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Jurisdictional immunity of international organisations and rights of their staff

Committee Opinion[1]
Committee on Social Affairs, Health and Sustainable Development
Rapporteur: Mr Stefan SCHENNACH, Austria, Socialists, Democrats and Greens Group

A. Conclusions of the committee

The Committee on Social Affairs, Health and Sustainable Development welcomes the report prepared by Mr Volker Ullrich (Germany, EPP/CD) for the Committee on Legal Affairs and Human Rights and supports its recommendations that the Council of Europe member States should bring about greater transparency of the work of international organisations and should ensure that these organisations introduce mechanisms to protect the rights of staff, along with procedures for lodging appeals.

However, the report submitted to the Parliamentary Assembly by the Committee on Legal Affairs focuses on the right of access to a tribunal, rather than on social rights which form an integral part of human rights – as recognised by the Council of Europe and its Parliamentary Assembly on many occasions – and whose non-respect seem to pose the most acute problem for staff in international organisations.

Thus, whilst fully agreeing with the aim of the Committee on Legal Affairs to encourage the Committee of Ministers and the member States to look more closely at the protection of human rights and the rule of law in international organisations, the Committee on Social Affairs wishes to propose a number of amendments to ensure that social rights are taken into account as far as possible, and to ensure, as a priority, the effective protection of the rights of staff of international organisations.

B. Amendments

Amendment A (to the draft resolution)

In paragraph 4, add the following words at the end of the first sentence:

> *", as well as the European Social Charter (ETS Nos. 35 and 163)."*

Amendment B (to the draft resolution)

At the end of paragraph 6.1, insert the following words:

> *"(if appropriate, especially for smaller international organisations, by submitting to the jurisdiction of tribunals established within other international organisations)"*

1. Reference to committee: Reference 4185 of 29 January 2016. Reporting committee: Committee on Legal Affairs and Human Rights, see Doc. 14443.

Amendment C (to the draft resolution)

In paragraph 6.2, after the words "other groups", insert the words:

> *"(such as staff committees and staff associations)"*

Amendment D (to the draft resolution)

At the end of paragraph 6.3, insert the following words:

> *"ideally by creating tribunals of appeal, where they do not yet exist, for the more established internal tribunals (such as the ILO Administrative Tribunal and the Administrative Tribunal of the Council of Europe), and by having smaller international organisations submit to their jurisdiction;"*

Amendment E (to the draft resolution)

After paragraph 6.3, insert the following paragraph:

> *"ensure that internal redress mechanisms at all levels are independent and impartial, respect the principle of equality of arms and issue reasoned decisions, and that these mechanisms are given the means to operate effectively and without undue interference so that decisions are fair and taken within a reasonable time;"*

Amendment F (to the draft recommendation)

Replace paragraph 1.3 with the following paragraph:

> *"initiate reflection on:*
>
> *1.3.1. ways to ensure that the Administrative Tribunal of the Council of Europe is also accessible to trade unions;*
>
> *1.3.2. whether the Administrative Tribunal of the Council of Europe should be complemented by an appellate judicial body, either within the Council of Europe itself or by pooling resources with other international organisations in order to create a joint appeals body for several administrative tribunals;"*

Amendment G (to the draft recommendation)

At the end of paragraph 1.4, add the following words:

> *"and with other relevant human rights (including social rights), and, where appropriate, make recommendations on how these systems can be improved with a view to attaining a higher level of protection of these rights."*

C. Explanatory memorandum by Mr Stefan Schennach, rapporteur for opinion

1. As rapporteur of the present opinion and a long-standing member of the Committee on Social Affairs, I very much appreciate my colleague Mr Volker Ullrich's attention to detail in his report on the jurisdictional immunity of international organisations and the rights of their staff. His report defines and explains both the rights of staff members of international organisations and their respective jurisdictional immunity, and showcases the competent bodies for labour disputes within international organisations, as well as the relevant case law of the European Court of Human Rights. I can fully support his recommendations that the Council of Europe member States should bring about greater transparency of the work of international organisations and should ensure that these organisations introduce mechanisms to protect the rights of staff, along with procedures for lodging appeals.

2. However, Mr Ullrich focused specifically on the right of access to a tribunal and not on the social rights of the staff of international organisations, which he admitted "would warrant a more detailed examination",[2] but which he considered to be beyond the scope of his report. As the rapporteur for opinion of the Committee on Social Affairs, for which focusing on social rights is its bread and butter, I will attempt to provide this more detailed examination in this opinion.

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2. Doc. 14443, paragraph 3 of the explanatory memorandum, p. 5.

3. First of all, I believe it is important here to underline that social rights are human rights. This has been consistently recognised by the Council of Europe and the Parliamentary Assembly, most recently in Resolution 2180 (2017) "The 'Turin process': reinforcing social rights in Europe".[3] The fact that social rights, at Council of Europe level, are not as easily justiciable as first generation human rights does not make them less important, it just means that they are harder to enforce – especially if an international organisation which benefits from functional jurisdictional immunity refuses to waive this immunity.

4. It is no secret that the signatories of the original motion for a resolution had the situation at the European Patent Office (EPO) in mind when tabling this motion. The EPO – like other international organisations – is not exactly a paragon of transparency when it comes to its internal workings, but the situation has deteriorated so badly over the last few years that there has even been some media attention.[4] From this media coverage it appears that the President of the EPO installed in 2010 has waged a campaign against staff who oppose his reform efforts (with staff representatives members of the trade union SUEPO[5] being in the first line of fire): by 2016, three elected staff representatives had been dismissed, others had been demoted and/or had seen their salaries or pensions cut. Staff complain about a campaign of intimidation, harassment and discrimination, resulting in burn-out and other sickness, and even suicides: Over the past four years, five EPO staff members have committed suicide, two of them at their place of work.

5. As mentioned in paragraph 44 of Mr Ullrich's explanatory memorandum, SUEPO (together with other trade unions) felt obliged to take its case to the Dutch courts as it lacked standing in the internal remedy systems of the EPO and the International Labour Organization (ILO) – which it ultimately lost, including before the European Court of Human Rights.[6] However, the Administrative Tribunal of the ILO ("ILOAT"), which acts as the appellate body of the internal EPO remedy system (the EPO's Boards of Appeal), has been swamped by individual complaints against this organisation, with nearly three quarters of all its cases now originating in EPO. ILO management even felt obliged to warn the ILO governing body that the volume of complaints from EPO was "impairing the ability of the Tribunal to function".[7]

6. Through two decisions handed down in late 2016, the ILOAT effectively nullified more than a year's worth of decisions of the EPO's (Disciplinary) Board of Appeal, ruling *inter alia* that it had not been properly constituted.[8] This shows that the EPO's management cannot, after all, act with total impunity, but it also shows the limits of the current system of internal remedies: Individuals do have access to a remedy, but the first instance (the EPO's Board of Appeal) was not properly constituted and could thus not render valid judgments, while the appellate body (the ILOAT) is so swamped by complaints that its ability to function is being impaired – which translates into lengthy proceedings. There is no second-tier tribunal at all.

7. While some of these individual complaints may eventually end up before the European Court of Human Rights, and may even be declared admissible if the EPO's appeal committee and the ILOAT are not considered a "reasonable alternative means" of protecting staff's individual rights by the Court, it is also clear that it is far more difficult to enforce collective rights, as the trade union SUEPO has attempted. In this connection, the question does arise whether the (collective) complaints procedure under the Additional Protocol to the European Social Charter (ETS No. 158) would be a better avenue for SUEPO, given that it is in force in the Netherlands.[9]

8. In a letter dated 21 October 2017, addressed to Mr Ullrich and forwarded to me, the President of the *Union Syndicale Fédérale* (USF),[10] Mr Bernd Loescher, asked the Parliamentary Assembly to tackle the issue of discrimination of staff of international organisations as compared to citizens and workers in the Council of Europe member States which have ratified the European Convention on Human Rights (ETS No. 5) and the European Social Charter. His union maintains that the rights enshrined in these conventions should also apply to staff in international organisations, as there is no declared intention of the member States of these international organisations or of the international organisations themselves to exclude international organisations and their staff from the scope of the conventions.[11] The union thus proposes a quasi-judicial

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3. Paragraph 1: "Social rights are fundamental human rights".
4. For example, articles have been published in the French satirical newspaper *Le Canard enchaîné*, on the French website "Novethic", and in the British newspaper *The Register*.
5. The EPO does not recognise the trade union, to which more than half of staff belong.
6. Interestingly, the Court dismissed the appeal as "manifestly ill-founded", as it appeared to the Court that no Convention/Additional Protocol rights had been violated, without examining the question of standing or jurisdictional immunity.
7. See article by Kieren McCarthy, *The Register,* 7 March 2017.
8. The majority of its members had been management-chosen in breach of the applicable rules.
9. Of course, the question of jurisdictional immunity remains also under the European Social Charter.
10. The USF is the largest federation of employees' unions in the European Public Service.

body designed to co-operate with the judicial bodies of the international organisations to ensure better respect for the rights enshrined in these conventions, suggesting that the mandate of the European Committee of Social Rights could be extended in order to act as such a body (which could, for example, provide legal opinions to the ILOAT). The union also supports limiting the breadth of immunity international organisations enjoy before national courts, improving standards within the internal remedy systems of international organisations in the light of the requirements of Article 6 of the Convention, and the establishment of a central appellate judicial body for the existing internal international organisation tribunals.

9. I would personally conclude that, first of all, international organisations should endeavour to respect the rights of their staff – all their fundamental human rights, including social rights enshrined in the European Social Charter, thus the **Amendment A**. Quite frankly, if the "success" of an international organisation such as the EPO is built on campaigns of harassment and intimidation which drive staff members to suicide, then the price of this success is too high. This should be obvious to the governing body of the international organisations in question, and thus, ideally, in case of such abuses, the governing body would ensure that the international organisation's management stops the abuse and goes back to respecting staff rights. If this is not the case, then the internal remedy system of the international organisations should be able to put things right again. This is why I fully support the proposals made by Mr Ullrich and the Committee on Legal Affairs to ensure that all international organisations introduce appropriate mechanisms to protect the rights of staff, along with procedures for lodging appeals.

10. We must, however, ensure, that we do this effectively. Some international organisations are exceedingly small[12] – it makes no sense for each of these tiny international organisations to establish their own tribunal, for example. Thus, I am proposing in **Amendment B** that smaller international organisations could fulfil this condition by submitting to the jurisdiction of tribunals established within other international organisations.[13] It is indeed also important that trade unions and other groups working to protect the rights of staff have access to these means of redress – I am proposing in **Amendment C** that it be made clear that these "groups of staff" include staff committees and staff associations.

11. The Committee on Legal Affairs has also rightly suggested that procedures be introduced for lodging appeals against decisions of the internal tribunals of international organisations in employment disputes. However, as in the case of Amendment B, it is important to remain effective: thus, ideally tribunals of appeal, where they do not yet exist, should be created for the larger and more established internal tribunals (such as the ILO Administrative Tribunal and the Administrative Tribunal of the Council of Europe), and smaller international organisations should submit to their jurisdiction (**Amendment D**). I believe this would be more effective than creating one central appellate judicial body for all international organisations which would probably be quickly overloaded with work.

12. It is also important not only to ensure access to internal redress mechanisms as per the first line of Article 6 of the European Convention on Human Rights, but also to ensure respect for the other rights guaranteed in that article, i.e. that internal redress mechanisms at all levels are independent and impartial, ensure the equality of arms and issue reasoned decisions, and that these mechanisms are given the means to operate effectively and without undue interference so that decisions are fair and taken within a reasonable time (**Amendment E**).

13. **Amendment F** takes up the suggestion of Amendment D specifically for the Administrative Tribunal of the Council of Europe: to initiate reflection on whether the Administrative Tribunal of the Council of Europe should be complemented by an appellate judicial body, either within the Council of Europe itself or by pooling resources with other international organisations in order to create a joint appeals body for several administrative tribunals. It also asks the Committee of Ministers to ensure that the Administrative Tribunal is accessible to trade unions.

14. Finally, **Amendment G** seeks to enlarge the mandate to carry out a comparative study beyond Article 6 of the Convention to other relevant human rights (including social rights), and, where appropriate, to making recommendations on how the internal remedy systems of international organisations can be improved with a view to attaining a higher level of protection of these rights.

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11. The union also references Article 11 of the Rules of Procedure of the ILOAT in this connection.
12. See paragraph 5 of Mr Ullrich's explanatory memorandum in Doc. 14443.
13. As happened recently at the Administrative Tribunal of the Council of Europe, to whose jurisdiction two international organisations submitted at the end of 2017.