

DECISION ON ADMISSIBILITY

12 September 2017

International Federation of Associations of the Elderly (FIAPA) v. France

Complaint No. 145/2017

The European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 294th session, in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
Marcin WUJCZYK
Krassimira SREDKOVA
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint, dated 7 March 2017, registered on 13 March 2017 as number 145/2017, lodged by the International Federation of Associations of the Elderly (“the FIAPA”) against France and signed by *Maître* Pierre-Olivier Koubi-Flotte, lawyer at the Marseille Bar, on behalf of the FIAPA, and represented by him according to a mandate signed by the President of the FIAPA, Alain KOSKAS requesting the Committee to find that the application of legislation on the prevention and punishment of the offense of abuse of an individual's state of weakness (*abus de faiblesse*) by the national courts does not ensure the effective exercise of the right of the elderly to social protection in violation of Article 23 taken alone and of Article E read in conjunction with Article 23 of the revised European Social Charter (“the Charter”);

Having regard to the documents appended to the complaint;

Having regard to the letter from the Government registered on 23 June 2017;

Having regard to the Charter and, in particular, to Articles 23 and E, which read as follows:

Article 23 – The right of elderly persons to social protection

Part I: “Every elderly person has the right to social protection.”

Part II: “With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
 - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
 - b the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.”

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 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 last revised on 6 July 2016 at its 286th session (“the Rules”);

Having deliberated on 12 September 2017;

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

1. The FIAPA alleges that Article 223-15-2 of the Penal Code on the prevention and punishment of the offense of abuse of an individual's state of weakness (*abus de faiblesse*) as applied by the national Courts does not ensure the effective exercise of the right of the elderly to social protection in violation of Article 23 taken alone and of Article E read in conjunction with Article 23 of the Charter.
2. The Government has indicated that it has no objections concerning the admissibility of the complaint.

THE LAW

3. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by France on 7 May and entered into force for this State on 1 July 1999, the complaint has been submitted in writing and concerns Article 23 of the Charter, which was accepted by France when it ratified the treaty on 7 May 1999, and Article E, and to which it is bound since the entry into force of the treaty in its respect on 1 July 1999.
4. Moreover, the grounds for the complaint are indicated.
5. The Committee notes that, in accordance with Articles 1 (b) and 3 of the Protocol, the FIAPA is an international non-governmental organisation holding participatory status with the Council of Europe. It is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints.
6. The Committee notes the particular competence of the FIAPA, whose aim is to represent older people by raising awareness of the position and living conditions of the elderly, especially the most vulnerable, among political and other bodies at international and national level; to encourage the action of associations through mutual information exchanges, the co-ordination of projects agreed jointly and the arranging of meetings, in particular at international colloquies; and to promote its member associations' activities at leading international organisations.
7. It also notes that the FIAPA is particularly active in terms of defending and protecting the rights of the elderly. It also strives constantly to combat ageism and its various forms in daily life.
8. Lastly, the Committee observes that the complaint lodged on behalf of the FIAPA is signed by *Maître* Pierre-Olivier Koubi-Flotte, lawyer at the Marseille Bar, who is entitled to represent the complainant organisation in respect of this complaint, as established by the mandate signed by Alain KOSKAS, President of the FIAPA, who has capacity to bring or defend legal proceedings on behalf of the FIAPA, in

accordance with Article 18 of its statutes. The Committee therefore considers that the complaint complies with Rule 23.

9. For these reasons, the Committee, on the basis of the report presented by Kristine DUPATE, 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 Deputy 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, paragraph 2, of the Charter, and to publish it on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 15 November 2017.

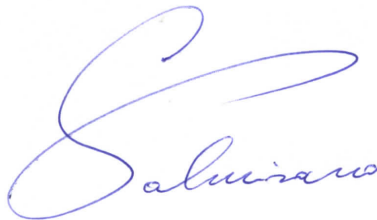
Invites the FIAPA to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites Parties to the Protocol and the States having submitted a declaration pursuant to Article D, paragraph 2, of the Charter to make comments by 15 November 2017.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations 15 November 2017.



Kristine DUPATE
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary