



European
Social
Charter

Charte
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COUNCIL
OF EUROPE

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DE L'EUROPE

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

20 October 2011

Case No. 1

Fellesforbundet for Sjøfolk (FFFS) v. Norway
Complaint No. 74/2011

**COMPLAINT
(translation)**

Registered at the Secretariat on 27 September 2011

Council of Europe
Directorate general of Human Rights and Legal
Affairs
Directorate of Monitoring
F-67075 Strasbourg Cedex

Vår ref: 500307/102513

Deres ref:

Oslo, 27. september 2011

Saksansvarlig advokat: Erik Råd Herlofsen

COLLECTIVE COMPLAINT:

**NORWEGIAN UNITED SEAMEN'S UNION (FELLESFORBUNDET FOR SJØFOLK) VS.
NORWAY**

**FOR BREACH OF THE REVISED VERSION OF THE EUROPEAN SOCIAL CHARTER:
ARTICLE 1, PARAGRAPH 2, AND ARTICLE 24, ALONE OR WITH THE NON-
DISCRIMINATION PROVISION IN ARTICLE E**

1 NORWEGIAN UNITED SEAMEN'S UNION

The Norwegian United Seamen's Union is an autonomous, politically independent trade union that was founded on 21 October 2000. The Union currently has just over 1,500 seamen as members and is an alternative trade union to others including the Norwegian Seafarers' Union (Norsk Sjømannsforbund).

The Norwegian United Seamen's Union has assisted its members for a number of years in relation to their respective employers/shipping companies on various issues involving labour law and wage law, including issues concerning safety at sea, pay, working hours, notice of termination, travel allowances, upper age limits, etc.

The Union looks after its members' rights in relation to employers and public authorities, cf. the attached description provided by the Union's President, Leif R. Vervik, and the attached statutes.

Appendix 1: Information on the Norwegian United Seamen's Union

Appendix 2: The Union's statutes

More information on the Union is available at www.fffs.no.

2 NORWAY

The European Social Charter was adopted by the Council of Europe in 1961. It entered into force in Norway on 26 February 1965. The Council of Europe signed a revised version of the European Social Charter in 1996. The revised European Social Charter entered into force in Norway on 1 July 2001.

Norway also ratified the Complaints Protocol on 20 March 1997.

3 BACKGROUND OF THE COMPLAINT IN BRIEF - AGE DISCRIMINATION

The Norwegian Seamen's Act (ACT 1975-05-30-18)

Section 19. Protection against non-objective notice of termination

1. A seaman may not be given notice of termination unless it is objectively justified by conditions relating to the shipping company or the seaman...

(paragraph 6:)

Notice of termination with retirement before the seaman has become 62 years of age due solely to the fact that the seaman is entitled to a pension in pursuance of Act no. 7 of 3 December 1948 concerning pension protection for seamen shall not be regarded as being objectively justified. It is possible to decide on retirement before the seaman has reached 62 years of age in the collective agreement in advance.

Appendix 3: Copy of the Norwegian Seamen's Act of 30 May 1975 no. 18

The text of the Act above means that Norwegian seamen may be given notice of termination without objective justification when they reach 62 years of age. This principle was confirmed by the Supreme Court of Norway on 18 February 2010 (Rt (Norwegian Law Reports) 2010-202).

The Norwegian United Seamen's Union requests the European Committee of Social Rights to confirm that Section 19 (1), paragraph 7, of the Norwegian Seamen's Act, under which seamen may be given notice of termination solely on the basis that they have reached 62 years of age, is in breach of the fundamental rights laid down in the European Social Charter.

Part V, Article E, states that 'The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other

opinion, national extraction or social origin, health, association with a national minority, birth or other status'.

The provision is not exhaustive and a number of international decisions, including from the European Court of Human Rights, have established that age as a ground for discrimination is covered by the term 'other status'.

Article 1, Paragraph 2, of the European Social Charter has the following wording:

The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon.

Article 24 states the following:

The right to protection in cases of termination of employment

With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service.

The Norwegian United Seamen's Union considers that the upper age limit of 62 years in the Norwegian Seamen's Act in reality implies an unjustified work ban and is thus a discriminatory withdrawal of seamen's rights to work as seamen.

The removal of job protection at the age of 62 years is directly discriminatory and has no objective justification in terms of either health or safety considerations. All seamen over 50 years of age must undergo an annual extended health check in order to be able to continue to work at sea and no objective grounds have been demonstrated to assume that a seaman's health situation changes when he reaches 62 years of age.

There is thus differential treatment based on age which has no objective or reasonable justification, cf. the Appendix to the European Social Charter (revised), Part V, Article E.

4 JUDGMENT OF THE SUPREME COURT OF NORWAY OF 18 FEBRUARY 2010 (RT 2010-202)

Arne Eikhaugen was employed as an electrician by the shipping company Nye Kystlink AS on 23 August 2006. Eikhaugen was employed on the ferry Pride of Telemark, which plied the Langesund (Norway) – Strömstad (Sweden) – Hirtshals (Denmark) route.

On 14 March 2008, Arne Eikhaugen was given notice of termination from his permanent position solely because he had reached 62 years of age. The shipping company referred to the fact that Section 19 (1), paragraph 7, of the Norwegian Seamen's Act, which indicates that general protection against notice of termination lapses at the age of 62 years if the seaman is also entitled to a seaman's pension, gave the shipping company the right to give Eikhaugen notice of termination.

Arne Eikhaugen was of the opinion that the notice of termination was in breach of the prohibition of age discrimination and did not accept the notice of termination. With the assistance of the Norwegian United Seamen's Union as litigation assistant, a claim was filed with Nedre telemark tingrett (district court) on 9 May 2008 (first instance). Nedre Telemark tingrett found for the shipping company on 8 September 2008 and awarded costs to the shipping company.

The judgment was appealed against and Agder lagmannsrett (court of appeal) (second instance) delivered a judgment on 24 June 2009, with the result that the appeal by Arne Eikhaugen was dismissed with dissenting votes. Neither of the parties was awarded costs.

The judgment was appealed against to the Supreme Court of Norway (third instance), which, in a judgment delivered on 18 February 2010, dismissed the appeal with dissenting votes (4 – 1). Neither of the parties was awarded costs.

The majority decided that, when the legislator implemented the EU anti-discrimination Directive 2000/78/EC in the Norwegian Seamen's Act in 2007, retaining an upper age limit of 62 years, it must be assumed that the legislator had considered the age limit and concluded that it was not in breach of the prohibition of discrimination.

Advokatfirma Ræder

The minority disagreed with this view and emphasised that the courts must ensure that there is an adequately updated, relevant basis for differential treatment. 'It should not lawfully be allowed to maintain differential treatment that is no longer necessary or proportionate with reference to past needs.' As the legislator had, in 2007, only provided a 'very brief, general and superficial' assessment of the need for a 62-year limit for seamen, the minority concluded that there was 'no satisfactory basis to be able to conclude that the age limit also serves legitimate considerations today and is appropriate, necessary and proportionate.' Ground 91.

The Supreme Court also considered whether the 62-year limit in the Norwegian Seamen's Act could be regarded as being in breach of Article 14 of the European Convention on Human Rights, but concluded that, as there could not be seen to be any relevant case law from the European Court of Human Rights, the provision in question could not be applied in relation to Norwegian internal law.

The Norwegian United Seamen's Union considers that the example shows that Norwegian legislation is in breach of the European Social Charter and therefore requests the European Committee of Social Rights to consider the case.

Appendix 4: Copy of the Supreme Court of Norway's judgment of 18 February 2010

5 SUBMISSIONS

It is a fundamental principle of labour law that every notice of termination of employment must have an objective justification. When the Norwegian Seamen's Act establishes that every seaman who has reached 62 years of age and is entitled to a seaman's pension no longer has general protection against notice of termination, this is in breach of Article 1, Paragraph 2, and Article 24 of the European Social Charter, in particular seen in the context of the prohibition of discrimination in Part V, Article E.

The removal of job protection at the age of 62 years for Norwegian seamen is an archaic scheme, peculiar to Norway, that was introduced after the Second World War as a consequence of a separate seamen's pension scheme being introduced at that time. This means that Norwegian seamen suffer differential treatment solely on account of age.

Advokatfirma Ræder

In the period since the Act was introduced, Norwegian life expectancy has increased by around 10 years (for newborns), while older workers enjoy considerably improved health. In addition, there is high demand for seamen and work on ships has become considerably safer, better and simpler.

If a Norwegian seaman worked on a Danish-registered ship, he would have general job protection until the age of 70 years. Reference is also made to the fact that far more demanding jobs in Norway, for example as a pilot or oil worker, operate with an upper age limit of 65 years.

If the European Committee of Social Rights requires further information, please contact me.

A power of attorney is also attached, showing that the undersigned has been granted authority to sign this complaint on behalf of the Union.

Appendix 5: Copy of power of attorney dated 9 September 2011

Yours sincerely,

Erik Råd Herlofsen
Lawyer/partner