



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

20 June 2016

**Case Document No. 2**

***Fellesforbundet for Sjøfolk (FFFS) v. Norway***  
Complaint No. 120/2016

**OBSERVATIONS BY THE GOVERNMENT  
ON ADMISSIBILITY**

**Registered at the Secretariat on 6 June 2016**





## ATTORNEY GENERAL - CIVIL AFFAIRS

The European Committee of Social Rights  
Executive Secretary  
Council of Europe  
F-67075 Strasbourg Cedex  
France

**Your reference**  
53/2016 LV/KOG

**Our reference**  
2016-0335 ITH

**Date**  
6.6.2016

### WRITTEN OBSERVATIONS ON ADMISSIBILITY

### SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF NORWAY

to

### THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

in

**Fellesforbundet for sjøfolk (FFFS) v. Norway  
(Complaint No. 120/2016)**

#### **1 INTRODUCTION**

- (1) Reference is made to the Deputy Executive Secretary's letter of 12 April 2016 informing the Permanent Representative of Norway to the Council of Europe of the collective complaint submitted by Fellesforbundet for sjøfolk (hereinafter "FFFS") pursuant to Article 5 of the Additional Protocol to the European Social Charter.
- (2) The Government of the Kingdom of Norway has been invited to submit written observations on the admissibility of the complaint by 6 June 2016.
- (3) In the view of the Government the complaint is inadmissible as the requirements set out in Article 1 c) and Article 4 of the Additional Protocol to the Charter are not met.

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### 2 ARTICLE 1 C) OF THE ADDITIONAL PROTOCOL

- (4) The Government respectfully submits that in the circumstances of the present case the complainant has failed to satisfy the requirement set out in Article 1 c) of the Additional Protocol.
- (5) The relevant part of Article 1 c) of the Additional Protocol states that the Contracting States, which includes Norway, “*recognize the right ... to submit complaints alleging unsatisfactory application of the Charter*” to “*representative national organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint*”.
- (6) The Committee examines the requirement of representativeness in particular with regard to the field covered by the complaint, the aim of the trade union and the activities which it carries, cf. *Fellesforbundet for sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on admissibility 23 May 2012 § 22.
- (7) The Government does not contest that FFFS fulfils the general requirements for being considered a representative trade union for the purposes of the collective complaints procedure, cf. the above mentioned decision § 23.
- (8) In the present case, FFFS claims to act “*on behalf of Spanish retired colleagues*”, cf. the complaint pages 1. It does not, however, appear from the complaint that these Spanish retired seamen are members of FFFS.
- (9) According to the complaint, the Spanish retired seamen “*have worked through their organization Asociación Longhope, for several years to try to induce Norwegian authorities to recognize that their time as workers on board the Norwegian vessels should be fully taken into account as earned time of service for the purpose of pension*”, cf. the complaint page 3. It also appears from the complaint that “*Asociación Longhope and 210 individual, former sailors (in some cases their widows)*” have brought legal proceedings against the Government before Oslo district court, see page 3.
- (10) Hence, the Spanish retired seamen in question are represented by the organization Asociación Longhope in matters regarding their pension rights.
- (11) In the absence of evidence that FFFS organizes the retired sailors in question, it must be concluded that the complaint pertains to a category of employees on whose behalf FFFS has no authority to act.
- (12) Based on the above, the Government submits that FFFS does not fulfil the requirement of representativeness as regards the subject matter of the complaint.

### 3 ARTICLE 4 OF THE ADDITIONAL PROTOCOL

- (13) The complaint does not satisfy the requirements in Article 4 of the Additional Protocol:

*“The complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned”* (emphasis added)

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- (14) The Government refers to the complaint made. FFFS argues that *"The Kingdom of Norway is alleged to have violated Part II Article 12 No 1–4 of the European Social Charter in excluding, until 1/1/94, Spanish seamen working on ships under Norwegian jurisdiction from the social security schemes of Folketrygdloven and Pensjonstrygden for sjømenn on the ground that they were not nationals of Norway or a Nordic country"*, cf. the complaint page 9.
- (15) Hence, the complaint concerns social security schemes in Norway before 1994. This means that the original European Social Charter (1961) will be applicable, but not the revised European Social Charter from 1996, which was ratified by Norway in 2001.
- (16) The complainant alleges that Article 12 of the European Social Charter has been violated.
- (17) Norway ratified the Charter 26 October 1962. It appears from the declaration contained in the instrument of ratification that Norway, in accordance with Paragraph 1 (b) of the Charter, undertook to consider itself bound by Articles 1, 5, 6, 12, 13 and 16.
- (18) However, as regards Article 12, the declaration contained the reservation *"that Norway, under Paragraph 4 of this Article, will be permitted in the bilateral and multilateral agreements therein mentioned to stipulate, as a condition for granting equal treatment, that foreign seamen should be domiciled in the country to which the vessel belongs"*.
- (19) During the period in question, Norway retained the right to stipulate, as a condition for granting equal treatment as regards the right to social security under Article 12, that foreign seamen on ships under Norwegian jurisdiction must be domiciled in Norway.
- (20) The present complaint concerns foreign seamen that were not domiciled in Norway, see the complaint page 2: *"However, they had their legal address in Spain ... where they also had their families and to where they returned between periods on board"*.
- (21) The complainant argues that the fact that Spanish seamen who were domiciled in Spain did not acquire pension rights under Norwegian law before 1994 violates Article 12 of the Charter.
- (22) The reservation made in connection with the ratification as regards Article 12, concerns exactly the same situation that is covered by the complaint.
- (23) The reservation meant that Norway had not "accepted" Article 12 in its entirety within the meaning of Article 4 of the Additional Protocol. Norway had the right to make the granting of social security rights under Article 12 conditional on domicile in Norway.
- (24) On this basis, the Government considers that the requirement that the complaint must relate to a provision of the Charter accepted by the Contracting party concerned, is not fulfilled in the present case. The complaint concerns questions that are covered by the reservation made by Norway in relation to Article 12 of the Charter.
- (25) In these circumstances the Government respectfully submits that the complaint should be regarded as inadmissible as failing to meet the criteria in Article 4 of the Protocol.

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### 4 CONCLUSION

- (26) The Government submits that in the circumstances of the present case the complaint must be rejected as inadmissible as it fails to satisfy the requirements in Article 1 c) and Article 4 of the Additional Protocol.
- (27) In the event that the Committee allows FFFS to submit further information and evidence in support of its allegations, the Government respectfully asks the Committee to accept further observations on admissibility from the Government.

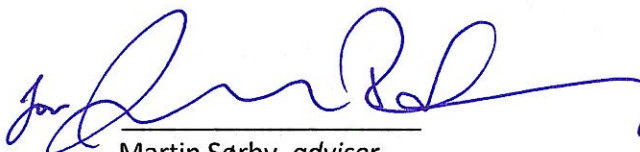
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Oslo, 6 June 2016

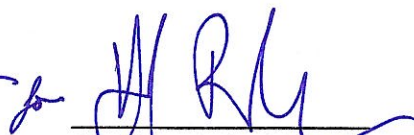


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