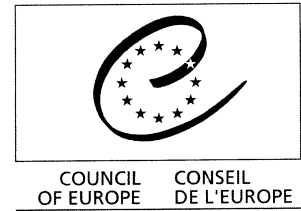


EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX



Complaint No. 6/1999

Syndicat national des Professions du tourisme against France

Documents

Secretariat of the European Social Charter

E-mail : social.charter@coe.int <http://www.esc.coe.int>

September 2001

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The European Social Charter – an overview

The European Social Charter guarantees human rights and fundamental freedoms in the economic and social sphere. It is the counterpart to the European Convention on Human Rights.

The Social Charter, which was opened for signature on 18 October 1961 and entered into force on 26 February 1965, guarantees a series of rights grouped into 19 articles. The Additional Protocol of 5 May 1988, which entered into force on 4 September 1992, added four rights to the Charter.

After a thorough revision, the 1961 Charter is being gradually replaced by the revised European Social Charter¹, which was opened for signature on 3 May 1996 and entered into force on 1 July 1999, and which amended and extended the list of rights guaranteed².

Compliance with the commitments set out in the Charter and the revised Charter is subject to international supervision by an independent body - the European Committee of Social Rights. There are two procedures for carrying out this supervision.

Supervision procedure based on reports

Under Article 21 of the charter, states submit periodic reports on the “hardcore” provisions³ every two years and on the non-hardcore provisions every four years. The Committee of Ministers has set a precise timetable for the submission of reports.

The supervision procedure functions as follows:

- the *European Committee of Social Rights*, made up of 12 independent experts elected by the Committee of Ministers and assisted by an observer from the International Labour Organisation, examines the reports submitted

¹ As at 1 July 2001, the Contracting Parties to the Charter are: Austria, Belgium, the Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Spain, Turkey and the United Kingdom. The parties to the revised Charter are: Bulgaria, Cyprus, Estonia, France, Ireland, Italy, Lithuania, Norway, Romania, Slovenia and Sweden.

² The revised Social Charter brings together in a single instrument the rights set out in the Charter (as amended), the rights set out in the Additional Protocol and a series of new rights grouped into eight articles.

³ The Charter's core provisions are: freedom of work (Article 1), freedom of association and the right to bargain collectively (Articles 5 and 6), the right to social security (Article 12), the right to assistance (Article 13), the rights of the family (Article 16), the rights of migrants (Article 19). The core provision of the revised charter also include: the rights of children (Article 7) and the right of women and men to equal treatment and opportunities in employment (Article 20).

by states and issues a ruling on whether states have complied with their commitments. Its rulings are called “conclusions”. These are forwarded to states, are public.¹

- if a state fails to act on a ruling of non-compliance by the European Committee of Social Rights, the Council of Europe’s *Committee of Ministers* may issue a recommendation to the state concerned, asking it to amend its legislation or practice in order to bring it into line with the charter. The work of the Committee of Ministers is prepared by a *Governmental Committee* made up of representatives of the governments of the states parties to the charter and assisted by representatives of both sides of industry in Europe.²

The collective complaints procedure

The Additional Protocol Providing for a System of Collective Complaints, which was opened for signature on 9 November 1995 and entered into force on 1 July 1998,³ sets out a collective complaints procedure whereby allegations of breaches of the Charter or the revised Charter may be submitted to the European Committee of Social Rights. This procedure is not conditional upon the exhaustion of domestic remedies.

Who may lodge a collective complaint?

- the European employers’ organisations and trade unions which participate in the work of the Governmental Committee: ETUC, UNICE and IOE;
- European non-governmental organisations having consultative status with the Council of Europe⁴ and included on a list drawn up for this purpose by the Governmental Committee;⁵
- national employers’ organisations and trade unions from the state concerned;
- national non-governmental organisations, if the state concerned has made a declaration authorising them to do so and if they are particularly competent in their field of activity.

¹ The country reports and the decisions of the Committee are public and may be consulted on the website <http://www.esc.coe.int>.

² The European Trade Union Confederation (ETUC), the Union of Industrial and Employers’ Confederations of Europe (UNICE) and the International Organisation of Employers (IOE).

³ As at 1 July 2001, 11 states have accepted the collective complaints procedure: Bulgaria, Cyprus, Finland, France, Greece, Ireland, Italy, Norway, Portugal, Slovenia and Sweden.

⁴ For further information on how to obtain consultative status, contact NGO-Unit@coe.int.

⁵ Interested organisations should send a letter to the Secretariat of the European Social Charter, Directorate General of Human Rights - DG II, Council of Europe, F-67705 Strasbourg Cedex (France). The letter should be accompanied by detailed documentation covering in particular the status of the organisation and its field of activity, objectives and working methods. This dossier will be forwarded to the Governmental Committee for a decision. The list may be consulted on the website <http://www.esc.coe.int>.

In what form should a complaint be lodged?

A collective complaint must be lodged in writing and must be signed by an authorised representative of the complainant organisation.

Complaints lodged by the ETUC, the UNICE and the IOE or by European non-governmental organisations must be written in one of the official languages of the Council of Europe (English or French). Complaints lodged by national trade unions and employers' organisations and by national non-governmental organisations may be written in a non-official language.

The complaint file should contain the following information:

- the name and contact details of the organisation lodging the complaint;
- in the case of non-governmental organisations, a note stating whether the organisation has consultative status with the Council of Europe and is included on the Governmental Committee list, and details of the fields of activity in which the organisation is competent;
- the state against which the complaint is being lodged, which must have accepted the collective complaints procedure;
- the Charter provisions which are alleged to have been breached, which the state in question must have accepted;
- the object of the complaint - that is, the extent to which the state in question is alleged not to have complied with the charter, and relevant arguments to support the allegation. Copies of relevant documents are required.

How does the procedure function?

The complaint is examined by the European Committee of Social Rights, which first decides on its admissibility according to the criteria listed above and its rules of procedure.

The procedure is adversarial. If the complaint is admissible, a written procedure is followed, with an exchange of documents between the parties. The procedure may become an oral one and a hearing may be organised by the committee.

The Committee then decides on the merits of the complaint. Its decision is contained in a report which it forwards to the Committee of Ministers.

At the end of the procedure, the Committee of Ministers adopts a resolution. If appropriate, it may recommend that the state in question take specific steps to bring the situation into line with the Charter.

Introduction

The aim of this publication is to reproduce in chronological order the original documents of the procedure that was followed on the examination of the complaint No. 6/1999 under the Additional Protocol to the European Social Charter providing for a system of collective complaints.

Complaint No. 6/1999 was filed on 30 August 1999 by the *Syndicat national des Professions du tourisme* (SNPT). On 10 February 2000, the European Committee of Social Rights declared the complaint admissible. On 10 October 2000, the Committee adopted its decision on the merits and transmitted its report to the Committee of Ministers. On 31 January 2001, the Committee of Ministers addressed Recommendation RecChS(2001)1 to France.

Complaint filed by the *Syndicat national des Professions du tourisme* (SNPT) against France

(filed with the Secretariat on 30 August 1999)

Letter to Catherine Trautmann, Minister for Culture

17 August 1999

Subject: *Widespread discrimination against interpreter-guides and national lecturers holding the State diploma and their customers by bodies coming under the Ministry of Culture; request for general cancellation and immediate suspension of the measures concerned*

Dear Madam,

In view of the European Social Charter, drawn up with reference to the European Convention on Human Rights, in particular the provisions of Part I indents 1, 2 and 10, Part II Articles 1 paragraphs 1, 2 and 4 (the right to work), and 10 paragraphs 1, 3.a and 3.b (the right to vocational training) and Part V, Article E (non-discrimination), and the additional protocol thereto providing for a system of collective complaints, which stipulates that complaints may be submitted by national organisations of employers and trade unions within the jurisdiction of the Contracting Party concerned; in view also of the principles of equality of users vis-à-vis public services, freedom of competition and equal access to employment and training, and at a more general level the principles set forth in the Declaration of the Rights of Man and of the Citizen and in the Constitution; in view of the relevant legislation, in particular Act No.92-645 of 13 July 1992 and the implementing decree and order of 15 April 1999; in view of the case-law of the *Conseil d'Etat* enshrined in decision No. 163528 of 28 February 1996, especially the third paragraph of the preamble, where that body found no difference in the services rendered to users by interpreter-guides and national lecturers holding the State diploma and by approved lecturers, which it deemed comparable; regard being had to the government's policy of combating unemployment and inequality; and without prejudice to the action taken by your ministry in response to the file which we submitted on 18 September 1998;

I formally request you to cancel all the measures discriminating between interpreter-guides and national lecturers holding the State diploma and their customers, on one hand, and approved lecturers and their customers, on the other hand, contained in the regulations, agreements, customary practices, etc., applied by all the bodies coming under your ministry, regardless of their legal status and of the various names whereby these bodies and these approved lecturers are designated.

The bodies in question are all those offering guided tours which are attached to your ministry. Mention can be made of:

the National Museums Association (*Réunion des Musées nationaux* - RMN) (in particular the following museums: Louvre, Orsay, Picasso, Antiquités Nationales, Orangerie, Jeu de Paume, Luxembourg; the castles of Versailles, the Trianon, Fontainebleau and Compiègne; and the national galleries of the Grand Palais - see the full list) and the French Museums Directorate (*Direction des Musées de France* - DMF) (the fine arts museums and the classified, supervised museums);

the Georges Pompidou National Art and Culture Centre and the National Museum of Modern Art;

the towns and regions of artistic or historical interest belonging to the "*Villes et Pays d'art et d'histoire*" network, approved by the Heritage Directorate and the National Fund for Historic Monuments and Sites (*Caisse nationale des Monuments Historiques et des Sites* - CNMHS) (tourism offices (*offices de tourisme*) and tourist information offices (*syndicats d'initiative*) in the areas concerned are often the only local employer) - see the full list;

the Heritage Directorate and the CNMHS (see the full list, which includes a very recent State acquisition, the castle of Ferney-Voltaire, the "*Centre ... de réflexion sur toutes les questions relatives aux droits de l'homme*" (human rights study centre);

etc.

These bodies discriminate against interpreter-guides and national lecturers holding the State diploma in numerous ways, to the point where discrimination can be said to have become the rule. Mention should be made of the following:

- Employment: blanket exclusion from the right to employment (discrimination on recruitment); denial of the right to work;
- Vocational training: blanket exclusion from organised further training.

Individual vocational training, including preparation of guided tours: an entry fee is usually payable to gain admission to all of the fine arts and other museums, apart from the State-owned museums and collections attached to the Ministry of Culture. An entry fee is charged for exhibitions organised by the RMN (the national galleries of the Grand Palais, the Luxembourg and Orangerie museums), the castle of Versailles, the Pompidou Centre, etc. (approved lecturers are admitted free of charge and do not have to queue).

Discrimination in the granting of access to libraries: interpreter-guides and national lecturers holding the State diploma are tolerated (but not admitted as of right) in the Louvre museum's multi-media reference library on Monday afternoons.

Points of sale allow approved lecturers discounts of as much as 30% on catalogues, publications and other works, which constitute essential tools of the

trade and training material, whereas interpreter-guides and national lecturers holding the State diploma have to pay the list price.

- The right to work is not recognised in all areas open to the public, since access to certain areas is reserved for approved lecturers and customers of the relevant bodies: the castle of Compiègne (exclusion from the dual State apartments, the Second Empire museum and the Empress's museum); Fontainebleau: exclusion from the rooms to which the castle's management admit the public only during guided tours conducted by its own staff and from the Napoleon museum; at the castle of Versailles access is limited to the State Apartments and their annexes (route no. 1): exclusion from route no. 2 (the Private Apartments, including the King's Bedchamber), the opera, the inner cabinets, etc.; at the Grand Trianon: exclusion from the Trianon-sous-Bois and Napoleon's apartments; at the Petit Trianon: exclusion from the Attic Apartments, the Queen's theatre and the workshops, all places to which approved lecturers and their customers are admitted.

It should be noted that those in charge of these sites sometimes run guided tours where the commentary is provided by members of security staff. These include Compiègne, Fontainebleau, the Grand Trianon and Mont-Saint-Michel (tours of the crypts, including Notre-Dame-sous-Terre, from which the abbey originated).

During exhibitions mounted by the Pompidou Centre there is a ban on guided tours, which are the preserve of the centre's own staff.

The interpreter-guides and national lecturers holding the State diploma want to be able to carry on their occupation in all areas open to the public under the same access conditions as approved lecturers.

- Restriction or denial of the right to work at exhibitions in the Pompidou Centre (see above). Interpreter-guides and national lecturers holding the State diploma are denied the right to work at the prestige exhibitions run by the Grand Palais. Permission is granted on a restrictive basis for other exhibitions at the Grand Palais and the Orsay, Orangerie and Picasso museums (there is a general lack of transparency in the reservation systems, which is a source of arbitrariness).

- A discriminatory fee is charged to obtain the right to work in certain cases: the Lille Fine Arts Museum charges 250 francs for the "right to speak" (sic); at Versailles only ready-formed "groups" (from one individual if the tour includes a commentary) have to pay a reservation fee, amounting to 330 francs for 30 people; others - constituting the approved lecturers' clientele - are exempt.

At the Louvre museum only ready-formed groups have to pay a reservation fee; visitors taking a lecture tour (the museum reserves certain times, free of charge, for tours conducted by its approved lecturers) are exempt.

- It should also be noted that the interpreter-guides and national lecturers holding the State diploma are versed in over 25 languages, whereas the approved lecturers are familiar with only four or five and frequently solely have English as a foreign language; this entails further discrimination vis-à-vis the former and also vis-à-vis members of the public, depending on their nationality and mother tongue.

Where does this leave France's cultural policy aimed at visitors from all over the world?

Pending formal recognition of the principle of non-discrimination between qualified personnel in a new Act relating to the categories of personnel qualified to conduct guided tours (lecture tours) throughout national territory,

I hereby request you as of now formally and with immediate effect to order those in charge of all the bodies concerned, firstly, to suspend as invalid without delay all measures involving discrimination of any kind against interpreter-guides and national lecturers holding the State diploma and their customers, contained in those bodies' regulations, agreements, customary practices, etc. - without this affecting the necessary harmonisation of the rules, which I ask you to supervise in person - and, secondly, to treat them, without debarment, on an equal footing with approved lecturers and their customers, with all the consequences that this entails.

I am convinced that you will not allow measures which are contrary to the law, to France's international commitments, to the image which the country seeks to convey and to the principles for which you stand to continue.

We would point out that you have already recognised the quality of the interpreter-guides and national lecturers holding the State diploma, who are alone capable of enabling visitors from all over the world to familiarise themselves with and appreciate French culture in the majority of their own languages.

I look forward to hearing from you and remain

Yours faithfully,

Christian Sterkers

Vice-Chairman

Copies to:

- Mesdames Martine Aubry, Minister for Employment and Solidarity, and Michelle Demessine, State Secretary for Tourism
- the Foreign Minister
- the Secretary General of the Council of Europe

Letter from the *Syndicat national des Professions du tourisme*

to

Mr Brillat, Head of the European Social Charter section, Council of Europe

26 August 1999

Dear Sir,

Further to the file which I sent to the Secretary General of the Council of Europe on 17 August 1999 and to our pleasant conversation, I wish to confirm that, on the basis of that file (and an additional note appended hereto), I am lodging a collective complaint against France under the European Social Charter, in particular the provisions of Part I indents 1, 2 and 10, Part II Articles 1 paragraphs 1, 2 and 4 (the right to work) and 10 paragraphs 1, 3.a and 3.b (the right to vocational training) and Part V, Article E (non-discrimination), and the additional protocol thereto providing for a system of collective complaints, which stipulates that complaints may be submitted by national organisations of employers and trade unions within the jurisdiction of the Contracting Party concerned, on the ground of widespread discrimination against interpreter-guides and national lecturers holding the State diploma by the French government and its agencies, constituting a breach of the Charter.

As agreed, I will send you a document certifying that I am authorised to act for the union as soon as possible.

I remain at your disposal to provide any further information which you may require.

Yours faithfully,

(signed)

Christian Sterkers
Vice-Chairman for the interpreter-guides and national lecturers

encl. Note of August 1999; copy of decision No. 163528 of the *Conseil d'Etat* of 28 February 1996

Note to be appended to the file of 17 August 1999 concerning Act No. 92-645 of 13 July 1992, the replacement of which by a specific Act is requested

Section 3 of this Act unreasonably excludes the State, local and regional authorities and some of their public corporations from its scope, without this affecting other entities.

In other words the State exempts itself (without this affecting other entities) from its obligations vis-à-vis personnel to whom it has nonetheless awarded a diploma and a title, in particular as regards their employment, discriminating against them in favour of lecturers approved by its own bodies, whom it nevertheless permits itself to include in the scope of the implementing decree (No. 94-490 of 15 June 1994, amended by No. 99-296 of 15 April 1999, Article 1.II, indents 4 to 6 and 9), even arbitrarily and unreasonably attributing to those approved lecturers some of the vocational qualifications of the interpreter-guides and national lecturers holding the State diploma, which the former do not possess and to which they are not entitled, (Order of 15 April 1999, Article 3.1, indents 3, 4 and 5 and appendix), without allowing the latter any compensation, apart from the possibility for regional interpreter-guides to become lecturer-guides in the towns and regions participating in the "*Villes et pays d'art et d'histoire*" network on successfully sitting a newly created examination (Article 5.III of the amended decree), whereas, under Article 85 of the above-mentioned decree and Article 4 of the above-mentioned Order, they are already qualified to conduct guided tours in the region(s) for which they are competent!

The rules concerning the categories of personnel qualified to conduct guided tours systematically discriminate against interpreter-guides and national lecturers holding the State diploma in favour of approved lecturers. The outcome is unfair competition, harmful to the diploma-holders' employment prospects. These rules must be brought into line with the law.

FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE

The *Conseil d'Etat*, sitting in its judicial capacity (Judicial Division, 10th and 7th sections combined),

On a report by the 10th section of the Judicial Division,

In view of the application registered on 12 December 1994 by the secretariat of the Judicial Division of the *Conseil d'Etat*, filed by the Public Corporation of the Louvre Museum (*Etablissement Public du Musée du Louvre*), 34 quai du Louvre, 75008 Paris Cedex 01, represented by its Chairman, duly authorised for that purpose, the Public Corporation of the Louvre Museum requests the *Conseil d'Etat* to:

- 1) set aside the judgment of 8 March 1994 whereby the Paris Administrative Court, firstly, cancelled a decision taken by the museum's Board of Directors on 24 March 1993, requiring the payment of a mandatory reservation fee solely by groups whose visit is not organised by the museum itself, and, secondly, ordering it to pay the National Federation of Interpreter-Guides and others the sum of 1,500 francs each as irrecoverable expenses;
- 2) order forthwith a stay of execution of that judgment;
- 3) dismiss the first-instance application;
- 4) award it a sum of 6,000 francs as irrecoverable expenses, on the basis of section 75-I of the Act of 10 July 1991;

In view of the other evidence in the file;

In view of Act No. 91-647 of 10 July 1991, in particular section 75-I thereof;

In view of decree No. 92-1338 of 22 December 1992 establishing the Public Corporation of the Louvre Museum;

In view of the Administrative Courts and Administrative Appeal Courts Code;

In view of Order No. 45-1708 of 31 July 1945, decree No. 53-934 of 30 September 1953 and Act No. 87-1127 of 31 December 1987;

Having heard the following in a public hearing:

- a report by Mr Rousselle, *Maître des Requêtes* (a junior member of the *Conseil d'Etat*);
- submissions by Ms Denis-Linton, Government Commissioner;

Without there being any need to rule on the grounds of inadmissibility advanced by the respondents:

Whereas the Board of Directors of the Public Corporation of the Louvre Museum, in a decision dated 24 March 1993, taken pursuant to Article 17-4 of the decree of 22 December 1992, confirmed the price-scale approved on 22 October 1992 by the Board of Directors of the National Museums Association (*Réunion des Musées nationaux*), introducing mandatory reservation fees for so-called "free" groups, and decided that an exemption from such reservation fees would be granted solely to groups whose visit was organised by the museum itself;

Whereas, fixing different prices for the same service rendered, applicable to different categories of users of public services, requires, unless it is the necessary consequence of a law, that there be a significant difference in situation between the users concerned or that the measure be justified for reasons of public interest relating to the conditions of operation of the service;

Whereas, firstly, the services rendered to users in "free" groups cannot on the whole be considered to differ significantly from those received by users of the lecture tours organised by the Louvre museum under the agreement that it has signed with the National Museums Association, and therefore, although they constitute specific categories of visitors to whom the Louvre museum has paid particular attention in its cultural policy, users of the lecture tours service are not in a situation different from that of participants in "free" groups, who may be rendered comparable services;

Whereas, secondly, regard being had to the purpose of the service and its means of financing, there is no reason of public interest that would justify applying an exemption from the reservation fee solely to lecture tours conducted by the National Museums Association's lecturers;

Whereas, lastly, neither the fact that the Louvre museum bears the cost of running the lecture tours service that it organises, nor the deficit in that service's budget constitute sufficient legal ground for the price discrimination between "free" and other groups;

Whereas it follows from the above that the Public Corporation of the Louvre Museum ill-foundedly asserts that, in the judgment appealed against, the Paris Administrative Court wrongly cancelled the decision taken by the Board of Directors of the Louvre Museum on 24 March 1993, requiring the mandatory reservation fee to be paid solely by groups whose visit is not organised by the museum itself;

With regard to the submissions seeking application of section 75-I of the Act of 10 July 1991:

Whereas under section 75-I of the Act of 10 July 1991 the National Federation of Interpreter Guides, Ms Perran, Ms Dupeyrat and the Official Lecturers Association, who are not the losing parties, cannot be ordered to pay the Public Corporation of the Louvre Museum the sum that it has requested to defray its expenses not included in the costs;

Whereas, on the other hand, there is reason to apply those provisions and order the Public Corporation of the Louvre Museum to pay the National Federation of Interpreter Guides, Ms Perran, Ms Dupeyrat and the Official Lecturers Association the sum of 1,000 francs each for the expenses which they have incurred and which are not included in the costs;

DECIDES AS FOLLOWS:

Article 1: The application by the Public Corporation of the Louvre Museum is dismissed.

Article 2: The Public Corporation of the Louvre Museum is ordered to pay the National Federation of Interpreter Guides, Ms Perran, Ms Dupeyrat and the Official Lecturers Association the sum of 1,000 francs each.

Article 3: This decision shall be served on the Public Corporation of the Louvre Museum, the National Federation of Interpreter Guides, Ms Perran, Ms Dupeyrat, the Official Lecturers Association and the Minister for Culture.

Decision taken at the session of 31 January 1996 in which the following sat: Mr Vught, Deputy President of the Judicial Division; Mr Lavondès and Mr Costa, Section Presidents; Mr Magniny, Mr Latournerie, Mr Chabanol, Mr Daël, *Conseillers* (senior members) of the *Conseil d'Etat*, Ms Bechtel, *Maître des Requêtes*, and Mr Rousselle, *Maître des Requêtes* and rapporteur.

Read in a public hearing on 28 February 1996

President:
(signed) Mr Vught

Maître des Requêtes and rapporteur:
(signed) Mr Rousselle

Secretary:
(signed) Ms Coste

The Republic commands and orders the Minister for Culture, in as far as she is concerned, and any *huissier* (bailiff) required to take enforcement measures under the general law against the private parties to ensure that this decision is executed.

Copy certified true by the secretary:
(signature)

Written observations by the French Government on the admissibility and the merits of the complaint

(filed with the Secretariat on 22 December 1999)

On 30 August 1999 the National Union of Tourism Professions lodged a complaint with the European Committee of Social Rights resulting from the Additional Protocol to the European Social Charter providing for a system of collective complaints.

The union considers that the French government has breached the provisions set forth in:

- Part I of the revised Social Charter, under indents 1, 2 and 10, relating to the right to work and the conditions in which that right can be fairly asserted;
- Part II, Article 1, paragraphs 1, 2 and 4, and Article 10, paragraphs 1, 3a and 3b, relating to effective exercise of the right to work and the right to vocational training;
- Part V, Article E on non-discrimination in enjoyment of the rights guaranteed by the Charter.

The French government has the following observations on this complaint.

I. ADMISSIBILITY

The additional protocol to the European Social Charter, which establishes a system of collective complaints, provides that such complaints may be submitted to the European Committee of Social Rights by certain national or international organisations under the conditions set forth in Articles 1, 2 and 3.

The National Union of Tourism Professions can certainly be regarded as a representative national organisation of workers within the jurisdiction of the French State under Article 1 c) of the additional protocol to the Charter. However, the documents in the case-file do not show that Mr Christian Sterkers, who signed the complaint, has capacity to represent the union and, furthermore, has been duly authorised to lodge a complaint with the Committee of Social Rights on its behalf. For lack of such supporting documents, the Committee cannot but declare the complaint inadmissible as it stands.

II. THE MERITS OF THE COMPLAINT

In the alternative, should the Committee nonetheless find the complaint admissible, the French Government wishes to submit the following observations.

The complainant organisation alleges numerous breaches of the provisions of the revised European Social Charter in three main areas. Firstly, Mr Sterkers maintains that the way in which interpreter-guides and national lecturers holding the State diploma are treated constitutes a violation of their right to work freely. Secondly, he alleges that this treatment disregards their right to vocational training. Lastly, he argues that the authorities discriminate against these interpreter-guides and national lecturers, as compared with approved lecturers, with regard to their working conditions.

1) On the first point, the complainant organisation does not adduce any evidence that the right to work of members of the National Union of Tourism Professions has been infringed. The legislation applicable to interpreter-guides and lecturers holding the State diploma contains no prohibition or restriction on the exercise of their profession which might be deemed to impede them from freely carrying on the occupation they have chosen.

2) As to the second grievance, Mr Sterkers' allegation that interpreter-guides and national lecturers holding the State diploma are deprived of all training possibilities is clearly mistaken.

Training sessions are run by the "*Villes et Pays d'Art et d'Histoire*" network on behalf of the Ministry of Culture. These are of two kinds: "initial" training, open to all, for people preparing to sit the examination to qualify as an approved lecturer-guide; and "further" training, which takes the form of an in-house training course financed by the Ministry of Culture and Communication, to which admittance is consequently confined to approved lecturer-guides.

Although the in-house training course for approved guides, funded by the ministry, clearly cannot be opened to all guides and lecturers, who do not necessarily have any link with the ministry, it is possible for anyone who so wishes to follow the initial training and thus attain the status allowing access to the further training. It is therefore not true to say that interpreter-guides and lecturers holding the State diploma are deprived of all entitlement to training.

3) It is with regard to the last ground of complaint that the complainant organisation's arguments are most detailed. This concerns alleged discrimination against interpreter-guides and lecturers holding the State diploma. We have the following comments on this ground of complaint.

Mr Sterkers maintains that the way in which the Ministry of Culture and Communication organises guided tours engenders discrimination against interpreter-guides and national lecturers holding the State diploma as compared with approved lecturers.

In this connection, a distinction should be drawn between the various systems established. As regards the "*Villes et Pays d'Art et d'Histoire*" network, the local and regional authorities concerned become members of the network on signing an agreement with the Architecture and Heritage Directorate at the Ministry of Culture and Communication. Under this agreement they are required, inter alia, to employ personnel who have been granted approval after sitting an examination organised by

the two signatory public bodies. Anyone may sit the examination, provided that they hold at least one diploma or certificate proving that they have successfully completed a two-year course of higher education. Persons granted approval in respect of a given town or region of artistic or historical interest are more often than not recruited and remunerated, on a per-session basis, by a tourism office or an association to conduct guided tours pursuant to the terms of the agreement.

At all events, it should be pointed out that this system in no way constitutes a monopoly, since it remains possible for anyone, even persons who do not hold the approval in question, to serve as a guide to tourists in public areas. The Ministry of Culture and Communication therefore cannot be accused of applying discriminatory practices through its "*Villes et Pays d'Art et d'Histoire*" network.

As regards the National Fund for Historic Monuments and Sites (*Caisse nationale des Monuments Historiques et des Sites*), this body uses lecturers recruited after sitting a proficiency test, which is the requirement for granting approval to conduct lecture-tours of a given monument. This condition is imposed because of the need to ensure that the tour formats developed are in keeping with the monument's cultural strategy.

In addition, under their terms of employment reception and security staff may be required to conduct guided tours in monuments managed by the National Fund for Historic Monuments and Sites, which is responsible for enhancing the prestige of the monuments that it presents to the public.

Lastly, for reasons of security of property and persons, freedom to conduct tours may be restricted in certain parts of the monuments managed by the Fund.

As to the guided tours on offer in the national museums, it is correct that some areas are only accessible to visitors accompanied by personnel employed by the Ministry of Culture and Communication.

This restriction is also imposed for security reasons. The staff in question fulfil both a cultural and a security role in respect of these premises, with which they are completely familiar.

It should be said that since they mainly cater for school groups - unlike their colleagues not in the employ of the culture ministry - these cultural mediators help to fulfil the essential educational role entrusted to monuments and museums.

Persons wishing to reserve a guided tour may, as they see fit, contact a tourism organisation, a suitably qualified professional direct, or the relevant department of the museum or monument concerned.

Globally speaking, the staff employed by the Ministry of Culture and Communication to run guided tours in no way enjoy a monopoly. The differences in working conditions between approved and non-approved guides and lecturers - which remain small - can moreover be justified on grounds of either security or fulfilment of the special role assigned to certain public cultural establishments. This therefore in no

way amounts to discrimination, but is a minor difference in treatment for which there are objective reasons.

The government also wishes to point out that if unjustified differences in treatment between approved and non-approved lecturers, in particular in the rates charged by museums, were to come to light, the national courts would not fail to reprove the measures in question on account of their discriminatory nature, as can be seen from the decision of the *Conseil d'Etat* which the complainant organisation produces in support of its allegations (CE, 28 February 1996, *Etablissement public du Musée du Louvre*, application No. 163528).

Lastly, Mr Sterkers contends that Act No. 92-645 of 13 July 1992 and the regulatory instruments issued in application thereof, which specify the conditions of performance of activities relating to the organisation and sale of trips or holidays, are discriminatory. Under section 13 of the Act natural or legal persons holding a licence, approval or authorisation to organise and sell trips and holidays must solely use the services of qualified personnel to conduct tours of museums or monuments. The qualification required of these professional guides to museums and monuments is itself defined in decree No. 94-490 of 15 June 1994, issued pursuant to Act No. 92-645 of 13 July 1992, last amended by decree No. 99-296 of 15 April 1999.

A list of diplomas and certificates conferring entitlement to conduct guided tours has been drawn up jointly by the ministries of tourism, culture, education and the interior. It guarantees groups of visitors that the lecturers and guides hosting tours will be full-blown professionals.

Since the Order of 15 April 1999 stipulating the conditions of issuance and withdrawal of a professional card for persons qualified to conduct tours of museums or historic monuments, professionals can now be issued with a card and an identity badge bearing the logos of both the tourism ministry and the culture ministry.

The complainant organisation criticises the legislation for granting approved lecturers advantages which, it contends, should be the preserve of interpreter-guides and lecturers holding the State diploma, who allegedly stand out from the rest because of their specific skills. However, the legislation is in no way discriminatory, since it ensures that categories of personnel who all hold a specific vocational qualification are granted the same favourable treatment. Moreover, the complainant organisation entirely fails to show that approved lecturers do not offer sufficient guarantees of the vocational skills warranting the issuance of the professional card in question.

The argument that the particularly favourable treatment granted to approved lecturers in fact amounts to a form of reverse discrimination therefore cannot be accepted in the instant case.

Accordingly, Mr Sterkers' complaint can but be dismissed on the merits on all grounds.

* *
*

For all of the above reasons the government requests the Committee of Social Rights to deem that the complaint submitted on behalf of the European Federation of Employees in Public Services is inadmissible and, in the alternative, unfounded.

(signed)
Jean-François Dobelle
Deputy Director of Legal Affairs

Written observations by the *Syndicat national des Professions du tourisme* in response to the French Government's observations on the admissibility

(filed with the Secretariat on 1st February 2000)

Comments on the French Government's Observations concerning the complaint lodged with the European Committee of Social Rights by the *Syndicat national des Professions du tourisme*

I. ADMISSIBILITY OF THE COMPLAINT

On the strength of the official approval documents, which were produced as early as 14 September 1999, Mr Jean-François Dobelle, Deputy Director of Legal Affairs, recognises the representative nature of the *Syndicat national des Professions du tourisme/CFE-CGC*, in accordance with the Labour Code. He nonetheless challenges Mr Sterkers' capacity and authority to act on behalf of the union. He fails to advance any argument in support of this challenge, which remains arbitrary and unfounded.

What is more, Mr Dobelle makes no mention of Mr Sterkers' status as Vice-President for interpreter-guides and lecturers. In this capacity, he is duly authorised to lodge a collective complaint on the union's behalf concerning these professions, which he represents and for the defence of whose special interests he is responsible by virtue of his office. See, in particular, Article 13 paragraph 4 of the union's statute: "The Vice-Presidents shall represent ...", as well as the reference in Article 15, paragraph 1 to the union's IIIrd Section. See also the attestation by Ms C.V. Brouillard, President of the SNPT/CFE-CGC, of 26 January 2000 (documents enclosed).

II. THE MERITS OF THE COMPLAINT

The submissions contained in part II do not concern the admissibility of the complaint, on which we were asked for our observations, and the SNPT/CFE-CGC reserves the right to respond to those submissions in due course.

Moreover, contrary to what Mr Dobelle alleges, Mr Sterkers has no connection with the European Federation of Employees in Public Services and is not authorised to act on its behalf.

28 *Observations of the SNPT on admissibility*

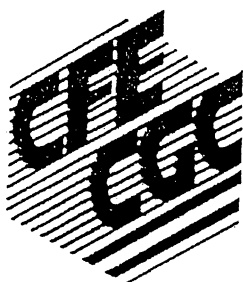
In conclusion, Mr Sterkers, Vice-President of the SNPT/CFE-CGC, acting on its behalf, requests that the complaint be declared admissible and the procedure continued.

(signed)

Christian Sterkers

Vice-President for Interpreter-Guides and Lecturers

(in French only)

SYNDICAT NATIONAL
DES PROFESSIONS DU TOURISME

20, rue Marx Dormoy - 75018 PARIS. ☎ / Fax 01 30 76 65 98


A T T E S T A T I O N

Je, soussignée, Catherine Virginie BROUILLARD, présidente,

Confirme par la présente que Monsieur Christian STERKERS, vice-président pour les Guides-Interprètes et les Conférenciers, est bien qualifié et habilité par notre organisation pour agir en son nom auprès du Conseil de l'Europe, au titre de la Charte Sociale Européenne pour les questions relatives aux professions qu'il représente.

Fait à Paris,

le 26 Janvier 2000


SYNDICAT NATIONAL DES
PROFESSIONS DU TOURISME
20, Rue Marx Dormoy
75018 PARIS

« Il n'est pas nécessaire d'espérer pour entreprendre ni de réussir pour persévérer ». (Frédéric-Guillaume Ier de Prusse)

30 Observations of the SNPT on admissibility

Syndicat National du Tourisme C.G.C.
Siège Social 30, rue de Gramont
75002 PARIS

STATUTS

TITRE I

Article 1 : Entre les soussignés :

Chambre Corporative des Personnels du Tourisme d'une part
représenté par M. CHOUNAVELLE

et le Syndicat des Cadres et Maitrise des Agences de Voyages et des
Offices de Tourisme d'autre part représenté par Monsieur GUYOT,

et leurs adhérents respectifs,

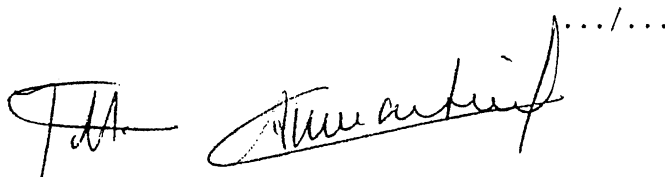
Il est institué un Syndicat régi par le Titre Ier du Livre IV du Code
du Travail, affilié à la F.N.C.T.T. - C.G.C. et dénommé : SYNDICAT
NATIONAL DU TOURISME (S.N.T. - C.G.C.)

Article 2 : Le siège social est situé 30, rue de Gramont - 75002 PARIS. Il
peut être transféré en tout autre lieu à Paris par décision du
Bureau Syndical ou dans une autre ville par décision de l'Assemblée
Générale.

