/05, *Pia Landgren v ETF*, ECLI:EU:F:2006:112, paragraph s 69 and 70). Under the Staff Regulations EU officials enjoy the same or even higher level of protection than the one agreed in the framework of the ILO.

### Conclusion

The provision that the petitioner proposes to introduce within the Staff Regulations would not create new rights nor give more protection than the current legal framework applicable to officials and other agents working within the institutions. Indeed, the Charter of Fundamental Rights is already fully applicable to all staff. Also, the staff already enjoy all the standards laid down by the directives adopted within the field of health and security at work. As concerns ILO conventions, it is to be noted that the Staff Regulations already provide the same or even higher level of protection than the one agreed in the framework of the ILO.