

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



27 August 2004

**Collective Complaint No. 26/2004
Syndicat des Agrégés de l'Enseignement Supérieur
(SAGES) v. France**

Case Document No. 3

**ADDITIONAL INFORMATION FROM THE UNION OF
TEACHERS IN HIGHER EDUCATION (SAGES) ON
ADMISSIBILITY**

(TRANSLATION)

registered at the Secretariat on 30 July 2004

Letter from the Syndicat des Agrégés de l'Enseignement Supérieur (Union of Teachers in Higher Education - SAGES), 18 avenue de la Corse, 13007 Marseille, France.

To the Secretariat of the European Social Charter

Dear Sir,

Complaint No. 26/2004 (Sages v. France)

§322. You have now received the observations of the defendant state on the admissibility of the complaint referred to in this correspondence. These observations call for the following response.

§323. The defendant state alleges four grounds of inadmissibility by claiming that:

- the complaint has not been signed;
- the Chair of the trade union is not authorised to represent it before the Committee;
- the CNESER does not defend social rights;
- domestic remedies have not been exhausted.

§324. Regarding the first two grounds of inadmissibility, the complainant trade union notes that, notwithstanding the government's allegations, the complaint lodged with the Committee was signed, and was accompanied by the union's statute and other documentation pertaining to the case. These grounds of inadmissibility are therefore totally without foundation. The explanation may be that the Committee forwarded to the defendant state not the paper copies of the documentation but only the one document sent by email, at Mr Régis Brillat's request, namely the complaint itself. Nevertheless, these two grounds of inadmissibility cannot be upheld.

§325. Regarding the admissibility *rationae materiae*, the complainant rejects the government's arguments, with reference firstly to its introductory written submission and secondly to the need to consider not just the formal terms of reference of the CNESR and its members but all the material circumstances of the case. It should also be noted that in its most recent decision on this case in domestic law the Paris Administrative Court of Appeal did not find that the Charter was inapplicable, only that the regulation concerned was not in breach of Charter obligations. It must therefore be concluded that in domestic law the Charter is indeed applicable to these elections, as stated by the aforementioned French court, and the argument that the complaint is inadmissible *rationae materiae* can only be characterised as a delaying tactic.

§326. Finally, even if domestic remedies have not been exhausted, this would certainly not be a ground of inadmissibility, since neither the Charter, nor the Additional Protocol nor the Committee's case-law makes exhaustion of remedies a condition of admissibility.

§327. To summarise, none of the grounds of inadmissibility alleged by the Government is acceptable:

- the first two are refuted by the facts,
- the third is formally and materially unsustainable on both factual and legal grounds, under both domestic and European law,
- the fourth is not a ground of inadmissibility under the letter and case-law of the European Social Charter.

The complaint must therefore be declared admissible, both for the aforementioned reasons and those already cited in the complaint itself and the supporting documents.

Yours etc.

For the complainant trade union, Denis Roynard, Chair.