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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

16 April 2012

Case document no. 1

**European Committee for Home-Based Priority Action for the Child and the
Family (EUROCEF) v. France**
Complaint No. 82/2012

COMPLAINT

Registered at the Secretariat on 4 April 2012



*OING auprès du Conseil de l'Europe
INGO to the Council of Europe*

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COMPLAINT
TO THE
EUROPEAN COMMITTEE OF SOCIAL RIGHTS

This complaint relates to the situation of families affected by the suspension of family allowances in the event of truancy from school by their children, which is a measure applied in France under **Act No. 2010-1127 of 28 September 2010 on combating truancy** (JORF (official gazette No. 0226 of 29 September 2010, page 17553, text No. 1) and **Act No. 2011-267 of 14 March 2011** on the parental responsibility contract.

Complaint lodged by the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) against France for the violation of Articles 16 and 30 of the revised European Social Charter, read alone or in conjunction with the non-discrimination clause in Article E.

Paris, April 2012

❖ **ADMISSIBILITY**

➤ A. – Standing of the complainant organisation, EUROCEF

The European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) is a non-profit-making legal entity governed by the legislation in force in France (local law of Alsace). It is a European association holding participatory status with the Council of Europe, included on the list of NGOs entitled to submit collective complaints.

Under Article 2 of its statute, *the purpose of the Committee is to promote social and educational assistance for children and families in the home environment, particularly through the following activities:*

- ✓ *Collecting and disseminating experience and research in this specific field.*
- ✓ *Promoting innovative experiments aimed at keeping children in their home environment, showing due regard for human rights and the International Convention on the Rights of the Child.*
- ✓ *Helping to devise social policies at the highest level so as to ensure that it is not just economic considerations which prevail.*
- ✓ *Attempting to convince European institutions of the need for professionalisation and an interdisciplinary approach in the sphere of social and educational work.*

To achieve these aims (Article 3 of the statute), the Committee states that it will use various methods such as working groups, publications, training activities, position papers, meetings, conferences, studies, surveys and recommendations and proposals to national and European institutions.

It may bring legal proceedings and refer the issues raised in that context to the European Court of Human Rights.

- ### ➤ **Applicability to France of the revised European Social Charter and of the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints**

France signed the European Social Charter of 1961 on 18 October 1968, and deposited its instrument of ratification on 9 March 1973. It signed the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints on 9 November 1995 and the revised European Social Charter on 3 May 1996. It ratified both these texts on 7 May 1999.

In accordance with the declarations contained in the instrument of ratification of the revised European Social Charter of 1996 deposited by France on 7 May 1999, France considers itself bound by all the articles of Part II of the revised European Social Charter.

- **Compliance by the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) with the criteria of the Additional Protocol**
 - **Compliance with Article 1 (b) of the Additional Protocol of 1995**

EUROCEF submits this collective complaint to the Executive Secretary, acting on behalf of the Secretary General of the Council of Europe, in accordance with the collective complaints procedure established by the Council of Europe on 9 November 1995 in order to give full effect to the principle of social rights for all.

Unlike the bodies referred to in Articles 1(c) and 2§1 of the Additional Protocol, international non-governmental organisations entitled to submit collective complaints need not necessarily fall under the jurisdiction of the High Contracting Party against which the complaint has been lodged. This means that EUROCEF can lodge a collective complaint against any country which has ratified the European Social Charter or revised Charter or both, and has agreed to be bound by the collective complaints mechanism, without prejudice to any other admissibility requirement.

EUROCEF has consultative status with the Council of Europe and appears on the Governmental Committee's list of international non-governmental organisations entitled to submit collective complaints.

- **Compliance with Article 3 of the Additional Protocol of 1995**

EUROCEF's activities assign it the necessary competence for the questions to which the complaint relates.

Article 2 of its statute reads:

The purpose of the Committee is to promote social and educational assistance for children and families in the home environment, particularly through the following activities:

- ✓ *Collecting and disseminating experience and research in this specific field.*
- ✓ *Promoting innovative experiments aimed at keeping children in their home environment, showing due regard for human rights and the International Convention on the Rights of the Child.*
- ✓ *Helping to devise social policies at the highest level so as to ensure that it is not just economic considerations which prevail.*
- ✓ *Attempting to convince European institutions of the need for professionalisation and an interdisciplinary approach in the sphere of social and educational work.*

In this way EUROCEF aims to help to improve social policies for families and oppose policies which would appear to it to infringe family law.

EUROCEF is a non-profit-making association and all the money it raises is reinvested in its activities. The members of the Committee's bureau and governing board are not entitled to any payment in return for the functions they perform.

