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

8 April 2022

**Case Document No. 1**

**Fellesforbundet for Sjøfolk (FFFS) v. Norway**  
Complaint No. 209/2022

**COMPLAINT**

**Registered at the Secretariat on 1 April 2022**

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Department of the European Social Charter  
Directorate General of Human Rights and Rule of Law  
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Oslo, 1 April 2022  
Our ref.: NS/EJO/36726-501

In charge:  
Nicolay Skarning

## **COMPLAINT TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS – THE EUROPEAN SOCIAL CHARTER ARTICLE 24 – BREACH OF THE RIGHT TO INDEPENDENT COURTS IN EMPLOYMENT MATTERS IN NORWAY**

### **1 INTRODUCTION – FFFS AND THE COMPLAINT**

This complaint to the Committee on Social Rights is submitted on behalf of the trade union **Fellesforbundet For Sjøfolk (FFFS)**, which can be translated into English as Joint union for sailors. It was founded on 21 October, 2000, then called "Seilende Oljearbeideres forening," has approximately 1300 members and has the right to submit collective complaints to the committee, cf. the Committee's decision on admissibility in complaint No. 120/2016 and complaint No. 74/2011.

FFFS respectfully requests that this complaint will be dealt with in connection with complaint no. 198/2021, SMB Norge v. Norway. FFFS agrees with the complaint from SMB Norge, makes the same allegations, and refers to the same evidence as in the SMB Norge complaint. We request that the case documents and written pleadings of that case will be included in FFFS's complaint.

In contradiction to SMB Norge, FFFS represents workers, and thus has a direct interest in the application of The Revised European Social Charter (ETS No. 163) article 24 i.f. This article declares that:

*"... the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body"*

FFFS claims that Norway is in breach of this provision because they have let Norway's largest trade union, LO, with a great influence on the Labor Government in 1976/77, to build a system where LO and LO Law Firm can appoint favorite lay judges to their trials in employment matters, even lay judges working in LO-organizations, clients of LO Law Firm. The system is detrimental to members of FFFS because the large employer counterpart, NHO, does the same and thereby directly affects the courts. In the tribunal of three judges, LO and NHO have a majority in their cases with two lay judges and only one professional judge, the latter randomly elected by the court itself. In the city and district court LO and NHO thus have two out of three judges in the tribunal, all three with equal voting power. These judges decide over cases involving members of

FFFS, except that the FFFS member can choose a lay judge from another union than LO, but not a FFFS judge or non-union judge, because they don't exist on the compulsory lists.

Giving especially two organizations a majority in a country's first instance courts of law is not in good harmony with the rule of law and the requirement for independent and impartial courts. It is giving judicial powers to certain strong interest groups in society.

The power of attorney on which this complaint is based has been given by the chairman of the board of FFFS, and is attached as **ATTACHMENT 1**.

## **2 THE COMPLAINING PARTY – FELLESFORBUNDET FOR SJØFOLK (FFFS)**

The Additional Protocol to the European Social Charter, which provides for a system of collective complaints, requires in Article 1 (c) that the right to collective complaints is given to:

*"representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint."*

FFFS organizes sailors and offshore workers in Norway. Currently it has about 1300 members. FFFS is an independent union, not affiliated with any federation of trade unions.

FFFS' address is: Eidsvågbakken 1, 5105 Eidsvåg, Norway, Org.no. 982 818 354

The chairman of the Board is Mr. Harald Prytz. As mentioned above, FFFS has previously been given the right to lodge complaint to the Committee, ref the two previous complaints before the Committee mentioned above.

## **3 THE DEFENDANT, NORWAY**

Norway has ratified the European Social Charter (revised) (No 163), ratified by Norway 7 May 2001. In addition, Norway also ratified the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (No 158), on 20 March 1997. Thereafter, Norway has allowed collective complaints to be lodged. The responsible ministry in Norway is the Ministry of Labor.

## **4 BACKGROUND FOR THE COMPLAINT**

The historical background of the current lay judges system in employment matters dates back to 1976/1977 and the Labor Government by Oddvar Nordli. LO then had two representatives in the Labor Party's central committee, Tor Aspengren, chairman of LO, and Lars Skytøen, chairman of the ironworkers in LO. Report on the history of Norwegian Labor Party, **ATTACHMENT 2**. In addition, LO gave an enormous financial support to the Labor Party, and had regular meetings with the top management of the Labor Party and LO every Monday in their Cooperation Committee (Samarbeidskomiteen LO-AP), which still exists today. It is therefore reasonable to assume that the current system is constructed by LO, or at least in close cooperation with LO, for the benefit of this organization. However, their major employer counterpart, NHO, has accepted the system, because they also are able to use their own favorite lay judges, and has in many matters worked closely with LO.

As shown in the SMB Norge complaint, the second largest employer organization in private sector in Norway, Virke, and the truck owner organization are protesting against the current system, together with SMB Norge and FFFS. Subsequently the system lacks the legitimacy required by The European Convention on Human Rights (ECHR) article 6 no. 1. The system is beneficial for some groups and detrimental to others, such as members of SMB Norge, FFFS and non-unionized labor (app. 50 % in the private sector) who stands without representation on the list of lay judges.

FFFS protested against the current system in an official press release on 23 April 2021, **ATTACHMENT 3**. FFFS is very sorry to learn that the Labour Government of Norway has informed the Committee in the SMB Norge complaint that no union is against the current system. They only consider the position of LO.

## 5 NORWEGIAN LEGAL BACKGROUND AND TEXT

Today's system is found in Norwegian Working Environment Act 2005, which reads:

*"Section 17-6. Panels of lay judges*

*For each county, the Norwegian Courts Administration shall appoint one or more special panels of lay judges with a broad knowledge of industrial life. At least two-fifths of the lay judges in each panel shall be appointed on the recommendation of the employers' organization and at least two-fifths shall be appointed on the recommendation of the employees' organization.*

*Section 17-7. Appointment of lay judges*

*(1) For the main hearing and for hearing in the Court of Appeal the court shall sit with two lay judges.*

*(2) Lay judges shall be appointed on the recommendation of the parties from the panel of lay judges appointed pursuant to section 17-6. In cases before the Court of Appeal the lay judges are taken from the panels appointed within the district of the court.*

*(3) Each party proposes one-half of the number of lay judges included in an individual case. If the proposals from the parties are not available within the time limit stipulated by the judge, the judge may appoint lay judges pursuant to section 94 of the Courts of Justice Act. The same applies if several plaintiffs or defendants fail to agree on a joint proposal.*

*(4) Nevertheless, the court may sit without lay judges if the parties and the court are agreed that lay judges are unnecessary."*

The text of the act is a bit misleading. It seems that the parties in a case only recommend lay judges. The fact and the practice is that the lay judges are decided by the parties to the case. The court's appointment is only a formality: the court appoints those who are proposed by the parties, without examining their independence.

An example from today's list of lay judges is submitted as **ATTACHMENT 4**. The list is from the city court in Tromsø, and shows that only the large organizations have names on the lists. At the same time, the requirement is to only use this list, which means that FFFS and SMB Norge must choose lay judges from their competitors' names when they have employment matters in Norwegian courts. In addition, people who are not organized anywhere must choose lay judges among only organized lay judges' names, and risk that these judges have a negative view on unorganized workers. Unions often view unorganized labor as "free passengers" in the labor market, which might affect their voting in court. This is not in good harmony with freedom of association, ECHR article 11.

## 6 LEGAL REMARKS

As stated in the introduction, FFFS refers to the complaint from SMB Norge, and makes the same legal submissions as in SMB's complaint and in later written pleadings.

The Revised European Charter has to be interpreted in accordance with ECHR article 6, which requires independent and impartial courts. The European Court of Human Rights has stated that

this also implies independence among the parties to the case: In *Maktouf and Damjanovic v Bosnia and Herzegovina* (2013) para 49, the Court stated:

*"In determining in previous cases whether a body could be considered to be "independent"-notably of the executive and of the parties to the case- it has had regard to such factors as the manner of appointment of its members, the duration of the term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence."*

When the parties in a case appoint the lay judge only for this single court case, with the expectation that he or she will vote in favor for the appointing party, this judge is not independent of the appointing party, and in breach of the ECHR and The Revised Social Charter.

The solution to this problem is to let the court itself choose lay judges randomly, from each side, and from broader lists than today, including more organizations and also non-union names.

## **7 THE NORWEGIAN SYSTEM ACCEPTS FOR ATTORNEYS TO USE THEIR OWN CLIENTS AS LAY JUDGES**

LO and its law firm (The LO Law Firm) regularly use their own clients as lay judges, in the sense that they use employees in LO-organizations as lay judges at the same time as the LO Law firm is the law firm of all LO-organizations, ref. **ATTACHMENT 5**. The SMB Norge complaint shows a lot of examples of the LO Law Firm using employees of LO-organizations as lay judges.

When a member of one of the LO unions file a lawsuit against the employer, they normally use the LO law firm. The LO lawyer then normally elects a lay judge from one of the LO unions. This is accepted both by NHO and by Norwegian courts. It is therefore not correct that the Norwegian Court Act sections 106 to 108 prevents this because the Working Environment Act is *lex specialis* and the courts have to accept the proposal of the parties except in clear cases of non-independence.

## **8 PRACTICAL REMARKS**

The undersigned attorney can be contacted at any time if there are questions concerning this complaint: Attorney Nicolay Skarning, [ns@kvale.no](mailto:ns@kvale.no), tel.: + 47 906 64 191.

Alternatively: Chairman of the FFFS, Harald Prytz, [harald.prytz@fffs.no](mailto:harald.prytz@fffs.no), tel: + 47 41 65 62 92.

FFFS Norway is willing to meet the Committee for an oral hearing, if so is required by the Committee.

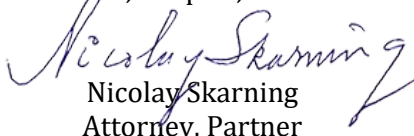
## **9 CONCLUSION & DEMAND FOR DECISION BY THE COMMITTEE**

FFFS respectfully asks the Committee to adopt the following

### **CONCLUSION**

**The Norwegian system of letting the parties in an employment matter appoint their own lay judge is a breach of the European Social Charter article 24 i.f.**

Oslo, 1. April, 2022

  
Nicolay Skarning  
Attorney, Partner

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AUTHORIZATION

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**AUTHORIZATION to attorney Nicolay Skarning**

"FFFS, the Joint Union for Sailors in Norway has 1300 members and the independent right to the collective complaint procedure to The European Committee of Social Rights, hereby gives the attorney Nicolay Skarning the right to complain to the Committee on behalf of Fellesforbundet for Sjøfolk (FFFS) about Norway's breach of the Revised European Social Charter article 24 about independent tribunals in employment matters, connecting to the case 198/2021 already pending before the Committee.

Bergen, 25 March 2022,

*H. Prytz*

Harald Prytz  
 Chairman of the Board "



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