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

10 February 2012

Case No. 3

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

**RESPONSE FROM FFFS
TO THE GOVERNMENTAL OBSERVATIONS
ON THE ADMISSIBILITY**

Registered at the Secretariat on 1 February 2012

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



Attn.: Régis Brillat

Our ref: 547401/102513

Your ref:

Oslo, 1 February 2012

Responsible partner: Erik Råd Herlofsen

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

1 INTRODUCTION

Reference is made to your letter dated 17 January 2012, with the Government's observations on the admissibility of the complaint enclosed.

The Government addresses two matters which are answered below. Firstly, question is raised as to whether proper powers of attorney to lodge the complaint have been documented and secondly whether requirements of representation is met by the FFFS.

2 RULE 23 (2) OF THE RULES OF PROCEDURE

The FFFS has for a number of years fought to remove the Seamen's Act's upper age limit of 62 years and has, as mentioned in the complaint, represented a member in the Norwegian Supreme Court. It is therefore very surprising and disappointing that the Government question whether the chairman of the board/general manager, Leif Vervik has sufficient power of attorney to engage an attorney to lodge a complaint against Norway to the European Committee of Social Rights.

It is hereby confirmed that Leif Vervik has a unanimous Board of Directors behind him and that he has the sufficient power of attorney needed to engage an attorney to lodge subject complaint.

However, the provision in § 17 of the Articles of Association of the FFFS mean that both the chairman of the board/general manager and the deputy chairman, separately hold the signature.

3 ARTICLE 1 LITRA C) OF THE ADDITIONAL PROTOCOL

3.1 Introduction

The Government alleges that the FFFS is not a representative national trade union and that the complaint therefore should be refused.

The Government questions the number of members of the FFFS and states that the trade union irrespectively does not have the sufficient number of members required in order to have their complaint handled (3.2).

It is further alleged that the European Committee of Social Rights should be restrictive in handling a complaint from a small trade union, as it is possible that other and more representative trade unions may disagree with the FFFS. Moreover, states the Government, the handling of the complaint may lead to other small trade unions making use of the right to lodge complaints and thus reducing the significance of the right to lodge complaints (3.3.).

In addition, the Government alleges that the FFFS has not been granted national collective bargaining rights, and that the FFFS has not been invited to participate in a panel recently appointed to review the Seamen's Act. This shall apparently indicate that the FFFS is not sufficiently representative in order to be able to lodge complaints. In conclusion, the Government alleges that the FFFS has not documented that they seek to influence governmental policy in general advocacy work (3.4).

3.2 Number of members

The FFFS currently has 1 293 paying, working members. In addition, the trade union has a number of retired associate members. The Government's insinuations that the list of members is not adjusted in cases of withdrawal or death is inappropriate and incorrect.

Under any circumstance, the FFFS is Norway's fourth largest trade union federation for seamen and was established in 2001 to be an independent alternative to the Norsk Sjømannsforbund (Norwegian Seafarers' Union), Det Norske Maskinistforbundet (the Norwegian Union of Marine Engineers) and Norsk Sjøoffisersforbund (Norwegian Maritime Officers's Union). For your information, the mentioned trade unions have a close cooperation and e.g. share office address and have a joint bank account for the collection of membership fees.

It is therefore a real need for an alternative trade union and a increasing number of seamen go from the three cooperating trade union federations to join the FFFS.

The FFFS experiences, however, that the aforementioned trade union federations, along with the Government, try to make obstacles for the FFFS. As an example, it is mentioned that the FFFS on 24 November 2008 was sustained by the Norwegian Supreme Court (Rt 2008.1601) in their claim that the Norsk Sjømannsforbund (Norwegian Seafarers' Union) had to stop collecting forced tariff fees for seamen who are members of the FFFS.

In addition the FFFS experiences that the Government, in conflict with Article 5, actively seek to make obstacles for the exercise of the right to organise, e.g. by refusing members of the FFFS tax reduction for trade union membership fee. This, contrary to the members of the other trade unions in question. In addition, the Government has, probably due to this complaint, neglected to invite the FFFS to join the aforementioned panel and is moreover trying to complicate the complaint by unfoundedly claiming that the FFFS is not sufficiently representative.

Pursuant to the Norwegian Labour Disputes Act § 1 paragraph 3, however, there are no limits to the number of members a trade union must have. The law has the following definition:

Trade Union Federation – any union of workers or of the workers unions when the objective of the federation is to safeguard the workers interests towards their employers.

In any case, an overall assessment will be made and the number of members is only one of the evaluation criteria, see i.a. 73/2011 Syndicat de Défense des Fonctionnaires v. France.

3.3 The Governments concern for the handling of the complaint

The Government alleges that the European Committee should be careful in handling a complaint from a smaller trade union and especially when it comes to the question of age discrimination. This is grounded on the fact that complaints from smaller trade unions can lead to additional work for the European Committee and the states, as well as it is possible that the other trade unions disagree with the FFFS.

The FFFS does not share the Government's concern. First of all, this is the very first time that a complaint has been made against Norway, and there is therefore no reason to worry about the work load. Moreover, this complaint is based on the fact that the European Committee will be able to determine breaches, if any, on the European Social Charter independent of whether some special federations in Norway should disagree with the subject. For the sake of good order, it is emphasized that it is unknown whether any of the other trade unions for seamen in fact do disagree that the 62 year age limit for seamen is discriminatory and in breach of the European Social Charter.

3.4 Right to negotiation and participation in panel

It is correct that the FFFS unfortunately has not yet been granted national collective bargaining rights by the Norges Rederiforbund (Norwegian Shipowners' Association). The FFFS has, however, concluded many tariff agreements and have for a number of years assisted their members against their respective employers/shipowners in relation to various work and tariff related legal queries, as well as questions regarding safety at sea, salary, working hours, dismissals, travel allowances, upper age limits etc.

The trade union is thus safeguarding their members' privileges towards their employer and public authorities and hopefully it is only a matter of time before the Norges Rederiforbund (Norwegian Shipowners' Association) will stop their unreasonable discrimination of the FFFS and approve them as a negotiation adversary.

The Government have in their reply tried to make a point of the fact that the FFFS are not members of the panel which will consider changes to the Seamen's Act, but fail to mention that it is the Government themselves who has appointed the panel and that this took place after present complaint was lodged at the European Committee and after the FFFS sued the Government with regards to discriminations in relation to tax reduction for trade union membership fees.

As the FFFS, for a number of years, has fought for changes to the Seamen's Act, it is regrettable that the Government, probably as a consequence of this complaint, neglected to invite the FFFS to participate in the panel in question.

For the sake of good order, it is emphasized that this injustice will be addressed in Stortinget (Parliament) in the near future. In this regard please see the following written query which is sent to the president of the Stortinget (Parliament):

Stortinget, 26 January 2012

President of the Stortinget

I take the liberty of asking the following question for written reply to the Minister of Industry and Trade:

On 18 November 2011 the government appointed a broadly compounded panel which will make a general revision of the Seamen's Act and prepare a draft for a new Act. The undersigned has been contacted by the Fellesforbundet for Sjøfolk (FFFS) where they advise that they have been in contact with the Ministry of Industry and where they advanced a clear request to be included in the panel, but their request was not met. Will the cabinet minister arrange for the appointed panel to be supplemented with a member from the FFFS?

Grounds:

Reference is made to the fact that the government, by royal resolution on the 18 November 2011, appointed a broadly compounded panel which will make a general revision of the Seamen's Act and prepare a draft for a new Act.

Fellesforbundet for sjøfolk (FFFS) has through a number of years been perhaps the most eager participant in changing and replacing the current Seaman's Act. As a number of court cases will substantiate. The undersigned feels it would be important that all relevant views and experiences with the current Seaman's Act come to light in the panel's work, and therefore thinks it should be a strength to the work which has been started that the panel be supplemented by a member of the FFFS.

The undersigned hopes that the cabinet minister will arrange for the panel to be supplemented with one member, giving the employees organised with the FFFS a voice in the panel, too.

Robert Eriksson

Member of Parliament (FrP)

Leader of the employment and social committee

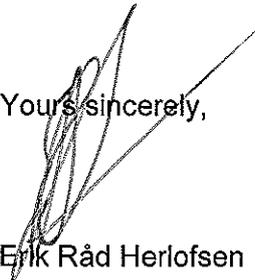
It is therefore not correct, as alleged by the Government, that the FFFS does not take community responsibility. The FFFS continually seek to influence the authorities to improve seamen's working conditions. For instance, the FFFS has recently made a national written submission with regards to arming of Norwegian vessels outside Somalia.

4 CONCLUSION

The FFFS is a relatively large trade union seen in relation to the number of seamen in Norway. In terms of all the smaller trade unions which have had their complaints treated in the European Committee of Social Rights or the EMD, there is no doubt that the FFFS is sufficiently representative. On this basis we ask that the Committee make a complete evaluation and consider the complaint.

It is disappointing that the Government, instead of commenting the reality of the matter, exert themselves to have the complaint refused. The FFFS has, however, confidence in the European Committee of Social Rights and ask that the complaint be declared admissible.

Yours sincerely,



Erik Råd Herlofsen
Attorney/Partner