

DECISION ON ADMISSIBILITY

16 October 2007

Sindicato dos Magistrados do Ministério Público (SMMP)
v. Portugal

Complaint No. 43/2007

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 225th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, First Vice-President
Tekin AKILLIOĞLU, Second Vice-President
Jean-Michel BELORGEY, General Rapporteur
Nikitas ALIPRANTIS
Stein EVJU
Mrs Csilla KOLLONAY LEHOCZKY
Mssrs Lucien FRANCOIS
Lauri LEPPIK
Colm O'CONNOR, Co-Rapporteur
Mrs Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmila HARUTYUNYAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 4 April 2007, registered on 11 April 2007 as number 43/2007, lodged by the *Sindicato dos Magistrados do Ministério Público* (SMMP) and signed by its chairman, Mr António Cluny, requesting the Committee to find that Portugal is not in conformity Article 12 § 1,2 and 3 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 12 §§ 1,2 and 3 which read as follows:

Article 12 – The right to social security

Part I: " 12 All workers and their dependents have the right to social security."

Part II: "With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

- 1 to establish or maintain a system of social security;
- 2 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;
- 3 to endeavour to raise progressively the system of social security to a higher level;

(...)"

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 regard to the letter from the Permanent Representative of Portugal dated 13 September 2007 registered at the Secretariat on 14 September indicating that the competent Portuguese authorities do not have observations concerning the admissibility of the complaint;

Having deliberated on 16 October 2007;

Delivers the following decision, adopted on the above date:

1. SMMP alleges that Portugal does not respect Article 12 §§ 1, 2 and 3 of the Revised European Social Charter because Legislative Decree No. 212/2005 of 9 December 2005 excludes the members of the Public Prosecutor's Office from the scope of the Social Welfare Service of the Ministry of Justice.

THE LAW

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 20 March 1998 and entered into force for this state on 1 July 1998, the complaint has been submitted in writing and concerns Article 12 §§ 1,2 and 3, a provision accepted by Portugal when it ratified this treaty on 20 March 1998 and to which it is bound since the entry into force of this treaty in its respect on 1 July 1998.

3. Moreover, the grounds for the complaint are indicated.

4. The Committee notes firstly that the SMMP, which exercises its trade union activities in Portugal, is a trade union organisation falling within the jurisdiction of Portugal in accordance with Article 1§c of the Protocol.

5. According to Article 6 of its Statute, the SMMP is composed of members of the Public Prosecution Office. Under article 5, its objectives are, *inter alia*, to defend the professional rights and interests of members, to protect this category's socio-professional status and to promote the status of Public Prosecutor's office staff. 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 de l'Encadrement "CFE-CGC" v. France*, Complaint no. 9/2000, decision on admissibility of 6 November 2000, paragraph 6). In the present case, having studied all the documents, the Committee considers that the SMMP is representative for the purposes of the collective complaints procedure.

6. The complaint is signed by Mr António Cluny, who is the chairman of the Governing Board. According to Article 19 of the Statutes, the chairman is entitled to represent the SMMP. Moreover, the Governing Board expressly took a decision to this effect on 28 March 2007. The Committee considers that Mr Cluny is duly authorised to represent the SMMP in the collective complaint procedure. Therefore the conditions stipulated in Rule 23 of the Rules are fulfilled.

7. For these reasons, the Committee, on the basis of the report presented by Mr Lauri Leppik 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 respondent 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§2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 30 November 2007.

Invites the SMMP 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§2 of the Revised Charter to make comments by 30 November 2007 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 30 November 2007.

Lauri LEPPIK
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary