

**DECISION ON THE MERITS**

**COMPLAINT No. 6/1999**

By the *Syndicat national des Professions du tourisme*  
against France

The European Committee of Social Rights, committee of independent experts of the European Social Charter established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 172<sup>nd</sup> session attended by:

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

Assisted by Mr Régis Brillat, Executive Secretary to the European Social Charter

In the presence of Ms Anna-Juliette POUYAT and Ms Jacqueline ANCEL-LENNERS,  
representatives of the International Labour Organisation

On the basis of the report presented by Mr Nikitas ALIPRANTIS

After having deliberated on 10 October 2000;

Delivers the following decision adopted on the same date:



## PROCEDURE

1. On 10 February 2000, the Committee declared the complaint admissible.
2. In accordance with Article 7 paras. 1 and 2 of the Protocol providing for a system of collective complaints and with the decision of 10 February 2000 on the admissibility of the complaint, the Executive Secretary to the European Social Charter communicated, on 17 February 2000, the text of the Committee's admissibility decision to the French Government, to the *Syndicat national des Professions du tourisme*, the complainant organisation, and to the Contracting Parties to the Protocol, as well as the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the International Organisation of Employers (IOE), inviting them to submit their observations on the merits of the complaint. The Executive Secretary also communicated the text of the decision to the Contracting Parties to the Charter and to the revised Charter for their information.
3. The French Government submitted its observations on the merits on 22 December 1999 at the same time as its observations on the admissibility of the complaint. The ETUC submitted observations on 19 April 2000 following an extension of the time limit. The complainant organisation submitted its observations on the merits, along with a number of enclosures, on 2 May 2000; it also submitted comments on the ETUC's observations on 14 June 2000. The French Government submitted supplementary observations on 11 July 2000 following an extension of the time limit.
4. In accordance with Article 7 paragraph 3 of the Protocol, each party received the information and supplementary observations of the other.

## SUBMISSIONS OF THE PARTICIPANTS IN THE PROCEDURE

### a) *The complainant organisation*

5. The *Syndicat national des Professions du tourisme* (SNPT) requests the Committee to declare that France is in violation of Article 1 paras. 1, 2 and 4, Article 10 paras. 1, 3a and b (Part II) and Article E (Part V) of the revised European Social Charter, which read as follows:

### Part II

#### Article 1 – The right to work

“With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

- 2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon;  
[...]
- 4 to provide or promote appropriate vocational guidance, training and rehabilitation.”

#### **Article 10 – The right to vocational training**

“With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

- 1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers’ and workers’ organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;  
[...]
- 3 to provide or promote, as necessary:
  - a adequate and readily available training facilities for adult workers;
  - b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;  
[...]

#### **Part V**

##### **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.”

The SNPT alleges in its complaint, as outlined in paragraph 1 of the decision on admissibility, that all the bodies offering guided tours within the remit of the Ministry of Culture and Communication (notably, the National Museums Association (*Réunion des Musées nationaux* – RMN)), the museums of fine arts, the towns and regions belonging to the *Villes et Pays d’Art et d’Histoire* network, and the National Fund for Historic Monuments and Sites (*Caisse nationale des Monuments Historiques et des Sites* – CNMHS) discriminate between, on the one hand, lecturer guides approved by these bodies (*conférenciers agréés*) and, on the other, interpreter guides and national lecturers with a state diploma (*guides interprètes et conférenciers nationaux diplômés d’Etat*) and that this discrimination results in a denial of the right to work and to vocational training for interpreter guides and national lecturers with a state diploma.

*The right to non-discrimination in employment*

6. The SNPT supports its allegations with practical examples of differences of treatment. It complains, for instance, that unlike approved lecturer guides, interpreter guides and national lecturers with a state diploma are prohibited from conducting guided tours in certain areas open to the public, and in certain museums have to pay a reservation fee or a charge for the “right to speak”.

7. The SNPT bases its case in part on the decision of the *Conseil d’Etat*, No. 163528 of 28 February 1996 (in the case of the Public Corporation of the Louvre Museum), in which it found in substance that the services rendered to users in “free” groups were not significantly different from those received by users of the lecture tours organised by the Louvre museum and that there was, therefore, no reason of public interest to justify applying an exemption from the reservation fee solely to lecture tours conducted by the museum’s own lecturers.

