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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

26 February 2013

Case No. 10

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

FURTHER RESPONSE BY FFFS ON ADDITIONNAL OBSERVATIONS FROM GOVERNEMENT

Registered at the Secretariat on 18 February 2013

RÆDER
ADVOKATFIRMA MNA

The European Committee of Social Rights
Directorate general of Human Rights and Legal Affairs
Council of Europe
F-67075 Strasbourg Cedex
FRANCE

Attn.: Mr. Régis Brillat

Our ref: 633970/102513 Your ref: Oslo, 18. February 2013

Responsible partner: Erik Råd Herlofsen

Dear Mr. Régis Brillat,

COMPLAINT NO. 74/2011 – FELLESFORBUNDET FOR SJØFOLK (FFFS) (UNION OF SAILORS) VS. NORWAY

1 INTRODUCTION

Reference is made to the additional observations made by the Government dated 23 January 2013. The observations call for clarification on a couple of points.

2 COMMENTS

The Government argues that FFFS fails to draw the Committee's attention to the fact that the age limit in the Prigge judgment and in the Norwegian Helicopter judgment, was set in a collective agreement and not by the legislator.

FFFS would like to emphasize that it is well known that the age limit in the Prigge judgment was set in a collective agreement and is also mentioned in the observations dated 28 November 2012 from FFFS point 2.2. However, the EU Court has several times found age limits provided by law to be discriminatory.

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Even if it is correct that a State has a wide margin of appreciation regarding the goals to be achieved in its social and labour marked policies, the EU Court said in the Age Concern case (C-388/07) paragraph 51:

> *However, that discretion cannot have the effect of frustrating the implementation of the principle of non-discrimination on grounds of age. Mere generalisations concerning the capacity of a specific measure to contribute to employment policy, labour market or vocational training objectives are not enough to show that the aim of that measure is capable of justifying derogation from that principle and do not constitute evidence on the basis of which it could reasonably be considered that the means chosen are suitable for achieving that aim (see, by way of analogy, Case C-167/97 Seymour-Smith and Perez [1999] ECR I-623, paragraphs 75 and 76).*

Moreover, the EU Court has a number of times set aside age-discriminatory legislation, most recently in C-286/12 where Hungary's new age limit of 62 years for judges, prosecutors and notaries, was deemed not proportionate as regards the objectives pursued. FFFS also refers to the following cases, C-144/04 (Mangold) and C-499/08 (Ingeniørforeningen i Danmark).

Regarding the Governments additional comments on the merits dated 12 February 2013 appendix 1, the FFFS will remark that it is of course positive that some employers are not practicing the 62 year age limit strictly. The fact that some employers have the need for seamen also after turning 62 years, illustrates precisely the point that the age limit of 62 years is discriminating, irrelevant and disproportionate. The European Social Charter should not allow that it shall be up to the individual employer to determine whether a seaman that has turned 62 years of age shall continue to practice his work, without any other grounds than the seaman's year of birth.

Yours sincerely,
Lawfirm Ræder DA

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