



European
Social
Charter

Charte
Sociale
Européenne



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

15 February 2013

Case No. 8

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

**ADDITIONAL OBSERVATIONS
OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 23 January 2013



ATTORNEY GENERAL - CIVIL AFFAIRS

The European Committee of Social Rights
Executive Secretary
Council of Europe
F-67075 Strasbourg Cedex
Frankrike

Our reference:
2011-0863 FPA

Date:
23.01.2013

ADDITIONAL COMMENTS ON THE MERITS

BY

THE KINGDOM OF NORWAY

COMPLAINT NO. 74/2011

FELLESFORBUNDET FOR SJØFOLK (FFFS) V. NORWAY

Reference is made to the observations dated 28 November 2012 from FFFS regarding the merits of the complaint, transmitted to the Government directly from FFFS' attorney.

The observations from FFFS call for clarification on a couple of points made by FFFS related to arguments relied on by the Government in its observations of 7 September 2012.

On page 2 of its observations, fourth paragraph, FFFS asserts that the Government fails to draw the Committee's attention to the fact that the Norwegian Supreme Court in the *Helicopter* case (Rt-2012-219) concluded, with support from the *Prigge* judgment, that a Norwegian age limit of 60 years for helicopter pilots was in violation of Directive 2000/78/EC and thus also of Norwegian law. In this context, the Government finds it appropriate to emphasize that the ECJ in the *Prigge* case concluded that an age limit of 60 years for pilots fixed in a collective agreement, with the objective of guaranteeing air traffic safety was not compatible with the Directive, since national and international legislation fixed an age limit of 65 years for pilots. Similarly the *Helicopter* case concerned an age limit of 60 years for helicopter pilots fixed in a collective agreement, whereas national and international fixed an age limit of 65 years. In contrast, the 62

ATTORNEY GENERAL - CIVIL AFFAIRS

year rule in the Seamen's Act, which was accepted by the Norwegian Supreme Court in the *Kystlink* case, was set by the legislator after a broad assessment and had subsequently been reconsidered in the light of Norway's international obligations and confirmed by the legislator as recently as 2006.

In the *Helicopter* judgment, the Supreme Court explicitly states that it does not decide on whether the *Kystlink* judgment is still valid in light of the (then) current legal situation, but points out that the Court in the latter case attached significant weight to the fact that the 62 year rule was the result of a deliberate choice made by the legislator, whereas the 60 year age limit in the *Helicopter* case had no such authoritative basis.

It should be recalled that the Supreme Court in the *Kystlink* judgment notes, with reference to judgments from the ECJ concerning Article 6 of Directive 2000/78/EC, that the states have a wide margin of appreciation regarding the goals to be achieved in its social and labour market policies, and the choice of means to achieve those goals. This is confirmed by the ECJ in subsequent case law and supported by the practice of the Committee of Social Rights itself, as substantiated in the Government's observations of 7 September 2012.

An age limit set in a collective agreement may take other and more limited considerations into account than what is fixed as the age limit by the legislature, which must weigh all relevant social and economic considerations. The point in the *Prigge* judgment and the *Helicopter* case was the collective agreements' unacceptable deviation from the choice made by the legislator. For this reason, those two judgements from European and Norwegian case law do not support the FFFS' arguments, but, on the contrary, weaken them. The margin of appreciation on the issue of age limits is granted to States, not to the parties to collective agreements.

The legislative committee appointed by the Government submitted its proposal for a revised Seamen's Act on 1 November 2012 in Official Norwegian Report (NOU) 2012:18. The report has been circulated for general review to all relevant stakeholders with a time limit of 1 February for response. The committee's report and the comments received will form the basis for the Government's legislative proposition for a new Seamen's Act, which it aims to submit to Parliament for approval during the spring of 2013.

Regarding the age limit, the following statement from the legislative committee (NOU 2012:18 at point 12.3.7 i.f.) illustrates that the legislator will have to make a broad and comprehensive assessment: *"As mentioned, many members of NHO Sjøfart¹ practice an age limit where the employment contract is terminated at the end of the year when the employee reaches 62 years. Thereafter, the employee may apply for one year at a time to continue in service in a different or equivalent position. The assessment of the individual employee's suitability for further service on particular types of vessels goes beyond the mere ascertainment of whether the employee has a valid health certificate. The work on board several vessels, for instance speedboats, requires a degree of vigilance and powers of reaction that for many individuals will be impaired by age. As it is uncertain to what degree the directives and case law allows for special age limits set by individual shipping companies, the committee's proposal² may be perceived as a challenge for those companies".*

¹ NHO Sjøfart (Maritime) is the main employer's organisation.

² I.e. the proposal to abolish the age limit in the Seamen's act.

ATTORNEY GENERAL - CIVIL AFFAIRS

The FFFS asserts, on page 4, that “the age limit in reality involves compulsory retirement, as only a few smaller shipowners do not practice the age limit strictly”. The Government would, however, like to point out that this is not correct as a general observation, as several Norwegian shipping companies employ seamen who are older than 62. The Norwegian Labour and Welfare Administration (NAV) has informed that it may provide statistical information on the extent of employment on Norwegian vessels of seamen older than 62, but that it will take some time to assemble this information. The Government thus respectfully requests permission to forward the information to the Committee as soon as it becomes available, which according to NAV should be by the end of the coming week.

With these supplements, the Government maintains its submissions in the observations dated 7 September 2012.

Yours sincerely,
Attorney General – civil affairs



Fanny Platou Amble
Advocate



Margit Tveiten
Deputy Director General
Ministry of Foreign Affairs
Adviser