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COUNCIL OF EUROPE
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON ADMISSIBILITY

23 May 2012

***Fellesforbundet for Sjøfolk (FFFS)*
v. Norway**

Complaint No. 74/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 257th session attended by:

Messrs Luis JIMENA QUESADA, President
Colm O'CINNEIDE, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Messrs Andrzej SWIATKOWSKI
Lauri LEPPIK
Mrs Birgitta NYSTRÖM
Messrs Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Mrs Jarna PETMAN
Elena MACHULSKAYA
Mr Giuseppe PALMISANO
Mrs Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary,

Having regard to the complaint dated 27 September 2011, registered on the same date as number 74/2011, lodged by *Fellesforbundet for Sjøfolk* (a seamen's trade union) ("the FFFS") and signed by its President, Mr Leif R. Vervik, requesting the Committee to find that the situation in Norway is not in conformity with Articles 1§2 and 24 of the Revised European Social Charter ("the Charter") read alone or in conjunction with Article E;

Having regard to the notification addressed to the Norwegian Government ("the Government") on 28 October 2011;

Having regard to the documents appended to the complaint;

Having regard to the Charter and, in particular, to Articles 1§2, 24 and E, which read as follows:

Article 1 – The right to work

Part I: "Everyone shall have the opportunity to earn his living in an occupation freely entered upon".

Part II: "With a view to ensuring the effective exercise of the right to work, the Parties undertake: (...)

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

Article 24 – The right to protection in cases of termination of employment

Part I: "All workers have the right to protection in cases of termination of employment".

Part II: "With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

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 ("the 1961 Charter") providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10th May 2011 at its 250th session ("the Rules");

Having regard to the observations of the Government on the admissibility of the complaint received on 12 January 2012 and registered on the same date;

Having regard to the observations of the FFFS received on 1 February 2012 and registered on the same date, in response to those of the Government;

Having regard to the additional observations of the Government received on 21 February 2012 and registered on the same date, and the documents appended to it;

Having regard to the additional observations of the FFFS received on 30 April 2012 and registered on the same date, in response to those of the Government;

Having deliberated on 23 May 2012;

Delivers the following decision, adopted on the above-mentioned date:

1. The FFFS submits that the Norwegian Seamen's Act (*Den norske sjømannslov*) of 30 May 1975 (No. 18), which stipulates compulsory retirement for seamen on reaching the age of 62 years, is to be construed as an unjustified prohibition of employment and a discriminatory denial of seamen's right to work as such, in breach of Articles 1§2 (right to work) and 24 (right to protection in case of termination of employment) read alone or in conjunction with Article E (non-discrimination) of the Charter.

2. In its observations, the Government raises the following objections concerning the admissibility of the complaint:

- the FFFS does not substantiate that the signatory of the complaint has the proper authority to sign the complaint;

- the FFFS is not a "representative" trade union within the meaning of Article 1§c of the Protocol;

- to declare the complaint admissible would be particularly inappropriate in a such a highly unionised sector when it concerns a subject whose sole proponent is a very small union.

3. In reply, the FFFS stresses that it is representative for the purpose of the collective complaints procedure, that its Articles of Agreement grant power of attorney to Mr Leif R. Vervik and that the fact that the other trade unions do not challenge the age limit for retirement has no effect on its capacity to bring a complaint before the Committee.

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee's Rules of Procedure, and objections 1 and 2 of the Government in that regard

4. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Norway on 20 March 1997 and took effect in respect of that State on 1 July 1998, the complaint was lodged in writing and concerns Articles 1§2, 24 and E of the Charter, provisions accepted by Norway at the ratification of this treaty on 7 May 2001 and binding upon it since the entry into force of the treaty in respect of it on 1 July 2001. The Committee observes that, in the matter of discrimination in employment, it is not necessary to combine Article E (non-discrimination) with Article 1§2 (right to work) since the latter already prohibits discrimination which workers may suffer in employment.

5. Moreover, the grounds for the complaint are stated.

6. The Committee recalls that under Article 1§c of the Protocol, Contracting Parties to the Protocol secure the right to lay complaints alleging unsatisfactory application of the Charter to "representative national (...) trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint".

7. The Committee notes that the FFFS is a trade union which engages in activities within Norwegian jurisdiction, in accordance with Article 1§c of the Protocol, and that the Government does not contest this.

8. In pursuance of Rule 23 of the Committee's Rules of Procedure, "complaints shall be signed by the person(s) with the competence to represent the complainant organisation". The complaint submitted on behalf of the FFFS is signed by Mr Leif R. Vervik, President of the FFFS.

9. The Government raises the two following objections alleging that Mr Leif R. Vervik lacks competence to represent the FFFS:

- According to Article 17 of the FFFS Articles of Agreement, power of attorney is granted to the chairman of the board of management/general manager and to the vice-chairman. Thus it is not clearly apparent from this wording whether the chairman of the board can sign alone;
- According to Article 13 of the FFFS Articles of Agreement, the powers of the chairman of the board are limited. He represents the board and must act in accordance with the decisions taken by the board. Only in exceptional circumstances may he act on his own responsibility, and in that event must seek the agreement of the board afterwards. The complaint does not demonstrate that the decision to confer power to represent the FFFS and to lodge the complaint was taken in accordance with this article.

10. As to the first objection, the FFFS states that Article 17 of its Articles of Agreement means that both the chairman of the board of management/general manager and the vice-chairman separately hold authority for signature.

11. The Committee observes that in its reply the Government does not return to this point. Nevertheless, it emphasises that Article 17 of the FFFS Articles of Agreement grants authority for signature to Mr Leif R. Vervik as chairman of the board of management.

12. As to the second objection, the FFFS points out that Mr Leif R. Vervik has the board's unanimous support and is empowered to decide to brief a lawyer to lodge the collective complaint. The FFFS transmitted a memorandum from its board of management dated 25 April 2012, giving Mr Leif R. Vervik full power in the present complaint.

13. The Committee recalls that, short of being permanently authorised by the articles of agreement, the signatory may be authorised by a deliberation of the body managing the trade union. This may even be issued after the complaint has been lodged (see *Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, decision on admissibility of 6 September 2004, §8). It accordingly notes that Mr Leif R. Vervik can commit the FFFS to the present procedure.

14. Furthermore, the Government contests that the FFFS is a representative organisation, within the meaning of Article 1§c of the Protocol, because its membership is too limited and because the FFFS does not participate in national negotiations. The Government recalls in that regard the Explanatory Report to the Protocol which specifies: "In the absence of any criteria on a national level, factors such as the number of members and the organisation's actual role in national negotiations should be taken into account" (§23).

15. Regarding the membership of the FFFS, the Government points out that the FFFS is a much smaller trade union than the three main Norwegian trade unions in the sector: *Det Norske Maskinistforbundet* (Norwegian Union of Marine Engineers) with some 6 300 members, the *Norsk Sjømannsforbund* (Norwegian Seafarers' Union) with some 10 100 members, and the *Norsk Sjøoffisersforbund* (Norwegian Maritime Officers' Union) with some 5 100 members to whom 700 petty officers should be added. The aggregate membership of these three trade unions comes to about 22 200. The FFFS would therefore represent, with 1 500 claimed members, at the most 6% of unionised workers in the maritime sector. The Government adds that there are an estimated 19 300 workers on ships in Norway (as of 31 December 2009), about 16 900 of whom belong to one of the three above-mentioned trade unions.

16. In reply, the FFFS indicates that 1 293 workers are fee-paying members to whom a certain number of retired associate members should be added. In terms of size, the FFFS is the 4th Norwegian seamen's union. It adds that the European Committee of Social Rights has already considered the merits of complaints lodged by small trade unions. The FFFS emphasises that the Committee makes an overall assessment of the case file in order to determine a trade union's representativeness, and that the number of members is only one element among others.

17. Concerning the role of the FFFS in national negotiations, the Government emphasises that despite the requests made to that effect by the FFFS to employers' organisations, it was not granted the right of collective bargaining unlike the other three trade unions in the sector. Nor was the FFFS invited to participate at the national level in the legal panel set up by the Government on 18 November 2011 to make a full review of the 1975 Norwegian Seamen's Act (*Den norske sjømannslov*). The Government explains that it was intended to limit the size of the panel for reasons of efficiency and to have a balance between the number of workers' representatives and the number of employers' representatives. According to the Government, this demonstrates that the FFFS is not regarded as a representative trade union.

