

DECISION ON THE MERITS

COMPLAINT No. 7/2000

By the International Federation of Human Rights Leagues
Against Greece

The European Committee of Social Rights (ECSR), committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as “the Committee”), during its 174th session attended by:

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

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

After having deliberated on 5 December 2000;

On the basis of the report presented by Mr. Konrad GRILLBERGER;

Delivers the following decision adopted on the same date:

PROCEDURE

1. On 28 June 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 Committee's decision of 28 June 2000 on the admissibility of the complaint, the Executive Secretary communicated, on 4 July 2000, the text of its admissibility decision to the Greek Government, to the International Federation of Human Rights Leagues (IFHR), the complainant organisation, to the Contracting Parties to Protocol as well as to the European Trade Union Confederation (ETUC) and the Union of the Confederations of Industry and Employers of Europe (UNICE), 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 revised Charter for their information.
3. The Greek Government submitted its observations on the merits on 4 September 2000. The ETUC submitted its observations on 3 October 2000. The complainant organisation submitted its observations on 12 October 2000. The Greek government submitted supplementary observations following an extension of the time limit on 16 November 2000.
4. In accordance with Article 7 para. 3 of the Protocol, each party received the observations of the other, as well as those of the ETUC.

SUBMISSIONS OF THE PARTICIPANTS IN THE PROCEDURE

a) The complainant organisation, IFHR

5. The IFHR considers that Greece is in violation of Article 1 para. 2 of the Charter on account of a series of provisions of national law which violate the prohibition of forced labour. Article 1 para. 2 reads as follows:

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

...

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon”

...

6. As stated at paragraphs 2-4 of the admissibility decision, the provisions of national law at issue are:

7. Legislative Decree No. 17/1974, which provides for the mobilisation of the civilian population “in any unforeseen situation causing disruption of the country's economy and society”. This provision, the IFHR recalls, has been found by the Committee to violate the Charter. It further observes that although the Greek Government accepts that the legislation is not compatible with the Charter, the text is still not revised. The draft amendment under consideration by the Greek authorities is, it asserts, insufficiently precise to comply with the Charter.

8. Section 64 of Legislative Decree No 1400/73, according to which career officers in the Greek army who have received several periods of training may be refused permission to resign their commissions for up to twenty-five years. The IFHR recalls that this provision has been found by Committee to violate the Charter and was the subject of several recommendations and resolutions of the Committee of Ministers of the Council of Europe (see Recommendation N° R ChS (93) 1, adopted on 7 September 1993, Recommendation N° R ChS (95) 4, adopted on 22 June 1995, Resolution ChS (97) 1, adopted on 15 January 1997 and Resolution ChS (99)2, adopted 4 March 1999). The IFHR contends that this situation cannot be justified, since other solutions are available to ensure reciprocity between public expenditure on training and the service performed by the beneficiaries of such investment. The possibility of reimbursing training costs is one such solution, as is the case in other Contracting Parties to the Charter, for example in France. This restriction cannot be justified, the IFHR maintains, either by national security or the long-term staffing needs of the defence forces. The IFHR refers to a judgment of the European Court of Human Rights (*Van der Musselle v. Belgium*, 23 November 1983, Series A, Vol. 70 pp 16 – 21, §§ 32 – 41). It considers that, in the light of this decision, the compulsory period of service for the officers concerned, which is calculated as three or four times the length of the training received, should be viewed as excessive and disproportionate in relation to the aim pursued. As to the efforts by the Greek Government to bring Decree 1400/73 into conformity with Article 1 para. 2 of the Charter, the IFHR states that the plans are too vague to merit consideration.

9. Articles 205, 207 (1), 208, 210 (1) and 222 of the Code of Public Maritime Law (Legislative Decree No 187 of 1973) and Article 4 (1) of Act No 3276 of 1944 on collective agreements in the merchant navy. These provide for penal sanctions against seafarers who refuse to carry out their duties, even when the safety of the vessel and the lives and health of those on board are not endangered. The IFHR recalls that these provisions have been found to violate the Charter and have been the subject recommendations and resolutions of the Committee of Ministers of the Council of Europe (Recommendation No R ChS (93) 1 adopted on 7 September 1993; Recommendation No R ChS (95) 4, adopted 22 June 1995, Resolution ChS (97) 1 adopted 15 January 1997 and Resolution ChS (99)2, adopted 4 March 1999). It further states that the intention of the Greek Government to revise the law concerned in order to comply with the Charter does not merit consideration because, first, the amendment under consideration refers to imprecise criteria, and second, there is no clear timetable for ensuring compliance.

b) Observations by the Greek Government

10. In its observations on the merits of the complaint concerning Legislative Decree No. 17/1974, the Greek Government stresses the fact that the General National Defence Staff has submitted a proposal to the legal services of the Ministry of National Defence to eliminate the term “emergency need” and that the “necessary legislative initiative is expected”.

