

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



2 June 2005

**Collective Complaint No. 24/2004  
Syndicat SUD Travail Affaires Sociales v. France**

**Case Document No. 6**

**RESPONSE BY SUD TRAVAIL AFFAIRES SOCIALES  
TO THE OBSERVATIONS ON THE MERITS  
BY THE FRENCH GOVERNMENT**

**registered at the Secretariat on 1 June 2005**



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To  
Mr Régis Brillat  
Council of Europe  
Directorate General of Human Rights – DG II  
Secretariat of the European Social Charter

16 May 2005

**COMPLAINT NO. 24/2004**

SUD TRAVAIL AFFAIRES SOCIALES V. FRANCE.

Dear Sir,

Thank you for your letter of 22 March enclosing for our observations the Government memorial in the above case. After consideration of this document we wish to make the following comments.

**1. Implicit recognition that our complaint is well founded:**

It must be stressed that the French Government does not dispute the need to transpose the European directive, in particular the adjustment of the burden of proof in cases before the relevant courts, in order to comply strictly with the requirements of the European Social Charter, particularly Article 1§2.

**2. Implicit recognition that European Directive No. 2000/43/EC of 29 June 2000 has not been transposed**

**a. domestic employees**

The Government rightly refers to the case-law of the Court of Cassation, which has on its own initiative extended the protection of Article L 122-45 of the Labour Code, which applies the directive to the great majority of employees, to this particular category, even though according to the letter of this article it does not apply to domestic employees.

However, the Government, like us, is clearly aware of the fragile nature of this case-law and its memorial makes clear its commitment to tabling legislation – a proposal that still remains to be put into practice – explicitly extending the ban on discrimination and the adjustment of the burden of proof in contested cases to domestic employees.

**b. established and non-established public employees**

The Government confines itself to claiming that Section 19 of Act No. 2004-1486 of 30 December 2004, establishing a high authority to combat discrimination and promote equality, fully transposes the directive. However a simple reading of the article, which is quoted in full in the memorial, shows that it is only concerned with discrimination on grounds of national origin or real or supposed membership of an ethnic group or "race"<sup>1</sup>.

The Government therefore implicitly acknowledges that the transposition of this directive does not offer established, let alone non-established, public employees guaranteed protection against other forms of unlawful discrimination, particularly that based on sex, age or political or trade union affiliations.

**3. Draft legislation currently being enacted**

In the light of the comments in 2b, it would appear that the French Government, which officially denies the partial nature of the transposition of Directive No. 2000/43/EC, does not intend to introduce any legislation specifically designed to protect established and non-established public employees against discrimination.

However, the author of the Government submission is apparently unaware – or pretends to be unaware – that the executive has introduced a bill in the two legislative assemblies containing *various measures to transpose Community law to the public service*, Section 16 of which:

- identifies, with a view to prohibiting, indirect "distinctions", not to say discrimination, concerning public officials;
- extends these anti-discrimination provisions to all such officials, non-established as well as established.

The draft legislation was introduced into the Senate, which after discussion passed it on 23 March 2005.

When introducing the bill before the National Assembly and the Senate, both the rapporteurs and the Minister for the Civil Service acknowledged that it was necessary to achieve compliance with Community law. The civil service minister, Mr Renault Dutreil, even told the Senate that Section 16 of the bill, on discrimination, had been submitted to parliament "*to avoid the opening of proceedings at Community level*".

However, this draft legislation as approved at first reading by the Senate would probably have failed to secure the directive's full transposition as regards established and non-established public employees because it did not adjust the burden of proof.

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<sup>1</sup> We have added the inverted commas, since such a - to say the least - highly inadequate reference gives a totally fallacious degree of substance to this false and politically dangerous biological notion.

But in addition, the section of the law – 16 – concerned with discrimination has not been approved by the Assembly or, at second reading, by the Senate.

Given France's unwillingness to accept change, as evidenced by this failure to approve provisions that are in any case inadequate, and the fact that no practical steps have yet been taken by the French Government on behalf of domestic employees, your Committee will no doubt wish to find that French legislation does not comply with the requirements of the European Social Charter and will report back to that effect.

On behalf of Sud Travail Affaires Sociales,

Yours etc.

Jacques Dechoz