

**DECISION ON ADMISSIBILITY**

**COMPLAINT No. 25/2004**

By the *Centrale générale des services publics* (C.G.S.P.)  
against Belgium

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 203<sup>rd</sup> session in the following composition:

Messrs Jean-Michel BELORGEY, President  
Nikitas ALIPRANTIS, Vice-President  
Mrs Polonca KONCAR, Vice-President  
Messrs Stein EVJU, General Rapporteur  
Rolf BIRK  
Matti MIKKOLA  
Konrad GRILLBERGER  
Alfredo BRUTO DA COSTA  
Tekin AKILLIOĞLU  
Mrs Csilla KOLLONAY LEHOCZKY  
Messrs Gerard QUINN  
Lucien FRANÇOIS  
Andrzej SWIATKOWSKI

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

Having regard to the complaint registered as number 25/2004, lodged on 23 February 2004 by the *Centrale générale des services publics* ("C.G.S.P."), represented by its President Mr. Guy BIAMONT, requesting that the Committee find that Belgium fails to apply in a satisfactory manner Article 6§§1 and 2 of the European Social Charter ("the Charter");

Having regard to the documents appended to the complaint;

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

Having regard to the additional information submitted on 10 June 2004 by the C.G.S.P.;

Having regard to the Charter and, in particular, to Article 6§§1 and 2 which reads as follows:

**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 employer’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”

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 during its 163<sup>rd</sup> session (“the Rules of Procedure”);

After having deliberated on 6 September 2004;

Delivers the following decision, adopted on the above date:

1. The C.G.S.P. alleges that as the process whereby legislation is drawn up is not subject to any judicial supervision, Belgian law does not guarantee the effectiveness of legislation concerning the exercise of the right to bargain collectively in the public sector, in violation of Article 6§§1 and 2 of the Charter.
2. The Government alleges inadmissibility on the grounds that the decision to lodge the complaint was not taken by the competent C.G.S.P. bodies: it was taken, on 6 February 2004, by the Permanent Secretariat of the C.G.S.P., whereas under Article 20 (e) of the C.G.S.P.’s Articles of Association, the decision “to take legal proceedings” must be taken by the Permanent Secretariat and the Federal Executive Bureau.
3. The C.G.S.P. argues that in practice, for functional reasons, the trade union’s Permanent Secretariat sometimes takes decisions between the meetings of the Federal Executive Bureau. Moreover, at its meeting on 26 May 2004, the Bureau confirmed, with effect from 6 February 2004, the Permanent Secretariat’s decisions to lodge the complaint and appoint the President to represent the C.G.S.P.

## AS TO THE LAW

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

4. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Belgium on 23 June 2003 and came into force in respect of that country on 1 August 2003, the complaint has been lodged in writing. It notes that the complaint refers to Article 6§§1 and 2, of the Charter, and that Belgium accepted these provisions on 16 October 1990, when it ratified the Charter.

5. The C.G.S.P., which operates in Belgium, is a trade union confederation that comes under Belgian jurisdiction, in accordance with Article 1.c of the Protocol. Under Belgian law the C.G.S.P. is considered representative at national level. The Committee 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"* against France, decision on the admissibility of 6 November 2000, §6).

6. As regards the representativity of the complainant, which is not contested by the Government, the Committee takes the view, after an overall assessment of the documents in the file, that the C.G.S.P. is representative for the purposes of the collective complaints procedure.

7. Furthermore, the complaint lodged on behalf of the C.G.S.P. is signed by its President, Guy BIAMONT, who was appointed by a decision by the Permanent Secretariat of 6 February 2004, confirmed by the Executive Bureau on 24 May 2004, to represent it in proceedings before the European Committee of Social Rights. The Government does not contest this. The Committee therefore considers that the requirement laid down in Rule 20 of the Rules of Procedure has been met.

### *As to the Government's objection on the admissibility*

8. The Committee considers that the Belgian Government's objection is not supported by the facts in so far as the Permanent Secretariat's decision to lodge the complaint was confirmed by the Executive Bureau according to the C.G.S.P.'s Articles of Association.

9. On these grounds, the Committee, on the basis of the report presented by Mr Jean-Michel BELORGEY,

**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 and the Revised Charter that the present complaint is admissible.

Invites the Government to submit in writing by 8 November 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 C.G.S.P. 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 8 November 2004.

Jean-Michel BELORGEY  
Rapporteur  
President

Régis BRILLAT  
Executive Secretary