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Report

drawn up on behalf of the Committee on the Rules of Procedure and Petitions

on Petition No 13/76 by Mr Jean FEIDT and fifteen other members of the Staff
Committee of the European Parliament on enquiries into the political affiliations
of Commission officials

Rapporteur: Mr William HAMILTON

PE 49.241/fin.

At the sitting of 15 November 1976 the President of the European Parliament referred Petition No. 13/76 by Mr Jean Feidt and fifteen other members of the Staff Committee of the European Parliament on enquiries into the political affiliations of Commission officials, to the Committee on the Rules of Procedure and Petitions, pursuant to Rule 48 (3) of Parliament's Rules of Procedure.

At its meeting of 25 January 1977 the Committee on the Rules of Procedure and Petitions declared this petition admissible under Rule 48 (3), appointed Mr W. Hamilton rapporteur and decided to ask the opinion of the Legal Affairs Committee.

The Committee on the Rules of Procedure and Petitions considered the Petition at its meetings of 30/31 March, 23/24 May and 22 June 1977. It decided to present a report pursuant to Rule 48 (4) of the Rules of Procedure. At its meeting of 11 October 1977 the committee adopted unanimously its report.

Present: Mr Leonardi, Chairman; Mr Hamilton, rapporteur; Mr Dewulf, Lord Murray of Gravesend and Mr Vernaschi.

The opinion of the Legal Affairs Committee is attached.

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A.

The Committee on the Rules of Procedure and Petitions hereby submits to the European Parliament the following motion for a resolution together with explanatory statement :

MOTION FOR A RESOLUTION

on Petition No. 13/76 by Mr Jean Feidt and fifteen other members of the Staff Committee of the European Parliament on enquiries into the political affiliations of Commission officials

The European Parliament,

- having regard to Petition No. 13/76¹,
- having regard to the report by the Committee on the Rules of Procedure and Petitions and the opinion of the Legal Affairs Committee (doc. 336/77),

1. Considers that it is necessary that the Commission of the European Communities guarantees the freedom of opinion of its officials;
2. Understands that the Commission also has to guarantee the trustworthiness of a limited number of officials, who work with what are loosely described as highly confidential documents;
3. Is aware of the fact that the Commission of the European Communities is not entrusted with its own security service and therefore has to rely on the information, gathered by the national authorities;
4. Stresses that questionnaires of the national authorities on this limited number of persons should in no way constitute separate files which can influence further careers;
5. Urges the Council and the Commission of the European Communities to recommend to the Member States concerned, pursuant to Article 194 (2) third paragraph of the Euratom Treaty, to harmonize the questionnaires and, in their formulation, to take account of the democratic principles on which the Community itself is founded.
6. Instructs its President to forward this resolution and the report of its committees to the Council and the Commission of the European Communities.

¹ Parliament Bulletin No. 38/76 of 19 November 1976, page 29

EXPLANATORY STATEMENT

Introduction

1. In Petition No. 13/76 of 9 November 1976 Mr Jean Feidt and fifteen other members of the Staff Committee of the European Parliament ask this institution to make sure that :
 - 1) no reference to political, philosophical or religious views is contained in any files of officials or other staff of the Communities;
 - 2) each official and staff member has a personal file and a medical file only;
 - 3) references to political, philosophical or religious views included in any file whatsoever on officials or other staff shall be destroyed;
 - 4) each Community institution and body complies with the provisions of the Staff Regulations in this matter;
 - 5) a report on these verifications is made public.

Opinion of the Legal Affairs Committee

2. In its opinion (PE 47.743/fin.), the committee has reached the following conclusions :
 - 1) A breach of the Staff Regulations of officials of the European Communities, in case any reference in an official's personal file is made to political, philosophical or religious views, does not seem to be the case. The security inquiries concern a very limited number of officials who are required to perform duties protected by secrecy.
 - 2) The first three requests contained in the petition can, in view of the 'confidential nature' of the personal files, be acceded to by Parliament only if it obtains the agreement of the administrations of the other institutions.
 - 3) Since Parliament is obliged to respect the principle of the separation of powers and cannot take upon itself responsibilities which fall within the jurisdictional sphere, the request that it should make sure that the other Community institutions comply with the provisions of the Staff Regulations should be rejected.

It is up to the officials concerned, where appropriate, to apply to the Court of Justice of the European Communities with a view to establishing that they have been the victims of a breach of the provisions of the Staff Regulations.

- 4) The intervention of Member States in the appointment of Commission officials to posts subject to the obligation of secrecy cannot always be founded on the provisions of the Treaties. However, account must always be taken of the need to safeguard the confidential character of documents placed by the Member States at the disposal of the Community, especially those which concern political cooperation.
- 5) The Commission does not have a department of its own empowered to carry out security inquiries. Since the inquiries in question are conducted essentially in the interests of the Member States, it is clear that it is for the appropriate departments of the Member States to carry them out in accordance with their domestic legislation.
- 6) In the light of the Staff Regulations and of the need to safeguard secrecy, the European Parliament could ask the Commission to recommend to the Member States concerned, pursuant to the third paragraph of Article 194 (2) of the Euratom Treaty, to harmonize the questionnaires referred to in Petition No. 13/76 and, in their formulation, to take account of the democratic principles on which the Community itself is founded.

Observations by the Committee on the Rules of Procedure and Petitions

3. The European Parliament was seized of the petition just at the time that discussions about this subject started in November 1976. The international press paid attention to it, Mr Brunner made a statement before the Bureau in November 1976, Mr Ortoli answered oral questions during question time in December 1976 and almost thirty written questions have been asked by European Parliamentarians. The petition seems to suggest that the questionnaires constitute a breach of Article 26 of the Staff Regulation of officials, which states : 'An official's personal file shall contain no reference to his political, philosophical or religious views'.....

4. During discussions in the Committee on the Rules of Procedure and Petitions it was pointed out that there are two different kinds of secrets. Firstly there are the ordinary professional duties, like those referred to in Article 214 of the EEC Treaty and Articles 11 to 22 of the Staff Regulation of officials. Secondly there are special duties in certain fields, like those specified in the Security Provisions (Articles 24-27, 194 and 217) of the Euratom Treaty, which are aimed in particular to the preservation of secrets in the nuclear field. It should be pointed out that there are no special provisions regarding secrecy in other sectors than the nuclear field. In practice the procedure, based on the Euratom Treaty, has been extended also

to other sectors. In the preliminary remarks before the conclusions in his opinion, the draftsman of the Legal Affairs Committee considers this as being "praeter legem".

5. During discussions in the Committee on the Rules of Procedure and Petitions it was also pointed out that officials, who are asked to fill out a questionnaire, can give wrong information. Mr Olmi, Deputy Director-General at the Legal Service of the European Communities, answered that the filling out of the questionnaires is not compulsory. He stressed the fact that the officials can refuse a post implying the use of secret documents.

6. In the conclusions of its opinion, the Legal Affairs Committee considers that no separate file exists, but only an exchange of letters between the administrations of the Member States and the Commission, which concern a very limited number of officials and which is kept secret. The Committee on the Rules of Procedure and Petitions is of the opinion that it is a play on words to speak about a 'file' or an 'exchange of letters'. Therefore it expresses its doubts on the admissibility of the existence of such an exchange of letters, even though it is not a file and even though it is secret. The refusal of a person to fill out a questionnaire or a negative report after having filled out such a questionnaire, create a tendency to suspect this person. It should therefore be insisted on that this exchange of letters must in no way influence the career of the persons concerned. The Committee believes it is going too far to suggest the letters should be destroyed.

7. As long as the Commission of the European Communities has to rely on the information by national authorities, it has little power to decide about the contents of the questionnaire. The Commission can, however, recommend that the Member States concerned, pursuant to Article 194 (2) third paragraph of the Euratom Treaty, should harmonize the questionnaires in order to establish a security system which is as uniform and comprehensive as possible. If the Commission does not use this power, discrimination will exist between the subjects of different Member States.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr J. Santer

At its meeting of 26 January 1976 the Committee on the Rules of Procedure and Petitions declared admissible Petition No. 13/76 submitted on 9 November 1976 by Mr Feidt and 15 other signatories on enquiries into the political affiliations of Commission officials. At the same meeting it requested the opinion of the Legal Affairs Committee on this petition.

At its meeting of 17 February 1977 the Legal Affairs Committee appointed Mr SANTER draftsman.

The draft opinion was considered at the meetings of 15 March 1977 and 26 April 1977, and adopted at the second meeting with four votes in favour and seven abstentions.

Present: Sir Derek Walker-Smith, chairman; Mr Santer, draftsman; Lord Ardwick; Mr Bangemann; Mr Calewaert; Mr Fletcher-Cooke; Mr Kunz; Mr Masullo; Lord Murray of Gravesend; Mr Scelba and Mr Shaw.

I. SUBJECT OF PETITION No. 13/76

1. Petition No. 13/76 states that the Commission of the European Communities has recently asked its British, Danish and Irish staff to complete a personal questionnaire concerning, in particular, their political views.

The signatories of the petition to the European Parliament point out that Article 26 of the Staff Regulations of Officials stipulates that 'an official's personal file shall contain no reference to his political, philosophical or religious views'.

2. They therefore request the European Parliament to make sure that

- (1) no reference of this nature is contained in any files of officials or other staff of the Communities;
- (2) each official and staff member has a personal file and a medical file only;
- (3) references to political, philosophical or religious views included in any file whatsoever on officials or other staff shall be destroyed;
- (4) each Community institution and body complies with the provisions of the Staff Regulations in this matter;
- (5) a report on these verifications is made public.

(a) Breach of the Staff Regulations

3. In deploring the enquiries into the political views of Commission officials, the petition's signatories refer to the provisions of Article 26 of the Staff Regulations of officials of the European Communities, the fourth paragraph of which expressly prohibits any reference in an official's personal file to his 'political, philosophical or religious views'.

4. It might be assumed - in view of the nature of the questionnaires, which former Commission President Mr Ortoli said were intended solely for officials likely to be entrusted with confidential material¹ - that these questionnaires were placed in a file other than the personal file. However, such a practice would be in breach of the fifth paragraph of Article 26, according to which 'there shall be only one personal file for each official'.

¹ See Mr Ortoli's answer to Mr Sandri's question in the European Parliament on 14 December 1976 (Report of Proceedings of the European Parliament OJ No. C 21Q, December 1976, pp. 77 and 79)

5. In view of the fact that Article 26 of the Staff Regulations draws no distinction, as regards the content of personal files, between officials empowered to deal with confidential material and those not so empowered¹, the breach of the Staff Regulations alleged in Petition No 13/76 must thus be considered to exist if references to the political, philosophical and religious views of the official are in fact contained in his personal file.

(b) Requests submitted to Parliament

6. The requests made to the European Parliament by the signatories of Petition No 13/76 are listed in point 2 above.

After consideration of the means available to Parliament for putting an end to the violation of Article 26 of the Staff Regulations, as called for by the signatories of Petition 13/76, the requests contained in the petition may be subdivided into two groups:

(a) requests (1) to (3), in which Parliament is asked to check that the personal files conform to the provisions of the Staff Regulations and to ensure the removal of information wrongfully included in them;

(b) requests (4) and (5), in which Parliament is asked to ensure that each institution and body complies with the provisions of the Staff Regulations in this matter and that a report on these verifications be made public.

7. As regards the first three requests, verification by Parliament could be effected solely in agreement with the three other institutions involved. For, under the treaties, Parliament possesses 'supervisory' powers to the extent that the treaties confer them upon it². However, it is common knowledge that such supervision is exercised primarily with regard to the Commission and not to the other institutions such as Council or Court of Justice.

8. It may indeed be maintained on Parliament's behalf that its powers of supervision also extend to acts of internal administrative procedure such as sending questionnaires to officials of the institutions. This does not, however, alter the fact that verifications of the contents of the personal files of officials of the institutions carried out by a delegation acting on behalf of Parliament, would presuppose the agreement of the administrations concerned, since the last paragraph of Article 26 itself lays down that 'the personal file shall be confidential and may be consulted only in the offices

¹ Article 17 and 19 of the Staff Regulations are those which make express reference to the commitment to secrecy.

² See Art. 20 ECSC, Art. 137 EEC and Art. 107 EAEC.

of the administration'¹.

9. The fourth request differs from the preceding ones in respect of its implications for jurisdiction within the Community.

If it is in fact true that Parliament's responsibilities include making publicly known violations by the Community institutions of provisions laid down in the Staff Regulations - and not only when such violations concern freedom of expression - it is equally true that the exercise of such control with a view to ensuring that all the institutions abide by the provisions of the Staff Regulations could run into conflict with the jurisdiction of the Court of Justice of the European Communities, which alone 'shall have jurisdiction in any dispute between the Community and its servants'².

