

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COMITÉ EUROPÉEN DES DROITS SOCIAUX



18 August 2004

Collective Complaint No. 23/2003
Syndicat occitan de l'éducation v. France

Case Document No. 6

**ADDITIONAL INFORMATION FROM THE
SYNDICAT OCCITAN DE L'ÉDUCATION
ON THE MERITS**

registered at the Secretariat on 4 June 2004

(TRANSLATION)

**Observations of the SOE (Syndicat Occitan de l'Education)
in response to those of the French government
of 16 April 2004¹**

The French government refers to paragraph 3 of Section 94 of Act No. 96-1093 of 16 December 1996, which states that "in the first round of voting the lists are put forward by representative public-servants' trade unions".

1. Preventing participation in the first round of workplace elections is an infringement of the right to organise

Before considering the notion of representativity, it must first be recognised that the French system for the election of staff representatives to civil service joint administrative boards provides for a first round of voting in which the lawfully constituted trade unions will not all be authorised to take part, if they are not deemed by the administrative authorities to be representative.

In the case of the public service, it is therefore the employer who decides which trade unions are authorised to participate in the first round. Yet Article 5 of the Social Charter clearly states that the "**Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom**". We consider the opportunity to stand in workplace elections from the first round to be a freedom and a right for all trade unions. French legislation is therefore in serious breach of this right and freedom and as such is incompatible with Article 5 of the European Social Charter.

2. The representativity criteria are not clearly defined and offer scope for a wide variety of interpretations

The French government refers to the criteria adopted to assess the representativity of trade unions. The criteria, laid down in Article L133.2 of the Labour Code, are number of members, independence, membership fees, level and length of experience, and patriotic attitude during the Occupation (this last criterion is no longer applied).

We wish to point out that some of these criteria are certainly not quantifiable and are thus left open to the judgment of one or more individuals, who will assess them according to their own scale of values or one known only to the authorities.

¹ Note of the Secretariat : the observations of the French Government on the merits were registered at the Secretariat of the European Social Charter on 19 April 2004.

Number of members: what is the minimum number for an organisation be considered to be representative?

Length of experience: how many years of activity are necessary to achieve representativity?

Both criteria are shrouded in mystery and we fear that the resulting decisions will not be consistent.

3. The legitimacy of the system

The French government states that "*the election arrangements pursue the legitimate aim of avoiding fragmentation of trade union representation and ensuring effective consultations with the trade unions by limiting the administrative authorities' consultation partners to the unions most representative of all the civil services (national, local and hospitals)*".

There is thus a clearly stated willingness in restricting trade union participation. Nor do we see why allowing all the unions that so wish to stand in the elections would not ensure effective consultations. In practice, the election results would identify objectively, and on the basis of voters' own choice, the representative trade unions that had secured elected members and with which the authorities would then negotiate.

4. Compliance with international treaties

The French government states that the French concept of trade union representativeness has not been found not to be in conformity with various international treaties:

"The European Committee of Social Rights has itself recognised the French concept of trade-union representativity to be in conformity with the Social Charter" (page 10);

"The national system described has also been deemed compatible with other convention provisions binding France as regards the right to organise", [in particular] "with Article 11 of the European Convention on Human Rights" (page 11);

"The International Labour Organisation also found the legislation to be compatible with International Convention No.87 on Freedom of Association and Protection of the Right to Organise" (page 13).

We note that the French government fails to mention that the United Nations Committee on Economic, Social and Cultural Rights has addressed observations to France on the subject of representativity (Concluding Observations of the Committee on Economic, Social and Cultural Rights: France, 30/11/2001. E/C.12/1/Add 72).

These observations are the following:

18 : The Committee is concerned that the criteria of « representativity » for participation of trade unions in certain process such as collective bargaining may tend to exclude smaller d newer trade unions in favour of the larger and more established ones and therefore may jeopardize the right of all trade unions to function freely in accordance with article 8 (c) of the covenant.

29 : The committee recommends that the state party ensure that the criteria of participation and, in particular, the condition of “representativity” do not impede the right of trade unions to participate freely in processes such as collective bargaining, irrespective of their size, in accordance with article 8 (c) of the covenant.

Workplace elections are an important aspect of the collective bargaining process because their results determine which unions will take part in negotiations in the sector concerned. Depriving a trade union of the right to stand is to deprive it of any possibility of participating in these negotiations.

Conclusion

For all the aforementioned reasons, we consider that the French government's observations do not invalidate our complaint.