

- A. EUROPEAN COMMITTEE OF SOCIAL RIGHTS
- II. COMITE EUROPEEN DES DROITS SOCIAUX
- III.



3 December 2004

Collective Complaint No. 25/2004
Centrale générale des services publics (CGSP)
v. Belgium

Case Document No. 5

**OBSERVATIONS FROM THE
EUROPEAN TRADE UNION CONFEDERATION
(ETUC)
ON THE MERITS**

registered at the Secretariat on 1 December 2004

The complaint, relating to Article 6 (the right to bargain collectively) of the Revised European Social Charter (hereinafter: RESC) alleges that as the process whereby legislation is drawn up does not provide for the proper consultation of the representative organisation and is not subject to any judicial supervision, Belgian law does not guarantee the effectiveness of legislation concerning the exercise of the right to bargain collectively in the public sector, in violation of Article 6§§1 and 2 of the Charter.

The European Committee of Social Rights (hereinafter: ECSR) declared the complaint admissible on 6 September 2004. The European Trade Union Confederation (hereinafter: ETUC) is asked to submit observations in accordance with article 7 para. 2 of the Additional Protocol.

Before submitting its observations, the ETUC would like to express its appreciation to the government of Belgium, for not only ratifying the RESC but also the Additional Protocol providing for a system of collective complaints (hereinafter: Additional Protocol). In this way, the Government contributes to re-enforce the Charter and the fundamental social rights in general as well as their specific effectiveness by taking active part in the system of supervision provided for in the Additional Protocol in particular.

By referring to the general observations in previous cases¹ the ETUC would like to submit the following observations:

A. Description of the case

From the out set, the ETUC would point out that the regulatory framework in Belgium, in general, allows both in law and in practice processes of information, consultation and negotiation in the public sector. However, the ETUC would like to stress that the mere existence of such a system is not at stake here, rather the fact that the regulatory framework - again both in law and practice - shows lacunae which not only can but, in fact, do undermine the effectiveness of these information, consultation and negotiations processes.

These deficiencies in law and practice of the current regulatory framework could be, based of the submitted information, summarised – amongst others – to the following ones:

- the obligation to undertake prior negotiations only to legislation initiated/adopted by the competent governmental executives, but not those emanating from parliamentary initiatives,
- the possibility to negotiate on draft regulatory acts, but not on amendments proposed after the negotiation process (including amendments proposed by the governmental executives),
- the fact that alleged infringements of the respect of information/consultation/negotiation obligations can not be properly challenged (as at previous attempts they were considered not admissible) before the Cour d'Arbitrage (i.e. the Constitutional Court) and the Conseil d'Etat (i.e. the supreme administrative court).

¹ See in particular ETUC observations in Collective Complaint No. 1/1999

B. Assessment

1. General framework

Without elaborating in detail on the standing ECSR case law, the ETUC considers that it is clear that this case law contains several fundamental objectives in relation to the whole Social Charters and in particular Article 6. Namely Contracting parties are under the obligation to align with the RESC provisions from a content point of view to ensure proper and adequate working conditions in general and the procedural rights contained in Article 6 RESC in particular to ensure that:

- these working conditions are elaborated in cooperation with the workers representatives and in particular the trade unions concerned,
- the procedures to do so are established, respected and applied and
- finally, if all such is not the case, that effective and easy accessible recourse procedures are available (and can establish appropriate and deterrent sanctions).

2. Concerning consultation and negotiation in the public service

In essence, this means that the democratic process of elaborating *regulations* affecting the public sector must be in compliance with the crucial fundamental social rights such as rights to information, consultation and collective bargaining, in particular if the eventual regulatory outcome can impede on the working conditions of public sector employees.

The argument (i.e. the risk of slowing down, burdening or even paralysing the parliamentary process) does not seem acceptable to the ETUC for the following reasons:

- firstly, it concerns a serious infringement of fundamental trade union rights (as recognised by Article 6 RESC and several international treaties as well as the Belgian Constitution);
- secondly, also the Belgian Parliament is under obligation to respect these (and other workers) rights enshrined not only in Article 6 RESC but also in Article 23 of the Belgian Constitution which it fails to comply with and might continue to fail doing so when the regulatory framework is not appropriately adapted. To note is that it was the Belgian Parliament itself, which in time overruled an amendment to the regulatory framework in order to overcome the identified deficiency in the law.

That it is not only a danger but that this danger has materialised is properly shown by the different concrete examples submitted by the complainant. The ECSR has to act in order to prevent future infringements, which would remain possible in case the situation is both in law and practice not changed (and of which the Government obviously shows no intention to change).

3. Concerning judicial redress

In acting as such (i.e. not in compliance of information / consultation / negotiation obligations) this process leading to the eventual regulations can not be properly challenged before the different competent highest courts in Belgium due to different reasons such as procedural ones, competences of Courts, nature of concerned instrument (administrative or legislative).

Without proper judicial redress the fundamental rights are not ensured in a satisfac-

tory way. Any person - natural or legal - should have the right of access to the Courts in case of such an allegation.

C. Conclusion

The Belgian Government in general refers to the fact that the different institutional powers in Belgium are under the obligation to respect not only the internal laws, in particular the Constitution, but also the international obligations of Belgium. This thus has to apply also to Article 6 RESC, the hard core of the hard-core provisions in the European Social Charters.

Given the submitted information, the ETUC considers that Belgium has not ensured the satisfactory application of Article 6 §§ 1 and 2 RESC and therefore supports the complaint by CGSP which is also supported by the public sector trade unions of the other affiliated Belgian trade unions to the ETUC (i.e. CSC-ACV, ACLVB-CGSLB).