

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



9 September 2005

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

**Case Document No. 7**

**SUPPLEMENTARY OBSERVATIONS  
BY THE FRENCH GOVERNMENT**

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



SUPPLEMENTARY OBSERVATIONS OF THE  
FRENCH GOVERNMENT ON THE MERITS OF  
COLLECTIVE COMPLAINT NO. 24/2004,  
SYNDICAT SUD TRAVAIL AFFAIRES  
SOCIALES,  
BEFORE THE EUROPEAN COMMITTEE OF  
SOCIAL RIGHTS

1. In a letter dated 14 June 2005, the Secretariat of the Council of Europe transmitted the reply of the trade union Sud Travail Affaires Sociales to the French Government and asked it to send any additional observations by 31 August 2005.

2. The French Government presents the Committee with the following observations on the reply of Sud Travail Affaires Sociales ("the union").

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- **The alleged implicit recognition that complaint No. 24/2004 is well founded and that European Directive No. 2000/43/EC of 29 June 2000 has not been transposed into French law.**

3. In its memorial in reply the union alleges that the French Government implicitly recognise that the complaint is well-founded and that it has failed to transpose Directive No. 2000/43/EC of 29 June 2000 with regard to domestic employees and established and non-established public service employees.

4. Firstly, the Government denies that it implicitly recognises the merits of the complaint. It considers, as it made clear in its initial observations on the merits, that French legislation is in compliance with Article 1§2 of the Revised Charter.

- **The alleged failure to transpose Directive 2000/43/EC**

5. Turning to the alleged failure to transpose Directive 2000/43/EC of 29 June 2000, the Government notes firstly that the Court of Justice of the European Communities has sole jurisdiction to decide whether Community directives have been properly transposed.

6. However, for information, the Government informs the Committee that France has completed the process of transposing Directive 2000/43/EC of 29 June 2000.

7. The Commission was notified in July 2003 of the transposition of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, a process completed in January 2005 with the transmission of Act No. 2004-1486 of 30 December 2004 establishing a high authority to combat discrimination and promote equality. The transposition of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation has been notified twice to the European Commission, in December 2002 and December 2003.

8. As shown in the tables of correspondence attached to these notifications, Directive 2000/43/EC was transposed in both the private and public sectors by the Anti-Discrimination Act, No. 2001-1066 of 16 November 2001, the Social Modernisation Act, No. 2002-73 of 17 January 2002, and Act No. 2003-6 of 3 January 2003 to re-establish collective bargaining over collective redundancies

(intimidation), and by the introduction of new sub-sections to Section 6 of Act No. 83-634 of 13 July 1983 on the rights and obligations of public officials, as amended, in particular by the aforementioned Acts of 16 November 2001 and 17 January 2002.

9. Section 1 of Act No. 2004-1486 of 30 December 2004 establishing a high authority to combat discrimination – "HALDE" – transposes Article 13 of Directive 2000/43/EC on the establishment of a body to promote equality. It should be noted that this body's powers extend to all forms of discrimination. In practice, domestic law goes well beyond the provisions of Directive 2000/43/EC, whose scope is confined to discrimination on grounds of racial or ethnic origin.

10. Directive 2000/43/EC has therefore been correctly transposed into French domestic law.

- **The alleged exclusion of domestic employees from the scope of the transposed provisions of the directive**

11. The Government rejects the argument that the case-law of the Court of Cassation, which includes caretakers of residential and other buildings in the scope of Article L. 122-45 of the Labour Code, is "fragile" in nature.

12. The Government points out that Article L. 122-45 of the Labour Code covers all work situations, and excludes none.

13. This does not prevent the introduction of a specific provision to apply the directive to domestic employees.

- **The alleged exclusion of non-established public service employees from the scope of the transposed provisions of the directive**

14. The union complains that Section 19 of Act No. 2004-1486, establishing a high authority to combat discrimination and promote equality, is only concerned with discrimination on grounds of national origin or real or supposed membership of an ethnic group or "race".

15. The Government first wishes to remind the union that Directive 2000/43/EC, which it is accused by the union of incorrectly transposing by Section 19 of the 2004 Act, is actually entitled "*implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*". The union can only criticise the Government for failing to transpose this directive in connection with discrimination on grounds of racial or ethnic origin, because this is really the purpose of the directive.

16. Besides, the Government would again emphasise that it has gone beyond the scope of Directive 2000/43/EC by authorising the HALDE to consider all forms of discrimination. Thus, Section 1 of Act No. 2004-1486 of 30 December 2004 states that the high authority has jurisdiction to hear cases relating to all forms of discrimination, direct or indirect, prohibited by law or by international

undertakings to which France is a party. This broad scope was not provided for in Directive 2000/43/EC, or even Directive 2000/78/EC.

17. The Government wishes to draw the Committee's attention to Act No. 2005-843 of 26 July 2005, containing various measures to transpose Community law to the public service. This Act, which had not yet been fully enacted when the initial observations on the merits were presented, strengthens the legislation protecting public officials against discrimination.

18. Section 6 amends Section 6 of Act No. 83-634 of 13 July 1983 on the rights and obligations of public officials so that it will cover non-established public service employees.

19. France therefore allows Article 1§2 of the Revised Social Charter to be applied to all workers.

20. In the light of the foregoing, the French Government invites the Committee to reject the complaint lodged by the trade union SUD Travail Affaires Sociales as ill-founded.

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The Agent of the Government

The Deputy Agent of the Government

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