11. As to Section 64 of Legislative Decree No.1400/1973, the Government states that the obligation to stay in the Greek army for up to 25 years covers the expenses for the training provided. Furthermore, it asserts, abolishing that obligation would endanger national security. The Government considers the current law justified under Article 31 of the Charter. In addition, the Government notes that enlistment for a career officer in the armed forces, as well as further training, takes place on the initiative of the person concerned. However, the Greek Government states that it wishes to be in compliance with the provisions of the Charter and therefore proposals are under consideration to replace the provisions in question of Legislative Decree 1400/73.

12. As to the Articles 205, 207 (1), 208, 210 (1) and 222 of the Code of Public Maritime Law and Article 4 (1) of Act No 3276/44 the Government of Greece states its intention to promote a legislative regulation to eliminate the problems regarding the application of Article 1 para. 2 of the Charter. It points out that the Governmental Committee decided during cycle XV-1 not to propose a recommendation against Greece, but to give time to proceed to the necessary legislative changes.

13. The Greek authorities consider that the complaint should be declared unfounded in view of their intention to bring the abovementioned legislation into conformity with the Charter, and the fact that the review process has already started.

c) Observations by the ETUC

14. The ETUC welcomes the fact that Greece has signed and ratified the Protocol providing for a system of collective complaints, thereby contributing to the effectiveness of the Charter and the protection of fundamental social rights.

15. In its observations, the ETUC quotes various international legal instruments prohibiting forced labour. The prohibition of forced or compulsory labour is a universally recognized and protected fundamental principle.

16. The ETUC recalls that the European Committee of Social Rights has on several occasions found the Greek legislation at issue to be in violation of Article 1 para. 2 of the Charter. Moreover, there are several recommendations by the Committee of Ministers in that context. According to the observations of the Greek Government, the problems identified have not yet been resolved. The ETUC considers that the Greek Government should act rapidly to bring its national legislation into full conformity with the Charter.

ASSESSMENT OF THE COMMITTEE

17. Under Article 1 para. 2, the Contracting Parties to the Charter undertake to protect effectively the right of the worker to earn his living in an occupation freely entered upon. This wording (“freely entered upon”) provides for a guarantee against forced labour. Forced labour is understood as “coercion of any worker to carry out work against his wishes and without his freely expressed consent” (see Conclusions III, p. 5). The Committee has also consistently interpreted this provision as prohibiting “the coercion of any worker to carry out work he had previously freely agreed to do, but subsequently no longer wanted to carry out” (*ibid.*). It therefore protects the freedom of workers to terminate employment (see for example Conclusions XIII-3, p. 71).

18. The Committee recalls that it has consistently held “the non-application of national legislation containing elements which are in conflict with Article 1 para. 2 of the Charter does not suffice to demonstrate a states compliance with this provision” (Conclusion XIII-3, p. 66). Such legislation has to be amended (Conclusion V, p. 6).

19. As the complainant organisation correctly points out, the Committee has since the eleventh supervision cycle concluded that Legislative Decree N°17/1974 violates Article 1 para. 2 of the Charter (see Conclusions XI-1, p. 42; XII-1, p. 51; XIII-1, p. 47; XIV-1, p. 349; XV-1, p. 295). The wording of this regulation (“in any unforeseen situation causing disruption of the countries economy or society”) is of such a general nature that it “cannot be considered to be in keeping with Article 1 para. 2 of the Charter, even if the provisions of Article 31 of the Charter are taken into account” (Conclusion XI-1, p. 42).

20. In its observations, the Government of Greece accepts these conclusions. It admits that the terms used raise a problem of compatibility with the Charter and indicates that the necessary legislative initiative to remedy the situation is expected. The Committee underlines the fact that it first found this legislation to violate the Charter in 1989. Eleven years later, the legislation remains in force.

21. As for Article 64 of Legislative Decree No. 1400/73 concerning career officers in the Greek army, who have received several periods of training, the Committee has similarly concluded since the eleventh supervision cycle that this provision violates Article 1 para. 2 of the Charter. A compulsory period of service of up to 25 years is excessive and contrary to the freedom to choose and to leave an occupation (Conclusion XI-1, p. 43; most recently Conclusion XV-1, p. 294). In addition, the Committee of Ministers has addressed to the Government of Greece two Recommendations, which were reiterated in two subsequent Resolutions. Again, the Committee wishes to underline that the provision at issue has not been amended after eleven years of consistent criticism.

22. Regarding penal sanctions against seafarers (Legislative Decree No. 987/1973 and Act No. 3276/1944) the Committee recalls its established case law, according to which Article 1 para. 2 prohibits the application of penal sanctions to seafarers who cease to perform their duties where neither the safety of the vessel nor the lives or health of persons on board are endangered (Conclusion XI-1, p. 43; most recently XV-1, p. 295). There are also two Recommendations and two Resolutions by the Committee of Ministers on this matter. Nevertheless the provisions concerned remain in force.

23. The Committee takes note of efforts by the Greek authorities to amend the provisions of national law cited above. It considers that these efforts should be intensified so as to bring the situation into conformity with Greece's obligations under Article 1 para. 2 of the Charter without further delay.

24. On the above grounds, the Committee has reached the following:

CONCLUSION

the situation in Greece is not in conformity with Article 1 para. 2 as regards each of the provisions complained of.

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Rapporteur

Matti MIKKOLA
President

Régis BRILLAT
Executive Secretary