Article 3 : Le Syndicat a pour objet :

- 1-) L'étude et la défense des droits ainsi que des intérêts matériels
ou moraux liés à la profession, tant collectifs qu'individuels,
des membres du Syndicat
- 2-) d'améliorer les relations économiques, sociales et culturelles
à l'intérieur des professions concernées
- 3-) de représenter ses adhérents devant toute juridiction compétente
et auprès de toute instance officielle ou autre
- 4-) de resserrer les liens de confraternité entre les membres
des professions concernées.

Article 4 : Le Syndicat est créé pour une durée indéterminée.

...../.....


TITRE II : ADMISSION - RADIATION - DEMISSION

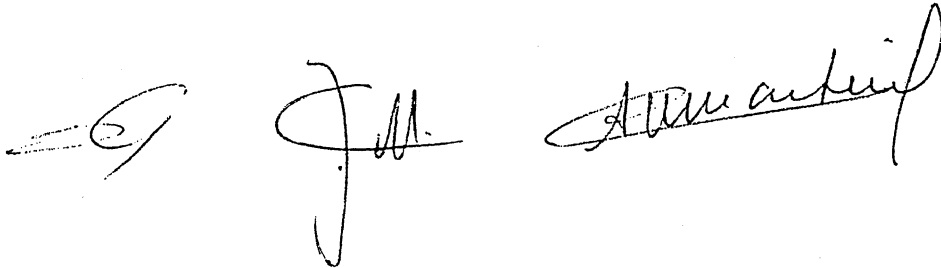
Article 5 : Peuvent adhérer au Syndicat tous salariés classés ou assimilés : agent de maîtrise, technicien, cadre, guide accompagnateur, guide interprète, représentant local, etc... employés par les agences de voyage, les offices de tourisme, les syndicats d'initiative, les associations touristiques et autres organismes officiels relevant de l'activité du tourisme. Peuvent également adhérer les retraités et les personnes physiques provisoirement sans emploi et dont le dernier emploi relevait de l'activité du Tourisme.

Article 6 : Les conditions d'admission sont les suivantes :

- . adhérer aux présents statuts
- . être admis par le Bureau Syndical (sous réserve d'approbation définitive par les sections nationales concernées)
- . s'acquitter de ses cotisations .

Article 7 : Toute condamnation entachant l'honorabilité, tout agissement reconnu contraire à la dignité de la profession ou nuisible aux intérêts du Syndicat ainsi que le défaut de paiement des cotisations peuvent être des motifs de radiation, laquelle est prononcée par le Conseil Syndical à la majorité des deux tiers des membres présents ou représentés.

Article 8 : Conformément aux dispositions légales, tout membre peut se retirer à tout instant du Syndicat, sans préjudice du droit pour le Syndicat de réclamer la cotisation afférente aux six mois qui suivent le retrait d'adhésion.



TITRE III : EXERCICE SOCIAL ET COTISATION

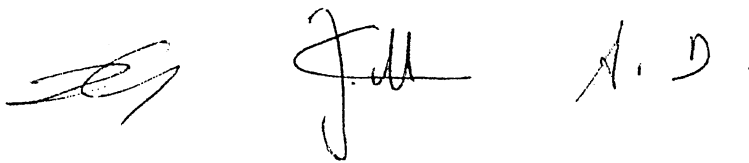
Article 9 : La cotisation est dûe au titre de l'exercice civil.

Article 10 : Le taux et les modalités de paiement de la cotisation sont fixés pour chaque exercice par l'Assemblée Générale ou par délégation le Conseil Syndical, sur proposition du Bureau Syndical, ce pour chaque catégorie concernée.

Le recouvrement des cotisations des membres du Syndicat se fait à la diligence du Trésorier.

Article 11 : La répartition budgétaire et les engagements de dépenses inhérentes aux besoins spécifiques des sections nationales sont précisées au règlement intérieur.

Article 12 : Le Syndicat communique à la Fédération la liste de ses adhérents en indiquant leurs responsabilités syndicales tant au niveau du Syndicat que de l'entreprise ainsi que leur répartition par département.



TITRE IV : DIRECTION ET ADMINISTRATION

Article 13 : L'instance souveraine du Syndicat est l'Assemblée Générale, chargée de promouvoir, orienter, contrôler l'action du Syndicat, ainsi que de mettre en place l'instance nécessaire à son fonctionnement.

Celle-ci, constituée par un Conseil Syndical, est composée de six membres au minimum et de douze membres au maximum parmi lesquels est désigné un Bureau comprenant :

- . un Président
- . quatre Vice-Présidents
- . un Trésorier

Les Vice-Présidents représentent les sections nationales prévues à l'article 15 ci-dessous, auxquelles ils doivent appartenir.

L'Assemblée Générale peut augmenter le nombre de Vice-Présidents chaque fois qu'une nouvelle section nationale est constituée, et peut adjoindre au Bureau Syndical autant de chargés de mission qu'elle le juge utile.

Nul ne peut être membre du Conseil Syndical s'il n'est pas majeur, s'il ne jouit pas de ses droits civiques et civils suivant l'article L 411-4 du Livre IV , Titre Ier du Code du Travail, et s'il n'est pas à jour de ses cotisations.

Les membres du Conseil Syndical sont élus pour deux ans. A la fin de leur mandat, ils peuvent à nouveau faire acte de candidature. Leurs fonctions sont bénévoles.

Le Conseil Syndical ne peut valablement délibérer que si la moitié de ses membres est présente ou représentée. Il statue à la majorité simple. En cas d'égalité des voix, celle du Président est prépondérante.

Le Conseil Syndical se réunit en principe quatre fois par an.

Article 14 : Le Bureau Syndical accomplit les actes nécessaires au fonctionnement du Syndicat. Il se réunit aussi souvent que l'intérêt l'exige. Il désigne les délégués syndicaux dans les entreprises, sur proposition des sections d'entreprise.



TITRE V : SECTIONS NATIONALES

Article 15 : Afin de préserver les intérêts particuliers des différentes catégories de statuts professionnels que représente le Syndicat, sont constituées les sections nationales suivantes, auxquelles sont rattachés automatiquement les adhérents en fonction de leur qualité :

Section I

regroupant les salariés sédentaires des agences de voyage, voyagistes, associations touristiques et organismes de tourisme social et familial

Section II

regroupant les guides accompagnateurs, agents d'accueil, transféristes et résidents locaux

Section III

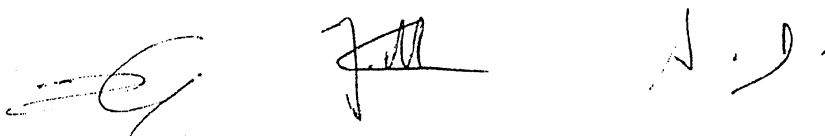
regroupant les guides interprètes et conférenciers

Section IV

regroupant les salariés sédentaires des offices de tourisme et syndicats d'initiative.

Il peut être décidé par l'Assemblée Générale sur proposition du conseil Syndical, de créer toute autre section nationale, chaque fois que la nécessité le justifie.

Article 16 : Un règlement intérieur, établi par le Conseil Syndical sur proposition du Bureau syndical et soumis à l'Assemblée Générale, précise les attributions des différents membres du Bureau, du Conseil Syndical et des sections nationales ainsi que les modalités de la gestion administrative.



TITRE VI : ASSEMBLEE GENERALE

Article 17 : Le Conseil Syndical convoque l'Assemblée Générale tous les deux ans, au cours du premier semestre.

L'Assemblée Générale est constituée par les membres du Syndicat à jour de cotisation, convoqués individuellement par simple lettre ou tout autre moyen par le Bureau Syndical au moins vingt et un jours avant le jour de la tenue de l'Assemblée. L'ordre du jour et un pouvoir sont joints à la convocation.

L'Assemblée Générale se réunit pour :

- . délibérer sur le rapport moral et le rapport financier de l'exercice précédent
- . élire le Conseil Syndical à l'échéance des mandats
- . élire les contrôleurs financiers
- . évoquer toute question soumise à elle par le Bureau Syndical ou par un de ses membres, selon un ordre du jour préalablement établi.

ASSEMBLEE GENERALE EXTRAORDINAIRE

Article 18 : Une Assemblée Générale extraordinaire peut être convoquée dans le minimum de temps et par tous les moyens :

- soit sur décision du Bureau Syndical
- soit sur la demande de 20 % de l'ensemble des membres, représentant au moins trois sections nationales

L'ordre du jour et un pouvoir sont joints à la convocation.

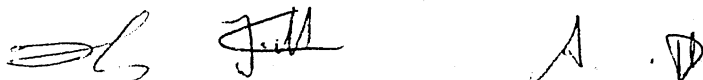
Article 19 : Les Assemblées Générales Ordinaire et Extraordinaire statuent à la majorité relative et chaque membre dispose de sa voix et de celles pour lesquelles il a reçu pouvoir écrit avec un maximum de six.

Elles sont présidées de droit par le Président du Syndicat ou par tout membre du Bureau Syndical désigné par ce dernier.

Article 20 : Les modifications aux présents statuts ne pourront être proposés que par l'intermédiaire du Conseil Syndical à l'Assemblée Générale Extraordinaire qui statuera.

Article 21 : Le patrimoine du Syndicat est formé :

- . des cotisations de ses membres
- . des dons, libéralités et subventions qui peuvent lui être accordés après acceptation par le Conseil Syndical



TITRE VII DISSOLUTION

Article 22 : La dissolution du Syndicat doit être votée par l'Assemblée Générale Extraordinaire à la majorité des deux tiers des présents ou représentés.

En cas de dissolution, pour quelque cause que ce soit, le patrimoine syndical sera liquidé conformément à la loi.

La dévolution des biens se fait sur vote de l'Assemblée Générale Extraordinaire qui en fixera les modalités.

S'il y a dissolution du Syndicat ou scission, les fonds doivent être répartis équitablement.

Certifié conforme
le 9 février 1987

J. M. C. M.

C. Guyot

Mr Guyot.

Mr CHOUNAVELLE

A. Dumartin
yelle A. DUMARTIN

Decision on admissibility

Decision on admissibility of Complaint No. 6/1999 by the *Syndicat national des Professions du tourisme* against France

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 168th session attended by:

| | |
|--------|--------------------------------------|
| Messrs | Matti MIKKOLA, President |
| | Rolf BIRK, Vice-President |
| | Stein EVJU, Vice-President |
| Ms | Suzanne GRÉVISSE, General Rapporteur |
| Mr. | Alfredo BRUTO DA COSTA |
| Ms | Micheline JAMOULLE |
| Messrs | Nikitas ALIPRANTIS |
| | Tekin AKILLIOĞLU |

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

Having regard to the complaint registered as number 6/1999, lodged on 30 August 1999 by the *Syndicat national des Professions du tourisme*, member of the French Confederation of non-manual employees – *Confédération générale des cadres* (CFE-CGC) represented by its Vice-President for interpreter guides (*guides interprètes*) and lecturers (*conférenciers*), Mr Christian Sterkers, requesting that the Committee find that France fails to apply in a satisfactory manner Article 1 paras. 1, 2 and 4 as well as Article 10 paras. 1, 3a and b (part II) in combination with Article E (part V) of the Revised European Social Charter;

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 22 December 1999 by the French Government represented by the Director of Legal Affairs of the Ministry of Foreign Affairs;

Having regard to the observations in reply submitted on 31 January 2000 by the *Syndicat national des Professions du tourisme*;

Having regard to the Revised European Social Charter and in particular Article 1 paras. 1, 2 and 4, Article 10 paras. 1, 3a and b (part II) and Article E (part V) which read as follows:

40 *Decision on admissibility*

Part II

Article 1 – The right to work

“With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
- 2 *to protect effectively the right of the worker to earn his living in an occupation freely entered upon;*
[...]
- 4 to provide or promote appropriate vocational guidance, training and rehabilitation.”

Article 10 – The right to vocational training

“With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

- 1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers’ and workers’ organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
[...]
- 3 to provide or promote, as necessary:
 - a adequate and readily available training facilities for adult workers;
 - b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
[...]

Part V

Article E – Non-discrimination

“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.”

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Having regard to the Rules of Procedure adopted by the Committee on 9 September 1999 during its 163rd session;

After having deliberated on 10 February 2000;

Delivers the following decision, adopted on the above date:

1. The *Syndicat national des Professions du tourisme* states alleges that France does not comply with Article 1 paras. 1, 2 and 4 and Article 10 paras. 1, 3a and b (part II) in combination with Article E (part V) of the Revised European Social Charter as all the bodies within the remit of the Ministry for Culture discriminate between interpreter guides and national lecturers with a state diploma (*conférenciers*

nationaux diplômés d'Etat) on the one hand and approved lecturers (*conférenciers agréés*) on the other hand, and that this discrimination results in a denial of the right to work and to vocational training for interpreter guides and national lecturers with a state diploma. The complaint is based *inter alia* on Act No. 92-645 of 13 July 1992 and its orders and implementing regulations.

2. The French Government does not contest that the complaint respects the conditions for admissibility laid down in Articles 1 para. c and 4 of the Additional Protocol. It observes that under the protocol the *Syndicat national des Professions du tourisme* is an organisation entitled to lodge complaints.

3. However, the French Government maintains that the complaint is inadmissible as it does not comply with Rule 20 of its Rules of Procedure is so far as the person signing the complaint has not shown that he is empowered to represent the *Syndicat national des Professions du tourisme* and to lodge a complaint on its behalf.

4. In its observations in reply, the *Syndicat national des Professions du tourisme* contests the French Government's objection to admissibility. It underlines that the complaint has been signed by its Vice-President for interpreter guides and lecturers who is a person empowered to act on behalf of the trade union for the professions he represents and for the defence of whose particular interests he is responsible. This capacity derives from the statutes of the union and is confirmed in a certificate issued by its President.

5. The Committee notes that, in accordance with Article 4 of the Protocol, which was ratified by France on 7 May 1999 and entered into force for this State on 1 July 1999, the complaint has been lodged in writing. It relates to Article 1 paras. 1, 2 and 4 and Article 10 paras. 1, 3a and b, provisions accepted by France on 7 May 1999 upon its ratification of the Revised Charter. The complaint alleges that interpreter guides and national lecturers with a state diploma are the victims of discrimination resulting in a denial of the right to work and to vocational training.

6. It further notes that the *Syndicat national des Professions du tourisme* is a trade union within the French jurisdiction in the meaning of Article 1 para. c of the Protocol. As regards the representative character of the trade union as referred to in Article 1 para. c, the Committee underlines that the representativity of national trade unions is an autonomous concept, beyond the ambit of national considerations as well the domestic collective labour relations context.

7. Having made an overall assessment of the documents in the file, the Committee considers that the *Syndicat national des Professions du tourisme* is a representative trade union for the purposes of the Protocol. It notes, moreover, that its representative character has not been contested by the Government.

8. The Committee considers the issue of observance of Rule 20 of its Rules of Procedure, which is contested by the Government.

9. The Committee observes, upon examination of its statutes, that the *Syndicat national des Professions du tourisme* is an interprofessional trade union organised into four sections, each comprising certain tourism professions. The purpose of this

structure is to share responsibility for the defence of the particular interests of the different professions between the sections. Each section is represented by the Vice-President appointed for the professions concerned. The Committee notes that in the present case, the complaint lodged on behalf of the *Syndicat national des Professions du tourisme* is signed by the Vice-President appointed for the professions of interpreter guides and lecturers, who, in accordance with its statutes, is responsible for representing these professions.

10. The Committee concludes that in view of the particular structure of the trade union, the Vice-President for interpreter guides and lecturers is, within the meaning of Rule 20 of its Rules of Procedure, a person empowered to represent the trade union for the said professions, whose interests they defend. This capacity is confirmed in a certificate issued by the trade union's president.

11. Consequently, the Committee considers that the French Government's objection to admissibility cannot be sustained.

12. For these reasons, the Committee, on the basis of the report presented by Mr Nikitas ALIPRANTIS, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE.

In application of Article 7 para. 1 of the Protocol, requests the Executive Secretary to inform the Contracting Parties to the Charter that the present complaint is admissible.

Invites the French Government to submit in writing by 15 March 2000 all further relevant explanations or information.

Invites the Contracting Parties to the Protocol to communicate to it by the same date any observations which they wish to submit.

Invites the *Syndicat national des Professions du tourisme* to submit in writing by a deadline which it shall determine all relevant explanations or information in response to the observations of the French Government.

In application of Article 7 para. 2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27 para. 2 of the Charter and to invite them to submit their observations by 15 March 2000.



Nikitas ALIPRANTIS
Rapporteur



Matti MIKKOLA
President



Régis BRILLAT
Executive Secretary

Observations of the European Trade Union Confederation (ETUC)

(filed with the Secretariat on 25 April 2000)

Before submitting its observations, the ETUC would like to express its congratulations to the government of France for not only ratifying the (Revised) Social Charter but also the Additional Protocol providing for a system of collective complaints. In this way, the government contributes in re-enforcing the Social Charter and the fundamental social rights as well as its effectiveness by the entry into force of the Additional Protocol.

1. The role of the ETUC

The international trade union movement has always been active in the system of control of international working standards. It is in this perspective that the ETUC contributes a large importance to the Social Charter in general and its system of control in particular. Hereby the ETUC wants to contribute so that the Social Charter is a lively instrument which re-enforces fundamental social rights in the daily live. The ETUC therefore wants to ensure that the interpretation and the application of the Charter are efficient.

The Charter is inspired on the experiences emerging from the ILO. In the whole system of control of the Charter, the participation of the ETUC is important and this is well shown by Article 27 of the Charter.

The procedures of complaints that are developed in the framework of the ILO are again been at the basis of the improvements of the control mechanisms for the Charter. Here we see how the trade unions do not only use the complaints before the Freedom of Association Committee, but also the possibilities of complaints as foreseen article 24 and 25 of the Constitution of the ILO. The Collective Complaints protocol transposes this trade union participation.

Already in the beginning of the "relaunch of the Social Charter", dating from the beginning of the nineteen eighties, the "Final Resolution" of the Governmental Conference of the Council of Europe on the Charter (Turin, 21-22 October 1991) has clearly expressed the importance of the largest possible participation of the social partners.

The Preamble of the Collective Complaints Protocol expresses also clearly that the collective complaints procedure also re-enforces the participation of social partners and non-governmental organisations.

Finally, the Protocol itself shows in its Article 7 para. 2 how the procedure is re-enforced by the participation of the ETUC whereby the explanatory report underlines the privileged role of the international employers and workers organisations in the control mechanism foreseen by the Charter by giving them the possibility to submit observations in relation to the collective complaints introduced by other organisations.

2. On the content of the complaint

Regarding the alleged violation of article 1, para. 1, 2 and 4 on the right to work, the ETUC tend to follow the argumentation of the French government in stating that the applicant has not sufficiently argued how the right to work has been violated. And this especially taken into account that, according to our own information sources, the access to the national musea is open to all guides, public servants or private persons. We therefor recommend that the applicant would submit more clarifying information on this issue to the Committee.

Regarding the alleged violation of article 10 para.1, 3a and b on the right to vocational training, the ETUC is convinced by the French governments argumentation that there is no discrimination at least not for what concerns the initial vocational training which is open to everybody. The selection criteria put forward for following the advanced vocational training can be regarded as discriminatory but on the other hand can be accepted by the fact that these courses are organised and financed by the Ministry of Culture and communication which to our point of view allows them to put forward selection criteria regarding the persons who can attend these courses. Besides it is apparently very clear in the circles of guides that these courses are indeed internal courses.

Regarding the third claim, the violation of the non-discrimination principle, the ETUC is convinced and this follows from the different documents which have been submitted to us that there is indeed a discrimination. However according to our sources this discrimination is not only the result of reasons of security as explained by the French government, but also lies in the different statute of the two groups of guides. The one group has a statute of public servant while the other group fall under private law. The difference and thus the discrimination lies therefore in the fact that the public servant guides often perform free of charge tours for groups of children and elderly, there where the private guides only perform profitable tours irrespective of the composition of their groups. So to our information the main reason for the differences lies also in the contradictory objectives of the public and private sector. Since the information is thus not completely clear we recommend that the French government would submit more details on this aspect, including the exact conditions on the refusal of access to certain areas in the monuments for security reasons.

Conclusion:

The ETUC thus recommends:

- That the applicant submits more information on how it believes the right to work is in concrete violated
- That the French government submits more information on the conditions for the refusal of access to certain areas to private guides for reasons of security as well as information on whether it is indeed so that the difference also result from the fact whether the guides offer tours free of charge to specific groups or not.

This information could be provided during a hearing organised by the Council of Europe.

We hereby hope that based on our reflections, together with those already submitted to you by the applicant and the French government, that you will be able to come to a suitable judgements in line with the principles protected by the (Revised) Social Charter, principles which are with a never-ending effort defended by the ETUC.

Yours sincerely

Observations of the *Syndicat national des Professions du tourisme* (SNPT) in response to the French Government's observations on the merits of the complaint

(filed with the Secretariat on 3 May 2000)

These observations - as such - follow the layout of the document prepared by Mr Jean-François Dobelle, Deputy Director of Legal Affairs, which is used solely as a working document. We in no way consider or acknowledge that this document qualifies as observations.

Our observations do not systematically answer Mr Dobelle's arguments concerning the statements that he ascribes to Mr Sterkers, which do not necessarily correspond to the facts set forth in the collective complaint file, which remains our reference document, supplemented by these observations and the documents appended hereto.

It should nonetheless be said that the discrimination exercised in breach of the Charter against national lecturers and interpreter-guides holding the State diploma concerns all of the issues raised - the right to work, training, access to sites and legislation - and that these issues are linked. They constitute a system.

Lecturers approved by a body related to the Ministry of Culture are normally referred to below as "approved lecturers (lecturer-guides)". The expression "national lecturers and interpreter-guides (holding the State diploma)" encompasses national lecturers, national interpreter-guides, permanent auxiliary interpreter-guides, regional interpreter-guides and local interpreter-guides.

The complainant organisation alleges numerous breaches of the provisions of the revised European Social Charter in three main areas. Firstly, Mr Sterkers maintains that the way in which interpreter-guides and national lecturers holding the State diploma are treated constitutes a violation of their right to work freely. Secondly, he alleges that this treatment disregards their right to vocational training. Lastly, he argues that the authorities discriminate against these interpreter-guides and national lecturers, as compared with approved lecturers, with regard to their working conditions.

With regard to the first point, Mr Dobelle states:

1) On the first point, the complainant organisation does not adduce any evidence that the right to work of members of the National Union of Tourism Professions has been infringed. The legislation applicable to interpreter-guides and lecturers holding the State diploma contains no prohibition or restriction on the exercise of their profession which might be deemed to impede them from freely carrying on the occupation they have chosen.

Mr Dobelle disregards trade union law, which stipulates that a union represents all the professions coming within its ambit under its statute and all members of those professions. Furthermore, membership of a union is a confidential matter. In addition, as our main submission we wish to point out that what is under consideration here is a collective complaint lodged by a representative national organisation in accordance with the European Social Charter, of which the additional protocol (Article 1) is likewise disregarded by Mr Dobelle.

As to the legislation:

a) Act No. 92-645 of 13 July 1992 specifying the conditions of performance of activities relating to the organisation and sale of trips or holidays

Section 13. The fact that the regulations governing the categories of personnel qualified to conduct tours in museums and historic monuments are attached to a law stipulating the conditions of performance of activities relating to the organisation and sale of trips and holidays, with which they have a merely incidental link, makes them ambiguous in scope and detracts from their clarity, which is a principle of law.

Section 3 of the Act excludes from its scope the State (which is responsible for enforcing it), local and regional authorities, their public administrative bodies (such as the CNMHS (National Fund for Historic Monuments and Sites), but not commercial entities such as the RMN (National Museums Association), the Louvre Museum, the castle of Versailles, the Pompidou Centre and a number of tourism offices, which are public industrial or commercial corporations) and certain other bodies, under conditions which do not result in a ban on distortion of competition.

And yet it is quite obvious that the services rendered by persons qualified to conduct guided tours are competitive in nature (including where organised by the CNMHS). This situation leads to a great deal of unfair competition, a cause of breaches of the rights guaranteed by the Charter (document No. 4).

We have high hopes of a genuine Tourism Code, which would be capable of effectively safeguarding the rights of all qualified personnel.

We greatly regret that the present law unreasonably and absurdly confines the qualification to conduct guided tours to museums and historic monuments alone, where interpreter-guides and national lecturers suffer the discriminatory practices of the Ministry of Culture complained of here. We would like it to be swiftly extended to all guided tour activities, in strict compliance with decision C-154/89 concerning tourist guides handed down by the Court of Justice of the European Communities on 26 February 1991. (Documents A, B, C, No. 1)

(The letters and numbers refer to the list of enclosures set out below).

b) Decree No. 94-490 of 15 June 1994, amended on 15 April 1999.

Heritage interpreters, lecturer-guides and lecturers of the RMN and CNMHS have been included unfairly in the scope of this decree, while retaining the discriminatory advantages complained of here (in particular in matters of recruitment), which they are granted to the detriment of interpreter-guides and national lecturers (Article 85).

We are very surprised that no provision has been made for a joint examination to be sat by lecturer-guides and regional interpreter-guides, whereas the regional qualification obtained by the latter on successfully sitting an examination has been granted unduly to the former; we are also surprised that the lecturer-guides' (illegal) monopoly on recruitment by members of the *Villes et Pays d'Art et d'Histoire* network remains unchallenged. (Amended Article 94, 6th paragraph).

This being the case, we wish to voice express reservations as to the conformity with the requirements of the Charter of the examination for VPAH lecturer-guides, provided for under the same decree (amended Article 94, 5th paragraph). At the same time, allowing those lecturer-guides to sit the examination for regional interpreter-guides is clearly superfluous and gives the impression of a symmetry which does not exist (amended Article 94, 4th paragraph).

And what of other interpreter-guides and national lecturers who also wish to be able to assert their right to work and to employment by the network's members? They are not even taken into consideration. (Documents Nos. 2 and 2a)

c) Order of 15 April 1999, Article 3.1, 3rd, 4th and 5th indents; Appendix 1 (professional card) and 2 (professional identity badge)

This order enables prefects to issue the national lecturers' professional card to persons who do not hold this vocational qualification.

The terms "vocational qualification" (Appendix 1) and "qualification" (Appendix 2) are used unlawfully where this card and this identity badge are issued to the persons who have not qualified as national lecturers mentioned in the above indents of Article 3.1.

Persons who cannot prove that they hold this qualification in accordance with the regulations and who are in possession of and use such a card or make reference to the title "national lecturer" appearing on it might be considered to have committed the offence of handling or of illegal use of title.

Such conduct in itself constitutes a specific form of unfair competition vis-à-vis genuine national lecturers on account, in particular, of the discriminatory advantages conferred on approved lecturers, which are complained of here, and of the confusion between the occupations of national lecturer and approved lecturer which the card sustains.

Issuing national lecturers' cards to persons who do not hold that qualification is illegal and must be stopped. Cards already awarded in such circumstances must be withdrawn, cancelled and destroyed, and the regulations must be brought into line with the law.

The same applies to the identity badge issued along with the card, wearing of which is compulsory. A person who does not hold the qualification appearing on it and who nonetheless wears the card de facto commits the offence of use of false title, at the very least.

(Document No. 3)

d) Value Added Tax

Services rendered by national lecturers and interpreter-guides holding the State diploma are subject to VAT at a rate of 20.6% (19.6%), whereas those rendered by approved lecturers are not taxable.

This discrimination causes the former considerable harm, depriving them of their right to employment. (See the file which we sent to the President of the European Commission on 5 April 2000 - Document No. 5).

e) Rules applied by bodies linked to the Ministry of Culture in various respects

Under the "*Villes et Pays d'Art et d'Histoire*" agreement (Article 5), which the Ministry of Culture requires local authorities wishing to use this label to sign, the municipalities concerned are prohibited from recruiting tour guides other than ministry (Heritage Directorate or Architecture and Heritage Directorate) approved lecturer-guides.

Similarly, the bodies coming under either the CNMHS or the RMN see fit to grant the right to employment and to work solely to personnel whom they have themselves approved and debar national lecturers and interpreter-guides, who are nonetheless suitably qualified, from recruitment. (Documents Nos. 6, 7, 8, 9, 10, 11 and 12)

2) *As to the second grievance, Mr Sterkers' allegation that interpreter-guides and national lecturers holding the State diploma are deprived of all training possibilities is clearly mistaken.*

Training sessions are run by the "Villes et Pays d'Art et d'Histoire" network on behalf of the Ministry of Culture. These are of two kinds: "initial" training, open to all, for people preparing to sit the examination to qualify as an approved lecturer-guide; and "further" training, which takes the form of an in-house training course financed by the Ministry of Culture and Communication, to which admittance is consequently confined to approved lecturer-guides.

In the field of training Mr Sterkers only takes into consideration further training, which is an essential part of the training on offer.

The national and auxiliary interpreter-guides and national lecturers who cover all of national territory and the other categories of personnel qualified to exercise their occupation in authorised tourist areas are not concerned by the "initial training", since they are already qualified to conduct guided tours of sites concerned by the VPAH network approval or any other approval mentioned here.

With regard to the in-house training ("further training"; see Article 5 of the VPAH agreement), Mr Dobelle himself acknowledges that these properly qualified individuals are excluded from the course on a discriminatory basis, and from the jobs that go with it (document No. 7).

Let us take the example of the training course held on 17 March 2000 by the Regional Heritage Institute in Brittany, which was funded by the regional Directorate for Cultural Action and was intended for lecturer-guides of the "*Villes d'art et*

d'histoire" network. The course description states "This session is open, by priority, to lecturer-guides but, depending on the availability of places, enrolment applications from other guides will be accepted." The document later specifies: "Enrolment fees: Lecturer-guides of the "Villes d'art et d'histoire" network: free of charge; other guides: FRF 1,290".

(Document No. 13)

3) *It is with regard to the last ground of complaint that the complainant organisation's arguments are most detailed. This concerns alleged discrimination against interpreter-guides and lecturers holding the State diploma. We have the following comments on this ground of complaint.*

Mr Sterkers maintains that the way in which the Ministry of Culture and Communication organises guided tours engenders discrimination against interpreter-guides and national lecturers holding the State diploma as compared with approved lecturers.

In this connection, a distinction should be drawn between the various systems established. As regards the "Villes et Pays d'Art et d'Histoire" network, the local and regional authorities concerned become members of the network on signing an agreement with the Architecture and Heritage Directorate at the Ministry of Culture and Communication. Under this agreement they are required, inter alia, to employ staff who have been granted approval after sitting an examination organised by the two signatory public bodies. Anyone may sit the examination, provided that they hold at least one diploma or certificate proving that they have successfully completed a two-year course of higher education. Persons granted approval in respect of a given town or region of artistic or historical interest are more often than not recruited and remunerated, on a per-session basis, by a tourism office or an association to conduct guided tours pursuant to the terms of the agreement.

Mr Dobelle acknowledges that the VPAH agreement, whereby the signatories undertake to recruit only VPAH approved personnel, is discriminatory in nature.

He also recognises that the members of personnel in question are hired not by the signatories, but by the tourism office (*office de tourisme*) or tourist information office (*syndicat d'initiative*) of the place concerned, a tourist organisation which is not bound by the agreement.

However, the pressure brought to bear on the local tourist organisation because of the risk that the signatory local authority may lose both the right to use this label - for which it has applied - and the related advantages causes that organisation to recruit only VPAH approved personnel - as Mr Dobelle points out - to the detriment of other persons qualified to conduct guided tours.

We do not know where Mr Dobelle obtained his information on the examination to be sat by VPAH lecturer-guides, which contradicts what he says in the second paragraph of section 2. Nor does it tally with our own information (see documents Nos. 7 and 8). Whatever the case may be, approval of VPAH lecturer-guides is arbitrary where the examination provided for in the fifth paragraph of Article 94 of the decree of 15 June 1994, as amended, is not held. In this respect, it should be

recalled that we have expressed advance reservations concerning the examination's conformity with protection of the rights guaranteed by the Charter.

At all events, it should be pointed out that this system in no way constitutes a monopoly, since it remains possible for anyone, even persons who do not hold the approval in question, to serve as a guide to tourists in public areas. The Ministry of Culture and Communication therefore cannot be accused of applying discriminatory practices through its "Villes et Pays d'Art et d'Histoire" network.

The discrimination practised on recruitment is all the more serious in that tourism offices and tourist information offices are often the only local employer and the prime point of contact for visitors and travel agencies. These organisations often also hold the keys to museums and monuments, where they arrange tours conducted by their own approved personnel.

It should be noted that, by denying them the right to employment, the Ministry of Culture deprives interpreter-guides and national lecturers of the right to work in all of the bodies related to it (document 6). Their skills are not even taken into account as criteria allowing access to examinations leading to a qualification which they already hold! (Documents Nos. 8, 9, 10 and 11).

As Mr Dobelle points out, there are no longer any regulations governing the qualification to conduct guided tours outside museums and historic monuments, and this brings considerable pressure to bear on the qualified personnel since they are no longer guaranteed that they will be able to exercise their right to work, to employment and to fair remuneration (documents A, B and C).

As regards the National Fund for Historic Monuments and Sites (Caisse nationale des Monuments Historiques et des Sites), this body uses lecturers recruited after having sat a proficiency test, which is the requirement for granting approval to conduct lecture-tours of a given monument. This condition is imposed because of the need to ensure that the tour formats developed are in keeping with the monument's cultural strategy.

This is untrue. Lecturers approved by the CNMHS (Heritage Directorate) carry on their profession and conduct guided tours in all of the Fund's monuments and elsewhere (documents Nos. 3 and 21).

In addition, under their terms of employment reception and security staff may be required to conduct guided tours in monuments managed by the National Fund for Historic Monuments and Sites, which is responsible for enhancing the prestige of the monuments that it presents to the public.

Under their terms of employment reception and security staff may be required to conduct guided tours in monuments managed by and on behalf of the CNMHS (although they are in no way qualified to do this), whereas national lecturers and interpreter-guides holding the State diploma cannot do so. What a fine example of how monuments' prestige can be enhanced and of proper fulfilment of the Fund's cultural role! This unfair competition gives a false image of the qualified personnel, with whom these persons may be confused. It constitutes discrimination on recruitment - taken to absurd extremes - and an impediment to employment. This also applies to the RMN. These abuses have been going on for far too long.

(Documents Nos. 19 and 20)

Lastly, for reasons of security of property and persons, freedom to conduct tours may be restricted in certain parts of the monuments managed by the Fund.

If freedom can be restricted for security reasons, the restrictions must apply to all, which is not the case. Security cannot be relied on as a ground for discrimination (see below).

As to the guided tours on offer in the national museums, it is correct that some areas are only accessible to visitors accompanied by personnel employed by the Ministry of Culture and Communication.

This is a further admission of the discrimination exercised against national lecturers and interpreter-guides holding the State diploma and their exclusion from the right to work.

This restriction is also imposed for security reasons. The staff in question fulfil both a cultural and a security role in respect of these premises, with which they are completely familiar.

The persons qualified to conduct guided tours, whatever their category, are not security staff. The latter must play their own role, which is of course distinct from that of the former, and may, where necessary, accompany tour guides. With regard to the specific training in security matters (to which all members of personnel in any case pay great attention) allegedly dispensed to approved staff but not to interpreter-guides and national lecturers (discrimination in the field of training), the latter are more than willing to undergo such training (document No. 20).

It should be said that since they mainly cater for school groups - unlike their colleagues not in the employ of the culture ministry - these cultural mediators help to fulfil the essential educational role entrusted to monuments and museums.

This is incorrect and indeed even untrue and defamatory. Approved personnel cater for the visitors who turn up, whether school children or adults. The national lecturers and interpreter-guides conduct tours for many school groups and themselves have the essential role of educating members of the public, irrespective of their age, in monuments and museums.

Persons wishing to reserve a guided tour may, as they see fit, contact a tourism organisation, a suitably qualified professional direct, or the relevant department of the museum or monument concerned.

The only problem is that those who contact the relevant department of a body linked to the culture ministry will be more certain of gaining access to all areas open to the public and possibly even of securing a reservation and advantages not granted to others, in particular pecuniary advantages, a situation which results in discrimination against national lecturers and interpreter-guides and in unfair competition.

(Documents Nos. 5, 6, 17, 18, 19, 20, 21)

Globally speaking, the staff employed by the Ministry of Culture and Communication to run guided tours in no way enjoy a monopoly. The differences in working conditions between approved and non-approved guides and lecturers - which remain small - can moreover be justified on grounds of either security or fulfilment of the

special role assigned to certain public cultural establishments. This therefore in no way amounts to discrimination, but is a minor difference in treatment for which there are objective reasons.

A difference in treatment (which Mr Dobelle, who is definitely not very particular in his choice of words, describes as small) can in no way be justified for reasons of security (a matter of constant concern to all categories of personnel, although it is the preserve of specialists or of staff who have received specific training, which interpreter-guides and national lecturers are refused on a discriminatory basis) or of fulfilment of a special role (shared by all qualified personnel).

A monopoly indeed exists where interpreter-guides and national lecturers do not have access to all areas open to the approved personnel and reception and security staff used to conduct guided tours. This monopoly is operational in all areas accessible solely by the latter. Approved personnel also enjoy a monopoly on recruitment by bodies linked to the culture ministry and on the free further training courses that they offer. These monopolies breach the provisions of the Charter.

(Mr Dobelle) also wishes to point out that if unjustified differences in treatment between approved and non-approved lecturers, in particular in the rates charged by museums, were to come to light, the national courts would not fail to reprove the measures in question on account of their discriminatory nature, as can be seen from the decision of the Conseil d'Etat which the complainant organisation produces in support of its allegations (CE, 28 February 1996, Etablissement public du Musée du Louvre, application No. 163528).

Mr Dobelle kindly draws attention to the existence of the national courts, to which we have no hesitation in referring cases, but the violations affecting national lecturers and interpreter-guides (which are not confined to mere rates charged!) are so numerous that, given the number of bodies concerned, it would probably take a whole generation for separate sets of proceedings against each of them to come to a conclusion.

Mr Dobelle appropriately points out that the *Conseil d'Etat* ruled in favour of the plaintiffs in a case concerning discriminatory measures taken by the Louvre museum against national lecturers and interpreter-guides in favour of its own approved personnel, where it found the services rendered to be comparable (document No. 4). In the instant case we have chosen to refer the matter to the Council of Europe, in which we have complete confidence, as we are entitled and free to do under the treaties signed by France.

Lastly, Mr Sterkers contends that Act No. 92-645 of 13 July 1992 and the regulatory instruments issued in application thereof, which specify the conditions of performance of activities relating to the organisation and sale of trips or holidays, are discriminatory. Under section 13 of the Act natural or legal persons holding a licence, approval or authorisation to organise and sell trips and holidays must solely use the services of qualified personnel to conduct tours of museums or monuments. The qualification required of these professional guides to museums and monuments is itself defined in decree No. 94-490 of 15 June 1994, issued pursuant to Act No. 92-645 of 13 July 1992, last amended by decree No. 99-296 of 15 April 1999.

The above-mentioned Act applies, inter alia, to natural or legal persons who undertake or assist the performance of activities consisting in organising or selling

"services related to the reception of tourists, in particular the organisation of visits to museums or historic monuments" (section 1.c).

The decree does not specify the qualification required of tour professionals, but does provide a list of the categories of personnel qualified to conduct guided tours in museums and historic monuments.

A list of diplomas and certificates conferring entitlement to conduct guided tours has been drawn up jointly by the ministries of tourism, culture, education and the interior. It guarantees groups of visitors that the lecturers and guides hosting tours will be full-blown professionals.

Guided tours are taken by both individuals and groups, and the same regulations apply to all tours.

Since the Order of 15 April 1999 stipulating the conditions of issuance and withdrawal of a professional card for persons qualified to conduct tours of museums or historic monuments, professionals can now be issued with a card and an identity badge bearing the logos of both the tourism ministry and the culture ministry.

Our case-file, in particular these very observations, contains ample evidence of the discriminatory nature of the law and the regulatory instruments, of their interpretation, of the rules applied by bodies linked to the Ministry of Culture and of their practices. Yet at the same time all qualified personnel are issued with a single card bearing the logos of both the tourism ministry and the culture ministry.

The argument that the particularly favourable treatment granted to approved lecturers in fact amounts to a form of reverse discrimination therefore cannot be accepted in the instant case.

Mr Dobelle acknowledges that approved lecturers are granted particularly favourable treatment. As to the remainder of his reasoning, we do not understand the logic of his conclusion. Particularly favourable treatment necessarily results in discrimination, in breach of the Charter, against those who do not benefit from it. We have provided ample evidence that the underlying motive is discrimination itself, conceived as a system. This system's objective is to minimise the rights - as recognised by the Charter - of personnel from the tourism ministry (interpreter-guides and national lecturers) and to favour as far as possible the personnel originating from the culture ministry (approved lecturers, approved heritage interpreters and approved lecturer-guides), although the *Conseil d'Etat* has held that they render comparable services (document No. 4).

Attention should be drawn to the discrimination in terms of national descent resulting from the surprisingly limited number of languages used within the bodies in question (often linked to national origin, in particular and most certainly in France, where the Constitution provides that French shall be the official language); this adds to the injustice suffered, in particular by interpreter-guides who, because of their descent, may be familiar with languages which are not used within those bodies. This situation is particularly shocking in France, which is traditionally a country of immigration and which receives the largest number of visitors from all over the world. (See the appended yearbook of the National Federation of Interpreter-Guides (FNGI)).

Whereas we have provided ample evidence that the French government, and especially the Ministry of Culture, has seriously breached the provisions of the European Social Charter, in particular:

- Part I indents 1, 2, 4 and 10 of the revised Social Charter, relating to the right to work and the conditions in which that right can be fairly asserted;
- Part II, Article 1, paragraphs 1, 2 and 4, Article 4, paragraph 1, and Article 10, paragraphs 1, 3a and 3b, relating to effective exercise of the right to work, the right to a fair remuneration and the right to vocational training;
- Part V, Article E on non-discrimination in enjoyment of the rights guaranteed by the Charter;

Whereas, in addition, the government has failed to submit observations on the merits of our complaint, although it was invited to do so pursuant to Article 7.1 of the Protocol, and consequently acknowledges that the complaint is founded in all respects;

I request the Committee of Social Rights to find that the French Government has failed to provide satisfactory guarantees of compliance with the above provisions of the European Social Charter.

Christian Sterkers

Vice-Chairman

ENCLOSURES

(Originals and copies)

- A) Decision C-154/89 of the Court of Justice of the European Communities, of 26 February 1991
- B) Letter from Mr John F. Mogg, Deputy Director General, European Commission, of 3 March 1999
- C) "Du personnel plus qualifié ..." (more qualified personnel) published in "Tourisme et Droit" (tourism and law), issue No. 9, June 1999, by Pierre Py, lecturer, Montpellier
- 1) Act No. 92-645 of 13 July 1992 specifying the conditions of performance of activities relating to the organisation and sale of trips or holidays
- 2) Decree No. 94-490 of 15 June 1994, amended on 15 April 1999 (excerpts)
- 3) Order of 15 April 1999
- 4) Decision No. 163528 of the *Conseil d'Etat*, 28 February 1996
- 5) VAT file submitted by the SNPT-CFE/CGC to the President of the European Commission on 5 April 2000
- 6) Written question posed by Mr Robert Hue, MP, to the Minister for Culture on 1 November 1999 and reply
- 7) Excerpts from the VPAH agreement
- 8) "La prise de parole dans les musées" (giving lectures in museums), master's degree thesis submitted by C. Prunet, Ecole du Louvre (excerpts relating to the CNMHS and the VPAH)
- 9) Letter from Ms B. Tehoval, head of the Professions and Personnel Department, French Museums Directorate, Ministry of Culture, dated 12 October 1999
- 10) Letter from Ms S. Palmero, in charge of the employment and careers management unit at the National Museums Association (RMN), dated 15 November 1999
- 11) Letter from Mr A. Janowski, head of the Lecture Tours Department at the RMN, dated 6 December 1999

It should be noted that these last two letters contradict each other.

- 12) Professional card
- 13) Training course offered by the Brittany Regional Heritage Institute, 17 March 2000
- 14) "100 monuments nationaux" (100 national monuments), CNMHS
- 15) "33 musées nationaux" (33 national museums), RMN

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- 16) "120 villes et pays ..." (120 towns and regions ...), VPAH
- 17) "Domaine de Versailles" (the Versailles estate)
- 17a) Guide to Versailles
- 18) Catalogue of lecture tours at the castle of Versailles; it should be noted that the only tours which interpreter-guides and national lecturers are allowed to conduct are included in the category "A first visit to Versailles or tours for young visitors"
- 19) Letter from Mr B. Wentzel, "Voir et découvrir Paris", to the curator of the castle of Compiègne, RMN, dated 27 July 1999
- 20) Letter from Mr J. Perot, manager of the Compiègne and Blérancourt castles, RMN, to Ms C. Bressac, dated 1 December 1999
- 21) Invoice No. 2401 of 12 November 1998 issued by the CNMHS to the FNGI
+ FNGI 1999/2000 Interpreter-Guides Yearbook

Respons of the *Syndicat national des Professions du tourisme (SNPT)* to the observations of the ETUC

(filed with the Secretariat on 14 June 2000)

We note that the ETUC's observations in question, which repeat some of its assertions, is based in particular on the document on the merits of the collective complaint improperly attached in violation of the rules to the observations of the French Government on admissibility.

We replied on 2 May, although we did not ourselves recognise it (cf. our own observations on the merits).

As an introductory remark, we wish to thank the ETUC for its commending our Government on the ratification of the revised Social Charter and the additional Protocol; we hope that all the member states of the Council of Europe will soon ratify this instrument so that the rights set out the Charter in all these states are increasingly guaranteed throughout those states.

1. We appreciated the recapitulation of the ETUC's role.

2. Content of the complaint

"Regarding the alleged violation of article 1, paragraphs 1,2 and 4, on the right to work, the ETUC follows the argument of the French Government in stating that the applicant has not sufficiently developed its submission on how the right to work has been violated, especially if the circumstance is taken into account that, according to our own sources of information, all guides - whether civil servants or private guides - have access to national museums. We therefore recommend that the applicant submit more specific information to the Committee on this point". (ETUC)

- Contrary to the ETUC's assertion, there are no "civil servants" or "private guides". The list of persons qualified to conduct guided tours, established by a single set of regulations, does not recognise these qualifications or distinctions (cf. documents 1, 2, 3 and 12, attached to our observations of 2 May, and see also below).

- As progress has been observed with regard to equality for qualified staff in conducting guided tours in exhibitions organised by the National Museums Association (RMN), we no longer maintain this particular complaint, provided that this right is set out in the texts (see document no. 6).

- We included in our observations of 2 May information concerning violations of article 1, paragraphs 1, 2 and 4, of the Charter and remain at the Committee's disposal for further details.

“Regarding the alleged violation of article 10, paragraphs 1, 3a and 3b, on the right to vocational training, the ETUC is convinced by the French Government's argument that there is no discrimination, at least as regards initial vocational training open to all. The selection criteria imposed for further vocational training may be regarded as discriminatory, but they are nevertheless acceptable, because such courses are organised and funded by the Ministry of Culture and Communication, which is therefore entitled, in our view, to impose criteria for selecting persons to attend these courses. Moreover, it is perfectly obvious to the guides that these courses are a part of internal training”. (ETUC)

- The ETUC recognises that the selection criteria for advanced vocational training are discriminatory.

- The argument that the discrimination, recognised by the ETUC, is acceptable because the training at issue is organised and financed by the Ministry of Culture is not admissible; it is no more justifiable for the Ministry than for anyone else.

- Ministry of Tourism staff who are qualified to conduct guided visits and were denied employment in a discriminatory manner by Ministry of Culture bodies (document no. 9) are de facto excluded from internal training courses. This constitutes double discrimination: job discrimination and discrimination with regard to further training. (Cf. also document no. 13, which does not deal exclusively with internal training courses, contrary to the ETUC's assertion).

- We set out our arguments about further training in our observations of 2 May.

“Regarding the third claim, that of violation of the principle of non-discrimination, the ETUC is convinced, in the light of documents submitted to it, that discrimination does in fact exist. However, according to our sources, such discrimination is related not only to security, as the French Government asserts, but also to the different status of the two categories of guides. Some guides have the status of civil servants, whereas others are subject to private law. This difference, and the resulting discrimination, is therefore associated with the fact that guides with civil servant status often conduct visits free of charge for groups of children and elderly persons, whereas the private guides conduct only paid visits, regardless of the composition of the group. According to our information, these differences are essentially due to the contradictory objectives of the public and private sectors. But as this information is not very clear, we recommend that the French Government provide further details on this point, including the exact conditions under which access to certain parts of monuments is denied for security reasons”. (ETUC)

- The ETUC recognises that the principle of non-discrimination has been violated.

- Some of the most important Ministry of Culture bodies, including the RMN, the Louvre, Versailles, the Pompidou Centre and the Tourism Offices, have been given the status of EPIC (*établissement public à caractère industriel et commercial* - public body of an industrial and commercial nature). As such, they are covered by private law and its commercial objectives; they are not permitted to recruit civil servants, but only contractual private law staff.

- We do not know of any guides with civil servant status. To our knowledge, lecturers of Ministry of Culture bodies are all private law contract workers, namely salaried employees usually hired intermittently and paid for the duration of the contract. We ask the ETUC to name its sources.

- Even if some guides have the status of civil servant, discrimination is still not justified either in their favour or in favour of those who, not having this hypothetical status, are from the Ministry of Culture or Ministry of Tourism staff who might also not have access to such status owing to (major) discrimination in hiring.

- We have no knowledge of guides with the status of civil servants who conduct free visits. Such visits are organised by the employer body and conducted or headed by their authorised lecturers (cf. document no. 2, art. 85). The fact that these bodies may have a tariff policy that favours certain categories of visitors in no way exempts them from remunerating their staff or complying with all the provisions of the Charter. This also applies, in particular, to guided visits conducted by Tourism Ministry staff (cf. in particular documents no. 4 and 21).

- On the other hand, contrary to what the ETUC states, interpreter-guides and national lecturers (Tourism Ministry staff) may be required to conduct guided visits free of charge, for the purpose of promoting tourism, culture or their profession or informing the public, regardless of age. That was recently the case at Versailles (see document no. 22, attached).

- The ETUC has not provided proof or even an argument in support of the contradictory objectives of the public and private sectors which it claims to have discerned and between which it wishes to make a distinction. Admittedly, the ETUC recognises that its information is not very clear. We have shown that it does not exist. We refer here to the decision of the Conseil d'Etat (document no. 4). Such a contradiction of objectives does not allow for exemption from compliance with the Charter.

- As to the refusal to grant access to certain parts of monuments for supposed security reasons, we have denounced this and given reasons in our observations as to why it is unfounded.

“Conclusion:

The ETUC thus recommends:

- that the applicant submit more detailed information on its perception of an actual violation of the right to work;

- that the French Government provide further details on the conditions under which access to certain parts of monuments is denied to private guides for security reasons and also indicate whether it is true that this distinction is linked to whether or not the visits which guides conduct for certain groups are free.

This information might be supplied at a Council of Europe hearing.” (ETUC)

- We believe that we have provided the more detailed information which the ETUC requested of us.

- We believe that we have sufficiently demonstrated the abuse resulting from the denial of access to certain parts of monuments to a particular category of staff for supposed security reasons.

- We do not see any connection between free or paid visits, on the one hand, and access to all areas open to the public, on the other.

- We remain at the Committee's disposal to provide any further information which it might deem necessary.

Christian Sterkers

Vice-President

N.B. We use the word "guide" to designate persons qualified to conduct guided visits.

The document numbers refer to our observations of 2 May, p. 18, apart from the following.

Encl: Document no. 22, "Découverte de Versailles", in *Convergence*, February 2000, p. 8.

Additional observations of the French Government in response of the observations of the *Syndicat national des Professions du tourisme* (SNPT) on the merits of the complaint

(filed with the Secretariat on 11 July 2000)

In its decision of 10 February 2000, the European Committee of Social Rights declared admissible the complaint lodged on 30 August 1999 by the *Syndicat national des Professions du tourisme*.

The *Syndicat* alleges that the French Government has breached the provisions laid down:

- in Part I of the revised European Social Charter, indents 1, 2 and 10, concerning the right to work and to just conditions for exercising that right;
- in Part II, Article 1 paragraphs 1, 2 and 4 and Article 10 paragraphs 1, 3a and 3b, concerning the effective exercise of the right to work and the right to vocational training;
- in Part V, Article E, concerning non-discrimination in the enjoyment of the rights guaranteed by the above provisions.

The French Government would make the following observations with regard to this complaint.

The complainant alleges numerous violations of the provisions of the revised Charter in three main areas.

The organisation's representative, Mr Sterkers, first asserts that the treatment of interpreter guides and national lecturers with a state diploma (*conférenciers nationaux diplômés d'Etat*) constitutes a violation of their right to work freely.

Secondly, he maintains that this treatment disregards the right of those concerned to vocational training.

Lastly, he argues that the authorities discriminate against interpreter guides and national lecturers with a state diploma, as compared with approved lecturers, in respect of their working conditions.

By way of introduction, the government would point out that it cannot be considered to have agreed to the complainant's arguments in that the observations in its defence which it delivered to the Committee of Social Rights on 22 December 1999 disputed all the allegations made by the *Syndicat*.

1. With regard to the first point, **the complainant supplies no evidence that the right to work of members of the *Syndicat national des Professions du tourisme* has been infringed. The regulations applicable to interpreter guides and lecturers with a state diploma contain no prohibition or restriction on the exercise of their profession which might be deemed to prevent them from freely carrying out the occupation which they have chosen.**

2. *With regard to the second grievance, Mr Sterkers' allegation that interpreter guides and national lecturers with a state diploma enjoy no training opportunities is clearly unfounded.*

Training sessions are run by the "*Villes et Pays d'Art et d'Histoire*" network on behalf of the Ministry of Culture and Communication.

These sessions are of two kinds: "**initial**" training, open to all, for persons preparing to sit the approved lecturer guides' qualifying examination, and "**further**" training, which takes the form of an in-house training course financed by the Ministry of Culture and Communication, admission to which is consequently reserved for approved lecturer guides.

Although, owing to its ministry funding, in-house training for approved guides clearly cannot be offered to all guides and lecturers, including those having no link with the ministry, it is possible for anyone who so wishes to enrol on the initial course and thus obtain the required status for access to further training. It is therefore inaccurate to maintain that interpreter guides and lecturers holding a state diploma do not enjoy the right to training.

3. It is with regard to the last ground of complaint that the complainant's arguments are most detailed. This concerns **alleged discrimination in respect of the working conditions of interpreter guides and lecturers holding a state diploma, as compared with those of their counterparts who have been approved by the authorities.** The following observations can be made in respect of this complaint.

Mr Sterkers maintains that the way in which the Ministry of Culture and Communication organises guided tours gives rise to discrimination between interpreter guides and national lecturers with a state diploma and approved lecturers.

In this connection, a distinction should be drawn between the various systems that exist.

As regards the "*Villes et Pays d'Art et d'Histoire*" network, the local and regional authorities concerned become members on signing an agreement with the

Architecture and Heritage Directorate at the Ministry of Culture and Communication. Under this agreement they are required *inter alia* to employ staff who have been granted approval after sitting an examination organised by the two signatory public bodies. Anyone may sit the examination, provided at least that they hold a diploma or certificate proving that they have completed a two-year course of higher education. Persons granted approval in respect of a given town or region of artistic or historical interest are more often than not recruited and remunerated by a tourism office or an association, on a per-session basis, to conduct guided tours pursuant to the terms of the agreement.

At all events, it should be pointed out that this system in no way constitutes a monopoly, since it remains possible for anyone, even persons who have not been awarded the approval in question, to operate as a tourist guide in public areas. The Ministry of Culture and Communication therefore cannot be accused of applying discriminatory practices through its "*Villes et Pays d'Art et d'Histoire*" network.

As regards the Centre for National Monuments (the former National Fund for Historic Monuments and Sites), this body uses lecturers recruited after sitting a proficiency test, which is the requirement for granting approval to conduct guided tours of a given monument. Selection is determined by the need for guides who are able to speak about monuments in the most appropriate manner, with respect in particular for their architectural and historical significance.

Lastly, for reasons of security of property and persons, freedom to conduct tours may be restricted in certain parts of the sites managed by the Centre for National Monuments.

As regards guided tours in national museums, it is correct that some visitor areas are only accessible in the company of guides employed by the Ministry of Culture and Communication.

This restriction too is imposed for security reasons. The staff in question exercise both a cultural and a security role in respect of premises with which they are completely familiar.

It should be said that since they cater mainly for school groups - unlike their counterparts not employed by the Ministry - these "cultural mediators" help to perform the essential educational role entrusted to monuments and museums.

Finally, the conditions of performance of activities relating to the organisation and sale of trips and holidays are specified in Act No. 92-645 of 13 July 1992 and the regulatory instruments issued in application thereof.

Under Section 13 of the Act, natural or legal persons holding a licence, approval or authorisation to organise and sell trips and holidays must exclusively use the services of qualified persons to conduct tours of museums or monuments. The qualification required of these professional guides to museums and monuments is defined in Decree No. 94-490 of 15 June 1994, which was issued pursuant to Act No. 92-645 and last amended by Decree No. 99-296 of 15 April 1999.

The ministries of tourism, culture, education and the interior have jointly drawn up a list of diplomas and certificates conferring entitlement to conduct guided tours. This guarantees groups of visitors that their lecturers and guides will be fully qualified.

Various selection processes for guides and lecturers therefore exist to identify those persons who are best suited for employment in the government cultural service. In no way can this be interpreted as restricting access to the profession of approved guide or lecturer; on the contrary, the purpose is to guarantee a certain standard for visitors wishing to make use of this service, without removing their freedom to choose other professionals who lack such accreditation.

In this regard, Mr Sterkers is challenging the very existence of these processes of official approval for guides and lecturers on the grounds that such approval gives those who are awarded it unfair advantages.

It should however be noted that all guides and lecturers are free to apply for and obtain approved status, which will entitle them to receive publicly funded training and be evaluated solely on professional merit. The system is therefore entirely fair and transparent.

Furthermore, the benefits deriving from approved status must not be exaggerated. In no circumstances does it permit a monopoly on the exercise of the profession. Admittedly, in very limited cases, where the security of visits so dictates, it is true that access to certain sites is authorised only for approved guides. Approval also makes it possible to obtain employment with a public body, whether a local authority recruiting for a monument under its responsibility or the Centre for National Monuments. Lastly, it brings the opportunity of vocational training funded by the Ministry of Culture. However, these advantages cannot be seen as discriminatory since they appear to be entirely justified in view of the particular skills demonstrated by those to whom they are granted.

By successfully negotiating the selection procedures leading to the award of approval, lecturers and guides provide evidence of their aptitude, in terms of knowledge and handling and supervising members of the public, to work as effective and reliable employees of the government cultural service. Consequently it is not at all discriminatory that they should benefit in return from the advantages mentioned above. In other words, these differences in treatment are objectively justified by reason of the proficiency of those concerned.

In the final analysis, any challenge to this situation amounts to a challenge to professional selection per se, since if non-approved guides and lecturers were to be considered justified in claiming the same working conditions as their approved counterparts, by analogy, any person who had failed or not applied to sit an exam or competition could legitimately claim the same benefits as successful candidates.

The government would add that if any unjustifiable discrepancies came to light concerning the treatment of approved lecturers and those with no approval, especially in respect of museums' rates of pay, the national courts would not hesitate to condemn them as discriminatory. This is shown by the decision of the *Conseil d'Etat*, which the complainant cites in support of its case (Complaint No. 163528 of 28 February 1996, *State institution of the Louvre Museum*).

For all of the above reasons, the government requests the Committee of Social Rights to conclude that the complaint submitted on behalf of the European Federation of Employees in Public Services is unfounded in all respects.

Director for Legal Affairs

Ronny ABRAHAM

**Report by the European Committee of
Social Rights to the Committee of Ministers**



Report by the European Committee of Social Rights to the Committee of Ministers

(Strasbourg, 10 October 2000)

1. Introduction

1. In accordance with Article 8 paragraph 2 of the Protocol providing for a system of collective complaints, the European Committee of Social Rights, committee of independent experts of the European Social Charter (hereafter referred to as "the Committee") transmits to the Committee of Ministers its report in respect of complaint No. 6/1999. The report contains the decision of the Committee on the merits of the complaint (adopted on 10 October 2000). The decision as to admissibility (adopted on 10 February 2000) is appended.

2. The Protocol entered into force on 1 July 1998 and has been ratified by Cyprus, Finland, France, Greece, Italy, Norway, Portugal and Sweden. Bulgaria and Slovenia are also bound by this procedure, in accordance with Article D of the revised European Social Charter of 1996.

3. When examining this sixth complaint, the Committee followed the procedure laid down in the rules adopted on 9 September 1999.

4. It is recalled that in accordance with Article 8 paragraph 2 of the Protocol, the present report will not be published until the Committee of Ministers adopts a recommendation or, at the latest, four months after its transmission to the Committee of Ministers on 13 February 2001.

2. Decision on the merits of Complaint No. 6/1999 by the *Syndicat national des Professions du tourisme* againsts France

The European Committee of Social Rights, committee of independent experts of the European Social Charter established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 172nd session attended by:

| | |
|---------|--------------------------------------|
| Messrs. | Matti MIKKOLA, President |
| | Rolf BIRK, Vice- President |
| | Stein EVJU, Vice-President |
| Ms | Suzanne GRÉVISSE, General Rapporteur |
| Messrs. | Konrad GRILLBERGER |
| | Alfredo Bruto DA COSTA |
| Ms | Micheline JAMOULLE |
| Messrs. | Nikitas ALIPRANTIS |
| | Tekin AKILLIOĞLU |

Assisted by Mr Régis Brillat, Executive Secretary to the European Social Charter

In the presence of Ms Anna-Juliette POUYAT and Ms Jacqueline ANCEL-LENNERS, representatives of the International Labour Organisation

On the basis of the report presented by Mr Nikitas ALIPRANTIS

After having deliberated on 10 October 2000;

Delivers the following decision adopted on the same date:

PROCEDURE

1. On 10 February 2000, the Committee declared the complaint admissible.
2. In accordance with Article 7 paras. 1 and 2 of the Protocol providing for a system of collective complaints and with the decision of 10 February 2000 on the admissibility of the complaint, the Executive Secretary to the European Social Charter communicated, on 17 February 2000, the text of the Committee's admissibility decision to the French Government, to the *Syndicat national des Professions du tourisme*, the complainant organisation, and to the Contracting Parties to the Protocol, as well as the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the International Organisation of Employers (IOE), inviting them to submit their observations on the merits of the complaint. The Executive Secretary also communicated the text of the decision to the Contracting Parties to the Charter and to the revised Charter for their information.
3. The French Government submitted its observations on the merits on 22 December 1999 at the same time as its observations on the admissibility of the complaint. The ETUC submitted observations on 19 April 2000 following an extension of the time limit. The complainant organisation submitted its observations on the merits, along with a number of enclosures, on 2 May 2000; it also submitted comments on the ETUC's observations on 14 June 2000. The French Government submitted supplementary observations on 11 July 2000 following an extension of the time limit.
4. In accordance with Article 7 paragraph 3 of the Protocol, each party received the information and supplementary observations of the other.

SUBMISSIONS OF THE PARTICIPANTS IN THE PROCEDURE

a) *The complainant organisation*

5. The *Syndicat national des Professions du tourisme* (SNPT) requests the Committee to declare that France is in violation of Article 1 paras. 1, 2 and 4, Article 10 paras. 1, 3a and b (Part II) and Article E (Part V) of the revised European Social Charter, which read as follows:

Part II

Article 1 – The right to work

"With a view to ensuring the effective exercise of the right to work, the Parties undertake:

- 1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
- 2 to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
[...]

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4 to provide or promote appropriate vocational guidance, training and rehabilitation.”

Article 10 — The right to vocational training

“With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

- 1 to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers’ and workers’ organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;
[...]
- 3 to provide or promote, as necessary:
 - a adequate and readily available training facilities for adult workers;
 - b special facilities for the retraining of adult workers needed as a result of technological development or new trends in employment;
[...]

Part V

Article E — Non-discrimination

“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.”

The SNPT alleges in its complaint, as outlined in paragraph 1 of the decision on admissibility, that all the bodies offering guided tours within the remit of the Ministry of Culture and Communication (notably, the National Museums Association (*Réunion des Musées nationaux – RMN*)), the museums of fine arts, the towns and regions belonging to the *Villes et Pays d’Art et d’Histoire* network, and the National Fund for Historic Monuments and Sites (*Caisse nationale des Monuments Historiques et des Sites – CNMHS*) discriminate between, on the one hand, lecturer guides approved by these bodies (*conférenciers agréés*) and, on the other, interpreter guides and national lecturers with a state diploma (*guides interprètes et conférenciers nationaux diplômés d’Etat*) and that this discrimination results in a denial of the right to work and to vocational training for interpreter guides and national lecturers with a state diploma.

The right to non-discrimination in employment

6. The SNPT supports its allegations with practical examples of differences of treatment. It complains, for instance, that unlike approved lecturer guides, interpreter guides and national lecturers with a state diploma are prohibited from conducting guided tours in certain areas open to the public, and in certain museums have to pay a reservation fee or a charge for the “right to speak”.

7. The SNPT bases its case in part on the decision of the *Conseil d’Etat*, No. 163528 of 28 February 1996 (in the case of the Public Corporation of the Louvre Museum), in which it found in substance that the services rendered to users in “free” groups were not significantly different from those received by users of the lecture tours organised by the Louvre museum and that there was, therefore, no reason of

public interest to justify applying an exemption from the reservation fee solely to lecture tours conducted by the museum's own lecturers.

8. The SNPT also bases its claims on the rules concerning persons qualified to conduct guided tours, in particular Act No. 92-645 of 13 July 1992, laying down the conditions of performance of activities relating to the organisation and sale of trips and holidays and its implementing decree, No. 94-490 of 15 June 1994, as amended by Decree No. 99-296 of 15 April 1999:

- firstly, in that the requirement imposed on tour operators to use qualified personnel (ie holders of the professional card) to conduct guided tours applies only in respect of museums and historic monuments, ie those places where approved lecturer guides are employed for this purpose - a situation which, according to the SNPT, in practice gives approved lecturer guides an advantage;
- and, secondly, in that approved lecturer guides are improperly attributed with professional qualifications through the granting of the professional card.

The right to vocational training

9. The SNPT claims that various types of discrimination practised by the bodies within the ministry's remit have the effect of depriving interpreter guides and national lecturers with a state diploma of the right to individual vocational training, including preparation of guided tours. It provides a number of specific examples in support of its claims: unlike approved lecturer guides, interpreter guides and national lecturers with a state diploma are excluded from entitlement to discount on catalogues and other publications at points of sale, from entitlement to free access to certain public places, and from exemption from queuing.

10. The SNPT also complains that "further" training organised by the *Villes et Pays d'Art et d'Histoire* network on behalf of the Ministry of Culture and Communication is either exclusively reserved for lecturer guides of the *Villes et Pays d'Art et d'Histoire* or they are given priority on preferential terms.

b) *The French government*

The right to non-discrimination in employment.

11. The Government does not contest that the provisions of the revised Charter invoked by the SNPT are applicable.

12. According to the Government, differences of treatment do exist with regard to working conditions, in particular access to certain public places by interpreter guides and national lecturers with a state diploma, on the one hand, and approved lecturer guides, on the other. It contends, however, that these differences are minimal and objectively justified. It points out that a distinction should be drawn here between the different systems of professional selection existing.

13. With regard, firstly, to the *Villes et Pays d'Art et d'Histoire* network, the local and regional authorities that wish to use this label are bound by the agreement they

sign with the Ministry of Culture and Communication to have recourse to staff who have been granted approval in respect of the particular town or region of artistic or historical interest. Approval is obtained by passing an examination open to anyone who has completed at least a two-year course of higher education.

14. Secondly, in the case of the former National Fund for Historic Monuments and Sites (CNMHS), now known as the Centre for National Monuments, lecturers are recruited on the basis of a proficiency test, which is the requirement for granting approval to conduct guided tours of a given monument. The Government points out that any guide or lecturer is free to apply for such approval. Selection is determined by the need for guides who are able to speak about monuments in the most appropriate manner in keeping with the monument's cultural strategy.

15. Thirdly, the Government refers to RMN (National Museums Association) guides coming under the Ministry of Culture and Communication.

16. In their case, as in that of the CNMHS guides, the fact that only approved lecturer guides enjoy access to certain public areas is, according to the Government, an advantage justified on objective grounds of security of property and persons, and of the particular skills of the guides in question. The Government maintains that any challenge to this situation amounts to a challenge to professional selection *per se* and implies, by analogy, that any person who had failed an exam should be entitled to claim the same benefits as the successful candidates.

17. The Government adds that if any unjustifiable discrepancies came to light concerning the treatment of approved lecturer guides and those without approval, especially in respect of museums' rates of pay, these would be discriminatory and would be sanctioned by the national courts as was demonstrated by the decision of the *Conseil d'Etat*, No. 163528, of 28 February 1996 (in the case of the Public Corporation of the Louvre Museum).

18. With regard to Act No. 92-645 of 13 July 1992, laying down the conditions of performance of activities relating to the organisation and sale of trips and holidays, and its associated implementing regulations, the Government states that, under the terms of the act, tour operators must use the services of qualified persons (ie holders of the professional card) to conduct tours of museums or historical monuments, the aim being to assure groups of visitors that their lecturers and guides will be fully qualified. It maintains that there is nothing discriminatory about this legislation inasmuch as it provides that categories of persons holding a particular professional qualification shall all enjoy the same favourable treatment. The Government also considers that the SNPT has failed to show that approved lecturer guides lack the proven professional proficiency required in order to be granted the professional card.

The right to vocational training

19. The Government contests the claim that interpreter guides and national lecturers with a state diploma have no right to training. It points out that the "initial" training run by the *Villes et Pays d'Art et d'Histoire* network on behalf of the Ministry of Culture and Communication, preparing trainees for the exam to qualify as

approved lecturer guides, is open to all – including interpreter guides and national lecturers with a state diploma.

20. As for the fact that the network's "further" training is open only to approved lecturer guides, the Government maintains that this is justified because it is in-house training financed by the Ministry of Culture and Communication.

c) *European Trade Union Confederation (ETUC)*

The right to non-discrimination in employment

21. The ETUC, in its observations, takes the view that, and subject to more information from SNPT and the French Government, there is indeed a difference in treatment in the employment of interpreter guides and national lecturers with a state diploma, on the one hand, and approved lecturer guides, on the other, but deems this to be justified. It considers that the discrimination is based on objective grounds, which relate not only to security but also to the different status of the two groups of guides: on the one hand public servants who conduct tours free of charge, and, on the other, private guides conducting paid visits.

The right to vocational training

22. The ETUC considers that there is no discrimination in relation to initial training, which is open to all. It regards the difference of treatment concerning access to further training as acceptable because the training in question is an in-house training run and financed by the Ministry of Culture and Communication, which is thus entitled to impose selection criteria.

ASSESSMENT OF THE COMMITTEE

23. The Committee considers that the grievances pertain in substance to the right to non-discrimination in employment guaranteed by Article 1 para. 2 of the revised Charter and the right to vocational training guaranteed by Article 10 of the revised Charter (Part II) as well as Article E (Part V). It emphasises that the provisions of Part II involved by the SNPT are identical to the corresponding provisions of the 1961 Social Charter and that interpretative elements for these provisions have already been formulated in its Conclusions.

The right to non-discrimination in employment

24. The Committee points out that Article 1 para. 2 of the revised Charter requires those states which have accepted it to protect effectively the right of workers to earn their living in an occupation freely entered upon. This obligation requires *inter alia* the elimination of all forms of discrimination in employment whatever is the legal nature of the professional relationship.

25. A difference in treatment between people in comparable situations constitutes discrimination in breach of the revised Charter if it does not pursue a legitimate aim and is not based on objective and reasonable grounds.

26. The Committee points out that “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (Complaint No. 1/1998, *International Commission of Jurists v. Portugal*, para. 32). It is therefore of the opinion that compliance with Article 1 para. 2 cannot result from the mere existence of legislation if the legislation in question is not applied in practice.

27. Firstly, as regards the question to determine whether the two professional categories are in comparable situations, the Committee notes that approved lecturer guides and the interpreter guides and national lecturers with a state diploma are people qualified to conduct guided visits who have followed officially defined training and who are entitled to a professional card such as is required to conduct tours in museums and historic monuments under the terms of the Act of 13 July 1992.

28. It also notes that the French Conseil d’Etat ruled in the decision cited by the SNPT (decision no. 163528 of 28 February 1996, *Public Corporation of the Louvre Museum*) that the services rendered by lecturers to so-called “free” groups could not on the whole be considered as differing significantly from, and are thus comparable to, those received by users of the visits organised by the Louvre Museum.

29. In the light of these factors, the Committee considers that approved lecturer guides and interpreter guides and national lecturers with a state diploma are comparable professional categories for the purposes of Article 1 para. 2 of the revised Charter.

30. Secondly, with respect to the question to determine whether there are any differences in treatment between the two professional categories and, if so, whether they are justified, the Committee considers that a distinction should be made between the alleged differences in treatment relating to the freedom to carry out guided visits (I.) and the differences in treatment pertaining to working conditions proper (II.).

31. I. a) With regard to alleged restrictions on the freedom to conduct guided tours to the advantage of guide-lecturers of the Villes et Pays d’Art et d’Histoire network, the Committee observes that it is not contested that the agreement concluded with the Ministry of Culture and Communication lays down the requirement to employ approved staff – recruited in the majority of cases by the local tourism office or tourist information office.

32. The SNPT argues that these are discriminatory practices tantamount to a de facto monopoly, all the more serious because the tourism offices and tourist information offices are often the only local employers and the prime point of contact for visitors and travel agencies. These organisations often also hold the keys to museums and monuments where they arrange tours conducted by their own approved personnel.

33. The Government argues that the recruitment examination is open to anyone who has successfully completed a two-year course of higher education and that any guide or lecturer, even persons who do not hold the approval in question, is able to serve as a guide to tourists in public areas. Accordingly, it maintains that the system is not at all discriminatory and in no way constitutes a monopoly.

34. The Committee notes that the Government does not contest that in practice interpreter guides and national lecturers with a state diploma do not have access to all sites, as the tourism offices and tourist information offices hold the keys to museums and monuments where they arrange tours conducted by their own approved personnel. The Committee considers that these differences in treatment have no reasonable and objective justification and constitute *de facto* discrimination in employment to the detriment of interpreter guides and national lecturers with a state diploma. They are contrary to the right to non-discrimination in employment guaranteed by Article 1 para. 2 of the revised Charter.

35. I. b) With regard to the allegations of restrictions on the freedom to conduct visits to the advantage of lecturer guides approved by the CNMHS and the RMN (hereinafter referred to as “approved lecturer guides”) the Committee notes that there is no dispute over the fact that unlike approved lecturer guides, interpreter guides and national lecturers with a state diploma do not have access to all the sites under the remit of the Ministry of Culture and Communication. It appears from the file that the sites where access is restricted include the following: parts of the châteaux of Compiègne, Fontainebleau and Versailles, and the special exhibitions in the Grand Palais.

36. The Government explains that in both the monuments managed by the CNMHS and the national museums, these restrictions are applied for reasons of security of persons and property. In the case of national museums, it states that “the staff employed by the Ministry of Culture and Communication exercise both a cultural and security role in respect of premises with which they are completely familiar.”

37. The Government also points out that any guide or lecturer is free to apply for approval and that approved lecturer guides, “by passing the selection procedures leading to the award of approval, provide evidence of their aptitude, in terms of knowledge and handling and supervising members of the public, to work as effective and reliable employees of the public cultural service.”

38. The SNPT, in response to these submissions, argues that restrictions on free access to certain sites for security reasons are acceptable only if they are applied equally to all guides and lecturers, which is not the case. Furthermore, it maintains that staff qualified to conduct guided tours, whatever their category, and security staff have different duties and that if security considerations so dictate, security staff could accompany tour guides. Lastly, the SNPT states that if specific training in security matters were offered, the interpreter guides and national lecturers with a state diploma would be willing to participate.

39. The Committee is of the opinion that the security of property and persons referred to by the Government cannot be ruled out as a legitimate aim. It remains to be seen whether with regard to the means employed, the application of a difference

in treatment between approved lecturer guides and interpreter guides and national lecturers with a state diploma for access to certain sites, is proportionate and appropriate.

40. The Committee notes that approved lecturer guides can conduct guided visits in areas where access is restricted for security reasons, either alone or accompanied by security staff, depending on the site in question.

41. The Committee considers that the Government's argumentation in this respect is not sufficient as it fails to demonstrate how – on the basis of selection criteria for sitting approval examinations or on the basis of the content of those examinations on the basis of an in-house training course – the use of approved lecturer guides, at least when they conduct visits unaccompanied by security staff, is a guarantee of security. More specifically, the Committee notes that the selection criteria for RMN lecturers – good knowledge of art history and archaeology, good awareness of all national collections, the ability to conduct guided tours at all levels and ability to speak two foreign languages – are not in any way linked to competencies in security matters. The Committee notes that the same applies to criteria for admission to the CNMHS lecturers' examination.

42. The Committee therefore holds that the use of approved lecturer guides cannot justify a difference in treatment such that the effect is to deprive qualified personnel from conducting guided tours of some of the principal tourist sites. Accordingly, it considers that this difference in treatment constitutes discrimination which is contrary to the right to non-discrimination in employment as guaranteed under Article 1 para. 2 of the revised Charter.

43. II. With regard to working conditions at sites accessible to all guides and lecturers, the SNPT complains that approved lecturer guides enjoy advantages to which the interpreter guides and national lecturers with a state diploma are not entitled. These include special pricing conditions at certain sites such as the Louvre Museum, the Lille Fine Arts Museum, Versailles, in the form of a reservation fee or a charge for the right to speak applied only to non-approved guides and lecturers.

44. The Government does not strictly speaking acknowledge these differences in treatment but states that if they were to come to light, they would constitute unjustified differences in treatment and would not fail to be condemned by the national courts on account of their discriminatory nature, as shown by the decision of the *Conseil d'Etat* no. 163528 of 28 February 1996 (Public Corporation of the Louvre Museum) provided by the SNPT.

45. The Committee points out that the fact that the national jurisdictions penalise abuses does not deprive the Committee of its competence under the Protocol providing for a system of collective complaints. Moreover, as the Committee asserted above, compliance with Article 1 para. 2 of the revised Charter cannot result from the mere existence of legislation if it is not applied in practice.

46. The Committee takes note of the above decision of the *Conseil d'Etat* which concludes that the Board of Directors of the Public Corporation of the Louvre Museum has no grounds for charging an obligatory reservation fee only to groups

whose visit has not been organised by the museum itself, as there is no reason of public interest justifying this price discrimination.

47. With regard to conformity with the revised Charter, the Committee notes that in the SNPT's view, the differences in treatment in respect of pricing conditions are widespread and are not challenged by the Government. The Committee can see no objective or reasonable grounds for maintaining these differences in treatment. Accordingly, it considers that they constitute discrimination in employment contrary to Article 1 para. 2 of the revised Charter.

48. The Committee considers that the other facts put forward by the participants in the procedure are not of a nature such as to change its assessment of the situation.

The right to vocational training

49. The Committee first of all examined the alleged discrimination against interpreter guides and national lecturers with a state diploma in exercising their right to vocational training.

50. The SNPT maintains that this discrimination results from the various practices of the ministerial bodies such as discounts at certain points of sale on catalogues and other works, and free and immediate access to certain sites. The government does not reply to this point directly.

51. The Committee points out that Article 10 para. 1 of the Charter places essentially two obligations on states which have accepted it: first, the obligation to promote the technical and vocational training of all persons, and second, the obligation to provide facilities for access to higher technical and university education, subject to no other criterion than individual fitness (Conclusions 1, page 55).

52. In the instant case, the Committee is of the opinion that the points put forward by the SNPT do not show that the advantages denied to the interpreter guides and national lecturers with a state diploma are related to vocational training within the meaning of Article 10 para.1 and consequently are not sufficient to establish that the Government has failed to comply with this provision. Accordingly, the Committee considers that there has been no violation of Article 10 para. 1 of the revised Charter.

53. The Committee then looked at the alleged discrimination resulting from the exclusion of interpreter guides and national lecturers with a state diploma from further training. The SNPT refers to the further training run by the *Villes et Pays d'Art et d'Histoire* network on behalf of the Ministry of Culture and Communication which is reserved exclusively or on a priority basis and on preferential terms for the network's guide-lecturers. The Government maintains that this situation is justified by the fact that it is an in-house training financed by the Ministry of Culture and Communication. It adds that the "initial" training run by the ministry in preparation for the approved guide-lecturers examination is open to all.

54. The Committee points out that Article 10 para. 3 of the revised Charter calls on states which have accepted it to provide or promote as necessary adequate and readily available training facilities for adult workers.

55. In the instant case, the Committee is of the opinion that the fact that the Ministry of Culture and Communication organises in-house further training aimed at approved lecturers is not in itself sufficient basis for concluding that there has been a violation of Article 10 para. 3 of the revised Charter.

CONCLUSION

56. The Committee concludes

i. that the differences in treatment between the approved lecturer guides of the *Villes et Pays d'Art et d'Histoire* network and the interpreter guides and national lecturers with a state diploma as regards the freedom to conduct guided tours constitute discrimination in breach of Article 1 para. 2 of the revised Charter;

ii. that the differences in treatment between the approved lecturer guides of the CNMHS and national museums, on the one hand, and the interpreter guides and national lecturers with a state diploma, on the other, as regards the freedom to conduct guided tours constitute discrimination in breach of Article 1 para. 2 of the revised Charter;

iii. that the differences in treatment between the approved lecturer guides of the CNMHS and national museums, on the one hand, and the interpreter guides and national lecturers with a state diploma, on the other, as regards working conditions constitute discrimination in breach of Article 1 para. 2 of the revised Charter

iv. that the differences in treatment between the approved staff and the interpreter guides and national lecturers with a state diploma does not constitute a violation of the right to vocational training within the meaning of Article 10 paras. 1 or 3 of the revised Charter.



Nikitas ALIPRANTIS
Rapporteur



Matti MIKKOLA
President of the
Committee



Régis BRILLAT
Executive Secretary

Recommendation RecChS(2001)1 of the Committee of Ministers

Recommendation RecChS(2001)1 on Collective complaint No. 6/1999 – *Syndicat national des Professions du tourisme* against France

(Adopted by the Committee of Ministers on 31 January 2001, at the 738th meeting of the Ministers Deputies)

The Committee of Ministers¹,

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint introduced on 30 August 1999 by the *Syndicat national des Professions du tourisme* against France;

Having regard to the report transmitted by the European Committee of Social Rights;

Having noted that the said Committee has found that France is not in conformity with Article 1 para. 2 of the Revised European Social Charter for the following reasons:

the differences in treatment, of which interpreter guides and national lecturers with a state diploma are the victims, and which are not contested by the French Government, as regards the freedom to conduct guided tours (non-access in practice to certain museums and monuments of the « *Villes et Pays d'Art et d'Histoire* » network; no right to conduct guided tours in some of the principal tourist sites falling under the National Fund for Historic Monuments and Sites and the National Museums Association) and as regards the pricing conditions on certain tourist sites which are accessible to all guides and interpreters, have no objective and reasonable grounds and constitute discrimination in employment to the prejudice of interpreter guides and national lecturers with a state diploma,

¹ In conformity with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the Deputies in their composition restricted to the Representatives of Contracting Parties to the European Social Charter or the Revised European Social Charter participated in the vote, ie. Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey and the United Kingdom.

Recommends France:

- to provide information by the intermediary of the Ministry of Culture and Communication to territorial entities belonging to the « *Villes et Pays d'Art et d'Histoire* » network of the obligation to ensure effective access for all guides and lecturers holding a professional card to all sites open to the public;
- to allow access for all guides and lecturers holding the professional card to all historical monuments and national museums. Requirements that visits shall be accompanied by security personnel or that guides/lecturers shall demonstrate knowledge of specific security instructions are not contrary to Article 1 para. 2 of the Charter;
- to inform the governing bodies of all the institutions concerned that the application of different fee conditions, in whatever form (reservation rights, speaking rights), only to visits not organised by the institutions themselves is a discriminatory practice and therefore prohibited;
- to indicate the measures taken to comply with this Recommendation in the report to be submitted on the application of the Revised European Social Charter before 30 June 2001.

Appendix

Decision on admissibility. The text of the decision on admissibility – which is annexed to the Report by the European Committee of Social Rights to the Committee of Ministers – can be found on page 39 of this publication.

Appendices

Appendix I

Additional Protocol to the 1995 European Social Charter providing for a system of collective complaints

Preamble

The member States of the Council of Europe, signatories to this Protocol to the European Social Charter, opened for signature in Turin on 18 October 1961 (hereinafter referred to as "the Charter");

Resolved to take new measures to improve the effective enforcement of the social rights guaranteed by the Charter;

Considering that this aim could be achieved in particular by the establishment of a collective complaints procedure, which, *inter alia*, would strengthen the participation of management and labour and of non-governmental organisations,

Have agreed as follows:

Article 1

The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter:

- a. international organisations of employers and trade unions referred to in para. 2 of Article 27 of the Charter;
- b. other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;
- c. representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

Article 2

1. Any Contracting State may also, when it expresses its consent to be bound by this Protocol, in accordance with the provisions of Article 13, or at any moment thereafter, declare that it recognises the right of any other representative national non-governmental organisation within its jurisdiction which has particular competence in the matters governed by the Charter, to lodge complaints against it.
2. Such declarations may be made for a specific period.

3. The declarations shall be deposited with the Secretary General of the Council of Europe who shall transmit copies thereof to the Contracting Parties and publish them.

Article 3

The international non-governmental organisations and the national non-governmental organisations referred to in Article 1.b and Article 2 respectively may submit complaints in accordance with the procedure prescribed by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence.

Article 4

The complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of this provision.

Article 5

Any complaint shall be addressed to the Secretary General who shall acknowledge receipt of it, notify it to the Contracting Party concerned and immediately transmit it to the Committee of Independent Experts.

Article 6

The Committee of Independent Experts may request the Contracting Party concerned and the organisation which lodged the complaint to submit written information and observations on the admissibility of the complaint within such time-limit as it shall prescribe.

Article 7

1. If it decides that a complaint is admissible, the Committee of Independent Experts shall notify the Contracting Parties to the Charter through the Secretary General. It shall request the Contracting Party concerned and the organisation which lodged the complaint to submit, within such time-limit as it shall prescribe, all relevant written explanations or information, and the other Contracting Parties to this Protocol, the comments they wish to submit, within the same time-limit.
2. If the complaint has been lodged by a national organisation of employers or a national trade union or by another national or international non-governmental organisation, the Committee of Independent Experts shall notify the international organisations of employers or trade unions referred to in para. 2 of Article 27 of the Charter, through the Secretary General, and invite them to submit observations within such time-limit as it shall prescribe.
3. On the basis of the explanations, information or observations submitted under para.s 1 and 2 above, the Contracting Party concerned and the organisation

which lodged the complaint may submit any additional written information or observations within such time- limit as the Committee of Independent Experts shall prescribe.

4. In the course of the examination of the complaint, the Committee of Independent Experts may organise a hearing with the representatives of the parties.

Article 8

1. The Committee of Independent Experts shall draw up a report in which it shall describe the steps taken by it to examine the complaint and present its conclusions as to whether or not the Contracting Party concerned has ensured the satisfactory application of the provision of the Charter referred to in the complaint.
2. The report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the organisation that lodged the complaint and to the Contracting Parties to the Charter, which shall not be at liberty to publish it.

It shall be transmitted to the Parliamentary Assembly and made public at the same time as the resolution referred to in Article 9 or no later than four months after it has been transmitted to the Committee of Ministers.

Article 9

1. On the basis of the report of the Committee of Independent Experts, the Committee of Ministers shall adopt a resolution by a majority of those voting. If the Committee of Independent Experts finds that the Charter has not been applied in a satisfactory manner, the Committee of Ministers shall adopt, by a majority of two-thirds of those voting, a recommendation addressed to the Contracting Party concerned. In both cases, entitlement to voting shall be limited to the Contracting Parties to the Charter.
2. At the request of the Contracting Party concerned, the Committee of Ministers may decide, where the report of the Committee of Independent Experts raises new issues, by a two-thirds majority of the Contracting Parties to the Charter, to consult the Governmental Committee.

Article 10

The Contracting Party concerned shall provide information on the measures it has taken to give effect to the Committee of Ministers' recommendation, in the next report which it submits to the Secretary General under Article 21 of the Charter.

Article 11

Articles 1 to 10 of this Protocol shall apply also to the articles of Part II of the first Additional Protocol to the Charter in respect of the States Parties to that Protocol, to the extent that these articles have been accepted.

Article 12

The States Parties to this Protocol consider that the first paragraph of the appendix to the Charter, relating to Part III, reads as follows:

"It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof and in the provisions of this Protocol."

Article 13

1. This Protocol shall be open for signature by member States of the Council of Europe signatories to the Charter, which may express their consent to be bound by:
 - a. signature without reservation as to ratification, acceptance or approval;
or
 - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. A member State of the Council of Europe may not express its consent to be bound by this Protocol without previously or simultaneously ratifying the Charter.
3. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 14

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 13.
2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of one month after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 15

1. Any Party may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of such notification by the Secretary General.

Article 16

The Secretary General of the Council of Europe shall notify all the member States of the Council of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. the date of entry into force of this Protocol in accordance with Article 14;
- d. any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 9th day of November 1995, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Appendix II

Rules of Procedure of the European Committee of Social Rights (extract relating to the collective complaints procedure)

Part VII: Collective complaints procedure

Rule 19: Lodging of complaints

Collective complaints submitted under the 1995 Additional Protocol providing for a system of collective complaints shall be addressed to the Secretary to the Committee acting on behalf of the Secretary General of the Council of Europe.

Rule 20: Signature

Complaints shall be signed by the person(s) with the competence to represent the complainant organisation. The Committee decides on any questions concerning this matter.

Rule 21: Languages

1. Complaints made by the organisations listed in Article 1 paras. a and b of the Protocol shall be submitted in one of the official languages of the Council of Europe.
2. Complaints made by organisations listed in Article 1 para. c and Article 2 para. 1 of the Protocol may be submitted in a language other than one of the official languages of the Council of Europe. For these complaints, the Secretary to the Committee is authorised in his correspondence with the complainants to use a language other than one of the official languages of the Council of Europe.