It should therefore be emphasized here that action regarding a breach of the Staff Regulations is a matter for the individual officials who consider that the questions put to them in the questionnaires contravene the provisions of the Regulations. These officials could, after having lodged a complaint with their superiors, make application to the Court of Justice of the European Communities for a ruling on whether there had been a breach of the Staff Regulations.

10. The fifth request calls for the results of the verification carried out by Parliament to be made public. The Legal Affairs Committee considers this request to be justified, since it is proper that the maximum publicity should be given to all actions by Parliament taken in the defence of freedom of opinion both at Community level and in individual Member States. However, this view is subject to the same reservations expressed above in point 8 regarding Parliament's powers of supervision.

II. OBSERVATIONS ON THE PROBLEM

(a) Nature of the questionnaires

11. The questionnaire sent to the British, Danish and Irish officials³ bears the heading 'Commission of the European Communities - Euratom' and the title 'Personal Report'. It is subdivided into seven sections relating to:

- I. Civil status
- II. Posts held during the past 10 years
- III. Periods spent abroad during the past 10 years
- IV. Places of residence during the past 10 years
- V. Information on family members and relatives
- VI. Information on the official's spouse
- VII. Information on other persons residing with the official.

¹ An exception can be made in the case of a dispute between an official and his institution. In that event the Court of Justice can request that the personal file of the official be submitted to it.

² See Art. 179 EEC and Art. 152 EAEC.

³ The Commission representative pointed out at the meeting of the Legal Affairs Committee of 15 March 1977 that the forms only concerned the United Kingdom and the Federal Republic of Germany.

The final part of the questionnaire, which follows section seven, is headed 'Confidential Information' and concerns any links the official may have, through family relationship, friendship or acquaintanceship with persons living in countries under a Communist regime, any trips the official may have made to these countries, direct or indirect participation in Communist, Trotskyist or Fascist organizations or movements and the attitude of the official towards such organizations or movements, and towards organizations having anti-constitutional aims.

12. Officials from the Federal Republic of Germany have been sent a questionnaire consisting of an introduction containing explanations for the addressee and followed by questions concerning the official and his family, places of residence during the past 10 years, any periods of residence - since 1945 - in Communist-bloc countries, any relatives in these countries, relations with persons living in these countries, professional training and occupation since 1945, membership of parties and organizations, details of immigration into the Federal Republic of Germany, if applicable, any periods spent as prisoner of war or in internment in a Communist country, journeys and periods spent abroad during the past 10 years, residence abroad of more than 6 months' duration, and contacts - actual or presumed - with secret service agents.

(b) Commission's position

13. Intervention by the Member States in the choice of officials to undertake duties subject to the obligation of secrecy may in fact conflict with the principle of 'European public service'. Moreover, Art. 16 of the Treaty establishing a single Council and a single Commission of the European Communities grants full independence to the Commission when it lays down:

'The Commission shall adopt its rules of procedure so as to ensure that both it and its departments operate in accordance with the provisions of the Treaties...'

14. In a declaration on the subject made on 29 October 1976 the Commission spokesman stated that no general enquiry was being carried out into the personal opinions of the institution's officials, and that such enquiries as were being carried out - described as 'security enquiries' - affected only those officials involved in activities whose secrecy had to be safeguarded.

The Commission spokesman stated, moreover, that the questionnaires completed by the officials were sent to the authorities of the Member States, which then decided on the suitability or otherwise of appointing an official to posts to which an obligation of secrecy attached. The Commission was bound to take account of a negative opinion expressed by the Member States concerned.

15. It must be recognized that, if the Commission considers itself bound by the negative opinion of the Member State concerned, the question arises whether its attitude is in accordance with Art. 10, according to which

'The members of the Commission shall, in the general interest of the Communities, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body.'

16. It should, however, be pointed out that at the parliamentary sitting of 14 December 1976, Mr Ortoli, President of the Commission of the European Communities, stated, in reply to Question No. 2 by Mr Sandri, that 'at present 350 officials are authorized to have access to secret information and 100 are in the process of being authorized. A number of further authorizations will probably be considered in the future. In the interests of the preservation of secrecy, the Commission intends to keep the number of officials so authorized down to a minimum.'¹

In reply to a question by Mr Giraud within the context of the discussion of 14 December 1976, Mr Ortoli added that the results of the inquiry did no harm to the career of officials and that their personal files would carry no trace of any opinions that might be attributed to them.

(c) Provisions on secrecy

17. However, whilst the Commission cannot disregard the provisions safeguarding its autonomy, it does have to respect other provisions of the treaties which oblige it to maintain secrecy. The second paragraph of Art. 47 of the ECSC Treaty lays down that

'The High Authority must not disclose information of the kind covered by the obligation of professional secrecy...'

and the fourth paragraph confirms that the institution is responsible for any breach of professional secrecy.

Article 214 of the EEC Treaty lays down that

'The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.'

18. The provisions of the EAEC Treaty take on particular importance in the context of this opinion. In signing this treaty the Member States obviously wanted to do everything possible to safeguard secrecy in the nuclear field, given the extremely 'sensitive' nature of the data they were required to transmit to the Community.

¹ See debates referred to, page 77

The provisions regarding secrecy appear in Section III of the EAEC Treaty (Arts. 24-27). These provisions accord a definite position of pre-eminence to the Member States vis-à-vis the Commission as regards the safeguarding of secrecy and make the entire matter largely subject to the arrangements laid down by national legal provisions.

19. Article 24(1) in particular provides for the adoption by the Council, on a proposal from the Commission, of 'security regulations' intended to lay down the various security gradings to be applied and the security measures to be implemented for each grading.

Such security regulations, pursuant to Art. 217 of the EAEC Treaty, were to be adopted by the Council within six months following entry into force of that treaty. Council Regulation No. 3 of 31 July 1958¹ lays down in Article 16(2) that 'the security screening shall be carried out at the responsibility of the Member State whose nationality the person concerned holds'. The following paragraph, paragraph 3, stipulates that 'the procedure with regard to the security screening shall be governed by the provisions and rules laid down in each Member State for that purpose'. shall be governed by the provisions and rules laid down in each Member State for that purpose'.

20. At the meeting of the Legal Affairs Committee of 15 March 1977, the Commission representative stated that the security inquiry was carried out 'on the responsibility of the Member State of which the person concerned is a national', because the Commission does not have a department of its own authorized to carry out such inquiries. It is therefore the appropriate departments of the Member States concerned which take charge of the matter by applying their respective internal procedures.

(d) Application of the secrecy provisions to other sectors

21. The provisions quoted above make it clear that the Commission finds itself confronted with two sets of rules when approaching this problem: those which lay down that it is an independent institution not subject to interference by the Member States and those which - particularly as regards nuclear matters - give full recognition to the application of procedures and systems in force in the Member States for safeguarding secrecy.

As Mr Ortoli pointed out when answering Mr Sandri's question², the procedure which grants to the Member States the authority to carry out

¹ See OJ of 6.10.1958, p. 406 ff

² See Report of Proceedings referred to above.

preliminary enquiries before assigning officials to services to which the obligation of secrecy applies and to give or withhold a favourable opinion on such appointments dates back to the beginnings of Euratom.

22. So this procedure rests on a legal basis constituted by the provisions of the Euratom Treaty and Council Regulation No. 3 of 31 July 1958. Pursuant to these provisions, the Member States bear the sole authority for assessing the suitability of a Commission official for appointment to certain posts to which the obligation of secrecy attaches.

23. This procedure has since been extended to other sectors with a view to safeguarding the secrecy of documents concerning foreign policy, international trade negotiations and monetary questions, the disclosure of which might harm the higher interests of the Community or Member States.

To this end security enquiries are carried out case by case and under the authority of the Member State whose citizenship the official holds. In these cases too, the Commission sends the official the questionnaire stipulated by the internal legislation of the Member State concerned and returns to the latter the completed questionnaire.

24. There are no provisions in the treaties or in legislation deriving from them which can justify the use of questionnaires sent by the Member States in such cases. These security enquiries should therefore be considered as being praeter legem in the absence of a regulation which - like Regulation No. 3 of 31 July 1958 - authorizes security enquiries in conformity with national legislation.

However, the necessity of safeguarding the confidential character of documents placed by the Member States at the disposal of the Community, especially those which concern political cooperation, should not be overlooked¹.

¹ On this point see the attached observations of the Commission (Annex)

(e) Evolution of rules regarding responsibility

25. A further provision by which Community officials are incontrovertibly subjected to national arrangements as regards responsibility for the infringement of secrecy is Article 194 of the EAEC Treaty. According to paragraph 1 of this article

'1. The members of the institutions of the Community, the members of the committees, the officials and other servants of the Community and any other persons who by reason of their duties or their public or private relations with the institutions or installations of the Community or with Joint Undertakings are called upon to acquire or obtain cognizance or any facts, information, knowledge, documents or objects which are subject to a security system in accordance with provisions laid down by a Member State or by an institution of the Community, shall be required, even after such duties or relations have ceased, to keep them secret from any unauthorized person and from the general public.

Each Member State shall treat any infringement of this obligation as an act prejudicial to its rules on secrecy and as one falling, both as to merits and jurisdiction, within the scope of its laws relating to acts prejudicial to the security of the State or to disclosure of professional secrets. Such Member States shall, at the request of any Member State concerned or of the Commission, prosecute anyone within its jurisdiction who commits such an infringement.'

26. The trend towards making the responsibility of Community officials for breaches of secrecy subject to the provisions in force in the Member States is reconfirmed in the Draft for a Treaty amending the Treaty establishing a Single Council and a Single Commission of the European Communities so as to permit the adoption of common rules on liability and protection under criminal law of officials and other servants of the European Communities¹.

The Protocol on the liability and protection under criminal law of officials and other servants of the European Communities, annexed to the Draft Treaty referred to above, provides in its Article 4 that:

¹ See OJ C 222 of 22.9.76, p. 13.

'The provisions of the criminal law of each Member State which relate to breach of professional secrecy shall apply also to breaches of professional secrecy committed by:

- (a) officials and former officials of the European Communities,
- (b) persons on whom a competent department of the European Communities has imposed a formal obligation of secrecy which has been accepted individually by the person concerned.'

All the provisions referred to, therefore, whether in force or in draft stage, provide expressly for the intervention of the Member States and the application of their respective procedures in regard to the protection of secrecy.

27. It should, however, be pointed out that Article 194 of the EAEC Treaty authorizes the Commission to actively intervene with the Member States with a view to harmonizing the questionnaires to which Petition No. 13/76 refers. The third paragraph of Art. 194(2) of the EAEC Treaty lays down that:

'Each Member State shall take all appropriate measures to facilitate the gradual establishment of as uniform and comprehensive a security system as possible. The Commission may, after consulting the Member State concerned, make recommendations for this purpose'.

The Commission could, in application of this provision, recommend to the Member States that in drawing up their respective questionnaires they take account of the democratic principles on which the Community is founded.

(f) Practice at the UN

28. Pursuant to Art. 101(1) of the UN Charter, the staff of that international organization are appointed by the Secretary-General in accordance with the provisions laid down by the General Assembly.

Article 101(3) lays down the general criteria for recruitment, which have clearly been reproduced in Article 27 of the Staff Regulations of Officials of the European Communities; they include 'ability', 'efficiency', 'integrity' and recruitment 'on the broadest possible geographical basis'.

29. It has not, however, been uncommon for Member States to request the UN Secretariat to forward to their respective foreign ministries the names of their citizens whose appointment is pending. This would enable national administrations to check whether anything in a candidate's record might militate against such appointment.

30. The Secretariat objected that such a procedure would have represented governmental control which could amount to a veto on the appointment of their citizens as UN officials and that this would have been incompatible with the principles of the UN charter as regards staff recruitment.

Article 100 of the Charter in fact lays down that:

'1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the organization.

.....

.....

2. Each member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.'

31. Following this objection from the Secretariat it became usual practice at the UN to leave the appointment of officials to the discretion of the Secretary-General. Nevertheless, the Secretary-General feels it appropriate to receive comments from the government concerned regarding the candidate's suitability and the Secretariat therefore normally informs each government of candidatures from nationals of its state.

The usefulness of such information is apparent when one considers the UN's interest in being able to recruit, pursuant to the provisions of Article 101(3), staff having 'the highest standards of ability, efficiency and integrity.'

32. It should be pointed out that the governments' comments regarding candidates to be recruited are quite distinct from the procedure of 'consulting' the government of a state to whose territory a UN expert is to be assigned. In such cases, in fact, the consultation procedure between the UN and the state concerned culminates in the formal approval of the expert's appointment by the state on whose territory he will be operating.

33. The problem raised by Petition No. 13/76, therefore, does not arise solely in the context of the Community, but is a general characteristic, under the heading of security, of relations between Member States and the international organizations set up by them.

