

**DECISION ON ADMISSIBILITY**  
**10 October 2005**

**Marangopoulos Foundation for Human Rights (MFHR)**  
**v. Greece**

Complaint No. 30/2005

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 210th session attended by:

Messrs. Jean-Michel BELORGEY, President  
Gerard QUINN, First Vice-President  
Andrzej SWIATKOWSKI, Second Vice-President  
Stein EVJU, General Rapporteur  
Rolf BIRK  
Matti MIKKOLA  
Nikitas ALIPRANTIS  
Alfredo BRUTO DA COSTA  
Tekin AKILLIOĞLU  
Mrs Csilla KOLLONAY LEHOCZKY  
Mrs Polonca KONČAR  
Messrs. Lucien FRANÇOIS  
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 30/2004, lodged on 4 April 2005 by the Maragopoulos Foundation for Human Rights (MFHR) and signed by its President, Alice YOTOPOULOS-MARANGOPOULOS, requesting the Committee to find that Greece is not in conformity with Articles 11, 2§4, 3§1 and 3§2 of the European Social Charter ("the Charter");

Having regard to the documents appended to the complaint;

Having regard to the Charter, and in particular to Articles 11, 2§4, 3§1 and 3§2, which read as follows:

**Article 11 – The right to protection of health**

Part I "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases."

**Article 2 – The right to just conditions of work**

Part I "All workers have the right to just conditions of work."

Part II: "With a view to ensuring the effective exercise of the right to just conditions of work, the Contracting Parties undertake:

[...]

4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed";

**Article 3 – The right to safe and healthy working conditions**

Part I: "All workers have the right to safe and healthy working conditions."

Part II: "With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. to issue safety and health regulations;
2. to provide for the enforcement of such regulations by measures of supervision".

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

Having deliberated on 10 October 2005;

Delivers the following decision, adopted on the above date:

1. The MFHR alleges that in the main areas where lignite is mined, the state has not done enough to reduce its impact on the environment and has not developed an appropriate strategy to prevent and respond to the health hazards for the general population. It is also alleged that there is no legislation to ensure the security and safety of persons working in lignite mines and that the latter do not benefit from reduced working hours or additional holidays.
2. The Government challenges the admissibility of the complaint on three grounds.
3. It argues firstly that the complainant organisation has no particular competence, within the meaning of Article 3 of the Protocol. It acknowledges the MFHR's important contribution in the field of human rights. However, it claims that the two activities to which the complainant organisation refers, the 1988 round table on "Ptolemaida: a case of heavy environmental pollution" and publication of a book entitled "*The Right to Environment: Infringements and Protection*", are not sufficient for the complainant to be regarded as having particular competence in the fields of environmental pollution, its impact on workers' health and health and safety at work.
4. Secondly, the Government maintains that the state is not responsible for individual acts and omissions. The Government leaves it to the Committee to decide whether acts and omissions on the part of the Public Power Corporation (DEI) can be imputed to the Greek state.
5. Thirdly, the Government argues that if the Committee does nevertheless decide to examine the merits of the complaint, it must confine its consideration to acts and omissions occurring after the signature of the Protocol by Greece.
6. In its observations presented on 21 September 2005, the MFHR replies to the Government's three objections.
7. Firstly, it produces a detailed list of its activities specifically related to social rights (colloquies, conferences, seminars, publications and press conferences). Eight of these activities concern environmental protection, seven concern health protection and seventeen concern rights relating to working conditions.
8. Secondly, regarding the Government's objection concerning the acts and omissions of the DEI, the MFHR states that until its partial privatisation in 2001 the corporation was solely the responsibility of the state. Since 2001, the Greek state has held 51.5% of its shares, thereby exercising full control of its activities. Regarding the alleged failures to comply with Article 2§4 of the Charter, the state had a dual responsibility as economic regulator and as employer. Turning to the aspects of the complaint relating to Articles 3§1, 3§2 and 11 of the Charter, the MFHR maintains that the Greek state had a duty to regulate the lignite mining sector in accordance with the requirements of these articles.

9. Thirdly, in response to the arguments concerning the Committee's competence *ratione temporis*, the MFHR states that all the alleged acts and omissions have occurred repeatedly over the last forty years and continue to take place. It argues that even if the Committee considers that these acts took place before Greek ratification of the Protocol or even Greek ratification of the Charter, to the extent that they continue to have consequences up to the present day they constitute continuing violations. In support, it refers to the relevant judgments of the European Court of Human Rights.

## **THE LAW**

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

10. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Greece on 18 June 1998 and entered into force for this state on 1 August 1998, the complaint has been submitted in writing and concerns Articles 11, 2§4, 3§1 and 3§2 of the Charter, provisions accepted by Greece when it ratified this treaty. In addition, the grounds for the complaint are indicated.

11. The Committee also observes that, in accordance with Articles 1 b) and 3 of the Protocol, the MFHR is an international non-governmental organisation with consultative status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international nongovernmental organisations that are entitled to lodge complaints.

12. As regards the particular competence of the MFHR in the matters of the complaint, the Committee has examined the statute of the organisation and the detailed list of its various activities relating to the articles of the Charter covered by this complaint (see above, §7), which shows that the complainant has long been involved in and particularly concerned with the relevant areas, and considers that the organisation has particular competence within the meaning of Article 3 of the Protocol.

13. The complaint is signed by Mrs Alice YOTOPOULOS-MARANGOPOULOS, who is President of the MFHR and is authorised to represent the complainant organisation before any authority or court under Article 6§1 sub-paragraph a of its statute. The Committee therefore considers that the complaint complies with Rule 23 of the Rules.

### *As to the Government's other objections concerning the admissibility of the complaint*

14. In response to the Government's objection concerning its responsibility for the acts and omissions of the DEI, the Committee emphasises that the state is responsible for enforcing the rights embodied in the Charter within its jurisdiction. The Committee is therefore competent to consider the complainant's allegations of violations, even if the State has not acted as an operator but has simply failed to put an end to the alleged violations in its capacity as regulator. The extent of the Government's responsibilities, whether in the capacity of operator or in that of

regulator will, if necessary, be examined in the proceedings on the merits of the complaint.

15. As regards the Government's objection in connection with the Committee's competence *ratione temporis*, in accordance with the principle of non-retroactivity of treaties as codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties, the starting point for application is the date on which a treaty came into force in a country and not the date of its signature as the Government points out. However there are exceptions to this rule when events occurring before the entry into force of a treaty continue to occur after this date, thus potentially constituting a continuing violation (see, for example, European Court of Human Rights, *Papamichalopoulos and others v. Greece*, judgment of 24 June 1993, Series A. 260B, §40).

16. The Committee notes that several allegations of violations in the complaint registered on 4 April 2005 refer to the period after 1 August 1998, the date on which the Protocol came into force in Greece. As regards events that occurred before this date, the question of whether these are to be linked to a continuing violation or not will be considered in the proceedings on the merits of the complaint.

17. For these reasons, the Committee, on the basis of the report presented by Mr Jean-Michel BELORGEY 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 13 January 2006.

Invites the MFHR 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 13 January 2006, 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 13 January 2006.