



19.12.2018

NOTICE TO MEMBERS

Subject: Petition No 0240/2018 by Antonio Luiz Vázquez Delgado (Spanish) on measures to promote the right of equal pay for equal work in the EU

1. Summary of petition

The petitioner indicates that even though the principles of equality and equal pay are among the core values of the European Union, discrimination still takes place among public workers in the Spanish police, where, the petitioner alleges that workers receive different salaries for the same job. Indirect discrimination takes place with regard to adequate payment and social benefits received by men and women. The petitioner states that in 2008 the proposal for a Directive on implementing the principle of equal treatment outside the labour market (Anti-discrimination Directive) was blocked by the Council. At the Employment, Social Policy, Health and Consumer Affairs Council meeting on 15 June 2017, the European Commissioner for Employment, Social Affairs, Skills and Labour Mobility, Marianne Thyssen, reaffirmed that the directive remains a priority for the Commission. The petitioner questions to which extent Member States have to uphold core values of the Union, taking into account alleged absence of legal measures.

2. Admissibility

Declared admissible on 3 September 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 19 December 2018

Article 157 of the Treaty on the Functioning of the European Union (TFEU) on equal pay for equal work, which is invoked the petitioner, reads as follows:

"Article 157
(ex Article 141 TEC)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.
2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.
Equal pay without discrimination based on sex means:
 - (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
 - (b) that pay for work at time rates shall be the same for the same job.
3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.
4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers."

It only applies to discrimination regarding pay between men and women. It does not apply to discrimination regarding pay between both male and female members of different police forces.

The principle of equal pay for men and women is also included in the recast Directive on gender equality in the area of employment and occupation (2006/54/EC). Gender based discrimination however is not the issue raised in this petition.

The alleged discrimination in the present case seems to stem from being employed by either Policía Nacional or Guardia Civil, the competences and thus tasks of which are different.

The adoption of the 2008 proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation remains a priority for the Commission. However, the file, which requires unanimity in the Council, is blocked by Member States for political reasons.

The scope of the 2008 proposal covers social protection, social advantages, education and access to supply of goods and services available to the public.¹ The issue raised in the petition concerns the area of employment, which in any case is not covered by the 2008 proposal. Moreover, the proposal concerns discrimination on the grounds of religion or belief, disability, age or sexual orientation, none of which is at issue in this petition.

Other categories of unjustified discrimination in working conditions, including pay, are governed by EU secondary legislation – such as between fixed-term and permanent workers or between part time and full time workers. But that is not the situation at stake in this

¹ See Article 3 of the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008)426 final, 2.7.2008.

petition, as the petition is about different pay by different employers.

The Commission must therefore conclude that the situation raised by the petitioner does not enter within scope of EU law.

As regards the Charter of Fundamental Rights of the European Union, which is also referred to by the petitioners, it should be underlined that in accordance with Article 51(1), the provisions of the Charter are addressed to the Member States only when they are implementing Union law. In the absence of any specific provision of Union law applicable to the difference in pay, the Charter does not apply to the situation described by the petitioners.

Conclusion

In the absence of any provision of EU law that would apply to the situation of the petitioners, the Commission does not have any competence to intervene in the present case.