III. CONCLUSIONS

34. In the light of the complex situation described above, the Legal Affairs Committee has reached the following conclusions:

(1) Petition No. 13/76 implies that a breach of the Staff Regulations of Officials of the European Communities - Article 26 of which expressly and unconditionally forbids any reference in an official's personal file to his political, philosophical or religious views - would exist if such references were in fact included in his personal file. However, this does not seem to be the case. The remarks made by the Commission representative at the meeting of the Legal Affairs Committee of 15 March 1977 show that the security inquiries concern a very limited number of officials who are required to perform duties protected by secrecy.

(2) The requests contained in the petition calling for the European Parliament to make sure that

- (a) no such references of this nature are included in the files of Community officials or other staff,
- (b) each official and staff member has a personal file and a medical file only,
- (c) references in breach of the Staff Regulations are removed from the files of officials or other staff

can, in view of the 'confidential nature' of the personal files, be acceded to by Parliament only if it obtains the agreement of the administrations of the other institutions.

(3) Since Parliament is obliged to respect the principle of the separation of powers and cannot take upon itself responsibilities which fall within the jurisdictional sphere, the request that it should make sure that the other Community institutions comply with the provisions of the Staff Regulations should be rejected.

It is up to the officials concerned, where appropriate, to apply to the Court of Justice of the European Communities with a view to establishing that they have been the victims of a breach of the provisions of the Staff Regulations.

(4) The intervention of Member States in the appointment of Commission officials to posts subject to the obligation of secrecy cannot always be founded on the provisions of the Treaties. However, account must always be taken of the need to safeguard the confidential character of documents placed by the Member States at the disposal of the Community, especially those which concern political cooperation.

- (5) The Commission does not have a department of its own empowered to carry out security inquiries. Since the inquiries in question are conducted essentially in the interests of the Member States, it is clear that it is for the appropriate departments of the Member States to carry them out in accordance with their domestic legislation.
- (6) In the light of the Staff Regulations and of the need to safeguard secrecy, the European Parliament could ask the Commission to recommend to the Member States concerned, pursuant to the third paragraph of Art. 194(2) of the Euratom Treaty, to harmonize the questionnaires referred to in Petition No. 13/76 and, in their formulation, to take account of the democratic principles on which the Community itself is founded.

Annex to the Opinion of the Legal Affairs Committee

Observations of the Commission on point 24 of this opinion:

'This case is not covered by the Euratom treaty nor by Regulation No. 3 of the Council. However, the Commission considers that, the texts being silent on this point, it could legitimately take the decision referred to above by virtue of the power of organization enjoyed by each Community institution and, in the case of the Commission, expressly recognized under Article 16 of the Merger Treaty.

In exercising this power, the Commission was guided by the following considerations:

(a) It is of great importance to the Community to have at its disposal secret documents on political, economic and monetary negotiations; in order to have access to them, it was necessary to give the Member States every guarantee that secrecy would be respected; but only a system of the Euratom type was acceptable to them.

(b) The Commission has at all events an absolute obligation to safeguard the secret documents entrusted to it;

(c) Only the Member States are in a position to undertake security enquiries. The Commission cannot provide itself with its own police force and have it operate within the Member States'.

Petition No. 13/76

by Mr Jean FEIDT,
Chairman of the Staff Committee
of the European Parliament,
and fifteen other members of that committee

Subject: Enquiries into the political affiliations of Commission officials

The undersigned, members of the Staff Committee of the European Parliament,

- Note that the Commission of the European Communities has recently asked its British, Danish and Irish staff to complete a personal questionnaire concerning their political views;
- Point out that Article 26 of the Staff Regulations of Officials stipulates that 'an official's personal file shall contain no reference to his political, philosophical or religious views';
- Therefore request the European Parliament to make sure that:
 - (1) no reference of this nature is contained in any files of officials or other staff of the Communities;
 - (2) each official and staff member has a personal file and a medical file only;
 - (3) references to political, philosophical or religious views included in any file whatsoever on officials or other staff shall be destroyed;
 - (4) each Community institution and body complies with the provisions of the Staff Regulations in this matter;
 - (5) a report on these verifications is made public.

Luxembourg, 9 November 1976

FEIDT Jean

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and fifteen other members of the Staff
Committee of the European Parliament

