



21.9.2018

NOTICE TO MEMBERS

Subject: Petition No 0419/2018 by Miguel Vicente Nunez (Spanish), on behalf of Union Syndicale Luxembourg, bearing 90 signatures, on supposed discrimination and non-respect of the working rights in day-care centres of the European Institutions

1. Summary of petition

The petitioner represents the contractual agents employed under Luxembourg law and temporary workers who work in crèches and day-care centres (garderies) of the European institutions in Luxembourg. They ask the authorities of the European Union to support the actions they deem necessary for several reasons. They request equal treatment in terms of working conditions, in accordance with the regulations of the Grand Duchy of Luxembourg, and ask that at the very least the respect of the national laws and the collective work agreements for the employees of the aid and care, and social sectors (CCT SAS) be guaranteed. They ask that cases of social dumping be abolished, that the principle of ‘equal work, equal pay’ be guaranteed and that an end be put to the disparate working conditions. Several types of contracts have coexisted in the crèches and day-care centres for more than 10 years: There are employees employed under national law, contractual agents classified according to their employer (function group III for the European Parliament and function group II for the European Commission), long-term temporary workers (several years in some cases), external service providers, and self-employed persons. In 2014, the internal employees’ representation (Union Syndicale Luxembourg) received a mandate to represent the petitioners and to take any action deemed necessary to find a solution to this situation.

2. Admissibility

Declared admissible on 2 July 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 21 September 2018

The Commission's observations

As regards the diverse statuses the staff working at the crèches and day-care facilities

The management of the Interinstitutional Early Childhood Centre (CPE) is shared, with the European Parliament being responsible for the crèches and the European Commission (OIL) for the Day-Care Centre (Garderie) and the Study and Recreation Centre. The three establishments are reserved for the children of officials and other servants of the European institutions and bodies in Luxembourg who are members of the Social Action Committee (SAC).

In the establishments managed by the Commission, educational staff have the status of contractual agents in function group II (hereinafter 'CA' – currently approximately 65 persons) or of employees under Luxembourg law (hereinafter 'ELL' – approximately 40 persons). The educational staff does not include any self-employed staff or service providers.

At the time of the 2004 reform of the Staff Regulations of the European civil service, the ELLs employed by the Commission were offered a CA contract. Some accepted this while others opted to keep their ELL status. Since 2004, the Commission has not recruited any more ELLs for the Early Childhood Centre (CPE). The coexistence of these two different statuses is therefore the result of a choice left to the persons concerned and will cease with retirement of the last ELL. The collective bargaining agreement (CCT-SAS) applies to all educational staff having ELL status.

The wage conditions of ELLs depend, among other things, on their diploma, length of service and number of contractual hours (the majority of educators have a structural part-time contract of between 29.5 and 36 hours per week), while the CA wage conditions fall under the Conditions of Employment of Other Servants of the European Union. The number of contractual hours of educators consists of a given number of hours worked on site with the children, and of a 'variable' number of hours to enable staff to prepare activities, to follow training and to engage in working groups or other ancillary activities.

Some of the staff complement their part-time contracts with other professional activities. The new internal rules applicable to CAs adopted by the Commission in October 2017 made this easier.

Eight educational coordinators (educators with additional specific coordination and operational management tasks) have 40-hour contracts. In addition, a further 10 staff members also have 40-hour contracts (for historical reasons); some of them work half-time (non-structural part-time).

An internal mobility exercise enabled two CA educational staff to find different posts within OIL in 2018.

In order to compensate for absences of staff subject to the Staff Regulations or Luxembourgish legislation, and in order to provide for certain specific activities, the Commission employs interim staff via a framework contract, in accordance with the legislation in force.

At present, a new CA selection procedure ('CAST') is underway and OIL intends to recruit some twenty CAs, in principle in early 2019. This will considerably reduce the number of temporary staff. However, the CPE cannot replace all interim staff with CAs, including in the case of 'structural' absences, as the necessary language profiles may change according to the operational needs and the number of children enrolled at the CPE is subject to fluctuation over time. This number is affected notably by the staffing policy of the institutions and bodies making use of the service (for example, the impact of the 2004 enlargement and increased recruitment by the EIB). The number is currently decreasing in the case of the Garderie and is expected to fall in the Study Centre in a few years.

As regards the obligation on the institutions of the European Union at the very least to respect local social provisions at the place of work – comparison with local staff employed in the delegations of the European Union (outside the European Union)

The Commission would first of all like to point out that contract staff employed under the Conditions of Employment of Other Servants of the European Union are covered by the social security scheme of officials and other servants of the European Union under the conditions laid down in Chapter 8 of said conditions (adopted pursuant to Article 14 of the Protocol on Privileges and Immunities annexed to the Treaties).

In contrast to this, the same is not the case for local agents employed outside the Union whose conditions of employment are laid down in Article 121 of the Conditions of Employment of Other Servants. These two categories of staff are thus in two different situations in terms of the applicable legal provisions on social security, which explains the difference in treatment raised by the petitioners.

As regards the disparity in purchasing power of contract staff employed in Luxembourg

The European Commission would first of all like to point out that, in accordance with an agreement concluded in February 2015 between its administration and the representation of its staff in Luxembourg, the Commission proceeded to implement a comprehensive set of operational measures.

- In the first place, the Commission set up a 'social safety net' to ensure that no contract agent receive net wages lower than the Luxembourg national minimum wage for qualified employees. In order to implement this new and unique social measure based on monthly payments to the staff concerned, a detailed comparison mechanism was developed to take account of allowances, indemnities and deductions applicable in the respective systems of remuneration for staff employed under national law and staff employed under the Conditions of Employment of other servants of the EU, to best reflect any differences in income and purchasing power.
- Secondly, the Commission took a series of measures relating specifically to the purchasing power of a wider group of contract staff (around 300 of them), including price

reductions for catering services, a greater reduction in the price of the ‘M-Pass’ public transport card, and a more progressive sliding scale applicable to the rates for institutional crèches and day-care centres.

- Thirdly, within the limits of the applicable legal framework, contract staff employed in Luxembourg benefited from substantial efforts to reclassify (promote) staff within their grade or, on the basis of new framework rules adopted in October 2017, to a higher function group, where the detailed analysis carried out by the administration identified officials whose actual tasks did not match their function group (this process was launched as soon as an appropriate legal basis was adopted and is currently ongoing).

As regards a correction coefficient for the city of Luxembourg

The Commission would like to point out that, as the Staff Regulations currently stand, it is legally impossible to apply a correction coefficient to the remuneration of staff serving in Luxembourg. The Commission does not agree with the interpretation of Article 64(3) of the Staff Regulations put forward by the petitioners, who consider that this provision allows a correction coefficient to be applied to staff serving in Luxembourg.

On the contrary, in the 2014 reform of the Staff Regulations, the co-legislators upheld the pre-existing principle according to which the remuneration of all Union staff ‘in Belgium and Luxembourg’ is not subject to a correction coefficient, given the special role as points of reference played by these places of employment as the main seats and places of origin of most of the institutions. This principle is also clear from the provisions of Annex XI to the Staff Regulations laying down detailed rules for the implementation of Articles 64 and 65 of the Staff Regulations, in particular Article 3(5), which states that ‘no correction coefficient shall be applicable in Belgium and Luxembourg’.

Moreover, it should be noted that the new method of adjusting salaries introduced in 2014 takes account of the overall situation in Luxembourg through the new common index, which reflects changes in the cost of living not only in Belgium but also in Luxembourg, unlike the index which was applicable before 2014.

Conclusion

The Commission wishes to point out that its services are well-acquainted with the issues raised by this petition and that they have taken significant measures over the past several years to limit the effects reported by the petitioners, in compliance with the provisions of the Staff Regulations and the principle of equal treatment between staff serving in Luxembourg but also in other places of employment of the European institutions.