

**DECISION ON ADMISSIBILITY**  
**13 June 2005**

***Syndicat national des Dermato-Vénérologues***  
**v. France**

Complaint No. 28/2004

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 208<sup>th</sup> session in the following composition:

MM    Jean-Michel BELORGEY, President  
      Andrzej SWIATKOWSKI, Second Vice-President  
      Stein EVJU, General Rapporteur  
      Rolf BIRK  
      Matti MIKKOLA  
      Tekin AKILLIOĞLU  
Mrs    Csilla KOLLONAY LEHOCZKY  
      Polonca KONČAR  
Mr    Lucien FRANÇOIS  
Mr    Lauri LEPPIK  
Mrs    Beatrix KARL

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

Having regard to the complaint registered as number 28/2004, lodged on 12 July 2004 by the *Syndicat national des Dermato-Vénérologues* (hereafter referred to as "SNDV"), represented by its President Dr. Gérard ROUSSELET, requesting that the Committee find that France fails to comply with Article 1§2 combined with Article E 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 22 October 2004 by the French Government (“the Government”),

Having regard to the Charter and, in particular, to Articles 1§2 and E which read as follows:

## **Part II**

### **Article 1 – The right to work**

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

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

## **Part V**

### **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.”

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 29 March 2004 during its 201<sup>st</sup> session (“the Rules of Procedure”);

After having deliberated on 13 June 2005;

Delivers the following decision, adopted on the above date:

1. The SNDV, a trade union, maintains that the relevant French regulations (minimum agreement regulation issued by interministerial decree on 13 November 1998 and amended by a further interministerial decree on 22 September 2003) constitute discrimination with regard to the fees payable to specialist medical practitioners in private practice and as such are in breach of Article 1§2 combined with Article E of the Revised Charter. The SNDV is a trade union that exercises its activities in France and within the jurisdiction of that state, in accordance with Article 1§c of the Protocol.
2. The Government states that the complaint is inadmissible because it does not satisfy one of the admissibility conditions in Article 1§c of the Protocol.
3. According to the Government, the SNDV is not recognised as being representative under Article L. 162-33 of the Social Security Code for the purposes of negotiating and signing national agreements on relations between health insurance bodies and specialist doctors. It also underlines that the SNDV has failed to produce evidence of its representativeness, and therefore does not meet one of the admissibility conditions in Article 1§c of the Protocol.

4. The Committee notes that, for the purposes of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness (*Confédération Française d'Encadrement "CFE-CGC" v. France*, Complaint No. 9/1999, decision on admissibility of 6 November 2000, §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 purposes of Article 1§c of the Protocol.

5. From the documents at its disposal, the Committee is unable to determine whether the complainant organisation is representative for the purposes of the collective complaints procedure, and in particular for that of presenting complaints on behalf of all specialist practitioners. However, given the conclusion it reaches in §8, it does not find it necessary to consider these matters.

6. The Protocol was ratified by France on 7 May 1999, and entered into force in that country on 1 July 1999. In addition, on 7 May 1999 France ratified the Revised Charter, which also entered into force in that country on 1 July 1999. In accordance with Article 4 of the Protocol, the complaint is presented in writing.

7. According to the complaint, France does not satisfactorily apply Article 1§2 of the Revised Charter, which was accepted by France when it ratified the Revised Charter, combined with Article E. The Committee is asked to determine whether the difference in treatment between categories of specialist medical practitioners in private practice regarding the fees they can charge for items of service, and thus their remuneration, amounts to discrimination against one particular category of these practitioners.

8. The Committee finds that the facts adduced are not of such a nature as to allow it to conclude that there has been a violation of the right guaranteed by the combination of Article E (non-discrimination) with Article 1§2 (right to earn one's living in an occupation freely entered upon) and Article 4§1 (right to a remuneration which is sufficient to ensure a decent standard of living) of the Revised Charter.

For these reasons, based on the report presented by Mr Lucien FRANCOIS, the Committee

**DECLARES THE COMPLAINT INADMISSIBLE,**

Requests the Executive Secretary to the Committee to inform the French Government and the *Syndicat national des Dermato-Vénérologues* that the present complaint is inadmissible.

Lucien FRANÇOIS  
Rapporteur

Jean-Michel BELORGEY  
President

Régis BRILLAT  
Executive Secretary