



**DECISION ON ADMISSIBILITY**

**COMPLAINT No. 2/1999**

From the European Federation of Employees in Public Services  
Against France

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 168<sup>th</sup> session attended by:

Messrs Matti MIKKOLA, President  
Rolf BIRK, Vice-President  
Stein EVJU, Vice-President  
Ms Suzanne GRÉVISSE, General Rapporteur  
Mr Alfredo BRUTO DA COSTA  
Ms Micheline JAMOULLE  
Messrs Nikitas ALIPRANTIS  
Tekin AKILLIOĞLU

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

Having regard to the complaint registered as number 2/1999, lodged on 13 August 1999 by the European Federation of Employees in Public Services (hereafter referred to as "EUROFEDOP") represented by its President, Mr Guy Rausner and its Secretary General, Mr Bert Van Caelenberg, requesting that the Committee find that France fails to apply in a satisfactory manner Articles 5 and 6 of the European Social Charter and the Revised European Social Charter;

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 22 December 1999 by the French Government represented by the Director of Legal Affairs of the Ministry of Foreign Affairs;

Having regard to the Revised European Social Charter and in particular to Articles 5 and 6 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 or 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 6 - The right to bargain collectively**

With a view to ensuring the effective exercise of the right to bargain collectively, the Contracting 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 employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

- 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.”

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

Having regard to the rules of procedure adopted by the Committee on 9 September 1999 during its 163rd session;

After having deliberated on 10 February 2000;

Delivers the following decision, adopted on the above date:

1. EUROFEDOP states that, according to its statute, its objective is to defend and promote the economic and social rights of employees in European public services taking into account their specific rights and obligations.

2. It alleges that France does not comply with Articles 5 and 6 of the European Social Charter and the Revised European Social Charter in so far as members of the armed forces do not enjoy the right to organise. The complaint is based on the Act on the General Status of the Military of 13 July 1972 (*loi portant statut général des militaires*) which prohibits the forming of professional organisations with trade union characteristics and prohibits serving members of the military from joining trade unions. Moreover, EUROFEDOP states that as there is no right to organise within the armed forces it follows that there is no right to bargain collectively. Finally, it alleges that the situation of civil personnel in the armed forces is not in practice in conformity with the same provisions of the Charter and the Revised Charter.

3. EUROFEDOP emphasises that other States, notably in Northern Europe, have granted the right to organise to members of the armed forces. It considers that the absence of a right to organise in several States, including France, is particularly unjustifiable in view of both the domestic and the international context. In many States the armed forces have been restructured in order to abolish compulsory military service and aiming to establish an army composed exclusively of professionals, civilian and military. At the international level the tasks assigned to the armed forces have changed and now include peace-keeping and humanitarian operations. They are based on co-operation between European States within the framework of a policy on peace and security. In this context it seems unacceptable that employees of the armed forces would not enjoy the same trade union rights as their colleagues from other countries.

4. The French Government does not contest the conformity of the complaint with the admissibility conditions laid down in Articles 1 b), 3 and 4 of the Additional Protocol. It observes that EUROFEDOP is an organisation entitled to lodge complaints under the Protocol.

5. The Committee notes that, in accordance with Article 4 of the Protocol, which was ratified by France on 7 May 1999 and entered into force for this State on 1 July 1999, the complaint has been lodged in writing. It relates to Articles 5 and 6, provisions accepted by France on 9 March 1973 upon its ratification of the Charter and on 7 May 1999 upon its ratification of the Revised Charter, in alleging that there is no right in the armed forces to form and join trade unions and consequently no right to bargain collectively.

6. It further notes that, in accordance with Article 1 b) and Article 3 of the Protocol EUROFEDOP is an international non-governmental organisation with consultative status with the Council of Europe. It is included on the list, compiled by the Governmental Committee, of international non-governmental organisations entitled to lodge complaints.

7. In addition, as laid down by Rule 20 of the rules of procedure of the Committee, the complaint lodged on behalf of EUROFEDOP is signed by its President and its Secretary General who, according to the statute of the organisation, are the persons empowered to represent it.

8. The Committee considers that this organisation has lodged a complaint in a field in which it has particular competence within the meaning of Article 3 of the Protocol.

9. For these reasons, the Committee, on the basis of the report presented by Mr Rolf BIRK, and without prejudice to its decision on the merits of the complaint,

**DECLARES THE COMPLAINT ADMISSIBLE.**

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

Invites the French Government to submit in writing by 15 March 2000 all further relevant explanations or information.

Invites the Contracting Parties to the Protocol to communicate to it by the same date any observations which they wish to submit.

Invites EUROFEDOP to submit in writing by a deadline which it shall fix all relevant explanations or information in response to the observations of the French Government.

In application of Article 7 para. 2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27 para. 2 of the Charter and to invite them to submit their observations by 15 March 2000.

Rolf BIRK  
Rapporteur

Matti MIKKOLA  
President of the Committee

Régis BRILLAT  
Executive Secretary