



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

11 April 2023

**Case Document No. 5**

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

**REPLY FROM THE GOVERNMENT  
TO THE FFFS RESPONSE**

**Registered at the Secretariat on 31 March 2023**



## ATTORNEY GENERAL FOR CIVIL AFFAIRS

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The European Committee  
of Social Rights

OSLO, 31 March 2023

# Additional observations by the Kingdom of Norway

represented by Henriette Busch, advocate at the Office of the Attorney General for Civil Affairs, as agent, and by Sverre Runde, advocate at the same office, in

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

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- (1) Reference is made to FFFS Norge's (hereinafter "the complainant organisation") second submission 19 February 2023, and the Deputy Executive Secretary's letter 27 February 2022 where the Government is invited to submit a response by 31 March 2023.
- (2) In the Government's view, letter 19 February 2023 deals with matters that has been sufficiently commented on in the Government's written observations 30 November 2022. The Government maintains its position and views presented in the written observations and refers to that for a complete account of the Government's submissions. Some additional observations are called for:
- (3) Firstly, the Government respectfully disagrees with the suggestion that the "one by one system is in contradiction to the jurisprudence of the ECHRt and the tenure and term of office requirement of the ECHR Court."
- (4) In this regard, the Government finds it appropriate to quote the entire paragraph 49 of the ECHR's judgment in *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08:

*49. By way of general observation, the Court reiterates that in determining in previous cases whether a body could be considered as "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 their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence (see, for example, Campbell and Fell v. the United Kingdom, 28 June 1984, § 78, Series A no. 80, and Brudnicka and Others v. Poland, no. 54723/00, § 38, ECHR 2005-II). The irremovability of judges by the executive during their term of office is in general considered as a corollary of their independence and thus included in the guarantees of Article 6 § 1 (see Campbell and Fell, cited above, § 80). Although the notion of the separation of powers between the political organs of government and the judiciary has assumed growing importance in the Court's case-law (see Stafford v. the United Kingdom [GC], no. 46295/99, § 78, ECHR 2002-IV), appointment of judges by the executive or the legislature is permissible, provided that appointees are free from influence or pressure when carrying out their adjudicatory role (see Flux v. Moldova (no. 2), no. 31001/03, § 27, 3 July 2007).*

- (5) It is apparent from the quoted paragraph that one must assess the facts in each individual case as a whole to be able to conclude as to whether a body can be considered to be "independent" or not. Although the duration of the judges' term of office is a relevant factor in this regard, it is not decisive in itself.
- (6) As regards the appointment of lay judges in cases concerning termination of employment, the Norwegian system for appointing lay judges ensures that the domestic court in each case constitutes an impartial and independent body in relation to both Article 24 of the Charter as well as Article 6 of the ECHR.
- (7) In this regard, it must be kept in mind that lay judges in cases concerning termination of employment are chosen from the panel provided by The Courts Administration.<sup>1</sup> Generally, the lay judges are appointed to the panel for periods of four years. In the Government's view, it is the appointment to the panel that is relevant when, in accordance with the cited case-law, considering "the manner of appointment of its members, the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence".
- (8) More specifically, the Government do not agree with the complainant organisation that it is relevant for the consideration of the duration of the lay judges' term of office that they are being appointed to sit each individual case on a case-to-case basis. The Government recalls that also the professional judges are selected on a case-to-case basis, subject to a test of impartiality.
- (9) Furthermore, for the reasons set out in detail in the Government's written observations 30 November 2022, there are sufficient safeguards ensuring that the lay judges appointed to sit each individual case are both impartial and independent of the parties to that case. The

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<sup>1</sup> See the Government's written observations 30 November 2022 section 2.3 for an account of the process of appointing lay judges to the panel.

## ATTORNEY GENERAL FOR CIVIL AFFAIRS

Government reiterates that the lay judges in each individual case are not selected or appointed by the parties to that case, but by the court. Although it is true that the parties are invited to suggest lay judges from the list of lay judges, the decision lies with the court. The Government also notes that the court's decision may be subject to appeal.

- (10) The Government strongly disagrees that lay judges risk "(...) not being selected and appointed again if he or she votes 'wrongly' (...)", as indicated by the complainant organisation. Nor can the Government see that there is any foundation for the accusation that "[h]e or she might even fear ending on at 'black list' of the labour organisations if voting 'wrongly' (...)".
- (11) Lastly, the Government fails to see the relevance of the decision by the Norwegian Supreme Court attached as Annex 1 to the second submission 19 February 2023. It is evident from the decision that the Supreme Court presupposes that the appointment of lay judges is subject to a test of impartiality, in accordance with domestic law.

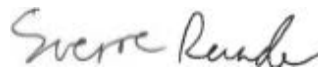
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Oslo, 31 March 2023

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