

DECISION ON ADMISSIBILITY
14 June 2005

SAIGI-Syndicat des Hauts Fonctionnaires
v. France

Complaint No. 29/2005

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 208th session attended by:

MM Jean-Michel BELORGEY, President
 Andrzej SWIATKOWSKI, Second Vice-President
 Stein EVJU, General Rapporteur
 Rolf BIRK
 Matti MIKKOLA
 Nikitas ALIPRANTIS
 Tekin AKILLIOĞLU
Mrs Csilla KOLLONAY LEHOCZKY
 Polonca KONČAR
Mr Lucien FRANÇOIS
Mrs Lenia SAMUEL
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 29/2005, lodged on 7 February 2005 by the *SAIGI-Syndicat des Hauts Fonctionnaires* ("the SAIGI") and signed by its President, Pierre SECRET, the SAIGI being subsequently represented by its Secretary General, Pascal GOBRY, requesting that the Committee find that France is not in conformity with Article 5 of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter and, in particular, Article 5, which reads as follows:

Article 5 – The right to organise

Part I: "All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests".

Part II: "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".

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 at its 201st session ("the Rules");

After deliberating on 14 June 2005;

Delivers the following decision, adopted on the above date:

1. The SAIGI, a trade union, alleges that in practice there are no effective remedies in the event of a breach of the right to organise where the state is also acting as employer, which is in breach of Article 5 of the Revised Charter.
2. The SAIGI exercises its trade union activities within the jurisdiction of France in accordance with Article 1§c of the Protocol.

3. The Committee notes that, for the purposes of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (*Confédération Française d'Encadrement "CFE-CGC" v. France*, Complaint no. 9/1999, decision on admissibility, para. 6). In particular, 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. In this case, however, given the conclusion it reaches in paragraphs 8 and 9, the Committee does not consider it necessary to determine whether the trade union is representative for the purposes of the collective complaints procedure.

4. The Committee notes that 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 and concerns Article 5 of the Revised Charter, provision accepted by France at the time of ratification of this treaty.

5. The Committee notes that the complaint lodged in the name of the SAIGI is signed by its President, Pierre Secret, who is duly authorised to represent it under Article 15 of the union's statute. The Committee therefore considers that the conditions stipulated in Rule 23 of the Rules are fulfilled.

6. The complaint refers to a series of alleged infringements of the rights of the President and the Secretary General of the union arising from penalties imposed on them and breaches of their rights to a fair trial and to an effective remedy and of their freedom of assembly and association, as laid down in, respectively, Articles 6, 13 and 11 of the European Convention on Human Rights ("the Convention").

7. The notion of a human rights continuum is undoubtedly particularly marked in the case of the freedom to organise, an area in which the scope of Article 11 of the Convention overlaps with that of Article 5 of the Revised Charter. Infringements of trade union leaders' freedom to organise may breach Article 5 of the Revised Charter either directly or because they impinge on the freedom of the union itself. However, the allegations, in the present case, have been put forward with reference to individual cases brought before the European Court of Human Rights in the context of the Convention.

8. The Committee notes that the complaint does not pertain to the rules applicable in a country but rather to the manner in which those rules are being applied to a particular case by way of procedures that were brought over a period of 8 years before administrative and criminal courts as well as disciplinary bodies. This, in the present case, does not fall within the remit of the Committee.

9. For these reasons, without finding it necessary to invite the Government to submit its observations on admissibility (Rule 29§3 of the Rules) and based on the report presented by Mr Nikitas ALIPRANTIS, the Committee, by 10 votes to 3,

DECLARES THE COMPLAINT INADMISSIBLE,

Requests the Executive Secretary to the Committee to inform the French Government and the *SAIGI-Syndicat des Hauts Fonctionnaires* that the present complaint is inadmissible.

Nikitas ALIPRANTIS
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary