

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



26 November 2004

**Collective Complaint No. 28/2004
National Union of Dermato-Venereologists (SNDV)
v. France**

Case Document No. 2

**OBSERVATIONS FROM THE FRENCH GOVERNMENT
ON THE ADMISSIBILITY**

registered at the Secretariat on 22 October 2004

(TRANSLATION)

In a letter of 1 September 2004, the European Committee of Social Rights drew the French Government's attention to the complaint lodged by the National Union of Dermato-Venereologists (SNDV) on 12 July 2004 and invited it to make observations on the admissibility of this complaint by 22 October 2004 at the latest.

The question of the admissibility of the complaint prompts the following observations on the part of the Government.

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The complainant organisation asks the Committee to find that France does not satisfactorily apply Articles 1, paragraph 2, and E of the revised European Social Charter of 3 May 1996. It submits that the French regulations on the fees chargeable by doctors in private practice constitute discrimination in breach of these provisions.

- Compliance with the requirements for admissibility deriving from Articles 1 to 3 of the Additional Protocol to the European Social Charter providing for a System of Collective Complaints

The complainant organisation does not fulfil the condition of representativeness required by the Additional Protocol to the European Social Charter providing for a System of Collective Complaints in order for its complaint to be admissible by the European Committee of Social Rights.

Article 1 of the Additional Protocol to the Charter restricts the right to submit a complaint to the Committee to **representative national** organisations of employers and trade unions. Article 1 c. provides:

"The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter: (...)

c. representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint."

The SNDV is not a representative national organisation within the meaning of Article L 162-33 of the Social Security Code, which governs the conditions for the official recognition of organisations representing health care professionals. The Article provides as follows:

"Within a specified time prior to the tacit or explicit expiry of an agreement, the minister or ministers responsible shall instigate a survey of representativeness to identify the most representative national unions to take part in the possible negotiation and signature of the agreements provided for in Articles L. 162-5, L. 162-9, L. 162-12-2, L. 162-12-9 and L. 162-16-1, in accordance with the following criteria: the number of members, independence, subscriptions, experience and time in existence of the union".

Article L 162-5 of the Social Security Code states as follows:

“The relations between health insurance bodies and doctors shall be established by national agreements concluded separately for general practitioners and specialist doctors by the National Union of Health Insurance Funds and one or more of the most representative unions of general practitioners or specialist doctors throughout France or by a national agreement negotiated by the National Union of Health Insurance Funds and at least one union representing general practitioners throughout France or one union representing specialist doctors throughout France. (...)”

The most recent survey of representativeness aimed at identifying unions representing specialist doctors was carried out in 2002. Four unions were recognised as being representative on this occasion, namely the Confederation of French Medical Unions, the Federation of Doctors of France, the Union of Private Medical Practitioners, and the Interunion Alliance of Self-Employed Doctors of France.

The SNDV was not considered representative enough to be involved in the negotiation of the national agreement governing the relations between health insurance bodies and specialist doctors – the agreement which is the subject of the SNDV’s complaint.

Neither does the SNDV provide any evidence of its representativeness in its complaint to the European Committee of Social Rights.

On these grounds, the Government considers that the SNDV cannot be regarded as representative and hence does not meet the condition of admissibility set in Article 1 c. of the Additional Protocol to the European Social Charter.

- As far as the merits of the complainant organisation’s allegations are concerned, it would be premature, when the admissibility of the complaint is still being examined, to discuss the merits of the allegations of a breach of the aforementioned articles of the Charter. The Government does, however, reserve the right to present a detailed argument as to the merits of these allegations should the complaint be declared admissible.

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In the light of all the foregoing considerations, the Government considers that the complaint submitted by the SNDV is inadmissible.

The Deputy Director

Jean-Luc FLORENT