

DECISION ON ADMISSIBILITY

COMPLAINT No. 24/2004

By *SUD Travail Affaires Sociales*, *SUD ANPE* and *SUD Collectivités Territoriales*
v. France

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 205th session attended by:

MM. Jean-Michel BELORGEY, President
Nikitas ALIPRANTIS, Vice-President
M^{me} Polonca KONČAR, Vice-President
MM. Stein EVJU, General Rapporteur
Rolf BIRK
Matti MIKKOLA
Konrad GRILLBERGER
Alfredo BRUTO DA COSTA
Tekin AKILLIOĞLU
M^{me} Csilla KOLLONAY LEHOCZKY
MM. Gerard QUINN
Lucien FRANCOIS
Andrzej SWIATKOWSKI

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

Having regard to the complaint dated 5 January 2004, formally submitted in the name of the trade unions *SUD Travail Affaires Sociales*, *SUD ANPE* and *SUD Collectivités Territoriales*, requesting that the Committee find that France fails to apply in a satisfactory manner Article 1§2 of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents supplementing the complaint;

Having regard to the observations submitted on 16 April 2004 by the French Government (“the Government”);

Having regard to the Revised Charter and, in particular, to Article 1§2 which reads as follows:

Article 1 – The right to work

With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: ...

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon; ...

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

Having regard to the Rules of Procedure adopted by the Committee on 9 September 1999;

After having deliberated on 7 December 2004;

Delivers the following decision, adopted on the above date:

1. The complaint alleges that French legislation prohibiting discrimination in employment is in violation of Article 1§2 of the Revised Charter, partly because certain categories of workers are excluded from the protection of the Labour Code and its Article L.122-45 prohibiting discrimination and alleviating the burden of proof, and partly because certain civil servants (*fonctionnaires*) and public employees (*agents publics non titulaires*) are not adequately protected against discrimination by the statutes governing their employment.

2. The complaint, dated 5 January and received on 12 January 2004 was lodged, formally, on behalf of three national trade unions, namely *SUD Travail Affaires Sociales*, *SUD ANPE* and *SUD Collectivités Territoriales*. On the instruction of the President, the Executive Secretary of the European Social Charter by letter of 28 January 2004 asked the signatory to the complaint, Mr Jacques DECHOZ, whether he was expressly mandated to act on behalf of the three unions. By letter dated 6 February and received at the Secretariat on 19 February 2004, *SUD Travail Affaires Sociales* replied that Mr DECHOZ had been mandated by a decision of the union’s national council on 22-23 January 2004 (see below at para. 5). The complaint was then registered. On the instruction of the President, the Executive Secretary by letter of 5 March 2004 once again asked the signatory to the complaint to document his mandate to lodge the complaint also on behalf of *SUD ANPE* and *SUD Collectivités Territoriales*. However, no reply to this request has been received. Meanwhile, the Government was informed by letter of 5 March 2004 of the registration of the complaint as well as of the outstanding question and was given until 16 April 2004 to submit observations on the admissibility of the complaint.

3. The Government in its observations registered on 16 April 2004 raises the following objections to admissibility:

- the signatory to the complaint had not been mandated to act on behalf of *SUD Travail Affaires Sociales* at the time of lodging the complaint;
- it has not been shown that the signatory to the complaint is mandated to represent *SUD ANPE* and *SUD Collectivités Territoriales*;
- pursuant to its statutes *SUD Travail Affaires Sociales* has no authority to act on behalf of the staff of local and regional authorities and of the public hospital service and it is not entitled to recruit members from the national employment agency (ANPE);
- porters and caretakers of residential buildings, domestic employees and mother's helps working in the home are covered by their own specific provisions of the Labour Code and for this reason alone fall totally outside the scope of the statutes of *SUD Travail Affaires Sociales*.

AS TO THE LAW

As to the admissibility conditions set out in the Protocol and the Committee's Rules of Procedure

4. The Committee notes that the Protocol was ratified by France on 7 May 1999, and entered into force in respect of this State on 1 July 1999. In addition, France ratified the Revised Charter on 7 May 1999 which entered into force in its respect on 1 July 1999. In accordance with Article 4 of the Protocol, the complaint is presented in writing and concerns Article 1§2 of the Revised Charter, a provision accepted by France at the time of ratification of this treaty. The Committee further notes that the Government does not contest that the complainant respects the conditions for admissibility laid down in Article 4 of the Protocol.

5. The Government in its observations submits firstly that the author of the complaint had not been authorised by *SUD Travail Affaires Sociales* to act on its behalf at the time of the lodging of the complaint, which should therefore be declared inadmissible. Secondly, it contends that the complaint is also inadmissible in so far as it is presented on behalf of the *SUD ANPE* and the *SUD Collectivités Territoriales* trade unions because it has not been shown that the signatory to the complaint has been mandated to represent these two unions.

6. With respect to the first objection, the Committee notes that the signatory to the complaint, Mr DECHOZ, was mandated to act on behalf of *SUD Travail Affaires Sociales* in respect of the present complaint by a decision of the union's national council of 22 and 23 January 2004 pursuant to Article 30 of the union statutes. On this basis, the Committee considers that the condition provided for in Article 20 of its Rules of Procedure is fulfilled as far as *SUD Travail Affaires Sociales* is concerned. The fact that the decision of the national council was taken after the initial lodging of the complaint does not lead the Committee to take any other view of the matter.

7. As regards the second objection, the Committee notes that on the basis of the information in the file there is no evidence to support that the signatory to the complaint was actually mandated by either *SUD ANPE* or *SUD Collectivités Territoriales* to act on their behalf (cf. also above at para. 2). Hence, the Committee finds that Article 20 of its Rules of Procedure is not complied with in respect of these two unions and that accordingly, the complaint must be dismissed as inadmissible in regard to *SUD ANPE* and *SUD Collectivités Territoriales* acting as complainants.

8. *SUD Travail Affaires Sociales*, which exercises its activities in France, is a national trade union organisation within the jurisdiction of this country as required by Article 1§c of the Protocol.

9. Pursuant to Article 1 of its statutes, *SUD Travail Affaires Sociales* organises any staff whose employment is directly or indirectly dependent on the Ministry of Employment and Solidarity as well as other staff whose employment is dependent on other ministries and who performs tasks related to labour inspection. Based on an overall assessment of the information at its disposal on the objectives and activities of *SUD Travail Affaires Sociales*, the Committee considers that *SUD Travail Affaires Sociales* is representative for the purposes of the collective complaints procedure. It notes that this is not contested by the Government. The Committee further recalls that, for the purposes of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (Complaint No. 9/2000, *Confédération française de l'Encadrement "CFE-CGC" v. France*, decision on admissibility of 6 November 2000, para. 6).

As to the other objections to admissibility raised by the Government

10. The Government argues that *SUD Travail Affaires Sociales* pursuant to Article 1 of its own statutes has no authority to act on behalf of the staff of local and regional authorities and of the public hospital service, and that it is not entitled to recruit members from the national employment agency (ANPE). Further, with respect to porters and caretakers of residential buildings, domestic employees and mother's helps working in the home, the Government argues that these three categories of employees are covered by their own specific provisions of the Labour Code and for this reason alone fall totally outside the scope of the statutes of *SUD Travail Affaires Sociales*. The Government submits that hence, the complaint should be declared inadmissible inasmuch as it pertains to categories of employees on whose behalf the complainant trade union has no authority to act.

11. The Committee notes that a trade union deemed to be representative for the purposes of the collective complaints procedure in accordance with Article 1§c of the Protocol, thereby has the right to lodge a complaint against the Party concerned on any point, within the bounds of Article 4 of the Protocol, on which it alleges unsatisfactory application of the Charter. This right of complaint is independent of which categories of employees the union according to its statutes is unionising, or which categories of employees it is authorised to represent or unionise in the framework of domestic law. The Government's objection on this point hence must be dismissed.

12. For these reasons, the Committee, by 9 votes to 4, on the basis of the report presented by Mr Stein EVJU, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE in regard to *SUD Travail Affaires Sociales*,

and

INADMISSIBLE in regard to *SUD ANPE* and *SUD Collectivités Territoriales* as complainants.

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

Invites the Government to submit in writing by 11 February 2005 all further relevant explanations or information.

Invites the Parties to the Protocol and the 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 *SUD Travail Affaires Sociales* to submit in writing by a deadline which it shall determine all relevant explanations or information in response to the observations of the 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 11 February 2005.

Stein EVJU
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary

A dissenting opinion by Mr Jean-Michel BELORGEY is appended to this decision.

Dissenting Opinion M. Jean-Michel BELORGEY

While the admissibility of the complaint presented by the *Syndicat SUD Travail Affaires sociales* does not give rise to any doubts as far as it concerns the situation of categories of staff employed under the Ministry for Employment, it cannot be accepted in so far as it relates to the situation of employees the defence of whose interests does not come within the aim of the complainant trade union. However broadly the notion of a union's competence to act is interpreted, it cannot be taken so far as to recognise a right for any trade union to take public action on behalf of all employees, and that notwithstanding the wording of the applicable provisions of the Protocol providing for a system of collective complaints of 9 November 1995, whose signatories could not have accepted the prospect of a total disruption of the industrial relations system.