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

3 June 2013

Case document No. 2

Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden
Complaint No. 99/2013

**OBSERVATIONS OF THE GOVERNMENT
ON THE ADMISSIBILITY**

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REGERINGSKANSLIET

29 May 2013

Ministry of Employment Sweden

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EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Complaint no. 99/2013
Federation of Catholic Associations in Europe, Christian Physicians
and Medical Students in Sweden and Pro vita
v.
Sweden

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ON ADMISSIBILITY

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I. Introduction

1. These observations on the admissibility of the complaints introduced by the Federation of Catholic Associations in Europe (FAFCE) along with the Christian Physicians and Medical Students in Sweden (KLM) and Pro Vita are submitted on behalf of the Swedish Government (the Government) in response to the invitations of the European Committee of Social Rights (the Committee) dated 3 April 2013.

II. On the Admissibility

KLM and Pro Vita

2. According to Part VIII, Chapter 1, 23.2 the rules of the Committee, adopted during the 201st session on 29 March 2004 and revised during the 207th session on 12 May 2005, during the 234th session on 20 February 2009 and during the 250th session on 10 May 2011 (the Rules), a complaint shall be signed by the person(s) with the competence to represent the complainant organisation.

3. The Government notes that a complaint has been lodged by FAFCE along with KLM and Pro Vita. The Government also notes that the Committee have registered only one complaint and that this complaint has been signed by the President of FAFCE alone. The Government is unaware of any documents which would grant the President of FAFCE the necessary mandate to represent KLM or Pro Vita.

4. The Government would like to point to the fact that the Kingdom of Sweden has ratified the Additional Protocol to the European Social Charter on 05/05/89, the Amending Protocol to the European Social Charter on 18/03/1992 and the Additional Protocol providing for a system of collective complaints on 29/05/1998. The Kingdom of Sweden has not yet made a declaration enabling national non-governmental organisations to submit collective complaints.

5. The Government holds that the Articles in the Protocol cannot be construed in a way that allows for organisations that have no locus standi, to file collective complaints along with an organisation that is entitled to file such complaints.

6. Having considered the content of the collective complaint and the other documents submitted by the complainants, as well as Articles 1 and 2 of the Protocol, the Government holds that neither KLM nor Pro Vita has locus standi to lodge collective complaints against the Kingdom of Sweden.

7. In sum, with reference to what has been stated above (paras. 1–6), the Government concludes that the President of FAFCE does not have the necessary mandate to represent KLM or Pro Vita. Therefore the formal requirement of Rule 23.2 of the Rules has not been met in regard to KLM and Pro Vita. However, even if this formal requirement had been met, neither KLM nor Pro Vita is entitled to file collective complaints against the Kingdom of Sweden. Thus the Government holds that the collective complaint lodged by KLM and Pro Vita should be declared inadmissible.

Particular competence

8. The Government do not contest that FAFCE is an international non-governmental organisation which, according to Article 1.b of the Additional Protocol of the European Social Charter providing for a system for collective complaints (the Protocol), is entitled to submit collective complaints. However to be admissible any complaints that are lodged by FAFCE must also, according to Article 3 of the Protocol, concern matters in which FAFCE have been recognised as having particular competence.

9. According to the complaint FAFCE focuses its attention on family policy and the rights of the family. With regard to the European Social Charter (the Charter) FAFCE pays particular attention to the articles concerning the protection of and support to the family (art. 16 and 19), protection of the parents (art. 27) and in particular of the mother (art. 8 and 20), as well as children (art. 7 and 17).

10. Having considered Article 4 and 5 of the Statute of FAFCE, which regulates the objective and responsibilities of FAFCE, the Government is not convinced that FAFCE can be regarded as having particular competence in the matters of concern.

Conscientious objection – the scope of Article 11 of the Charter

11. Should the Committee decide that FAFCE has particular competence in the matters of concern, the Government wishes to draw the attention to questions relating to the scope of Article 11 of the Charter.

12. In the complaint FAFCE, KLM and Pro Vita allege, *inter alia*, that the Kingdom of Sweden has failed to enact a comprehensive and clear legal and policy framework governing the practice of conscientious objection by healthcare providers in Sweden. Furthermore the complainants allege that the Kingdom of Sweden has failed to secure that health care workers, physicians and medical students that claim their right to conscientious objection, are not treated in a discriminatory way.

Thus the Kingdom of Sweden has failed to comply with the obligations set forth in Article 11, read alone or in conjunction with Article E.

13. According to Article 9.1 of the European Convention on Human Rights (the Convention) everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief and freedom, either alone or in community with others and in public or private, to manifest his or her religion or belief, in worship, teaching, practice and observance. According to Article 9.2 of the Convention, freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

14. The Convention protects the civil and political rights of individuals whereas the aim of the Charter is to guarantee social and economic rights to housing, health, education, employment, movement of persons, non-discrimination and legal protection.

15. The Charter is to be regarded as a complement to the judicial protection provided under the Convention. The jurisdiction of the European Court of Human Rights extends to all matters concerning the interpretation and application of, *inter alia*, the rights set forth in the Convention.

16. Although already stated by the complainants in the collective complaint (pages 11–12), the Government would like to point to the fact that the right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the Convention, as interpreted by the case-law of the European Court of Human Rights, by imposing several positive obligations designed to secure the effective exercise of that right.

17. The Government contend that although the exercising of, or interference with, the rights set forth in Article 9 of the Convention can have an impact on the rights guaranteed by Article 11 of the Charter, this is not always the case.

18. The Government holds that Article 11 of the Charter does not complement Article 9 of the Convention. Furthermore it is not within the scope of Article 11 of the Charter to guarantee the rights set forth in the aforementioned Article of the Convention. Consequently neither should Article 11 of the Charter be construed in a way which would embody the rights set forth in Article 9 the Convention.

19. Having examined what the complainants have submitted in regard to the allegations stated in paragraph 13 above, in particular pages 21–24 of

the collective complaint, the Government concludes that these allegations do not concern the protection of health guaranteed in Article 11 of the Charter, but instead the rights protected under Article 9 of the Convention.

20. The Government observes that any collective complaint which falls out of the scope of the Articles of the Charter, should be declared inadmissible as incompatible with the Charter *ratione materiae*.

21. In sum, with reference to what has been stated above (paras. 11–20), the Government holds that the collective complaint, in as far as concerns the allegations stated in paragraph 13 above, should be declared inadmissible as incompatible with Article 11 of the Charter *ratione materiae*.

III. Conclusions

22. The position of the Swedish Government concerning **the admissibility** of the collective complaint introduced by FAFCE along with KLM and Pro Vita is

- that the collective complaint, in as far as concerns KLM and Pro Vita, should be declared inadmissible as the formal requirement of Rule 23.2 of the Rules has not been met and, in any event, neither KLM nor Pro Vita is entitled to file collective complaints against the Kingdom of Sweden,
- that before deciding on the admissibility of the collective complaint, it must be ascertained whether or not FAFCE has particular competence in the matters of concern,
- that if FAFCE is considered to have particular competence in the matters of concern, the collective complaint, in as far as concerns the allegations stated in paragraph 13 above, should be declared inadmissible as incompatible with Article 11 of the Charter *ratione materiae*.



Monica Rodrigo
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