8. The SNPT also bases its claims on the rules concerning persons qualified to conduct guided tours, in particular Act No. 92-645 of 13 July 1992, laying down the conditions of performance of activities relating to the organisation and sale of trips and holidays and its implementing decree, No. 94-490 of 15 June 1994, as amended by Decree No. 99-296 of 15 April 1999:

- firstly, in that the requirement imposed on tour operators to use qualified personnel (ie holders of the professional card) to conduct guided tours applies only in respect of museums and historic monuments, ie those places where approved lecturer guides are employed for this purpose - a situation which, according to the SNPT, in practice gives approved lecturer guides an advantage;

- and, secondly, in that approved lecturer guides are improperly attributed with professional qualifications through the granting of the professional card.

*The right to vocational training*

9. The SNPT claims that various types of discrimination practised by the bodies within the ministry’s remit have the effect of depriving interpreter guides and national lecturers with a state diploma of the right to individual vocational training, including preparation of guided tours. It provides a number of specific examples in support of its claims: unlike approved lecturer guides, interpreter guides and national lecturers with a state diploma are excluded from entitlement to discount on catalogues and other publications at points of sale, from entitlement to free access to certain public places, and from exemption from queuing.

10. The SNPT also complains that “further” training organised by the *Villes et Pays d’Art et d’Histoire* network on behalf of the Ministry of Culture and Communication is either exclusively reserved for lecturer guides of the *Villes et Pays d’Art de d’Histoire* or they are given priority on preferential terms.

b) *The French government*

*The right to non-discrimination in employment.*

11. The Government does not contest that the provisions of the revised Charter invoked by the SNPT are applicable.

12. According to the Government, differences of treatment do exist with regard to working conditions, in particular access to certain public places by interpreter guides and national lecturers with a state diploma, on the one hand, and approved lecturer guides, on the other. It contends, however, that these differences are minimal and objectively justified. It points out that a distinction should be drawn here between the different systems of professional selection existing.

13. With regard, firstly, to the *Villes et Pays d’Art et d’Histoire* network, the local and regional authorities that wish to use this label are bound by the agreement they sign with the Ministry of Culture and Communication to have recourse to staff who have been granted approval in respect of the particular town or region of artistic or historical interest. Approval is obtained by passing an examination open to anyone who has completed at least a two-year course of higher education.

14. Secondly, in the case of the former National Fund for Historic Monuments and Sites (CNMHS), now known as the Centre for National Monuments, lecturers are recruited on the basis of a proficiency test, which is the requirement for granting approval to conduct guided tours of a given monument. The Government points out that any guide or lecturer is free to apply for such approval. Selection is determined by the need for guides who are able to speak about monuments in the most appropriate manner in keeping with the monument’s cultural strategy.

15. Thirdly, the Government refers to RMN (National Museums Association) guides coming under the Ministry of Culture and Communication.

16. In their case, as in that of the CNMHS guides, the fact that only approved lecturer guides enjoy access to certain public areas is, according to the Government, an advantage justified on objective grounds of security of property and persons, and of the particular skills of the guides in question. The Government maintains that any challenge to this situation amounts to a challenge to professional selection *per se* and implies, by analogy, that any person who had failed an exam should be entitled to claim the same benefits as the successful candidates.

17. The Government adds that if any unjustifiable discrepancies came to light concerning the treatment of approved lecturer guides and those without approval, especially in respect of museums' rates of pay, these would be discriminatory and would be sanctioned by the national courts as was demonstrated by the decision of the *Conseil d'Etat*, No. 163528, of 28 February 1996 (in the case of the Public Corporation of the Louvre Museum).

18. With regard to Act No. 92-645 of 13 July 1992, laying down the conditions of performance of activities relating to the organisation and sale of trips and holidays, and its associated implementing regulations, the Government states that, under the terms of the act, tour operators must use the services of qualified persons (ie holders of the professional card) to conduct tours of museums or historical monuments, the aim being to assure groups of visitors that their lecturers and guides will be fully qualified. It maintains that there is nothing discriminatory about this legislation inasmuch as it provides that categories of persons holding a particular professional qualification shall all enjoy the same favourable treatment. The Government also considers that the SNPT has failed to show that approved lecturer guides lack the proven professional proficiency required in order to be granted the professional card.

#### *The right to vocational training*

19. The Government contests the claim that interpreter guides and national lecturers with a state diploma have no right to training. It points out that the "initial" training run by the *Villes et Pays d'Art et d'Histoire* network on behalf of the Ministry of Culture and Communication, preparing trainees for the exam to qualify as approved lecturer guides, is open to all – including interpreter guides and national lecturers with a state diploma.

20. As for the fact that the network's "further" training is open only to approved lecturer guides, the Government maintains that this is justified because it is in-house training financed by the Ministry of Culture and Communication.

c) *European Trade Union Confederation (ETUC)*

*The right to non-discrimination in employment*

21. The ETUC, in its observations, takes the view that, and subject to more information from SNPT and the French Government, there is indeed a difference in treatment in the employment of interpreter guides and national lecturers with a state diploma, on the one hand, and approved lecturer guides, on the other, but deems this to be justified. It considers that the discrimination is based on objective grounds, which relate not only to security but also to the different status of the two groups of guides: on the one hand public servants who conduct tours free of charge, and, on the other, private guides conducting paid visits.

*The right to vocational training*

22. The ETUC considers that there is no discrimination in relation to initial training, which is open to all. It regards the difference of treatment concerning access to further training as acceptable because the training in question is an in-house training run and financed by the Ministry of Culture and Communication, which is thus entitled to impose selection criteria.

## **ASSESSMENT OF THE COMMITTEE**

23. The Committee considers that the grievances pertain in substance to the right to non-discrimination in employment guaranteed by Article 1 para. 2 of the revised Charter and the right to vocational training guaranteed by Article 10 of the revised Charter (Part II) as well as Article E (Part V). It emphasises that the provisions of Part II involved by the SNPT are identical to the corresponding provisions of the 1961 Social Charter and that interpretative elements for these provisions have already been formulated in its Conclusions.

*The right to non-discrimination in employment*

24. The Committee points out that Article 1 para. 2 of the revised Charter requires those states which have accepted it to protect effectively the right of workers to earn their living in an occupation freely entered upon. This obligation requires *inter alia* the elimination of all forms of discrimination in employment whatever is the legal nature of the professional relationship.

25. A difference in treatment between people in comparable situations constitutes discrimination in breach of the revised Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds.

26. The Committee points out that “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (Complaint No. 1/1998, International Commission of Jurists v. Portugal, para. 32). It is therefore of the opinion that compliance with Article 1 para. 2 cannot result from the mere existence of legislation if the legislation in question is not applied in practice.

27. Firstly, as regards the question to determine whether the two professional categories are in comparable situations, the Committee notes that approved lecturer guides and the interpreter guides and national lecturers with a state diploma are people qualified to conduct guided visits who have followed officially defined training and who are entitled to a professional card such as is required to conduct tours in museums and historic monuments under the terms of the Act of 13 July 1992.

28. It also notes that the French Conseil d’Etat ruled in the decision cited by the SNPT (decision no. 163528 of 28 February 1996, Public Corporation of the Louvre Museum) that the services rendered by lecturers to so-called “free” groups could not on the whole be considered as differing significantly from, and are thus comparable to, those received by users of the visits organised by the Louvre Museum.

29. In the light of these factors, the Committee considers that approved lecturer guides and interpreter guides and national lecturers with a state diploma are comparable professional categories for the purposes of Article 1 para. 2 of the revised Charter.

30. Secondly, with respect to the question to determine whether there are any differences in treatment between the two professional categories and, if so, whether they are justified, the Committee considers that a distinction should be made between the alleged differences in treatment relating to the freedom to carry out guided visits (I.) and the differences in treatment pertaining to working conditions proper (II.).

31. I. a) With regard to alleged restrictions on the freedom to conduct guided tours to the advantage of guide-lecturers of the *Villes et Pays d’Art et d’Histoire* network, the Committee observes that it is not contested that the agreement concluded with the Ministry of Culture and Communication lays down the requirement to employ approved staff – recruited in the majority of cases by the local tourism office or tourist information office.

32. The SNPT argues that these are discriminatory practices tantamount to a de facto monopoly, all the more serious because the tourism offices and tourist information offices are often the only local employers and the prime point of contact for visitors and travel agencies. These organisations often also hold the keys to museums and monuments where they arrange tours conducted by their own approved personnel.

33. The Government argues that the recruitment examination is open to anyone who has successfully completed a two-year course of higher education and that any guide or lecturer, even persons who do not hold the approval in question, is able to serve as a guide to tourists in public areas. Accordingly, it maintains that the system is not at all discriminatory and in no way constitutes a monopoly.

34. The Committee notes that the Government does not contest that in practice interpreter guides and national lecturers with a state diploma do not have access to all sites, as the tourism offices and tourist information offices hold the keys to museums and monuments where they arrange tours conducted by their own approved personnel. The Committee considers that these differences in treatment have no reasonable and objective justification and constitute *de facto* discrimination in employment to the detriment of interpreter guides and national lecturers with a state diploma. They are contrary to the right to non-discrimination in employment guaranteed by Article 1 para. 2 of the revised Charter.

35. I. b) With regard to the allegations of restrictions on the freedom to conduct visits to the advantage of lecturer guides approved by the CNMHS and the RMN (hereinafter referred to as "approved lecturer guides") the Committee notes that there is no dispute over the fact that unlike approved lecturer guides, interpreter guides and national lecturers with a state diploma do not have access to all the sites under the remit of the Ministry of Culture and Communication. It appears from the file that the sites where access is restricted include the following: parts of the châteaux of Compiègne, Fontainebleau and Versailles, and the special exhibitions in the Grand Palais.

36. The Government explains that in both the monuments managed by the CNMHS and the national museums, these restrictions are applied for reasons of security of persons and property. In the case of national museums, it states that "the staff employed by the Ministry of Culture and Communication exercise both a cultural and security role in respect of premises with which they are completely familiar."

37. The Government also points out that any guide or lecturer is free to apply for approval and that approved lecturer guides, "by passing the selection procedures leading to the award of approval, provide evidence of their aptitude, in terms of knowledge and handling and supervising members of the public, to work as effective and reliable employees of the public cultural service."

38. The SNPT, in response to these submissions, argues that restrictions on free access to certain sites for security reasons are acceptable only if they are applied equally to all guides and lecturers, which is not the case. Furthermore, it maintains that

staff qualified to conduct guided tours, whatever their category, and security staff have different duties and that if security considerations so dictate, security staff could accompany tour guides. Lastly, the SNPT states that if specific training in security matters were offered, the interpreter guides and national lecturers with a state diploma would be willing to participate.

39. The Committee is of the opinion that the security of property and persons referred to by the Government cannot be ruled out as a legitimate aim. It remains to be seen whether with regard to the means employed, the application of a difference in treatment between approved lecturer guides and interpreter guides and national lecturers with a state diploma for access to certain sites, is proportionate and appropriate.

40. The Committee notes that approved lecturer guides can conduct guided visits in areas where access is restricted for security reasons, either alone or accompanied by security staff, depending on the site in question.

41. The Committee considers that the Government's argumentation in this respect is not sufficient as it fails to demonstrate how – on the basis of selection criteria for sitting approval examinations or on the basis of the content of those examinations on the basis of an in-house training course – the use of approved lecturer guides, at least when they conduct visits unaccompanied by security staff, is a guarantee of security. More specifically, the Committee notes that the selection criteria for RMN lecturers – good knowledge of art history and archaeology, good awareness of all national collections, the ability to conduct guided tours at all levels and ability to speak two foreign languages – are not in any way linked to competencies in security matters. The Committee notes that the same applies to criteria for admission to the CNMHS lecturers' examination.

42. The Committee therefore holds that the use of approved lecturer guides cannot justify a difference in treatment such that the effect is to deprive qualified personnel from conducting guided tours of some of the principal tourist sites. Accordingly, it considers that this difference in treatment constitutes discrimination which is contrary to the right to non-discrimination in employment as guaranteed under Article 1 para. 2 of the revised Charter.

43. **II.** With regard to working conditions at sites accessible to all guides and lecturers, the SNPT complains that approved lecturer guides enjoy advantages to which the interpreter guides and national lecturers with a state diploma are not entitled. These include special pricing conditions at certain sites such as the Louvre Museum, the Lille Fine Arts Museum, Versailles, in the form of a reservation fee or a charge for the right to speak applied only to non-approved guides and lecturers.

44. The Government does not strictly speaking acknowledge these differences in treatment but states that if they were to come to light, they would constitute unjustified differences in treatment and would not fail to be condemned by the national courts on account of their discriminatory nature, as shown by the decision of the *Conseil d'Etat* no. 163528 of 28 February 1996 (Public Corporation of the Louvre Museum) provided by the SNPT.

45. The Committee points out that the fact that the national jurisdictions penalise abuses does not deprive the Committee of its competence under the Protocol providing for a system of collective complaints. Moreover, as the Committee asserted above, compliance with Article 1 para. 2 of the revised Charter cannot result from the mere existence of legislation if the it is not applied in practice.

46. The Committee takes note of the above decision of the *Conseil d'Etat* which concludes that the Board of Directors of the Public Corporation of the Louvre Museum has no grounds for charging an obligatory reservation fee only to groups whose visit has not been organised by the museum itself, as there is no reason of public interest justifying this price discrimination.

47. With regard to conformity with the revised Charter, the Committee notes that in the SNPT's view, the differences in treatment in respect of pricing conditions are widespread and are not challenged by the Government. The Committee can see no objective or reasonable grounds for maintaining these differences in treatment. Accordingly, it considers that they constitute discrimination in employment contrary to Article 1 para. 2 of the revised Charter.

48. The Committee considers that the other facts put forward by the participants in the procedure are not of a nature such as to change its assessment of the situation.

#### *The right to vocational training*

49. The Committee first of all examined the alleged discrimination against interpreter guides and national lecturers with a state diploma in exercising their right to vocational training.

50. The SNPT maintains that this discrimination results from the various practices of the ministerial bodies such as discounts at certain points of sale on catalogues and other works, and free and immediate access to certain sites. The government does not reply to this point directly.

51. The Committee points out that Article 10 para. 1 of the Charter places essentially two obligations on states which have accepted it: first, the obligation to promote the technical and vocational training of all persons, and second, the obligation to provide facilities for access to higher technical and university education, subject to no other criterion than individual fitness (Conclusions 1, page 55).

52. In the instant case, the Committee is of the opinion that the points put forward by the SNPT do not show that the advantages denied to the interpreter guides and national lecturers with a state diploma are related to vocational training within the meaning of Article 10 para.1 and consequently are not sufficient to establish that the Government has failed to comply with this provision. Accordingly, the Committee considers that there has been no violation of Article 10 para. 1 of the revised Charter.

53. The Committee then looked at the alleged discrimination resulting from the exclusion of interpreter guides and national lecturers with a state diploma from further training. The SNPT refers to the further training run by the *Villes et Pays d'Art et d'Histoire* network on behalf of the Ministry of Culture and Communication which is reserved exclusively or on a priority basis and on preferential terms for the network's guide-lecturers. The Government maintains that this situation is justified by the fact that it is an in-house training financed by the Ministry of Culture and Communication. It adds that the "initial" training run by the ministry in preparation for the approved guide-lecturers examination is open to all.

54. The Committee points out that Article 10 para. 3 of the revised Charter calls on states which have accepted it to provide or promote as necessary adequate and readily available training facilities for adult workers.

55. In the instant case, the Committee is of the opinion that the fact that the Ministry of Culture and Communication organises in-house further training aimed at approved lecturers is not in itself sufficient basis for concluding that there has been a violation of Article 10 para. 3 of the revised Charter.

## CONCLUSION

56. The Committee concludes

i. that the differences in treatment between the approved lecturer guides of the *Villes et Pays d'Art et d'Histoire* network and the interpreter guides and national lecturers with a state diploma as regards the freedom to conduct guided tours constitute discrimination in breach of Article 1 para. 2 of the revised Charter;

ii. that the differences in treatment between the approved lecturer guides of the CNMHS and national museums, on the one hand, and the interpreter guides and national lecturers with a state diploma, on the other, as regards the freedom to conduct guided tours constitute discrimination in breach of Article 1 para. 2 of the revised Charter;

iii. that the differences in treatment between the approved lecturer guides of the CNMHS and national museums, on the one hand, and the interpreter guides and national lecturers with a state diploma, on the other, as regards working conditions constitute discrimination in breach of Article 1 para. 2 of the revised Charter

iv. that the differences in treatment between the approved staff and the interpreter guides and national lecturers with a state diploma does not constitute a violation of the right to vocational training within the meaning of Article 10 paras. 1 or 3 of the revised Charter.

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Rapporteur

Matti MIKKOLA  
President of the Committee

Régis BRILLAT  
Executive Secretary