



DECISION ON ADMISSIBILITY

COMPLAINT No. 4/1999

From the European Federation of Employees in Public Services
Against Italy

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 168th 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 4/1999, 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 Italy fails to apply in a satisfactory manner Articles 5 and 6 of the European Social Charter and of the Revised European Social Charter;

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 1 December 1999 by the Italian Government represented by the Legal Department 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 Italy 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 Act No. 382 of 11 July 1978 on rules for military discipline, which in its Section 18 provides for the establishment of bodies to represent members of the armed forces. These bodies may only put forward proposals, opinions and requests on terms and conditions of service. They cannot be considered as trade unions in the meaning of the Charter and the Revised Charter. 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 Italy, 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 Italian 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.

5. It considers that the complaint concerning the situation of the military personnel in the armed forces is clearly without foundation. It points out that Article 5 of the Revised Charter leaves it to national law to determine whether and to what extent to apply the guarantees laid down in the provision to members of the armed forces. The Italian Government also considers that by setting up a specific system of representation of military personnel (Act No. 382 of 11 July 1978 and Legislative Decree No. 195 of 12 May 1995) which recognises, albeit through a special procedure their right to bargain collectively, it has complied with its international obligations.

6. The Italian Government considers that the complaint concerning civilian employees in the armed forces is equally without foundation, since these employees enjoy the same trade union rights as all workers and participate, through union representation, in collective bargaining in accordance with Articles 5 and 6 of the Revised Charter.

7. The Committee notes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force for this State on 1 July 1998, the complaint has been lodged in writing. It relates to Articles 5 and 6, provisions accepted by Italy on 22 October 1965 upon its ratification of the Charter and on 5 July 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.

8. Since the entry into force of the Revised European Social Charter in respect of Italy on 1 September 1999, this country is bound by Articles 5 and 6 of the Revised Charter and the complaint, therefore, will be examined in respect of these provisions of the Revised Charter;

9. 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.

10. In addition, as laid down in 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.

11. 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.

12. The Committee considers that in the present case, the Italian Government's allegation that the complaint is manifestly ill-founded, relates to the substance of the complaint and should not be considered at the stage of admissibility.

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

Stein EVJU
Rapporteur

Matti MIKKOLA
President of the Committee

Régis BRILLAT
Secretary to the Committee