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Union Syndicale Fédérale Congress Document

„European Social Charter and European Committee of Social Rights“

The USF Congress claim

Considering that:

- The International Organizations' institutional setup usually foresees an internal rule-setting body and an executive body;
- Even on European territory these organizations claim to have full freedom to set up and apply their own staff rules;
- These Organizations also have the possibility and the duty to update these staff rules to align them on external, universal social and labour law standards;

Worried that:

- Most International Organizations' internal rules are lagging behind in terms of compliance with universal labour and social legislation, also in Europe;

Grateful for:

- The attention of the Parliamentary Assembly of the Council of Europe for social and labour related issues in International Organizations;

The USF Congress claims:

- that these international organizations include in their staff rules as a general guiding principle the European Social Charter (the so-called "Revised European Social Charter of 1996");
- that in cooperation with the respective staff and / or union representatives, the international organizations work out tailored procedures allowing to obtain interpretations of the European Social Charter by the European Committee of Social Rights ensuring internal decisions compliant with the European Social Charter.

The USF Congress invites:

- the Parliamentary Assembly of the Council of Europe, especially the Committee on Social Affairs, Health and Sustainable Development, to take note of this suggestion and consider a follow-up with the bodies and instruments available at the Council of Europe.

External, universal social and labour law standards

The historical starting point of individually protected European Fundamental Rights is the European Convention of Human Rights signed in 1948, the creation of the Council of Europe

and the European Court of Human Rights. The original intention was to create a second pillar of rights: the European Social and Labour Rights with the European Social Charter signed in Turin 1961 and its revised version signed in 1996.

The financial crisis and excessive austerity policy it entailed kindled anew the debate, whether the European Social Charter's authority should indeed be raised to the level of the Human Rights Convention including the organ that is tasked to interpret the European Social Charter: the European Committee of Social Rights.

In his remarkable study published on 14th November 2018, Prof. Olivier De Schutter raised this issue [1], noting that the Fundamental Rights Charter of the European Union suffered from a comparable flaw: social rights are not sufficiently developed, although Articles 151-155 of the EU Treaty have been used extensively to develop EU social legislation (EU Directives). The case law of the CJEU also reveals divergences to the decisions of the ECSR, due to the divergence of legislations. These divergences appeared in the context of austerity following the financial crisis.

In November 2017, the "European Pillar of Social Rights" was proclaimed by the European Council, the Parliament and the Commission, which could be a promising initiative. It could be seen as a first step to fill the gaps identified in the fundamental European social legislation. Future will tell whether there is a real willingness with the EU Institutions and the Member States to follow up on the EPSR.

Beyond the instruments used by the European Union and the Council of Europe there are of course the UN and ILO Conventions, a number of which are relevant not only for the signatories of these Conventions but also for the relationship between International Organizations founded by these signatories for other purposes and their staff.

Universal social and labour law standards: internal effects in International Organizations

The most obvious assessment is probably the effect of the Fundamental Rights Charter of the EU on the relationship between EU Institutions and their staff: the EU FRC is applicable[2] in the relationship between these Institutions and the staff. The CJEU even considered the application of general EU legislation like the working time Directive 2003/88/EC as binding on the Institutions[3].

This obligation to stay in conformity with EU legislation applicable to all Member States unfortunately does not preempt all problems in day-to-day practice. Especially small and / or remote EU entities (agencies, offices…) can escape attention from the media, so that unacceptable behavior of local management often remains unnoticed.

The limited means of the CJEU[4] (only annulment of a decision is possible, the Court is mostly reluctant to substitute into administrative decisions) sometimes raise doubts on the compliance of the EU system with the Charter.

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[1] „The European Pillar of Social Rights and the Role of the European Social Charter in the EU Legal Order", 14th November 2018, the study was prepared at the request of the Secretariat of the Council of Europe and of the CoE-FRA-ENNHRI-Equinet Platform on Economic and Social Rights.
[2] See CJEU case C-334/12 RX „Jaramillo"
[3] See CJEU case C-579/12 RX "Strack"

A further doubt arises due to the risk encountered by claimants when the defendant Institution makes use of external, expensive lawyers to represent the administration in court.

However, the situation at the other International Organizations contrasts with the situation at the EU Institutions. The Staff of IOs are in a clearly inferior situation, for the following reasons.

International Organizations are legal entities “sui generis”. They generate their staff rules themselves. In order to meet Art.6 ECHR requirements (access to a court), a judicial body is tasked to hear cases when administrative decisions are challenged. This body can be an internal body as in the case of the European Schools or a judiciary ready to take on this task as the ILOAT. None of these judiciaries seem to be well equipped to assess the compliance of the staff rules generated by an internal body with universal principles of labour and social law (especially the ESC). Even the CJEU hesitates answering questions by these courts on fundamental EU principles in the framework of a preliminary ruling procedure[5]. The CJEU implicitly encouraged the Member States to provide such an alignment procedure on EU social legislation inspired from all national legal orders in the EU, but the Member States did not take up the hint. National courts refuse to assess the legality of internal staff rules as the autonomy requirements of the international organization normally impose the immunity before national courts. There is also no judiciary that would assess the justification for upholding the immunity or the autonomy of the IO (with the exception of the EU system, where the CJEU is competent for assessing the justification for upholding the immunity of any EU Institution or Agency).

Human Resources departments of IOs usually lack the means and / or will to monitor the evolution of universal social legislation and update staff rules regularly. Small IOs may be overburdened with such a task, larger IOs lack this excuse so that reluctance or negligence is the obstacle. Most of the IOs simply restate regularly that their system simply does not provide for any obligation to align staff rules on general social legislation, not even on the social legislation that is commonly shared by all Member States in their domestic environment. The IOs also lack a central service that would give advice to all IOs to avoid incompliance with ILO Conventions, EU social legislation or the European Social Charter.

Concrete Examples

Of course one will not find “male / female” salary scales penalizing female colleagues. What is rather easy to find in any set of staff rules is for example penalizing career prospects for part-timers (mostly mothers), grant of part-time or teleworking subject to higher productivity, the absence of any provision protecting breastfeeding workers, pension rights transfers from national systems with unfavorable conditions for women, insufficient means granted to staff representatives, lack of social dialogue basics, penalizing annual leave provisions (limited transfer to the following year), working time issues, health and safety issues, insufficient protection of disabled workers, insufficient data protection etc. Obviously, none of the founding texts of these IOs mandate or encourage or give legitimation to altering or annulling universal social and labour legislation in the relationship with their staff.

Breaches are commonly indirect, but clearly identifiable already with limited insight.

Internal judiciaries (ILOAT…) are hard to convince when claimants cannot provide any evidence of wrong-doing of an administration that simply and "correctly" applies internal rules, even when these rules are inherently incompliant with universal social legislation[6].

The witnessed impact of the systemic deficiencies ranges from unfortunate situations and demotivated staff to disastrous results, toxic working atmosphere and flooding of the ILOAT with individual appeals. In all cases the reputation of the international organization is stained.

Support by discussions at the Council of Europe

In the Council of Europe environment the systemic gaps which are harmful both for staff and the organizations themselves raised attention. The Parliamentary Assembly of the Council of Europe (PACE) raised the issue a number of times[7]. A study was established and resolutions decided. This is highly welcome for the staff of International Organizations and indeed the Organisations themselves, as the weakness of their systems and the internal rule of law are a constant threat to their reputation and ability to recruit staff at the appropriate high level. The USF Congress is grateful for this attention and strives to use the momentum to achieve progress.

The European Social Charter

The European Social Charter is a supervisory system which is deeply rooted in the history of Europe, signed by 45 Member States. It encompasses duties that go beyond duties of employers, including social welfare and inclusion issues. As International Organizations too mostly cover duties beyond employers' duties, the ESC constitutes an important reference for these organizations.

However, not all Articles of the ESC are equally relevant to International Organizations, the parts that deserve particular attention are:

The principles and rights mentioned in Part I of the ESC;

Art.2 The right to just conditions of work;

Art.3 The right to safe and healthy working conditions;

Art.4 The right to a fair remuneration;

Art.5 The right to organize (workers and employers);

Art.6 Social Dialogue (including the right to strike);

Art.7 The right of children and young persons to protection;

Art.8 The right of employed women to protection of maternity;

Art.9 The right to vocational guidance;

Art.10 The right to vocational training;

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[6] See ILOAT Judgements 351, 429, 902, 2236

[7] See PACE documents Doc. 14443 of 29th November 2017, "Jurisdictional immunity of international organisations and rights of their staff"; Resolution 1979 (2014) "Accountability of international organisations for human rights violations"; Doc. 14487 of 24th January 2018 "Jurisdictional immunity of international

Art.12 The right to social security;

Art.19 The right of migrant workers and their families to protection and assistance;

Art.20 The right to equal opportunities (gender related);

Art.21 The right to information and consultation;

Art.22 The right to take part in the determination and improvement of the working conditions and working environment;

Art.24 The right to protection in cases of termination of employment;

Art.26 The right to dignity at work;

Art.27 The right of workers with family responsibilities to equal opportunities and equal treatment;

Art.28 The right of workers' representatives to protection in the undertaking and facilities to be accorded to them.

The European Committee of Social Rights

Concerning the interpretation and implementation of the ESC, the European Committee of Social Rights plays a pivotal role. Year by year, the ECSR establishes a report on the situation in every Member state on the compliance of national legislation with the ESC.

Under the "1995 Additional Protocol" a new system of Collective Complaints came into force 1998. Much like a judicial body, the ECSR examines the admissibility and the merits of the cases filed by claimants. A number of organizations included in a special list (NGOs, Union federations…) are enjoying the possibility of filing complaints about alleged non-compliance with the ESC.

Including international organizations with a membership constituency close to the European Social Charter constituency into the basic reporting instruments would be too heavy in the light of constitutional and work-load related considerations[8].

The "1995 Additional Protocol" appears to be the right entry point into the system of the ESC and ECSR[9]. The core issue, as described above, is to assess the compliance of staff rules with the ESC.

Cooperation models

First, the competent body which sets the internal rules ("Administrative Council", "Permanent Commission", …) should include as a preamble the European Social Charter in the internal "staff rules" or "regulations" to be applied by the executive branch of the IO ("President", "Secretary General", …).

Cooperation models between the participating IO and the ECSR then appear as feasible and meeting the objective with limited institutional and procedural arrangements. The first issue

[8] The European Social Charter (Revised), 1996, Part III to VI

[9] Rules of ECSR, "Part VIII: The Collective Complaints Procedure", introduced with the "1995 Additional

to be tackled when drafting a cooperation scheme is how questions qualify for passing the admissibility test of the ECSR:

- Questions jointly submitted to the ECSR by the Central Union or Staff Committee or Association of an IO and the IO itself, related to a specific staff rule allegedly incompliant with the ESC;
- Questions submitted to the ECSR by any competent internal joint body of an IO, when this body has to apply internal staff rules challenged in the light of the ESC;
- Questions submitted by the competent judiciary, like the ILOAT under Art.11 of the ILOAT Rules of Procedure[10].

Beyond the submissions and applicable staff rules, internal systems of participating IOs would be provided with an interpretation of the ESC as regards the relevant staff rules, so that the internal executive, judiciary or quasi-judicial body could, based on the ESC articles introduced as the preamble of the IO rules in question, include the interpretation of the ECSR into its decision, ruling or opinion.

As the needs and culture vary from one IO to the next one, the unions and/or staff associations of each of these IOs should be invited by the executive branch for discussions on how to adapt internal staff rules or regulations to the cooperation scheme with the ECSR, so that the European Social Charter becomes a frame for current and future decisions inside the participating International Organization.

For the reasons above,

the USF Congress claims:

- that international organizations, especially those which share a constituency close to the 43 States signatories of the European Social Charter, include in their staff rules as a general guiding principle the European Social Charter (the so-called “Revised European Social Charter of 1996”);
- that in cooperation with the respective staff and / or union representatives, the international organizations, work out tailored procedures allowing to obtain interpretations of the European Social Charter by the European Committee of Social Rights ensuring internal decisions compliant with the European Social Charter.

[10] Art.11 RoP is an instrument already in place and used by ILOAT: “Art. 11 The Tribunal may, on its own motion or on the application of either party, order such measures of investigation as it deems fit, including the appearance of the parties before it, the hearing of expert and other witnesses, the consultation of any competent