

DECISION ON ADMISSIBILITY

COMPLAINT No. 26/2004

By the Syndicat des Agrégés de l'Enseignement Supérieur
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:

Messrs Jean-Michel BELORGEY, President
Nikitas ALIPRANTIS, Vice-President
Mrs Polonca KONČAR, 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 26/2004 on 27 April 2004 by the Syndicat des Agrégés de l'Enseignement Supérieur ("SAGES") represented by its acting President Mr Denis ROYNARD, requesting that the Committee find that France fails to apply in a satisfactory manner Article 5 as well as Articles E, G and I of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 13 July 2004 by the French Government ("the Government");

Having regard to the Revised Charter and, in particular, to Article 5 and Articles E, G and I which read as follows:

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 E – Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

Article G – Restrictions

"1 The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed."

Article I – Implementation of the undertakings given

"1 Without prejudice to the methods of implementation foreseen in these articles the relevant provisions of Articles 1 to 31 of Part II of this Charter shall be implemented by:

- a laws or regulations;
- b agreements between employers or employers' organisations and workers' organisations;
- c a combination of those two methods;
- d other appropriate means.

2 Compliance with the undertakings deriving from the provisions of paragraphs 1, 2, 3, 4, 5 and 7 of Article 2, paragraphs 4, 6 and 7 of Article 7, paragraphs 1, 2, 3 and 5 of Article 10 and Articles 21 and 22 of Part II of this Charter shall be regarded as effective if the provisions are applied, in accordance with paragraph 1 of this article, to the great majority of the workers concerned.”

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 the Committee adopted by the Committee on 29 March 2004 during its 201st session (“the Rules”);

After having deliberated on 7 December 2004;

Delivers the following decision, adopted on the above date:

1. SAGES alleges that French legislation impairs the right to organize in violation of Article 5 of the Revised Charter because Decree No. 89-1 on the National Council for higher education and research (*Conseil national de l'enseignement supérieur et la recherche* - CNESER) does not guarantee collective legal remedies in respect of elections to CNESER. It further alleges that the national regulations are in breach of Articles E and G, read in conjunction with Article 5, and in consequence the situation is also in breach of Article I.

2. The Government in its observations registered on 13 July 2004 raises the following objections to admissibility:

- the complaint was not signed by its author;
- the author of the complaint has not shown that he has been mandated by the complainant organisation;
- the complaint is inadmissible *ratione materiae* as the matter complained of falls outside the scope of the Revised Charter;
- the domestic remedies have not been exhausted.

AS TO THE LAW

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

3. 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 Articles 5 and E, G and I of the Revised Charter, provisions accepted by France at the time of the ratification of this treaty. In addition, the grounds for the complaint are indicated. 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.

4. The Government in its observations submits firstly that complaint was not duly signed and secondly, that it has not been established that the author of the complaint has been authorised to represent SAGES as required by Article 23 of the Committee's Rules.

5. The Committee notes that the complaint dated 21 April 2004 and registered on 27 April 2004 at the Secretariat is signed by Mr Denis ROYNARD, President of SAGES, and carries the stamp of SAGES. Furthermore, in view of documents appended to the complaint, in particular the statutes of SAGES, the Committee considers that Mr ROYNARD has been duly authorised to represent the complainant organisation for the purposes of the collective complaints procedure. Pursuant to Article 21 of the statutes the President of SAGES is empowered to take legal action on behalf of SAGES and he may even delegate this power to any member of the union. Consequently, on these points the objections of the Government must be dismissed.

6. SAGES, 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.

7. According to Article 1 of its statutes, SAGES organises qualified teachers and teachers of similar status with a view to defending the rights and moral and material interests of the members, collectively or individually. Based on an overall assessment of the information at its disposal on the objectives and activities of SAGES, the Committee considers that SAGES 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

8. The Government argues that the matter complained of, the lack of collective remedies in respect of elections to CNESER, falls outside the scope of the Charter because CNESER is not concerned with the exercise of social rights or with relations between employers and employees. The Government points out in this respect that CNESER in its plenary form is a consultative body dealing with the organisation and functioning of higher education. It is particularly consulted on authorisations to award national qualifications in accordance with Article L.613-1 of the Education Code and the allocation of the staff resources of higher education establishments in accordance with Article L.719-4. In addition, under Article L.232.2 of the Code, concerned with disciplinary matters, the CNESER, acting in a judicial capacity and with more restricted membership, hears appeals against decisions of the relevant university authorities of scientific, cultural and vocational public educational institutions concerning their teacher-researchers, teachers and users.

9. The complainant in its additional information registered on 30 July 2004 contests the Government's arguments and refers to its initial submission. It further states that it is necessary to consider not just the formal terms of reference of the CNESER and its members but all the material circumstances of the case. The complainant finally states that the Paris Administrative Court of Appeal in its most recent decision on this case did not find that the Charter was inapplicable, only that the regulation concerned was not in breach of Charter obligations.

10. The Committee recalls that under Article 5 of the Revised Charter a trade union shall have the right to organise its activities and to formulate a programme of action. Whether seeking representation on public law bodies, as in the present case, is protected by Article 5, and if so to what extent, raises an issue of substance that appropriately pertains to the assessment of the merits of the complaint. Hence, the Government's objection on this point to the admissibility of the complaint must be dismissed.

11. The Government finally observes that the matter complained of was the subject of a challenge by SAGES in the Paris Administrative Court which was dismissed by the Court on 20 June 2003 and that an appeal to the Paris Administrative Appeal Court was dismissed on 9 March 2004. However, it points out that the complainant organisation has not exhausted the domestic remedies available indicating more specifically that the possibility of an appeal on points of law with the *Conseil d'Etat* was not used. The Government considers this to be a ground for declaring the complaint inadmissible.

12. The Committee recalls that neither the Protocol nor the Rules lay down a requirement that domestic remedies be exhausted. Naturally, the Committee takes full account of the interpretation put on national law by the domestic courts. Nevertheless, the Protocol does not require the invocation or exhaustion of domestic remedies as a prerequisite to maintaining a collective complaint. For this reason the Committee dismisses the Government's objection to admissibility on this ground.

13. For these reasons, the Committee, on the basis of the report presented by Mr Alfredo BRUTO DA COSTA, 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 notify the complainant organisation and the defending State of the present decision, to transmit it to the Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 11 March 2005.

Invites SAGES to submit a response to the Government's submissions by a deadline which it shall determine.

Invites Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 11 March 2005, should they so wish.

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 make observations by 11 March 2005.

Alfredo BRUTO DA COSTA
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary