EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

31 March 2005

Collective Complaint No. 25/2004 **Case Document No. 7**
Centrale générale des services publics (CGSP)
v. Belgium

ADDITIONAL OBSERVATIONS FROM THE BELGIAN GOVERNMENT ON THE MERITS

registered at the Secretariat on 3 March 2005

(TRANSLATION)

The supplementary observations of the CGSP dated 2 December 2004 and the observations of the ETUC dated 1 December 2004 call for the following comments.

1. Firstly, it is not irrelevant, as the CGSP states in paragraph 1 of its supplementary observations, with reference to Belgium's observations in reply, that an application could be made to the *Conseil d'Etat* to set aside regulations adopted in breach of the obligations of negotiation and prior consultation or that such regulations might not be applied by the courts.

- Most of the provisions relating to the working conditions of public officials appear in regulations rather than legislation, because under the Belgian Constitution the executive is responsible for the employment status of public officials (see, with regard to the federal level, Articles 37 and 102, sub-paragraph 2 of the Constitution, under which the power to determine the employment status of federal government officials is vested in the crown – Appendix 1).

  As an illustration, purely at the federal level, of the number of draft regulations on this subject, a list of proposals submitted to the federal, community and regional public services committee for negotiation in 2003 and 2004 is appended to these supplementary observations (Appendix 2).

  To understand the scope of this list, it needs to be borne in mind that this committee only considers draft regulations relating to federal public service staff covered by more than one sector committee.

  Draft regulations relating to federal public service staff covered by a single sector committee are negotiated within that committee and are therefore not included in the list.

- When legislation does relate to public service officials' working conditions, in most cases it simply authorises the crown to issue regulations laying down the administrative status and pay of these staff. These regulations must be and are the subject of negotiation. Where appropriate, they may be the subject of appeal to the *Conseil d'Etat* or of an application to the courts requesting that they not be applied.

- Finally, it must be pointed out that, in accordance with the "trade union statutes" (the Act of 19 December 1974 and its implementing regulations) the great majority of legislative provisions relating to public service officials' working conditions are subject to the prior negotiation procedure, since in most cases they originate in draft legislation, or bills.

- The cases raised by the CGSP where there are no negotiations on working conditions therefore only concern rare or accidental situations, and contrast with the considerable number of provisions that have been the subject of negotiation.

2. In paragraph 2 of its supplementary observations, the CGSP refers to the opinion of the *Conseil d'Etat* of 28 December 2000, where it held that section 2.2.1 of the Act of 19 December 1974 on relations between public authorities and the trade unions representing their staff cannot be interpreted as exempting certain essential provisions of a draft regulation from the negotiating procedure with representative trade unions, because they are inserted in the form of amendments.

The CGSP then claims that Belgium's observations clearly show that the Belgian government does not intend to take account of this opinion.

In fact the government has recently negotiated in the federal, community and regional public services committee (protocol No. 509 of 1 December 2004, Appendix 3), a government amendment to draft programme legislation (government amendment No. 4, Chamber of Representatives, Doc. 51, 1437/016, Appendix 4). Protocol No. 509 relating to these negotiations notes that the government and trade union delegations reached agreement on the measure provided for in the government amendment.

3. Despite Belgium's commitment to the right to collective bargaining, it may be that in drafting legislation whose main purpose has no connection with the trade union statutes, for example the establishment of a body to deal with a problem confronting the government, the author of the legislation loses sight of the fact that one or more provisions of the draft do concern these statutes and should be subject to prior negotiation.

Generally, such provisions do no more than authorise the crown to lay down the administrative status and pay of the staff of the newly established body.

In practice, the provisions will be inoperative and will have no effect on staff working conditions until the crown has issued the relevant implementing regulations. These implementing regulations must be and are subject to negotiation.

- In paragraph 3 of its supplementary observations, the CGSP cites the example of the Act of 3 May 2003 establishing the federal council to combat illegal work and welfare fraud, the federal co-ordinating committee and the district units.

  This act, which establishes bodies responsible for drawing up and applying policies to combat illegal work and welfare fraud, as rapidly as possible, is mainly concerned with their composition, powers and operating methods. It specifies that the crown shall lay down the administrative status and pay of the staff concerned.

  The legislation was published in the *Moniteur belge (*official journal) of 10 June 2003. It has not been implemented in the absence of implementing regulations.

It is therefore perfectly natural that the CGSP should only discover the act's existence when the authorities included the relevant draft royal decree on the federal, community and regional public services committee's agenda for its meeting of 25 February 2004.

The facts show that the authorities had no intention of avoiding negotiations on the administrative status and pay of the staff concerned.

It should also be noted that the protocol relating to these negotiations (protocol No. 482 of 27 February 2004 – Appendix 5) notes that the government and trade union delegations reached agreement on the draft royal decree and states explicitly that the CGSP had no objections to the proposals.

The royal decree on the administrative status and pay of the chair of the federal council to combat illegal work and welfare fraud, and of the members of the federal co-ordinating committee was issued on 25 April 2004 (Appendix 6).

It can therefore be concluded that the authorities had nothing to fear from negotiations on the relevant provisions of the Act of 3 May 2003 and thus no reason to avoid them.

4. In paragraph 4 of its supplementary observations, the CGSP bases its complaints, surprisingly, on the fact that on a number of occasions the government has submitted proposed amendments to the consolidated legislation on the use of languages for administrative purposes for prior negotiations with the trade unions, even though the statutory consultation obligation does not extend to amendments to the co-ordinated legislation itself.

Belgium wishes to point out to the European Committee of Social Rights that when the authorities consult the CGSP under section 54.2 of the consolidated legislation of 18 July 1966 on any proposed measures to implement this legislation with an impact on staff, the union president generally replies using a standard wording that has remain unchanged for years: "in reply to your letter ... I wish to inform you that, in accordance with the rule it has laid down for itself, the CGSP has no opinion to offer on the draft decree in question".

Thus, in a letter of 5 January 2005 (Appendix 7), the president of the CGSP used this wording in answer to the request for an opinion of 3 January 2005 from the Ministry of the Civil Service on a draft royal decree laying down, for the purposes of section 43 of the consolidated legislation of 18 July 1966 on the use of languages for administrative purposes, the categories and grades of officials of certain central departments constituting hierarchical equivalents (for the purposes of establishing language quotas for these departments).

Similarly, in a letter of 17 November 1998 (Appendix 8), the CGSP said that it had no response to the request for an opinion of 17 November 1998 from the Ministry of the

Civil Service on a draft royal decree amending the royal decree of 19 November 1997 establishing the language quotas for that ministry.

Again, in a letter of 21 March 1996 (Appendix 9), the CGSP said that it had no response to the request for an opinion of 19 March 1996 from the Ministry of the Civil Service on the draft royal decree amending the royal decree of 14 September 1994 laying down, for the purposes of section 43 of the consolidated legislation of 18 July 1966 on the use of languages for administrative purposes, the grades of state officials constituting hierarchical equivalents.

Still by way of example, in a letter of 10 February 1994 (Appendix 10), the president of the CGSP, referring to the rule it had laid down for itself, said that it had no opinion on the draft royal decree amending the royal decree of 30 November 1966 laying down, for the purposes of section 43 of the consolidated legislation of 18 July 1966 on the use of languages for administrative purposes, the grades of state officials constituting hierarchical equivalents.

It is somewhat surprising then that the CGSP is suddenly so concerned about the lack of consultation on section 40 of the Programme Act of 5 August 2003 amending section 43ter of the consolidated legislation on the use of languages for administrative purposes, when the same trade union has made it a rule not to submit opinions on this subject! What makes it even more surprising is the fact that, as the CGSP states, the events in question were purely anecdotal, given the number of persons affected by section 40.

If the situation challenged by the CGSP were as common as it would have us believe, it is reasonable to argue that it would have sought a review in the Court of Arbitration of some other provision than section 40 of the Programme Act of 5 August 2003 amending section 43ter of the consolidated legislation on the use of languages, a subject on which it normally fails to use the existing opportunities for consultation.

Once again, therefore, the CGSP's complaints have to be treated with considerable reserve. It has been shown that the cases of lack of negotiation on working conditions cited by the union in its complaint to the European Committee of Social Rights only concern rare or accidental situations, as noted in section 1 of these supplementary observations.

5. As to "the possibility of fundamental changes to, or possibly repeal of, the public service trade union statute through a private member's bill or government amendment", as stated in paragraph 5 of the CGSP's supplementary observations, it needs to pointed out that in the three decades that have elapsed since the Act of 19 December 1974 was passed, this has not occurred.

The CGSP states that its real concern is "the adoption of such a legislative provision without prior negotiation".

The history of the last three decades shows that the CGSP is levelling totally unfounded allegations against Belgium.

6. Belgium considers that the observations of the European Trade Union Confederation are answered in these supplementary observations and its original observations in response.

7. Belgium naturally stands by its arguments in its original observations in response.

ON THESE GROUNDS

Belgium asks the European Committee of Social Rights to declare the collective complaint lodged by the CGSP unfounded.

Brussels, 21 February 2005

Agent of the Belgian Government

Jan Devadder
Director general
Legal Consultant