EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

5 April 2005

Collective Complaint No. 26/2004 **Case Document No. 4**
Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France

WRITTEN SUBMISSIONS BY THE FRENCH GOVERNMENT ON THE MERITS

registered at the Secretariat on 11 March 2005

OBSERVATIONS OF THE FRENCH GOVERNMENT ON THE MERITS OF COLLECTIVE COMPLAINT NO. 26/2004, SYNDICAT DES AGRÉGÉS DE L'ENSEIGNEMENT SUPÉRIEUR (UNION OF TEACHERS IN HIGHER EDUCATION - SAGES), BEFORE THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

In a decision of 7 December 2004, the European Committee of Social Rights declared admissible the complaint lodged on 27 April 2004 by the Syndicat des Agrégés de l'Enseignement Supérieur (Union of Teachers in Higher Education - SAGES) against France, asking the Committee to find that France was not applying Article 5 and Articles E, G and I of the Revised Charter satisfactorily.

The French government wishes to make the following observations.

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I. The complaint

The complainant alleges that French legislation restricts the right to organise, in breach of Article 5 of the Revised Charter, because Decree 89-1 of 2 January 1989 on the CNESER (national council for higher education and research) excludes the lawful use of collective action with regard to elections to the CNESER. It also alleges that the national regulations contravene Articles E and G, combined with Article 5, and that the situation is therefore also incompatible with Article I

II. The merits of the complaint

2.1 The applicability of the Revised Charter to this case.

The relevant part of Article 5 of the Revised Charter reads:

"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. …."

In its admissibility decision, the Committee noted that under Article 5 of the Revised Charter a trade union should have the right to organise its activities and to formulate a programme of action. Whether seeking representation on public law bodies, as in the present case, was protected by Article 5, and if so to what extent, raised an issue of substance that appropriately pertained to the assessment of the merits of the complaint.

The government notes that the CNESER is not concerned with social rights or defending employees and its membership is not confined to representatives of staff working in higher education establishments. Under Article L.232-1 of the Education Code, the CNESER "*represents scientific, cultural and vocational public educational institutions – ones answerable directly to the higher education minister – and major national educational, scientific, cultural, economic and social interests"*.

It advises on "*matters relating to the statutory responsibilities of the scientific, cultural and vocational public educational institutions, in cases provided for in this Code"* and *"on agreements reached between these public educational institutions and private undertakings and individuals concerning the provision of premises, equipment and material, as provided for in Section 10 of the Innovation and Research Act, No. 99-587 of 12 July 1999"*.

It must also be consulted on:

"*1. government proposals to ensure a coherent policy on higher education in institutions answerable to the higher education minister;*

2. the general outlines of the multiannual contracts with institutions provided for in Article L.711-1;

3. The apportionment of capital and operating budgets between the various establishments.

It proposes measures to improve the functioning of scientific, cultural and vocational public educational institutions."

In its plenary form, the CNESER is a consultative body concerned with the organisation and functioning of French higher education. It is particularly consulted on authorisations to award national qualifications in accordance with Article L.613-1 of the Education Code and the allocation of the staff resources of higher education establishments in accordance with Article L.719-4. It is not consulted on the drafting of or amendments to regulations on staff, particularly teachers, such as amended Decree No. 84-431 of 6 June 1984 on the staff regulations governing teacher-researchers and the specific status of university professors and lecturers and amended Decree No. 72-580 of 4 July 1972 on the specific status of other qualified teachers in higher education, which are the responsibility of other consultative bodies.

Finally, under Article L. 232-3 of the Education Code, the CNESER has certain judicial functions, for which it has a specific composition laid down in amended Decree No. 90-1011 of 14 November 1990 on the CNESER operating as a disciplinary body.

As such, it hears appeals against decisions of the relevant disciplinary authorities of scientific, cultural and vocational public educational institutions concerning their teacher-researchers, teachers and students.

Points 5 and 6 of Part I of the Revised Social Charter grant workers and employers the right to freedom of association in organisations for the protection of their economic and social interests and the right to bargain collectively. Article 5 of the Revised Social Charter deals with the right to form and to join trade unions.

However the CNESER is not concerned with the exercise of the right to organise or relations between employers and employees. The government therefore considers that this complaint concerning means of challenging elections of members of the CNESER falls outside the scope of the Revised Charter.

2.2 Compliance with Article 5 of the Revised Charter

Should the Committee find that the complaint does fall within the scope of the Revised Charter, which the government disputes, the latter would then wish to make the following points.

- **method of electing staff representatives to the CNESER**

Under Article L.232-1 of the Education Code, staff and students of scientific, cultural and vocational public educational institutions are represented on the CNESER. More specifically, Article 3 of amended Decree No. 89-1 of 2 January 1989 on the CNESER states that "*staff representatives shall be directly elected by and from among all the staff of scientific, cultural and vocational public educational institutions*". The arrangements for drawing up candidate lists, set out in Article 6 of the decree, simply require them to be constituted nationally and make no stipulations about trade union membership. It is therefore possible for trade unions to present candidate lists for CNESER staff representative elections under the Decree of 2 January 1989, and to draw up action programmes. But even though several lists are based on trade union membership, it is equally possible for lists to be presented with no reference to any form of organisation whatever.

The staff representatives fall into four separate categories, or electoral colleges: university professors and equivalents, other teacher-researchers, teachers and researchers, library scientific staff, and administrative, technical, manual and service staff. Qualified teachers teaching in higher education belong to the second category, the most numerous. But although this group of qualified teachers forms the bulk of the SAGES membership, they

represent less than 15% of all the teaching posts in the establishments concerned.

At the 2002 CNESER elections, 11 lists were presented for the other teacher-researchers, teachers and researchers college, since there is nothing in the regulations on the appointment of CNESER members to prevent trade unions from putting up candidates and publicising their action programme. To be elected, candidates must then obtain sufficient votes, which five lists, including the one presented by SAGES, failed to do.

- **the appeals**

Under Article 6-3 of the Decree of 2 January 1989: "*the lawfulness of elections may be challenged in the Paris administrative court by the minister responsible for higher education or by any voter within eight clear days of the publication of the results*."

This means that any voter belonging to the relevant electoral college, **and any candidate,** may challenge the election result in the administrative court. The situation is therefore not such as to infringe trade unions' right to defend employees **since each trade union candidate, and more generally each member with the right to vote, can personally take action in the administrative court, either spontaneously or at the request of the organisation to which he or she belongs**.

Finally, since any voter, **and therefore any trade union member taking part in the election of CNESER members**, can challenge the conduct of the elections in the courts, the provisions governing the election of CNESER members do not infringe these individuals' freedom to join the trade union of their choice.

It is quite usual for the right to challenge elections in the courts to be restricted to voters and candidates (see, for example, Article 30 of Decree No. 2001-213 of 8 March 2001 on the application of Act No. 62-1292 of 6 November 1962 on the election of the President of the Republic by universal suffrage and Article LO 180 of the Electoral Code for the election of members of parliament).

These provisions are not therefore incompatible with Article 5 of the Revised Charter.

2.3 Compliance with Article E

According to SAGES, teachers and teacher-researchers in higher education do not enjoy equal treatment with private sector workers regarding the right of trade unions themselves to challenge the lawfulness of representative elections they are contesting. This means that the national regulations are in breach of Article E of the Revised Charter, combined with Article 5. As an example, the union quotes the example of the industrial relations courts, for

which "*any ... organisation presenting a list in connection with the relevant industrial relations court may challenge the lawfulness or admissibility of lists, candidates' eligibility, the eligibility or election of an elected representative or the lawfulness of the electoral process*".

The government wishes to point out that elections to industrial relations courts and to the CNESER relate to quite different circumstances that cannot be compared. Under Article L. 511-1 of the Labour Code, the industrial relations courts, whose members are elected with equal representation from both sides, conciliate between employers or their representatives and their employees in disputes concerning employment contracts covered by the Labour Code. When conciliation fails, the courts have the power to hear the case and make a legal ruling. Their powers do not extend to public officials, whose occupational status is determined not by private law contracts but by statutory provisions under public law.

The CNESER however is primarily a consultative body under public law, whose main task is to advise the authorities on the organisation and functioning of French higher education. In addition to its main responsibility, it also had judicial powers in disciplinary matters. The CNESER cannot therefore be compared to the industrial relations courts, which are specialist courts.

It should be noted in this context that disputes between public authorities, as public employers, and their established and other staff, are heard by the administrative rather than the industrial relations courts.

Finally, the Committee should note that the public service legislation provides for the following bodies on which established and other public employees are represented, all of which are involved in the organisation and functioning of the public service, drawing up regulations and reviewing individual decisions relating to public employees' careers: the higher council for the national public service, the joint administrative committees, the joint technical committees and the health and safety committees. These are all joint bodies made up of employer and employee representatives. The public service therefore makes provision for its staff to be represented by their trade unions in a series of joint bodies, where they can defend their members' social rights.

The government considers that as the CNESER and the industrial relations courts are quite dissimilar bodies, they are entitled to differ in their operating methods, including the arrangements for organising elections of their staff representatives and for challenging these elections. The different arrangements for electing staff representatives to the CNESER and employee representatives to the industrial relations courts do not therefore constitute discrimination against the public sector trade unions, and the regulations in question are not in breach of Article E combined with Article 5 of the Revised Charter.

2.4 Compliance with Article G

The government considers that Article 6-3 of the Decree of 2 January 1989 does not restrict the rights of the complainant trade union. As noted earlier, **each trade union candidate, and more generally each member with the right to vote, can personally take action in the administrative court, either spontaneously or at the request of the organisation to which he or she belongs**. Trade union rights are thus preserved. The provisions in question are therefore compatible with Article 5 and with Article G combined with Article 5.

2.5 Compliance with Article I

The government considers that it has satisfied Article 5 of the Revised Charter, as shown above, and has complied with its undertakings under Article I.

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For all these reasons, and subject to any other information that might be required, the French government invites the European Committee of Social Rights to reject the complaint lodged by the trade union SAGES as ill-founded.