

DECISION ON ADMISSIBILITY

8 December 2009

European Trade Union Confederation (ETUC)
Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)
Confédération des Syndicats chrétiens de Belgique (CSC)
Fédération Générale du Travail de Belgique (FGTB)
v. Belgium

Complaint N° 59/2009

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 240th session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, Vice-President
Colm O'CONNOR, Vice-President
Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Mr Lauri LEPPIK
Mrs Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmilla HARUTYUNYAN
Mssrs Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA QUESADA
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint registered on 22 June 2009 as number 59/2009, lodged by the European Trade Union Confederation (« The ETUC »), and signed by its Secretary General Mr John MONKS ; Centrale Générale des Syndicats Libéraux de Belgique (« The CGSLB »), and signed by its President Mr Jan VERKAMST; Confédération des Syndicats chrétiens de Belgique (« The CSC »), and signed by its President Mr Luc CORTEBEECK; Fédération Générale du Travail de Belgique (« The FGTB »), and signed by its President, Mr Rudy DE LEEUW, requesting the Committee to find that Belgium is not in conformity with Article 6§4 of the Revised European Social Charter (“the Revised Charter”) ;

Having regard to the documents appended to the complaint;

Having regard to the communication made by the Government of Belgium on observations on admissibility, registered by the Secretariat on 25 September 2009;

Having regard to the Revised Charter and, in particular, to Article 6§4 which reads as follows:

Article 6 – The right to bargain collectively

Part I: "All workers and employers have the right to bargain collectively."

Part II: "With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

(...)

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into. "

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

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session and on 20 February 2009 at its 234th session ("the Rules");

Having deliberated on 8 December 2009;

Delivers the following decision, adopted on the above mentioned date:

1. The ETUC, the CGSLB, the CSC and the FGTB claim that :

- court intervention in collective disputes since 1987 under the urgent procedure, particularly in the form of restrictions on the activities of strike pickets, is in

breach of the right to strike and to collective action, and is therefore incompatible with Article 6§4 of the Revised Charter.

THE LAW

2. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Belgium on 23 June 2003 and entered into force for this State on 1 August 2003, the complaint has been submitted in writing and concerns Article 6§4 of the Revised Charter, provision accepted by Belgium when it ratified this treaty on 02 March 2004 and to which it is bound since the entry into force of this treaty in its respect on 1 August 2003.

3. Moreover, the grounds for the complaint are indicated.

4. In accordance with Article 1 a) of the Protocol, the ETUC is an international organisation of trade unions referred to in paragraph 2 of Article 27 of the Charter and thus being entitled to lodge collective complaints.

5. Exercising their activities in Belgium: the CGSLB is a representative national trade union within the jurisdiction of this country as required by Article 1c of the Protocol; the CSC is a representative confederation of trade unions within the jurisdiction of this country as required by Article 1c of the Protocol; the FGTB is a representative confederation of trade unions within the jurisdiction of this country as required by Article 1c of the Protocol.

6. Furthermore, the CGSLB, the CSC and the FGTB are recognised under Belgian law as being representative organisations of workers and employees on the national level. The Committee recalls that, for the purpose of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness (Complaint No. 9/2000, *Confédération française de l'Encadrement "CFE-CGC" v. France*, decision on admissibility of 6 November 2000, paragraph 6). Having made an overall assessment of the information at its disposal, the Committee considers that CGSLB, the CSC and the FGTB are representative organisations of workers and employees on the national level for the purpose of the collective complaints procedure.

7. Moreover,

i) the complaint submitted on behalf of ETUC is signed by its General Secretary, Mr John MONKS, who pursuant to Article 23§2 of the ETUC's constitution shall be the spokesperson of the Confederation and the coordinator of all its activities;

ii) the complaint submitted on behalf of the CGSLB is signed by its President Mr Jan VERKAMST, entitled according to Article 47 of the CGSLB's statutes to represent it externally;

iii) the complaint submitted on behalf of the CSC is signed by its President Mr Luc CORTEBEECK, who pursuant to Article 35 of the CSC's statutes shall have the management of the CSC and its services;

iv) the complaint submitted on behalf of the FGTB is signed by Mr Rudy DE LEEUW, entitled according to Annex 3 of the FGTB's statutes to represent it externally.

9. The Committee, therefore, considers that the condition provided for in Article 20 of its Rules of procedure is fulfilled.

10. The Committee invited the respondent Government to submit observations on admissibility (Article 6 of the Protocol and Rule 29§3), and received a communication from the Government according to which no observations were made.

11. For these reasons, the Committee, on the basis of the report presented by Ms Monika SCHLACHTER and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisations and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 20 March 2010.

Invites the ETUC, the CGSLB, the CSC and the FGTB to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 20 March 2010, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 20 March 2010.

Monika SCHLACHTER
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary