

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



23 February 2005

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

**Case Document No. 3**

**OBSERVATIONS FROM THE NATIONAL UNION OF  
DERMATO-VENEREOLOGISTS (SNDV)  
ON THE ADMISSIBILITY**

**registered at the Secretariat on 14 December 2004**

**(TRANSLATION)**



**Letter of 8 December 2004 from Doctor Gérard Rousselet,  
Chair, French National Union of Dermato-Venereologists (SNDV)  
to the President of the European Committee of Social Rights**

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

Reply to the French government's written observations on the admissibility of collective complaint No. 28/2004 (Rule 29, paragraph 2, of the European Committee of Social Rights' Rules of Procedure)

Dear Sir,

By letter of 5 November 2004, the President of the European Committee of Social Rights invited me, in my capacity as Chair of the SNDV, to submit observations in reply to the French government's written observations on the admissibility of collective complaint No. 28/2004.

Article 1 c) of the Additional Protocol to the European Social Charter 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 the complaint."*

In challenging the SNDV's status as a representative national organisation within the meaning of the above provision, the French government relies on a single argument: viz. the SNDV is not a representative national organisation within the meaning of Article L. 162-33 of the Social Security Code. That article provides:

*"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."*

The French government also states that the most recent survey of representativeness conducted in 2002 did not show the SNDV to be among the "most representative" organisations.

The government's written observations call for the following response:

**1. Compliance with the admissibility criteria deriving from Article 1 c) of the Protocol to the European Social Charter providing for a System of Collective Complaints**

*1.1 Nature of "representative national organisations of employers and trade unions" within the meaning of Article 1 c) of the Additional Protocol*

The French government's arguments cannot stand.

It is not a matter of determining the representative status of a national organisation within the meaning of French law, in particular for the purpose of the negotiation and signature of the national agreements provided for in Article L.162-5 of the Social Security Code, but of ascertaining whether the organisation qualifies as representative within the meaning of Article 1 c) of the Additional Protocol of the European Social Charter.

In this connection, the European Committee of Social Rights has held that "the representativity of national trade unions is an autonomous concept, beyond the ambit of national considerations as well as the domestic collective labour relations context" (*decision on admissibility, complaint No. 6/1999, paragraph 6*), and that it is "not necessarily identical to the national notion of representativity" (*decision on admissibility, complaint No. 10/2000, paragraph 6*).

With particular regard to an organisation's participation in collective bargaining, the committee has held that "the fact that the complainant trade union is not considered in French law as representative for the purposes of collective bargaining is not in itself decisive for the requirements of Article 1§c of the Protocol." (*decision on admissibility, complaint No. 23/2003, paragraph 4*)

It can be seen from the above that qualification as a representative national organisation cannot depend on the status attributed by the French authorities. If the opposite view were to prevail, any attempt to ensure uniform application of the admissibility criteria for collective complaints would be vain.

## 1.2 *The SNDV's status as a representative national trade union organisation*

The European Committee of Social Rights considers that an organisation's representativeness, within the meaning of Article 1 c) of the Additional Protocol, must be assessed in the light of its capacity to defend the pecuniary and non-pecuniary interests of a great majority of workers in the relevant professional sector (*decision on admissibility, complaint No. 10/2000, paragraph 6*) and its independence (*decision on admissibility, complaint No. 23/2003, paragraph 5*).

It can be recalled that there is no need for the organisation to participate in the collective bargaining process (*decision on admissibility, complaint No. 23/2003, paragraph 4*).

The SNDV is a representative national trade union organisation within the meaning of the Additional Protocol.

Firstly, it is a trade union organisation existing at national level, itself divided into regional sections, which are represented on its Board.

Secondly, under Article IV 2) of its statute, the SNDV's aim is to "*defend its members' professional, non-pecuniary and pecuniary interests*" (*cf. Appendix 1, Statute of the SNDV*).

In that connection it has the means to "*take all forms of action to defend its members' professional interests before government, public or private authorities or the courts*" (Article V 3 of the statute).

The SNDV currently brings together 2,118 dermato-veneorologists, or 60% of the professionals in the sector (*cf. Appendix 2 list of dermatologists members of the SNDV, signed by the Chair and the Treasurer*).

Lastly, a number of provisions in the trade union's statute show its independence in the performance of its role. The SNDV prohibits any debate of a political or religious nature at its meetings and is also forbidden from running any commercial or industrial enterprise on its own behalf (Article VI). Members of the Board may not hold any remunerated political office (Article XI).

Attention must also be drawn to other evidence confirming the SNDV's status as a representative organisation.

Firstly, as stated in the letter of 12 July 2004 lodging the complaint, the SNDV is a longstanding trade union, which was founded in 1929.

Secondly, the French authorities have de facto acknowledged the SNDV's representativeness. It represents the specialist field through its relations with public authorities and bodies.

The SNDV studies, prepares and applies, in partnership and cooperation with the public authorities, the general medical and assistance measures and measures for the protection of public health linked to the practice of dermatology and venereology.

For the past seven years the trade union has organised a national skin cancer screening day, a service offered by the dermatologists free of charge and with guarantees of anonymity, which is sponsored by the Ministry of Health. The President of the Republic has congratulated it on this initiative (*cf. Appendix No. 3*).

Furthermore, during negotiations concerning agreements on fees it is in contact with the Social Affairs Committees of the National Assembly and the Senate, and with members of parliament in general. It is received at the Ministry of Health in order to finalise the fees to be charged by practitioners of this specialisation (*cf. Appendix No. 4*).

Thirdly, all members of the SNDV are required to pay an annual subscription, which is determined by the Board and subject to approval by the General Meeting (Article VIII, paragraph 1, of the statute) (*cf. in Appendix No. 5 the list of dermatologists up to date with their subscription, as drawn up by the SNDV's accountant*).

It can be seen from these observations that, contrary to the French government's contention, the SNDV is a representative organisation within the meaning of both Article 1 c) of the Additional Protocol and French labour law itself, in particular Article L. 133-2 of the Code of Labour Law, which provides:

*"The representativeness of trade union organisations shall be determined according to the following criteria:*

- number of members;*
- independence;*
- subscriptions;*
- the union's experience and time in existence;*
- patriotic attitude during the occupation."*

In view of the above, we find ourselves obliged to challenge the appropriateness of the government's interpretation of Article L. 162-33 of the Social Security Code, in so far as it determines the government's concept of trade union representativeness.

## **2. Interpretation of Article L.162-33 of the Social Security Code**

The French government advances an erroneous interpretation of Article L. 162-33 of the Social Security Code. It alleges that the purpose of this provision is to govern *"the conditions for the official recognition of organisations representing health care professionals."*

However, that is not the article's aim.

Its purpose is to determine which of the representative national trade union organisations are the most representative with a view to taking part in negotiations and signing national agreements.

Although the restriction imposed by the legislation has its logical foundation in the need to limit the number of partners authorised to negotiate and sign these agreements, it nonetheless cannot be inferred from this provision or from the survey conducted in 2002 that the SNDV is not a representative organisation.

It is simply not on the list of the four organisations recognised as being the most representative.

Accepting the opposite viewpoint would be tantamount to holding that only four organisations are representative of all health care professionals, which is clearly inconsistent with the state of affairs regarding representation by trade unions in this sector.

### **Conclusion**

In the light of the above observations, the SNDV, acting through its Chair, maintains that the collective complaint is admissible.

Yours faithfully,

Doctor Gérard Rousselet, Chair  
(signed)

**LIST OF APPENDICES to the reply to  
the French government's written observations  
on the admissibility of Collective Complaint No. 28/2004  
National Union of Dermato-Venereologists (SNDV) v. France**

- Appendix No. 1: Statute of the SNDV of 9 March 1977
- Appendix No. 2: List of dermatologists members of the SNDV, signed by the Chair and the Treasurer of the SNDV
- Appendix No. 3: Letter of sponsorship from the Ministry of Health and letter conveying the President of the Republic's congratulations concerning the national day for anonymous, free skin cancer screening by dermatologists, organised by the SNDV.
- Appendix No. 4: Letters from the Social Affairs Committees of the National Assembly and the Senate and from the Ministry of Health showing the SNDV's key role as negotiator in discussions concerning the agreed fee for dermatology.
- Appendix No. 5: List of member dermatologists up to date with their subscription, drawn up by the SNDV's accountant.