



DECISION ON ADMISSIBILITY
5 December 2006

Frente Comum de Sindicatos da Administração Pública
v. Portugal

Complaint No. 36/2006

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 219th session attended by:

Mr Jean-Michel BELORGEY, President
Mrs Polonca KONČAR, First Vice-President
Mssrs Andrzej SWIATKOWSKI, Second Vice-President
Stein EVJU, General Rapporteur
Rolf BIRK
Matti MIKKOLA
Alfredo BRUTO DA COSTA
Nikitas ALIPRANTIS
Tekin AKILLIOĞLU
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Ersiliagrazia SPATAFORA
Mr Colm O'CONNOR

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

Having regard to the complaint dated 3 July 2006, registered on the same date as number 36/2006 and lodged by the *Frente Comum de Sindicatos da Administração Pública* (“FCSAP/CGTP-IN”) and signed by its Co-ordinator, Ms Ana AVOILA, requesting the Committee to find that Portugal is not in conformity with paras. 6 and 22 (part I) and Articles 21(b) and 22 (part II) as well as Article E (part V) 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, to Articles 6§2, 21(b), 22 and E which read as follows:

Article 6 – The right to bargain collectively

Part I: “All workers and employers have the right to bargain collectively”.

Part II: “With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

[...]

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;

[...]”.

Article 21– The right to information and consultation

Part I: “Workers have the right to be informed and to be consulted within the undertaking”.

Part II: “With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

[...]

b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking”.

Article 22– The right to take part in the determination and improvement of the working conditions and working environment

Part I: “Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking”.

Part II: “With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a to the determination and the improvement of the working conditions, work organisation and working environment;

b to the protection of health and safety within the undertaking;

c to the organisation of social and socio-cultural services and facilities within the undertaking;

d to the supervision of the observance of regulations on these matters”.

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 the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session ("the Rules");

Having deliberated on 5 December 2006;

Delivers the following decision, adopted on the above date:

1. FCSAP/CGTP-IN alleges a breach of their right to collective bargaining since the Government refused to continue negotiations with their organisation on issues related to the General Government Employees' Statute.

THE LAW

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 30 May 2002 and entered into force for this state on 1 July 2002, the complaint has been submitted in writing and concerns Article 6 of the Revised Charter, a provision accepted by Portugal when it ratified this treaty and to which it is bound since the entry into force of this treaty in its respect on 1 July 2002, as well as Article E.

3. Moreover, the grounds for the complaint are indicated. According to FCSAP/CGTP-IN, the negotiating procedure was flawed in several aspects:

(i) the organisation had insufficient time to examine the documents initially received from the Government for the negotiation,

(ii) at a certain stage, the Government proposed to hold additional meetings only if the trade unions waived the additional bargaining period foreseen under domestic law, and stated that it would break off negotiations altogether if the unions refused the proposal,

(iii) the FCSAP/CGTP-IN submitted a negotiating timetable and requested the continuation of the negotiations in accordance with the law. The Government rejected this proposal, broke off negotiations with FCSAP/CGTP-IN and continued to negotiate with two other trade unions involved in the procedure.

The FCASP/CGTP-IN also alleges to be a victim of discrimination, because the Government selected the trade unions it wished to negotiate with (and only negotiated with the unions that accepted its proposals).

4. Ms Ana AVOILA, representing the complainant organisation in the capacity of co-ordinator for the FCSAP/CGTP-IN, has not submitted to the Committee any document showing that the by-laws of the FCSAP/CGTP-IN, or that a mandate from this body, or from its member organisations, have authorised her to act on its behalf, despite having been invited to do so.

5. For these reasons, on the basis of the report presented by Mr Stein EVJU, the Committee

DECLARES THE COMPLAINT INADMISSIBLE

Requests the Executive Secretary to the Committee to inform the Portuguese Government and the *Frente Comum de Sindicatos da Administração Pública* (FCSAP/CGTP-IN) that the present complaint is inadmissible.

Stein EVJU
Rapporteur

Jean-Michel BELORGEY
Président

Régis BRILLAT
Secrétaire exécutif