

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



5 April 2004

Case Document No. 1

COLLECTIVE COMPLAINT No. 24/2004

**Union Syndicale SOLIDAIRES
(Syndicat SUD TRAVAIL AFFAIRES SOCIALES)
v. France**

(TRANSLATION)

registered at the Secretariat on 6 February 2004

Letter dated 5 January 2004 to the President of the European Committee of Social Rights lodging Collective Complaint 24/2004

Sir,

On behalf of the following trade union organisations:

Syndicat SUD TRAVAIL AFFAIRES SOCIALES,
registered office 12 rue Bonne Nouvelle, 75010 PARIS

Fédération SUD ANPE,
registered office 239 rue de Belleville, 75019 PARIS,

Fédération SUD COLLECTIVITÉS TERRITORIALES,

we have the honour to lodge a collective complaint under the terms of the 1995 Protocol against the French Government for non-compliance with the provisions of the European Social Charter of 2 May 1996 concerning prohibition of discrimination in employment.

In the light of the report submitted by the French Government, the Committee of Social Rights under your chairmanship has concluded that French legislation on equal rights, a principle enshrined in Article 1 paragraph 2 of the European Social Charter, complies with this provision.

Prohibition of discrimination in employment is indeed stipulated in Article L.122-45 (first indent) of the French Labour Code as established by Law no. 2001-1066, in the following terms:

“Nobody shall be excluded from a procedure for recruitment or admission to a training course or to a period of in-plant training, nor may any employee be penalised, dismissed or subjected to a measure involving direct or indirect discrimination in respect of remuneration, training, reclassification, posting, qualification, classification, vocational advancement, transfer or renewal of contract on the ground of origin, gender, morality, sexual orientation, age, family circumstances, genetic characteristics, real or presumed affiliation or otherwise to an ethnic group, nation or race, political views, activities in connection with trade unions or mutual benefit societies, religious convictions, physical appearance, surname, or state of health or disability, except in the case of unfitness certified by the occupational physician in accordance with Title IV, Book II of this Code.”

Furthermore, the last indent of the aforementioned Article L.122-45, likewise derived from the law of 1 November 2001, ensures reversal of the burden of proof in civil litigation over acts of discrimination. This adjustment, viewed in your conclusion as a *“positive development”*, was in fact essential in order to secure equitable handling of disputes, and those are in fact the reasons for the European Union’s declaring it mandatory, together with prohibition of

indirect discrimination, through the following instruments:

Directive 2000/43 EC regarding forms of discrimination which are racist in motivation or foundation;

Directive 2000/78 EC for all European Union Member States regarding all forms of discrimination.

It may be observed in this connection that the two foregoing directives, whose entry into force was fixed to coincide with the date of publication, are applicable to all employment relationships whether governed by **private or public law**. The first of these instruments prescribes a time limit of five years for its transcription into national law as from the date of its publication, ie by 19 July 2005, and the second a time limit of three years ie by 2 December 2000.

However, and this is the subject of our complaint, the benefit of the above provisions is withheld from many categories of workers:

1. Exclusion of specific private law employee categories

The provisions of Article L.122-45 of the Labour Code, prohibiting discrimination in employment and easing the burden of proof in the event of disputes, do not benefit some categories of persons employed under private law:

- . Porters and caretakers of residential buildings,
- . Domestic employees,
- . Mother's helps working in the home,

Totalling several hundred thousand employees.

II. Situation of public law employees

I. Civil servants:

The aforementioned Law no. 2001-1066 introduced into the law (no. 83-634) establishing the general civil service regulations a prohibition of all forms of discrimination, Article 6 now being worded as follows:

Freedom to hold and express opinions shall be secured to civil servants.

No distinction whether direct or indirect may be drawn between civil servants on the ground of their opinions on political, unionist, philosophical or religious subjects, their origin, sexual orientation, age, surname, state of health, physical appearance, disability, or their real or presumed affiliation or otherwise to an ethnic group or race.

Such distinctions as take account of any physical unfitness for the discharge of specific duties shall nevertheless be permissible.

Likewise, age requirements may be laid down for the recruitment of civil servants where these are intended to facilitate their career development, and

also in respect of their advancement where they follow from professional constraints, are justified by experience or length of service, and are necessitated by the tasks to which the persons concerned are assigned in their branch, staff establishment or post.

No measure relating to recruitment, acquisition of tenure, training, discipline, promotion, posting or transfer may be applied to a civil servant if any of the following considerations enter into it:

- 1. That he/she has lodged an appeal with an official superior or brought a legal action in defence of the principles stated in the second indent of this article;*
- 2. Or that he/she has reported or given evidence of practices infringing these principles.*

Officials acting as above shall be liable to a disciplinary sanction.

However, no statutory provision has been adopted to ease the burden of proof for civil servants, whether in connection with the act of recruitment, their career development or their dismissal.

In the absence of such an adjustment of the burden of proof, it must be acknowledged that civil servants are inadequately protected against risks of discrimination.

2. Public service employees without tenure, whether answerable to the State civil service, local government or the hospital administration:

No legislative instrument in the matter has been promulgated and no regulatory measure has been taken. Thus they are not covered by provisions on adjustment of the burden of proof, and what is more no specific instrument prohibits discrimination where they are concerned. This situation is still more untoward considering that:

a. - in many cases their engagement – particularly for the discharge of managerial duties with local authorities – is according to their political profile;

b. – Staff without tenure in the various public services, with few exceptions, are recruited on fixed-term contracts of three years maximum duration. As renewal of their contracts is altogether discretionary, they have no guarantee, whether formal or substantive, in the event of refusal to extend their contracts.

By way of an indication, the numbers of contractual employees of local authorities exceed 250 000¹

¹ According to a very recent report by the Chair of the Higher Council for the Local Government Service, there are exactly 267 031 in mainland France alone, the Paris local authority excepted and not counting part-time employees paid by the hour, whose job status is the least secure.

3. Special situation of employees of the National Employment Agency (ANPE):

Employment relationships in the National Employment Agency, an administrative public corporation responsible for the placement of job-seekers, whose complement of salaried staff stands at 20 000 employees with public law status, are governed by conditions of service based on a regulation, currently Decree no. 90-543 of 29 June 1990.

The decree in fact contains no general prohibition of discrimination in employment and thus can hardly institute an adjustment of the burden of proof.

In the light of the foregoing, the trade unions signatories hereto request you to prevail upon the French Government to take whatever steps may be appropriate in order to extend prohibition of discrimination in employment, and relief from the burden of proof, to all employees whether on public law or private law contracts.

We remain at your disposal to attend such hearings as you may deem expedient, and beg you to accept the assurance of our highest consideration.

On behalf of the above-named organisations

(signature)

Jacques DECHOZ

All correspondence relating to this complaint should be sent additionally or preferentially to the following address: Union Syndicale SOLIDAIRE, 12 rue des Trembles, 38100 GRENOBLE

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