



31.10.2018

NOTICE TO MEMBERS

Subject: Petition No 0328/2018 by Àngels Bosch Camprecios (Spanish), on behalf of the European Confederation of Police (EuroCOP), on social rights, the right to strike and health and safety of police officers

1. Summary of petition

The petitioner is concerned with the perceived lack of implementation of certain social rights as regards police officers. The petitioner alleges that several Member States have restricted or even denied fundamental rights for police officers, such as the freedom of expression, the right to freedom of assembly and association, the right of collective bargaining and action, and workers' rights to information and consultation. She specifically refers to the police forces in Spain, Portugal and Ireland, where police officers face restrictions in their affiliation and activities within the trade unions. The petitioner states that the restrictions on the right to strike should be interpreted narrowly and alleges that Member States have not demonstrated compelling reasons as to why there exists an absolute prohibition on the right to strike for police officers.

The petitioner also claims that police officers are not provided with the same health and safety rights as other workers in line with the provisions of Council Directive- 89/391/ EEC on the introduction of measures to encourage improvements in worker health and safety. She states that police officers are more prone to specific work-related illnesses such as depression, PTSD and stress, and she is concerned about the lack of proper equipment and training.

The petitioner recommends that police officers are included in all relevant legislation related to worker protection (Directive 89/391/EEC and Directive 2009/104/EC) and that EU legislation has to be adopted addressing police officers specifically.

2. Admissibility

Declared admissible on 18 July 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 31 October 2018

The Commission's observations

As indicated by the petitioner, Article 153 of the Treaty on the Functioning of the European Union (TFEU) specifically indicates that the European Union does not have a legislative competence on the right to strike. It is up to the EU Member States to respect and implement their international commitments.

In this context, it should be noted that, with regard to restrictions on the right to strike of the police, the European Court of Human Rights (ECtHR) found that more stringent requirements imposed on “law-enforcement agents”, on account of the fact that they were armed and of the need for them to provide an uninterrupted service, justified the ban on strike action, in so far as public safety and the prevention of disorder were at stake. The Court noted that the specific nature of these agents’ duties warranted granting the State “a wide margin of appreciation” to regulate certain aspects of the trade union’s activities in the public interest, without however depriving the union of the core content of its rights under Article 11 of the European Convention on Human Rights.¹

In the field of occupational safety and health at work (OSH), the EU Framework Directive 89/391/EEC lays down the general principles concerning the prevention of occupational risks, the protection of safety and health, the elimination of risk and accident factors, and the information, consultation and training of workers.

The Framework Directive applies to all sectors of activity, both public and private. This includes the activities of the police², insofar as they are carried out under normal circumstances. The limited exception in Article 2(2) regarding, inter alia, the police, applies only when the specific nature of certain individual tasks carried out by the workers in that sector, owing to the absolute necessity to ensure effective protection of the community, justifies an exception to the rules laid down in that directive³. But even in that case, the health and safety of police workers must be ensured as far as possible in light of the objectives of the Framework Directive.

The Framework Directive requires the employer to evaluate all risks, i.e. including psychosocial risks, relating to the health and safety of workers, to put in place preventive measures and to provide appropriate protection. In specific situations, it will therefore follow from the assessment of risks which measures need to be taken.

Any more stringent and more specific provisions of the *related* Directives (e.g. Working Time Directive 2003/88/EC, Workplace Directive 89/654/EEC, Work Equipment Directive 2009/104/EC, Noise Directive 2003/10/EC) which would prevail over the general provisions of the Framework Directive, also fully apply to the police force. In this sense, police workers are very much on an equal footing with workers in any other sector, and subject to the same protective provisions.

¹ Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E) v. Spain. 21 April 2015

² Case C-227/09, Antonino Accardo and Others v Comune di Torino, [2010] I-10273.

³ Case C-52/04, Personalrat der Feuerwehr Hamburg [2005] ECR I-07111.

It is for the competent national authorities to monitor and enforce the implementation of the national provisions transposing Directives¹. In situations where the rights of workers would not have been respected under existing national and/or EU law, means of redress should be available at national level.

Moreover, in accordance with the established case-law of the Court of Justice of the European Union, the provisions of the Working Time Directive (2003/88/EC) are applicable to the public sector, including to the activities of safety and emergency services such as the police where these are carried out under normal circumstances (judgments in cases C-52/04 *Feuerwehr Hamburg* and joined cases C-397/01 to 403/01 *Pfeiffer*). However, the Working Time Directive does not impose a uniform labour law across the EU but solely lays down a safety net of minimum requirements, which shall be transposed into national law by the Member States. The Directive does not regulate what should be considered as normal working time or overtime.

Besides, according to Article 153(5) TFEU, the EU has no competence to regulate how working time should be remunerated.

Finally, it is worth mentioning that the EU-OSHA Agency in Bilbao provides a wealth of information and practical help on identifying, preventing and managing psychosocial risks and work-related stress.

In light of the above, it is currently not the Commission's intention to propose specific legislation on workers in the police force.

Conclusion

The Commission is not competent with regard to the right to strike.

Police officers are covered by the EU OSH Directives as any other worker, with a limited exception. It is for the competent national authorities to monitor and enforce the implementation of the national provisions transposing Directives. The Commission does therefore not intend to propose specific legislation on workers in the police force.

¹ Pursuant to Article 4 of Council Directive 89/391/EEC, Member States must take the necessary steps to ensure that employers, workers and workers' representatives are subject to the legal provisions necessary for the implementation of the directive and shall ensure adequate controls and supervision.