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

17 January 2011

Case No. 2

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

**OBSERVATIONS BY THE GOVERNMENT
ON THE ADMISSIBILITY**

Registered at the Secretariat on 12 January 2012



ATTORNEY GENERAL - CIVIL AFFAIRS

The European Committee of Social Rights
Executive Secretary
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Our reference:
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WRITTEN OBSERVATIONS ON ADMISSIBILITY

BY

THE KINGDOM OF NORWAY

COMPLAINT NO. 74/2011

FELLESFORBUNDET FOR SJØFOLK (FFFS) v. NORWAY

1 INTRODUCTION

Reference is made to the Executive Secretary's letter of 28 October 2011, whereby notice was given to the Permanent Representative of Norway to the Council of Europe of the collective complaint from Fellesforbundet for Sjøfolk (hereinafter "FFFS"), pursuant to Article 5 of the Additional Protocol to the European Social Charter. In the letter, the Norwegian Government was invited to submit written observations on the admissibility of the complaint by 13 January 2012.

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2 ADMISSIBILITY OF THE COMPLAINT

As regards admissibility, there are two main issues that need to be addressed: 1) whether proper powers of attorney to lodge the complaint have been documented, cf. Rule 23 (2) of the Rules of Procedure, and 2) whether the requirement of representativity in Article 1 litra c) of the Additional Protocol is met by FFFS.

2.1 Rule 23 (2) of the Rules of Procedure

The complaint is signed pursuant to the power of attorney submitted as enclosure no. 5 to the complaint. The power of attorney has been signed by Mr Leif R. Vervik, as “chairman of the FFFS”. Pursuant to the information available on the FFFS’ home page, Mr Vervik is the current chairman of the board of directors of FFFS. Pursuant to § 17 of the Articles of Association of FFFS, submitted as enclosure no. 2 to the complaint, the association’s signature is held by “the chairman of the board/general manager and the deputy chairman”. It is not clear from this wording that the chairman of the board holds the signature alone. Consequently, it is unclear whether the complaint has been signed by a person entitled to represent the FFFS.

Furthermore, according to § 13 of the Articles of Association the powers of the chairman of the board are limited. The chairman represents the board, and he must act in accordance with decisions made by the board. Only in exceptional cases may he act upon his own responsibility, and in such instances the board’s consent must be sought afterwards. The complaint does not document that the decision to grant the power of attorney and to lodge the complaint has been made according to the statutes of the organization.

2.2 Article 1 litra c) of the Additional Protocol

Collective complaints may only be lodged pursuant to the Additional Protocol by national trade unions which are *representative*. The representativity requirement in Article 1 litra c) is an autonomous concept, see, inter alia, the Committee’s decision in *6/1999 Syndicat National des Professions du Tourisme v. France*. The question of representativity is decided on the basis of an overall assessment of the information available to the Committee, and is not necessarily identical to the national notion of representativity, see inter alia *43/2007 Sindicato dos Magistrados do Ministério Público v. Portugal*.

In the Explanatory Report to the Additional Protocol to the Charter (ETS No. 158), the Council of Europe states: “*In the absence of any criteria on the national level, factors such as **the number of members and the organization’s actual role in national negotiations** should be taken into account*, para. 23, (emphasis added). The essential role played by these factors is confirmed by the Committee in its decisions, see inter alia *10/2000 STTK ry and They ry v. Finland* and *12/2002 Confederation of Swedish Enterprise v. Sweden*.

In enclosure no. 1 to the complaint, FFFS claims to have “approximately 1 500 members”. The Government questions this number, on the basis of previous indications emanating from the FFFS that the organization keeps running membership number accounts which are not adjusted for members who resign or pass away. The relevant figure for the purpose of admissibility must be the present number of contribution paying members, which – absent documentation to the contrary – is likely to be lower than 1 500.

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Even supposing that the alleged membership number of 1 500 is correct, it should be noted that the FFFS is significantly smaller than any of the three main Norwegian maritime labour union organizations: Det Norske Maskinistforbundet (the Norwegian Union of Marine Engineers) with approximately 6 300 members, Norsk Sjømannsforbund (Norwegian Seafarers' Union) with approximately 10 100 members, and Norsk Sjøoffisersforbund (Norwegian Maritime Officers' Union) with approximately 5 100 members plus 700 junior officer members. The aggregate membership number for these three unions thus total approximately 22 200, suggesting that the FFFS at the most represents some 6 % of the organized maritime workforce.

It should also be observed that the unionization rate among Norwegian seafarers is high. According to the Norwegian Labour and Welfare Administration (NAV), approximately 19 300 persons were in employment on Norwegian vessels as of 31 December 2009. The list is appended as **appendix 1** (in Norwegian, and divided between regular ships and drilling vessels). Out of those 19 300, approximately 16 900 were organized in the three main unions mentioned above.

The representativity requirement should be applied strictly in an issue with potential repercussions for all members above a certain age in all the maritime labour unions, and with a strong political focus in Norwegian society and in Europe in general, such as the issue at hand. One could risk that the Committee's testing of compliance of the age limit with the European Social Charter on the basis of a complaint lodged by a very small union runs contrary to the wish of a great majority of the members of Norwegian maritime labour unions. This would be particularly unfortunate in a sector with such a high degree of membership in trade unions, as in the maritime sector in Norway.

Granting a small organization such as FFFS the right to complain would imply allowing too many small organizations to lodge complaints under the collective complaints procedure and endanger the efficient functioning of the procedure, cf. the Explanatory Report to the Additional Protocol, para 23.

Furthermore, it should be noted that despite requests to the relevant employer organizations, FFFS has not been granted collective bargaining rights. National collective bargaining is conducted with the three above-mentioned main maritime labour unions, covering all vessels in overseas trade, domestic coastal trade including ferries, offshore activities and deep-sea fishing¹.

The assertion that the FFFS is not considered representative on the national level is further supported by the fact that it has not been invited to participate in the broadly composed legislative committee which was appointed by the Government 18 November 2011 to conduct a comprehensive review of, and suggest revisions to, the Norwegian Seamen's Act of 1975 (see enclosure no. 3 to the complaint). A copy of the mandate² of the legislative committee, as well as a list of the members, is enclosed herewith as **appendix 2** (in Norwegian). The Government found that each of the three main maritime labour unions mentioned above should have a seat in the committee, with personal deputies, and that this would ensure that the full width in maritime labour union interests would be represented. Moreover, it should be noted that the FFFS is not, unlike the above-mentioned unions, member of Norwegian maritime associations established inter alia to promote seafarers' rights, including Maritimt Forum Norge (The Norwegian Maritime Forum), Stiftelsen Norsk Maritim Kompetanse (The Norwegian Maritime Competence Foundation) and ITFs norske

¹ The coastal fishing fleet is represented by Norges Fiskarlag, the Norwegian Fishermen's Association, in collective bargaining.

² It should be mentioned that the mandate of the legislative committee also comprises review and possible revision of the age limitation of 62 years which constitute the essence of the merits of the present complaint.

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koordineringskomité (the International Transport Workers' Federation (ITF) coordination committee in Norway).

More generally, the FFFS's main focus of attention, according to information attached to the complaint in enclosure no. 1 to the complaint, seems to be individual cases of legal litigation. The complaint and documents attached to it do not document any main effort being made by the organization "*to promote the general understanding of the needs of its members and the contribution it makes to the well-being of society and its society*", cf. arguments upheld by the Committee in *12/2002 Confederation of Swedish Enterprises v. Sweden*. Neither does the complaint document that the FFFS seeks to influence governmental policy in general advocacy work.

Given the FFFS's relatively insignificant number of members within the maritime sector, its lack of collective national bargaining rights and its lack of general representativity on the national level, the Government finds that FFFS cannot be considered "representative" for the purpose of Article 1 litra c) of the Additional Protocol.

3 CONCLUSION

- It is not clear from the documents submitted with the complaint that the requirements of Rule 23 (2) of the Rules of Procedure are met.
- The Norwegian Government submits that the requirement of representativity in Article 1 litra c) of the Additional Protocol is not satisfied by the FFFS, and that the complaint should, accordingly, be declared inadmissible.

Yours sincerely,

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Attorney General – civil affairs
Advocate
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Margit Tveiten
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2 Appendices