18. The FFFS acknowledges that the *Norges Rederiforbund* (Norwegian Shipowners' Association) did not grant it the right to bargain collectively. However, the FFFS states that it has concluded numerous agreements and for several years has helped its members to defend themselves against their employers in disputes on various issues, particularly through actions before the courts.

19. The Committee recalls that, for the purposes of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness (*Confédération française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6).

20. The Committee stresses that the number of members and the role performed in national negotiations are mentioned in the Explanatory Report to the Additional Protocol to the Charter providing for a system of collective complaints by way of illustration and not as conditions of an exclusive nature. The Committee, accordingly, makes an overall assessment to establish whether or not a trade union is representative within the meaning of Article 1§c of the Protocol.

21. The application of criteria of representativeness should not lead to automatic exclusion of the small trade unions or those not long formed, to the advantage of larger and longer-established trade unions, thereby prejudicing the effectiveness of the right of all trade unions to bring a complaint before the Committee.

22. The Committee examines representativeness in particular with regard to the field covered by the complaint, to the aim of the trade union and the activities which it carries (see *Syndicat de Défense des Fonctionnaires v. France*, Complaint No. 73/2011, decision on admissibility of 7 December 2011, §6). It also considers that in order to qualify as representative, a trade union must be real, active and independent. The Committee finds that the FFFS fulfils these criteria, which the Government moreover does not dispute.

23. The overall assessment of the information in its possession leads the Committee to consider the FFFS as a representative trade union for the purposes of the collective complaints procedure.

24. Consequently, the Committee considers that the complaint complies with Article 1§c of the Protocol.

As to the Government's objection relating to the expediency of the complaint and the difficulties which the FFFS allegedly encounters in conducting its union action

25. In the Government's view, the admissibility of a complaint must be stringently determined in a matter which has potential implications for all persons over a certain age, further considering that the complaint is brought by a very small trade union against the wishes of a very substantial majority of members of trade unions in the maritime sector. To declare a complaint of this kind admissible would be particularly inappropriate in such a highly unionised sector.

26. The FFFS, for its part, stresses that the sector's three other trade unions are close to each other since their premises are located at the same address and they have a joint bank account for their members' fees. Therefore, the FFFS argues, a real need exists for there to be an alternative trade union. The FFFS adds that the three other trade unions and the Government are seeking to prevent the FFFS from conducting its union activities through various measures like making the subscriptions paid to the FFFS non-tax deductible as opposed to those paid to the three other trade unions in the sector. The FFFS adds that the fact that the other trade unions do not challenge the age limit for retirement has no effect on its capacity to refer an alleged violation of the Charter to the Committee. The FFFS further considers that there is no way of knowing the position of these trade unions as to whether or not the age limit of 62 years is discriminatory and whether or not it complies with the Charter.

27. In reply, the Government points out that the non-tax deductibility of membership fees to the FFFS stems from the application of the law which requires trade unions to have a national dimension for tax deductibility to operate. It adds that this question is currently under examination by the Oslo court of first instance (*Oslo tingrett*). In reply, the FFFS stresses its national dimension.

28. The Committee considers the argument raised by the Government invalid because it is not among those which may be properly relied on to establish the inadmissibility or ill-foundedness of a complaint. It would moreover be particularly inadvisable for the Committee to refuse to examine situations potentially violating the Charter on the pretext that the complainant organisation upholds a position not shared by other organisations in the same sector. Any other stance by the Committee would conflict with the freedom to organise.

29. Consequently, the Committee holds that the pleas of inadmissibility entered by the Government are to be rejected.

30. For these reasons, the Committee, by 13 votes to 1, on the basis of the report presented by Mrs Jarna PETMAN 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 Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 12 July 2012.

Invites the FFFS 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 Charter to make comments by 12 July 2012, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 12 July 2012.



Jarna PETMAN
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary