

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



4 May 2004

**Collective Complaint No. 24/2004  
Syndicat SUD TRAVAIL AFFAIRES SOCIALES v. France**

**Case Document No. 2**

**OBSERVATIONS FROM THE FRENCH GOVERNMENT  
ON THE ADMISSIBILITY**

**(TRANSLATION)**

**registered at the Secretariat on 16 April 2004**

**French Government's observations on the admissibility of complaint  
No. 24/2003 submitted by the SUD TRAVAIL AFFAIRES SOCIALES trade  
union and others to the European Committee of Social Rights**

In a letter dated 5 March 2004, the European Committee of Social Rights drew the French Government's attention to the complaint submitted to it on 6 February 2004 by Mr DECHOZ on behalf of the SUD TRAVAIL AFFAIRES SOCIALES, SUD ANPE and SUD COLLECTIVITÉS TERRITORIALES trade unions and asked for its observations on the admissibility of this complaint by 16 April 2004.

The Government wishes to make the following observations on admissibility.

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The trade union complainants argue that French legislation prohibiting direct and indirect discrimination in employment contravenes the European Social Charter, particularly Article 1 paragraph 2, firstly because it is not sufficiently comprehensive to be effective and secondly because certain categories of employee under private and public law do not benefit from it to the same extent, thus making the legislation itself discriminatory.

The complaint is inadmissible on several grounds. It has not been presented by someone with lawful authority to represent the trade unions on whose behalf he claims to be acting and it is concerned with employees whom the trade unions on whose behalf the complaint is presented are not authorised in their statutes to represent.

1. When the complaint was lodged, its author had not been authorised by the SUD TRAVAIL AFFAIRES SOCIALES to act on its behalf before the Committee.

Under Rule 20 of the Committee's Rules of Procedure: "*Complaints shall be signed by the person(s) with the competence to represent the complainant organisation. The Committee decides on any questions concerning this matter*".

Yet on 12 January 2004, when the complaint dated 5 January 2004 was registered, Mr DECHOZ, the signatory to the complaint, had not been authorised to refer the matter to the Committee on behalf of SUD TRAVAIL AFFAIRES SOCIALES. This was only done subsequently following SUD TRAVAIL's national council on 22 and 23 January 2004.

For this reason alone, the Committee is asked to declare the entire complaint inadmissible.

2. The signatory to the complaint has never been authorised to represent the SUD COLLECTIVITÉS TERRITORIALES and SUD ANPE trade unions

In accordance with the observations of the President of the Committee, the Government notes that the author of the complaint has produced no evidence to show that he has received any form of authorisation to represent the SUD COLLECTIVITÉS TERRITORIALES and SUD ANPE trade unions before a judicial body, and in particular to refer a case on their behalf to the Committee.

**The complaint is therefore also inadmissible in so far as it is presented on behalf of the SUD COLLECTIVITÉS TERRITORIALES and SUD ANPE trade unions.**

**This second ground of inadmissibility means that the Committee cannot examine the merits of part II of the complaint – “Situation of public law employees” – since it concerns the staff of local and regional authorities and the national employment agency (ANPE), on whose behalf the complainant trade union has no authority to act.**

Under Article 1 of its statute, SUD TRAVAIL represents staff of whatever status who are directly or indirectly responsible to the Ministry of Employment and Solidarity and staff of other ministries with labour inspection responsibilities.

The Committee is asked to draw the full consequences of this provision.

Firstly **the staff of local and regional authorities** are clearly excluded from the scope of this clause. Since the complainant has no authority to represent SUD COLLECTIVITÉS TERRITORIALES before a judicial body while SUD TRAVAIL has no right to act on behalf of the staff of local and regional authorities, the complaint must be declared inadmissible on this count.

In so far as it concerns the staff of local and regional authorities, therefore, part II.2 of the complaint cannot be examined by the Committee.

Secondly, **staff of the public hospital service** are also clearly excluded from the scope of this complaint. Since the decree of 7 May 2002 (published in the French official journal of 8 May 2002), these public law employees have been accountable to the Ministry of Health, the Family and Disabled Persons, and not to the Ministry of Employment and Solidarity, which besides no longer exists. **In so far as it concerns the staff of the public hospital service, therefore, part II.2 of the complaint cannot be examined by the Committee.**

Thirdly, the very existence – as a result of this complaint – of SUD ANPE means that SUD TRAVAIL is not entitled to recruit **members from the national employment agency, ANPE**. And again it must be emphasised that the author of the complaint has no authority to represent the SUD ANPE trade union.

Once the Committee has accepted this ground of inadmissibility, therefore, it is excluded from examining the merits of part II.3 of the complaint, which is only concerned with employees of the national employment agency, whose employment conditions are governed by regulation.

3. Article 1 of SUD TRAVAIL's statute prevents it from acting on behalf of categories of employee excluded from this statute

SUD TRAVAIL has no authority to act on behalf of employees who are not entitled to be members of the union under Article 1 of its statute.

In part I of its complaint, the union maintains that **porters and caretakers of residential buildings, domestic employees and mothers' helps working in the home are excluded from the scope of Article L 122-45. These three categories of staff are covered by their own specific provisions of the Labour Code and for this reason alone fall totally outside the scope of Article 1 of SUD TRAVAIL's statute. The Committee is therefore asked to rule that part I of the complaint is inadmissible because it has been presented by a trade union whose statute makes it incompetent to represent these categories of staff.**

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It would be premature to consider the merits of the complaint that the aforementioned provisions of the Charter had been breached while its admissibility was still under examination. However the Government reserves the right to present detailed arguments on the merits of the allegations at a later date, if the complaint is declared admissible.

For the foregoing reasons, the Committee is asked to declare the complaint presented by Mr Jacques DECHOZ inadmissible on all counts.