

COPIE

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Mr Javier SOLANA,
Secretary General and High Representative,
Council of the European Union
Rue de la Loi 175
B - 1048 Brussels.

Thank you for your letter dated 21 March 2002 replying to my letter of 7 March 2002 concerning the possible use of age limits in recruitment competitions to be organised by the proposed European Recruitment Office. Your letter calls for the following observations from the European Ombudsman.

Article 21 of the Charter of Fundamental Rights of the European Union lists age as one of the prohibited grounds of discrimination. You refer to the Charter as a "text of a political nature" and consider the possible abolition of age limits for recruitment to the Union institutions and bodies to be a subjective choice of policy and not a legal obligation. It seems necessary to emphasise again that the Charter was solemnly proclaimed at the European Council held in Nice on 7 December 2000, having been signed by Mme Nicole FONTAINE, M Hubert VEDRINE and Mr Romano PRODI on behalf of the European Parliament, the Council of the European Union and the European Commission. In my view, this represents an important commitment to European citizens, which must be respected and put into practice by those institutions. Failure by the Union institutions to deliver on their promises will surely have a corrosive effect on the already poor relations between the European Union and its citizens.

You also mention correspondence from the Registrar of the Court of Justice, which you consider to contain a position similar to that adopted by the Secretariat General of the Council. I would like to inform you that the letter to which you refer relies principally on extracts from a court judgement made in 1972. In my view, it is necessary to take account of the subsequent development of Community law on fundamental rights. It should be recalled in this context that age was first mentioned as a possible ground of discrimination in Community law by Article 13 of the EC Treaty, introduced by the Treaty of Amsterdam which entered into force in 1999.

Moreover, you argue that the abolition of age limits would also imply the abolition of the minimum age for employment and of the retirement age. This analysis does not seem convincing because the purpose of these provisions is not to discriminate against persons exercising the right to seek employment, nor are the provisions

necessarily based on a negative evaluation of the potential contribution of the persons concerned. The minimum working age is the subject of an ILO Convention¹ and is based on the belief that childhood is a period of life which should be consecrated not to work but to education and development and that child labour, by its nature or because of the conditions in which it is undertaken, often jeopardises children's possibilities of becoming productive adults. An age of retirement is widely understood in terms of the conditions for entitlement to a pension earned by previous years of work rather than as an obligation. Insofar as a mandatory retirement age may constitute compulsion on individuals who wish to continue to work, its justification does indeed need to be examined from the standpoint of possible discrimination.

Finally, your letter states that representatives of the Ombudsman participated in the drawing up of an agreement between the Secretaries General which foresees that the Management Board of the European Recruitment Office shall examine the question of the use of age limits. I wish to make clear that neither the Ombudsman nor his representatives have ever agreed to any provision that would authorise the use of age limits in recruitment.

I understand the time pressures that your important work in promoting peace and human rights in many parts of the world must create. I therefore regret that it is necessary for me to address you again about this matter, but I am confident that you also wish to promote respect for human rights within the European Union and to enhance relations between the citizens of the Union and the institutions which exist to serve them.

Yours sincerely

Jacob Söderman

¹ ILO Convention No. 138 concerning the Minimum Age for Admission to Employment.