Rule 22: Representatives of the States and of the complainant organisations

1. The states shall be represented before the Committee by the agents they appoint. These may have the assistance of advisers.
2. The organisations referred to in paras. 2 and 3 of the Protocol shall be represented by a person appointed by the organisation to this end. They may have the assistance of advisers.
3. The names and titles of the representatives and of any advisers shall be notified to the Committee.

Rule 23: Order in which to handle a complaint

Complaints shall be registered with the Secretariat of the Committee in chronological order. The Committee shall deal with complaints in the order in which they become ready for examination. It may, however, decide to give precedence to a particular complaint.

Rule 24: Rapporteurs

1. For each complaint a member of the Committee shall be appointed by the President to act as Rapporteur.
2. The Rapporteur shall follow the proceedings. He or she shall inform the Committee at each of its sessions of the progress of the proceedings and of the procedural decisions taken by the President since the previous session.
3. The Rapporteur shall elaborate a draft decision on admissibility of the complaint for adoption by the Committee, followed by, as the case may be, a draft report for the Committee of Ministers as provided for in Article 8 of the Protocol.

Rule 25: Role of the President

1. The President shall take the decisions provided for in Rules 26 to 29.
2. The President shall set the time limits mentioned under Article 6 and under Article 7 paras. 1, 2 and 3 of the Protocol. He or she may grant, in exceptional cases and following a well-founded request, an extension of these time limits.
3. The President may, in the name of the Committee, take any necessary measures in order that the procedure may be correctly carried out.
4. The President may especially, in order to respect a reasonable time limit for dealing with complaints, decide to convene additional sessions of the Committee.

Rule 26: Observations on the admissibility

1. Before the Committee decides on admissibility, the President of the Committee may ask the State concerned for written information and observations, within a time limit that he or she decides, on the admissibility of the complaint.
2. The President may also ask the organisation that lodged the complaint to respond, on the same conditions, to the observations made by the State concerned.

Rule 27: Admissibility assessment

1. The Rapporteur shall within the shortest possible time limit elaborate a draft decision on admissibility. It shall contain:
 - a. a statement of the relevant facts;

- b. an indication of the issues arising under the Charter in the complaint;
 - c. a proposal on the admissibility of the complaint.
2. The Committee's decision on admissibility of the complaint shall be accompanied by reasons and be signed by the President, the Rapporteur and the Secretary to the Committee.
 3. The Committee's decision on admissibility of the complaint shall be made public.
 4. The States party to the Charter or the revised Charter shall be notified about the decision.
 5. If the complaint is declared admissible, copies of the complaint and the observations of the parties shall be transmitted, upon request, to States party to the Protocol and to the international organisations of employers and trade unions referred to in para. 2 of Article 27 of the Charter. They shall also have the possibility to consult the appendices to the complaint at the Secretariat.

Rule 28: Assessment of the merits of the complaint - written procedure

1. If a complaint has been declared admissible, the Committee asks the State concerned to make its observations on the merits of the complaint within a time limit that it decides.
2. The President then invites the organisation that lodged the complaint to respond, on the same conditions, to these observations and to submit all relevant written explanations or information to the Committee.
3. The States party to the Protocol as well as the States having ratified the revised Social Charter and having made a declaration under Article D para. 2 shall be invited to make comments within the same time limit as that decided above under para. 1.
4. The international organisations of employers and trade unions referred to in Article 27 para. 2 of the Charter shall be invited to make observations on complaints lodged by national organisations of employers and trade unions and by non-governmental organisations.
5. The observations submitted in application of paras. 3 and 4 shall be transmitted to the organisation that lodged the complaint and to the State concerned.
6. Any information received by the Committee in application of Article 7 paras. 1, 2 and 3 of the Protocol shall be transmitted to the State concerned and to the complainant organisation.

Rule 29: Hearing

1. The hearing provided for under Article 7 para. 4 of the Protocol may be held at the request of one of the parties or on the Committee's initiative. The Committee shall decide whether or not to act upon a request made by one of the parties.

2. The State concerned and the complainant organisation as well as the States and organisations referred to under Article 7 of the Protocol that have submitted written observations during the proceedings shall be invited to the hearing.
3. The hearing shall be public unless the President decides otherwise.

Rule 30: The Committee's decision on the merits

1. The Committee's decision on the merits of the complaint contained in the report provided for in Article 8 of the Protocol shall be accompanied by reasons and be signed by the President, the Rapporteur and the Secretary to the Committee. Any dissenting opinions shall be appended to the Committee's decision at the request of their authors.
2. The report containing the decision in question shall be transmitted to the Committee of Ministers and to the Parliamentary Assembly.
3. The Committee's decision on the merits of the complaint shall be made public at the moment of the adoption of a resolution by the Committee of Ministers in conformity with Article 9 of the Protocol or at the latest four months after the report was transmitted to the Committee of Ministers.
4. When the Committee's decision has become public, all documents registered with the Secretariat shall be accessible to the public unless the Committee decides otherwise following a proposal by the Rapporteur.

Part VIII: Amendment to the Rules of Procedure

Rule 31: Amendments

Any rule may be amended upon motion made after notice by one of its members when such motion is carried, at a session of the Committee, by a majority of all its members. Notice of such a motion shall be delivered in writing at least two months before the session at which it is to be discussed. Such notice of motion shall be communicated to all members of the Committee at the earliest possible moment.

Appendix III

Signatures and ratifications of the Charter, its Protocols and the revised Charter Situation at 1st July 2001

| Member states | European Social Charter 1961 | | Additional Protocol 1988 | | Amending Protocol 1991 | | Collective Complaints Protocol 1995 | | Revised European Social Charter 1996 | | |
|---|---------------------------------|--------------|-----------------------------|--------------|---------------------------|--------------|--|--------------|---|--------------|---|
| | Signature | Ratification | Signature | Ratification | Signature | Ratification | Signature | Ratification | Signature | Ratification | |
| | Albania | (1) | — | (1) | — | (1) | — | (1) | — | 21/09/98 | — |
| | Andorra | (1) | — | (1) | — | (1) | — | (1) | — | 4/11/00 | — |
| Armenia | — | — | — | — | — | — | — | — | — | — | |
| Austria | 22/07/63 | 29/10/69 | 04/12/90 | — | 07/05/92 | 13/07/95 | 07/05/99 | — | 07/05/99 | — | |
| Azerbaijan | — | — | — | — | — | — | — | — | — | — | |
| Belgium | 18/10/61 | 16/10/90 | 20/05/92 | — | 22/10/91 | 21/09/00 | 14/05/96 | — | 03/05/96 | — | |
| Bulgaria | (2) | (2) | (3) | (3) | (2) | (2) | (4) | (4) | 21/09/98 | 07/06/00 | |
| Croatia | 08/03/99 | — | 08/03/99 | — | 08/03/99 | — | 08/03/99 | — | — | — | |
| Cyprus | 22/05/67 | 07/03/68 | 05/05/88 | (3) | 21/10/91 | 01/06/93 | 09/11/95 | 06/08/96 | 03/05/96 | 27/09/00 | |
| Czech Republic | 27/05/92* | 3/11/99 | 27/05/92* | 17/11/99 | 27/05/92* | 17/11/99 | — | — | 4/11/00 | — | |
| Denmark | 18/10/61 | 03/03/65 | 27/08/96 | 27/08/96 | — | ** | 09/11/95 | — | 03/05/96 | — | |
| Estonia | (2) | (2) | (3) | (3) | (2) | (2) | (2) | — | 04/05/98 | 11/09/00 | |
| Finland | 09/02/90 | 29/04/91 | 09/02/90 | 29/04/91 | 16/03/92 | 18/08/94 | 09/11/95 | 17/07/98 | 03/05/96 | — | |
| France | 18/10/61 | 09/03/73 | 22/06/89 | (2) | 21/10/91 | 24/05/95 | 09/11/95 | 07/05/99 | 03/05/96 | 07/05/99 | |
| Georgia | (1) | (1) | — | (1) | — | (1) | — | 30/06/00 | — | — | |
| Germany | 18/10/61 | 27/01/65 | 05/05/88 | — | — | ** | — | — | — | — | |
| Greece | 18/10/61 | 06/06/84 | 05/05/88 | 18/06/98 | 29/11/91 | 12/09/96 | 18/06/98 | 18/06/98 | 03/05/96 | — | |
| Hungary | 13/12/91 | 08/07/99 | — | — | 13/12/91 | ** | — | — | — | — | |
| Iceland | 15/01/76 | 15/01/76 | 05/05/88 | — | — | ** | — | — | 04/11/98 | — | |
| Ireland | 18/10/61 | 07/10/64 | (3) | (3) | 14/05/97 | 14/05/97 | 4/11/00 | 4/11/00 | 4/11/00 | 4/11/00 | |
| Italy | 18/10/61 | 22/10/65 | 05/05/88 | 26/05/94 | 21/10/91 | 27/01/95 | 09/11/95 | 03/11/97 | 03/05/96 | 05/07/99 | |
| Latvia | 29/05/97 | — | 29/05/97 | — | 29/05/97 | — | — | — | — | — | |
| Liechtenstein | 09/10/91 | — | — | — | — | — | — | — | — | — | |
| Lithuania | (2) | (2) | (3) | (3) | (2) | (2) | (2) | — | 08/09/97 | 29/06/01 | |
| Luxembourg | 18/10/61 | 10/10/91 | 05/05/88 | — | 21/10/91 | ** | — | — | 11/02/98 | — | |
| Malta | 26/05/88 | 04/10/88 | — | — | 21/10/91 | 16/02/94 | — | — | — | — | |
| Moldova | (1) | — | (1) | — | (1) | — | (1) | — | 03/11/98 | — | |
| Netherlands | 18/10/61 | 22/04/80 | 14/06/90 | 05/08/92 | 21/10/91 | 01/06/93 | — | — | — | — | |
| Norway | 18/10/61 | 26/10/62 | 10/12/93 | 10/12/93 | 21/10/91 | 21/10/91 | 20/03/97 | 20/03/97 | 07/05/01 | 07/05/01 | |
| Poland | 26/11/91 | 25/06/97 | — | — | 18/04/97 | 25/06/97 | — | — | — | — | |
| Portugal | 01/06/82 | 30/09/91 | (1) | — | 24/02/92 | 08/03/93 | 09/11/95 | 20/03/98 | 03/05/96 | — | |
| Romania | 04/10/94 | (2) | (3) | (3) | (2) | (2) | (2) | — | 14/05/97 | 07/05/99 | |
| Russia | (1) | — | (1) | — | (1) | — | (1) | — | 14/09/00 | — | |
| San Marino | — | — | — | — | — | — | — | — | — | — | |
| Slovakia | 27/05/92* | 22/06/98 | 27/05/92* | 22/06/98 | 27/05/92* | 22/06/98 | 18/11/99 | — | 18/11/99 | — | |
| Slovenia | 11/10/97 | (2) | 11/10/97 | (3) | 11/10/97 | (2) | 11/10/97 | (4) | 11/10/97 | 07/05/99 | |
| Spain | 27/04/78 | 06/05/80 | 05/05/88 | 24/01/00 | 21/10/91 | 24/01/00 | — | — | 23/10/00 | — | |
| Sweden | 18/10/61 | 17/12/62 | 05/05/88 | 05/05/89 | 21/10/91 | 18/03/92 | 09/11/95 | 29/05/98 | 03/05/96 | 29/05/98 | |
| Switzerland | 06/05/76 | — | — | — | — | — | — | — | — | — | |
| “The former Yugoslav Republic of Macedonia” | 05/05/98 | — | 05/05/98 | — | 05/05/98 | — | — | — | — | — | |
| Turkey | 18/10/61 | 24/11/89 | 05/05/98 | — | — | ** | — | — | — | — | |
| Ukraine | 02/05/96 | — | (1) | — | (1) | — | (1) | — | 07/05/99 | — | |
| United Kingdom | 18/10/61 | 11/07/62 | — | — | 21/10/91 | ** | — | — | 07/11/97 | — | |

* Date of signature by the Czech and Slovak Federal Republic.

** State whose ratification is necessary for the entry into force of the protocol.

- (1) State having signed the Revised Social Charter.
- (2) State having ratified the revised Social Charter.
- (3) State having accepted the rights (or certain of the rights) guaranteed by the Protocol by ratifying the revised Charter.
- (4) State having accepted the collective complaints procedure by a declaration made in application of Article D para. 2 of Part IV of the revised Social Charter.

Appendix IV

International non-governmental organisations entitled to submit collective complaints¹

Conference of European Churches (CEC)
Conférence des églises européennes (KEK)

Council of European Professional Informatics Societies (*1 January 2001*)
Conseil des associations européennes des professionnels de l'informatique (CEPIS)
(*1 janvier 2001*)

Education International (EI) (*1 January 1999*)
Internationale de l'éducation (IE) (*1 janvier 1999*)

Eurolink Age

European Action of the Disabled (*1 January 2000*)
Action européenne des handicapés (AEH) (*1 janvier 2000*)

European Antipoverty Network
Réseau européen des associations de lutte contre la pauvreté et l'exclusion sociale (EAPN)

European Association for Palliative Care
Association européenne de soins palliatifs (EAPC-Onlus)

European Association for Psychotherapy (EPA) (*1 January 2001*)
Association européenne de psychothérapie (EAP) (*1 janvier 2001*)

European Association of Railwaymen
Association européenne des cheminots (AEC)

European Centre of the International Council of Women (ECICW)
Centre européen du Conseil international des femmes (CECIF)

European Council of Police Trade Unions
Conseil européen des syndicats de police

¹ List established by the Governmental Committee following the decision of the Committee of Ministers on 22 June 1995 (see para. 20 of the explanatory report to the Protocol). The organisations are registered on this list - in English alphabetical order - for a duration of 4 years as from the date of entry into force of the Protocol (1st July 1998), with the exception of NGOs for which it is indicated that the duration of 4 years begins on 1st January 1999, or on 1st January 2000, or on 1st January 2001.

European Council of WIZO Federations (ECWF) (*1 January 2000*)
Conseil européen des fédérations WIZO (CEFW) (*1 janvier 2000*)

European Disability Forum (EDF) (*1 January 2001*)
Forum européen des personnes handicapées (FEPH) (*1 janvier 2001*)

European Federation of Employees in Public Services
Fédération européenne du personnel des services publics (EUROFEDOP)

European Federation of National Organisations Working with the Homeless
Fédération européenne d'associations nationales travaillant avec les sans-abri (FEANTSA)

European Federation of the Elderly (*1 January 1999*)
Fédération européenne des personnes âgées (EURAG) (*1 janvier 1999*)

European Forum for Child Welfare
Forum européen pour la protection de l'enfance (EFCW)

European Movement
Mouvement européen

European Non-Governmental Sports Organisation (*1 January 1999*)
Organisation européenne non gouvernementale des sports (ENGSO) (*1 janvier 1999*)

European Ombudsman Institute
Institut européen de l'Ombudsman (EOI)

European Organisation of Military Associations
Organisation européenne des associations militaires (EUROMIL)

European Regional Council of the World Federation for Mental Health
Conseil régional européen de la Fédération Mondiale pour la santé mentale

European Union Migrant's Forum (*1 January 2001*)
Forum des migrants de l'Union européenne (EMF) (*1 janvier 2001*)

European Union of Rechtspfleger (*1 January 1999*)
Union européenne des greffiers de justice (EUR) (*1 janvier 1999*)

European Women's Lobby
Lobby européen des femmes

Eurotalent

International Association Autism-Europe (IAAE)
Association internationale Autisme-Europe (AIAE)

International Association of the Third-Age Universities
Association internationale des universités du 3^e âge (AIUTA)

International Catholic Society for Girls
Association catholique internationale de services pour la jeunesse féminine (ACISJF)

International Centre for the Legal Protection of Human Rights (INTERIGHTS)

International Commission of Jurists (ICJ)
Commission internationale de juristes (CIJ)

International Confederation of Catholic Charities (*1 January 2000*)
Confédération internationale des charités catholiques (CARITAS INTERNATIONALIS)
(*1 janvier 2000*)

International Council of Environmental Law (ICEL) (*1 January 2000*)
Conseil international du droit de l'environnement (CIDE) (*1 janvier 2000*)

International Council of Nurses (ICN)
Conseil international des infirmières (CII)

International Council on Social Welfare (ICSW)
Conseil international de l'action sociale (CIAS)

International Federation of Educative Communities
Fédération internationale des communautés éducatives (FICE)

International Federation of Human Rights Leagues
Fédération internationale des ligues des Droits de l'Homme (FIDH)

International Federation of Musicians
Fédération internationale des musiciens (FIM)

International Federation of Settlements and Neighbourhood Centres
Fédération internationale des centres sociaux et communautaires (IFS)

International Federation for Hydrocephalus and Spina Bifida
Fédération internationale pour l'hydrocéphalie et le spina bifida (IFHSB)

International Federation for Parent Education (IFPE) (*1 January 1999*)
Fédération internationale pour l'éducation des parents (FIEP) (*1 janvier 1999*)

International Human Rights Organization for the Right to Feed Oneself (*1 January 2001*)
Organisation internationale des droits de l'homme pour le droit à l'alimentation (FIAN)
(*1 janvier 2001*)

International Humanist and Ethical Union (IHEU)
Union internationale humaniste et laïque (UIHL)

International Movement ATD - Fourth World
Mouvement international ATD - Quart Monde

International Planned Parenthood Federation – European Network
Fédération internationale pour le planning familial – Réseau européen (IPPF)

International Road Safety
La prévention routière internationale

International Scientific Conference of Minorities for Europe of Tomorrow
Conférence scientifique internationale sur les minorités dans l'Europe de demain (ISCOMET)

Marangopoulos Foundation for Human Rights (MFHR) (*1 January 2000*)
Fondation Marangopoulos pour les droits de l'homme (FMDH) (*1 janvier 2000*)

Public Services International (PSI)
Internationale des services publics (ISP)

Quaker Council for European Affairs
Conseil quaker pour les affaires européennes (QCEA)

Standing Committee of the Hospitals of the European Union
Comité permanent des Hôpitaux de l'Union européenne (HOPE)

World Confederation of Teachers
Confédération syndicale mondiale de l'enseignement

