

DECISION ON ADMISSIBILITY

COMPLAINT No. 23/2003

By the *Syndicat occitan de l'éducation*
against France

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 200th session attended by:

MM. Jean-Michel BELORGEY, President
Nikitas ALIPRANTIS, Vice-President
M^{me} Polonca KONCAR, Vice-President
MM. Rolf BIRK
Stein EVJU
Matti MIKKOLA
Konrad GRILLBERGER
Tekin AKILLIOĞLU
M^{me} Csilla KOLLONAY LEHOCZKY
MM. Lucien FRANCOIS
Andrzej SWIATKOWSKI

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

Having regard to the complaint registered as number 23/2003, lodged on 18 November 2003 by *Syndicat occitan de l'éducation* (hereafter referred to as the « SOE »), represented by its Treasurer and member of its national bureau Mr Ives RAUZIER, requesting that the Committee find that France fails to apply in a satisfactory manner Articles 5 and 6 of the Revised European Social Charter (hereafter referred to as "the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 30 January 2004 by the French Government,

Having regard to the Revised Charter and, in particular, to Articles 5 and 6 which read as follows:

Part II

Article 5 – The right to organise

“With a view to ensuring or promoting the freedom of workers and employers to form local, national and international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.”

Article 6.-The right to bargain collectively

“With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- 1 to promote joint consultation between workers and employers;
- 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

- 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into”.

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints (hereafter referred to as” the Protocol”);

Having regard to the Rules of Procedure adopted by the Committee on 9 September 1999 during its 163rd session;

After having deliberated on 13 February 2004;

Delivers the following decision, adopted on the above date:

1. The trade union SOE alleges that law no 84-16 of 11 January 1984 which prohibits trade unions not deemed representative within the meaning of Article 14 to present themselves in elections for worker representatives constitutes a violation of Articles 5 and 6 of the Revised Charter. The SOE, which exercises its activities in France, is a trade union organisation within the jurisdiction of this country as required by Article 1§c of the Protocol.
2. The French Government raises two objections to admissibility: on the one hand, it contests that the complaint respects the conditions for admissibility laid down in Articles 1§c of the Protocol, on the other hand, it considers that the condition laid down in Rule 20 of the Rule of Procedure is not fulfilled.
3. In respect of Article 1§c of the Protocol, the Government highlights that in a judgment of 29 September 2002, the Administrative Court of Appeal of Paris held that the SOE did not fulfil the conditions of representativity as laid down by the above-mentioned law no. 84-16. As a result, the SOE is not a national organisation of workers within the meaning of Article 1§c of the Protocol.
4. The Committee recalls that for the purpose of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint no. 9/1999, *Confédération Française d'Encadrement "CFE-CGC" v. France*, decision on admissibility, para 6). The fact that the complainant trade union is not considered in French law as representative for the purposes of collective bargaining, is not in itself decisive for the requirements of Article 1§c of the Protocol.
5. Having made an overall assessment of the documents in the file, from which it appears, in particular, that the SOE exercises, in the geographical area in which it is based, activities in defence of the material and moral interests of personnel in the education sector, of which it represents a considerable number, and this in total independence from the employing authorities, the Committee considers that the SOE is representative for the purposes of the collective complaints procedure.
6. The French Government does not contest that the complainant respects the conditions for admissibility laid down in Article 4 of the Protocol.
7. The Committee notes that the Protocol was ratified by France on 7 May 1999, and entered into force in respect of this State on 1st July 1999. In addition, France ratified the Revised Charter on 7 May 1999 which entered into force in its respect on 1st July 1999. According to Article 4 of the Protocol, the complaint is presented in writing and concerns Articles 5 and 6 of the Revised Charter, provisions accepted by France at the time of ratification of this treaty.
8. As regards of the plea of inadmissibility relating to Rule 20 of the Rules of Procedure, the Committee notes that the complaint lodged in the name of the SOE is signed by its Treasurer and member of its national bureau, Yves RAUZIER, duly authorised to do so by a mandate signed by the Secretary General of the SOE, in the name of the bureau which is, by virtue of Article 9 of the statute of the complainant trade union, entitled to represent it before the courts. The Committee therefore considers that the conditions provided for by Article 20 of its Rules of Procedure are fulfilled.

9. For these reasons, the Committee, on the basis of the report presented by Mr Rolf BIRK, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE.

In application of Article 7§1 of the Protocol, requests the Executive Secretary to inform the Contracting Parties to the Charter that the present complaint is admissible.

Invites the French Government to submit in writing by 9 April 2004 all further relevant explanations or information.

Invites the Contracting Parties to the Protocol and the other States having submitted a declaration pursuant to Article D of the Revised Charter, in order to accept the procedure established by the Protocol, to communicate to it by the same date any observations which they wish to submit.

Invites the SOE to submit in writing by a deadline which it shall determine all relevant explanations or information in response to the observations of the French Government.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to submit their observations by 9 April 2004.

Rolf BIRK
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary