



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR EMPLOYMENT, SOCIAL AFFAIRS AND INCLUSION

The Director-General

Brussels,
EMPL.C2/PG/ARES(2018)4665388

Subject: Re Ares(2018)2623046

Dear petitioners,

Thank you for a series of letters the Commission received in recent months describing the way in which you have been affected by the law on retirement benefits for officials of the Police, the Internal Security Agency, Foreign Intelligence Agency, the Military Counterintelligence Service, Military Intelligence Service, Central Anticorruption Bureau, Border Guard, Government Protection Bureau, the State Fire Service and their families, adopted on 16 December 2016. The law in question allegedly imposes a collective responsibility and punishment on retired police officers and members of other Polish law enforcement agencies. You argue that the above law is unconstitutional and deprives you of any chance to defend your rights and find justice in Polish courts.

The petition deals with rules governing the membership of, contributions paid to and entitlement to benefits from a social security body in a Member State.

The provision of social security is a competence of the Member States. Article 48 of the Treaty on the Functioning of the European Union (TFEU) confers on the Union only the competence for the coordination, not the harmonisation, of the Member States' rules in the field of social security. Article 153 TFEU reiterates the right of Member States to define the fundamental principles of their social security systems. This includes the rules governing the contribution rates, conditions for entitlement and calculations of benefits.

While there are EU Directives, which apply to certain situations of discrimination¹, there is no provision in the EU acquis relating to discrimination between workers of specific public offices or agencies.

¹ For example, Directive 2000/78/EC concerning discrimination on the grounds of religion or belief, disability, age, sexual orientation.

In view of the competences conferred by the TEU and TFEU, the Commission cannot be called upon to request the Polish legislator to change the way provision of social security for particular branches of the public sector is organised.

Anyone who considers that any of her or his fundamental rights have been violated may lodge a complaint with the European Court of Human Rights (not an EU institution) at this address:

67075 Strasbourg-Cedex

France

<http://www.echr.coe.int/echr/>

It should be noted, however, that the Court may only deal with a matter after all domestic remedies have been exhausted.

As regards the question whether the legislation concerned violates basic constitutional principles, this matter illustrates the importance of having an effective constitutional review of legislation in Poland. In that respect the Commission has at several occasions in the past three years expressed its concerns about the situation of the Constitutional Tribunal and the effectiveness of constitutional review, inviting the Polish authorities to solve the problems identified as a matter of urgency. In this respect it is recalled that on 20 December 2017 the Commission adopted the Reasoned Proposal in accordance with Article 7(1) of the Treaty on European Union inviting the Council to determine that there is a clear risk of a serious breach by Poland of the rule of law which is one of the values referred to in Article 2 of the Treaty on European Union.



Joost KORTE