EUROCEF plays an active part in INGO activities at the Council of Europe and is competent in areas of activity connected with social rights and the European Social Charter.

❖ STATEMENT OF THE FACTS

- **Adoption by the French parliament of legislation to combat truancy providing for the suspension of family allowances for the parents of offending children.**

On 28 September 2010, the French parliament adopted **Act No. 2010-1127** on combating truancy (JORF No. 0226 of 29 September 2010, page 17553, text no. 1) amending articles L-131-8, L401-3, L-552-3-1, L-222-4-1 and L-262-3 of the Education Code.

The Act provides for various graded measures targeting the persons responsible for children where these persons have failed to give reasons for the absence of their children or given imprecise reasons or their children have missed school for no legitimate reason or with no valid excuse for at least four half days in a month.

- ✓ The regional schools inspector issues a warning to the persons responsible for the child, notifying them of the relevant administrative and criminal penalties and the parental support systems available to them. These include the parental responsibility contract and any other support measure which the Chair of the *Département* Council may offer to families pursuant to Article L. 222-4-1 of the Social Welfare and Family Code.
- ✓ If, in the course of the same academic year, the child is absent again for at least four half days in a given month despite the inspector's warning, the inspector refers the case to the director of the body paying family allowances, which immediately suspends payment of the share of the allowance owed in respect of the child in question.

Payment of family allowances will resume only once the inspector has notified the director of the paying body that there have been no absences by the child in question for no legitimate reason or without a valid excuse over a period of one month's schooling ... since the month in respect of which payment of family allowances was suspended.

The resumption of payment of family allowances is retroactive. If, since the absence which gave rise to the suspension, one or more new absences of four half days per month without a legitimate reason or valid excuse are registered ... no payment will be due for the month or months during which these new absences occurred.

- **Adoption by the French parliament of the Internal Security Policy and Programming Act (No. 2011-267 of 14 March 2011), which extended the scope of the parental responsibility contract and made the suspension of family allowances the penalty for the rejection or failure of contracts.**

This act, among other measures, amended Article L222-4-1 of the Social Welfare and Family Code relating to the parental responsibility contract:

When a case of truancy is referred to the Chair of the Département Council, ... he or she may propose that the parents or legal representatives of the minor concerned should sign a parental responsibility contract.

In the event of a disruption to the functioning of a school, the application to a minor of section 43 of the Internal Security Policy and Programming Act (No. 2011-267 of 14 March 2011) or any other difficulty connected with a failure of parental authority, the Chair of the Département Council shall, on his or her own initiative or at the request of the schools inspector, the head teacher, the mayor of the municipality in which the minor resides, the director of the body paying allowances or the prefect, propose to the parents or the legal representative of the minor a parental responsibility contract or any other child welfare measure suited to the situation. A parental responsibility contract shall also be proposed to the parents of a minor who has been prosecuted or convicted for an offence reported by the public prosecutor to the Chair of the Département Council in accordance with the second paragraph of Article L.3221-9 of the General Code of Local Government where this offence reveals a failure in parental authority. A parental responsibility contract may also be signed at the instigation of a minor's parents or legal representative. Such contracts shall set out the obligations of the persons with parental authority and describe any social assistance or welfare measure designed to rectify the situation. Their content and length and the arrangements for the referral to the Chair of the Département Council and the conclusion of the contract shall be established by a decree of the Conseil d'Etat. This decree shall also lay down the conditions under which the referring authorities shall be informed by the Chair of the Département Council that a parental responsibility contract has been concluded and is being implemented.

If he or she becomes aware that the parents or the legal representative of the minor have failed to fulfil their obligations or if, for no valid reason and through their own doing, it has become impossible to sign the contract, the Chair of the Département Council may:

1° Ask the director of the body paying allowances to suspend payment of all or some of the benefits relating to the child, pursuant to Article L.552-3 of the Social Security Code;

2° Report any act possibly constituting a criminal offence to the public prosecutor;

3° Bring the matter before a judicial authority for it to apply the provisions of Article 375-9-1 of the Civil Code where appropriate.

The possibility provided for in paragraph 1 above shall not apply to parental responsibility contracts proposed or concluded in the event of truancy, as defined in Article L.131-8 of the Education Code.

Where it has been impossible to sign the contract for reasons attributable to the minor's parents or legal representative, the Chair of the Département Council may also send them a reminder of their obligations as holders of parental authority and take any social assistance or welfare measure capable of rectifying the situation.

➤ **Recent developments**

Suspension of family allowances and the parental responsibility contract are not new legal measures, but the changes in the instruments governing these existing measures and the range of reasons for which they may be adopted have the effect of conferring a new scope and breadth on these two measures.

French law has provided for the suspension or suppression of family allowances since 1959. It is a measure which was rarely or never used and whose ineffectiveness with regard to combating truancy prompted parliament to repeal it in 2004 (Child Support and Protection Act of 2 January 2004).

The measure was reintroduced in 2006 as part of the Equal Opportunities Act (Act No. 2006-396 of 31 March 2006), which also introduced the parental responsibility contract. The two measures are also very closely linked under this law, as the rejection or breakdown of the parental responsibility contract results in the suspension of family allowances for the parents concerned.

Act No. 2010-1127 of 28 September 2010 on combating truancy was adopted again based on the finding that the system was “not working” and little use was being made of it. Its aim was to promote the more effective application of these measures, in particular by increasing the number of means of initiating proceedings. Parental responsibility contracts may be proposed to parents by the Chair of the *Département Council*, on his or her own initiative or at the request of the schools inspector, the head teacher, the mayor of the municipality in which the minor resides, the director of the body paying allowances or the prefect. When they are proposed because the child has been playing truant, the parents' rejection of the contract is no longer sanctioned immediately by the suspension of family allowances, but this penalty is applied if the truancy continues, regardless of whether or not a parental responsibility contract is being applied.

Lastly, the Internal Security Policy and Programming Act (No. 2011-267 of 14 March 2011) increased the number of cases in which the parental responsibility contract could be deployed (disruption to the functioning of a school or any other difficulty deriving from a failure of parental authority) and made the suspension of family allowances the penalty for the rejection or failure of contracts.

It should be noted that in June 2010 the National Council on policies to combat poverty and social exclusion¹ expressed its opposition to the implementation of this measure (see the press release in Appendix 1).

Similarly, on 5 November 2011, the board of the national family allowance fund, the CNAF, came out against the suspension or suppression of family allowances for truancy.

In June 2011, the use made of the measure so far was very uneven. According to the French Minister of Education, Mr Luc Chatel², there had been 51 actual suspensions of family allowances by this date, most of which had been carried out in the *départements* of Ariège and

¹ The National Council on policies to combat poverty and social exclusion comprises representatives of the chambers of parliament, local and regional authorities and other public or private law entities involved in vocational training, integration and measures to combat poverty and exclusion. Its composition and the arrangements for the appointment of its members and its chair by the Prime Minister are governed by a decree of the Conseil d'Etat.

² Statement to the French National Assembly on 9 June 2011.

Yonne, and 147 applications for suspension were being processed by the family allowance services.

On 1 December 2011³, Eric Ciotti, the Chair of the Council of the *département* of Alpes-Maritimes, made the following announcement: “Over the next few days, several dozens of applications for the suspension of family allowances will be granted in Alpes-Maritimes”. By this date, the figures communicated by the Minister of Education, Luc Chatel, showed that there had been 240 applications for suspension throughout France and 165 actual suspensions.

Clearly therefore, this highly controversial measure is not applied evenly throughout France, making it even more discriminatory for families living in those *départements* where it is enforced.

³ See the 2 December 2011 edition of Nice-Matin.

❖ **The grounds for our complaint**

The practice of suspending family allowances is challenged as being in breach of the provisions of the European Social Charter, which France ratified on 7 May 1999.

- **The provisions on the suspension of family allowances constitute a violation of Article 16 of the European Social Charter read alone or in conjunction with the non-discrimination clause in Article E.**

Article 16 states that “the family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development”.

For this purpose, “with a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life **by such means as social and family benefits**, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means”.

Clearly therefore the European Social Charter regards family benefits as a right that is granted to parents as part of the community's contribution to the burden that children effectively represent in terms of their upbringing and the material conditions of their existence.

Family allowances therefore amount to a right to claim a payment. Does this mean therefore that they can give rise to a quid pro quo arrangement? Can they be the subject of a contractual deal?

Using the suspension of family allowances as a penalty for some parents' behaviour is tantamount to regarding these allowances not as a right to this contribution but as a reward, confined to those parents who do not encounter any difficulties in raising their children, or at least succeed in overcoming those that arise.

Furthermore using their suspension as a penalty against the parents is harmful to the best interests of the children, who are regarded by French law as the recipients of social benefits.

In our opinion, the award of family allowances cannot be dependent on the parents' behaviour except in the cases, provided for by law, where these allowances are being used for a purpose which is not in the child's best interest, in which case the judicial authorities may issue a guardianship order (which has the advantage of including an educational dimension) or order the transfer of these allowances to the persons who are actually responsible for the child.

It should be added that under Article R 624-7 of the Criminal Code⁴, parents who fail to oblige their child to attend school on a regular basis may be fined. Our aim is therefore not to oppose a measure designed to help enforce this obligation but to challenge an administrative measure using the suspension of family allowances as a penalty.

In our view, any withdrawal of family allowances must be subject to the review of the judicial authorities, which are the only bodies empowered to intervene to restrict parents' rights and penalise them, where necessary, with due regard for adversarial principles and for legal means of redress conducive to a fair trial as required under Article 6 of the European Convention on Human Rights, ratified by France on 3 May 1974.

- **The provisions on the suspension of family allowances constitute a violation of Article 30 of the European Social Charter read alone or in conjunction with the non-discrimination clause in Article E**

Article 30 of the European Social Charter states that “everyone has the right to protection against poverty and social exclusion”.

We maintain that in a country where 8 million people live below the poverty line, family allowances are a major if not essential part of their income. To restrict this income, even temporarily, is to penalise people who are already vulnerable by undermining the balance of their fragile economic position or by making their already dramatically poor financial situation worse.

As a result, two sets of contradictory demands are placed on families. Firstly, the French state, whose desire is to provide free access to schools (in keeping with Article 17 of the revised European Social Charter), is significantly undermining the conditions for the development of children from families affected by these measures. Secondly, these measures are intended to

⁴ “Either parent of a child subject to compulsory schooling or any person exercising parental authority or permanent *de facto* authority over such a child who has been warned by the regional director of the national education services acting under the delegation of the chief education officer and in respect of whom the procedures described in Article R. 131-7 of the Education Code has been implemented and fails to ensure that his or her child complies with the obligation to attend school regularly without giving a legitimate reason or valid excuse or who gives inaccurate reasons for the child’s absence, shall be subject to the fine provided for for 4th-category summary offences.”

punish families for behaviour which is considered to be improper but make them even more vulnerable and may make it even more difficult for them to fulfil their duty to protect their children as well as potentially exacerbating the social exclusion from which they already suffer. This effectively undermines the conditions for the proper development of children within their families.

In this respect, the suspension of family allowances runs counter to the undertaking given by France to protect everyone against poverty and social exclusion.

- **The provisions on the suspension of family allowances constitute a violation of the non-discrimination clause in Article E of the revised European Social Charter read in conjunction with Articles 16 and 30**

The non-discrimination clause states as follows: “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**”.

We assert that the suspension of family allowances undermines the principle of non-discrimination for the following reasons:

- ✓ the penalty for the truancy of a child is only applicable to families receiving family allowances, leaving families with only one dependent child under the age of 20 in a situation of “impunity”;
- ✓ the effect of suspending the share of the allowances relating to the child involved in truancy is to reduce the income of the entire family unit, thus penalising the other members of the family including both the parents and the siblings, despite the fact that the latter were not at all responsible for or involved in the improper behaviour;
- ✓ some families which are entitled to these allowances are momentarily deprived of them because of a situation which does not constitute an eligibility requirement;
- ✓ families are treated unequally according to their stock of intellectual knowledge and their interpersonal skills. Some families without difficulties will be entirely capable of finding and giving legitimate reasons or valid excuses for the absence of their child whereas others, encountering language or literacy problems or failing to master the means of contacting the school, will be incapable of doing so, making them much more prone to economic sanctions.

❖ CONCLUSION

This complaint, submitted by the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF), must prompt the Committee to find as follows:

That France is in breach of Articles 16 and 30 of the revised European Social Charter read alone or in conjunction with Article E because of discrimination with regard to the granting and payment of family allowances to certain entitled families.

EUROCEF respectfully requests the European Committee of Social Rights:

- to consider the facts set down in this collective complaint and declare that France is in breach of the aforementioned articles of the revised Charter with the aim, notwithstanding the power of the judicial authorities in this field, of urging the French government to apply this treaty directly and to adopt measures with regard to families faced with truancy by one or more of their children which provide assistance and support rather than imposing economic penalties, which will inevitably only make the situation of families whose living conditions are already vulnerable even worse.
- to remove the provisions concerning the suspension of family allowances from the following French legislation:
 - Equal Opportunities Act (No. 2006-396 of 31 March 2006);
 - Act No. 2010-1127 of 28 September 2010 on combating truancy;
 - Internal Security Policy and Programming Act (No. 2011-267 of 14 March 2011).

EUROCEF thanks the European Committee of Social Rights for giving attention to these issues.

Anna Rurka

Chair of EUROCEF