

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

**DECISION ON ADMISSIBILITY**

**14 May 2014**

**Bedriftsforbundet v. Norway**

Complaint No. 103/2013

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 271<sup>st</sup> session attended by:

Luis JIMENA QUESADA, President  
Monika SCHLACHTER, Vice-President  
Petros STANGOS, Vice-President  
Lauri LEPIIK  
Birgitta NYSTRÖM  
Rüçhan IŞIK  
Alexandru ATHANASIU  
Jarna PETMAN  
Elena MACHULSKAYA  
Giuseppe PALMISANO  
Karin LUKAS  
Eliane CHEMLA  
Jozsef HAJDU  
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary,

Having regard to the complaint dated 4 September 2013, registered on 9 September 2013 as number 103/2013 and lodged by *Bedriftsforbundet* (the Norwegian Business Association), represented by Attorney Nicolay Skarning and Administrative Director Lars-Erik Sletner, pursuant to a revised authorisation dated 30 April 2014 and signed by the Board of Directors of *Bedriftsforbundet*, requesting the Committee to find that the situation in Norway is not in conformity with Article 5 of the Revised European Social Charter (“the Charter”);

Having regard to the notification addressed to the Government of Norway (“the Government”) on 24 September 2013;

Having regard to the documents appended to the complaint;

Having regard to the Charter and, in particular, to Article 5 thereof, which reads as follows:

**Article 5 – The right to organise**

Part I: “All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.”

Part II: “With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.”

Having regard to the Additional Protocol to the European Social Charter (“the 1961 Charter”) providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules of the Committee (“the Rules”);

Having regard to the additional submissions to the complaint from *Bedriftsforbundet*, dated 4 and 25 November and registered on the same dates;

Having regard to the observations of the Government on the admissibility of the complaint dated on 7 November 2013 and registered on the same date;

Having regard to the observations of *Bedriftsforbundet* of 29 November 2013, registered on the same date, in response to those of the Government;

Having regard to the additional observations of *Bedriftsforbundet* of 10 February 2014, registered on the same date, and the documents appended to them;

Having regard to the additional observations of the Government dated 7 May 2014, registered on the same date, and the documents appended to them;

Having regard to the letters, dated 3 and 4 December 2013 respectively, by the employers' organisations Ships- and Terminal Operators Association (*Dampskibsexpeditørernes Forening*) and Norwegian Logistics and Freight Association (*NHO Logistikk og Transport*), in support of the complaint;

Having regard to the letter of the Government of 20 January 2014, containing a letter from the Norwegian Confederation of Trade Unions (*Landsorganisasjonen i Norge*; "LO");

Having deliberated on 12 and 14 May 2014;

Delivers the following decision, adopted on the latter date:

1. *Bedriftsforbundet* submits that the practice of requiring the membership of a particular trade union (the Norwegian Transport Workers' Union; *Norsk Transportarbeiderforbund* ("NTF")) as a condition for taking up and holding permanent work in Norwegian public ports, and of the preferential treatment accorded to the members of the said union in the collective agreement governing work at ports, are in breach of the negative and positive aspects of the right to organise guaranteed in Article 5 of the Charter.

2. The Government raises the following objections against the admissibility of the complaint:

- *Bedriftsforbundet* is not an organisation of employers within the meaning of Article 1§c of the Protocol;
- It is not a "representative" organisation within the meaning of Article 1§c of the Protocol;
- the complaint concerns an individual situation, which is under litigation at the national level and cannot be made subject of a collective complaint; and
- *Bedriftsforbundet* does not represent workers and therefore cannot lodge a complaint on their behalf.

3. *Bedriftsforbundet* contests these objections and submits that the complaint should be declared admissible.

## **THE LAW**

*As to the admissibility conditions set out in the Protocol and the Committee's Rules*

4. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Norway on 20 March 1997 and took effect in respect of that state on 1 July 1998, the complaint is lodged in writing. It concerns Article 5 of the Charter, a provision accepted by Norway at the ratification of this treaty on 7 May 2001 and binding upon the said state since the entry into force of the treaty in respect of it on 1 July 2001.

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

6. The Committee observes that the complaint submitted on behalf of *Bedriftsforbundet* is signed by Attorney Nicolay Skarning, entitled to represent the organisation in respect of this complaint, as established by the authorisation signed by the Board of Directors of *Bedriftsforbundet*, who, according to Section 14 of its Statutes, is entitled to issue a power of attorney on behalf of the association. The Committee therefore considers that the complaint complies with Rule 23.

7. The Committee observes that the Government contests *Bedriftsforbundet's* status as a representative organisation within the meaning of Article 1§c of the Protocol and maintains that the complainant organisation has failed to submit sufficient evidence on its representativeness.

8. Furthermore, the Committee observes that in its submissions of 7 May 2014, the Government alleges that *Bedriftsforbundet* is not an organisation of employers within the meaning of the Protocol. According to the Government, *Bedriftsforbundet* is an organisation with a membership of only 2.3 % of the small and medium-sized enterprises in Norway.

9. The Government further maintains that pursuant to the Statutes of *Bedriftsforbundet*, it is an interest organisation purporting to improve the conditions for small and medium-size enterprises. It does not take part in collective bargaining and is not a party to collective agreements. *Bedriftsforbundet* is moreover not classified as an employers' organisation by Statistics Norway.

10. *Bedriftsforbundet* maintains that it is a business and employer's organisation for small and medium-sized businesses in Norway. In January 2014, it represented a total of 3,996 members from all over the country. *Bedriftsforbundet* assists its members on a variety of issues, "the majority of which being employment relations, employment contracts, collective agreements within the businesses, lay-offs, notices, salaries, etc." It submits having been an alternative to the larger employers' organisations for 20 years.

11. It is furthermore consulted by the Government in questions relating to small and medium-sized businesses and represents its members in relations with the authorities, employees and trade unions. As evidence of this, it presents a request issued by the Government to *Bedriftsforbundet* as an employer's organisation for the purpose of nominating a member to a national advisory board.

12. *Bedriftsforbundet* further submits that the collective complaints procedure is of more importance to smaller organisations than to larger ones when promoting human rights and observes that a complaint from a Norwegian trade union with less than 1,700 members has been declared admissible by the Committee (*Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012).

13. The Committee considers that its previous findings concerning trade unions equally apply to employers' organisations and recalls that, for the purposes of the collective complaints procedure, representativeness is an autonomous concept and

as such not necessarily identical to the national notion of representativeness (*Confédération Française de l'Encadrement (CFE-CGC) v. France*, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6).

14. In order to qualify as representative, an employers' organisation or a trade union must be real, active and independent (*FFFS v. Norway*, cited above, §22). Representativeness is furthermore examined in particular with regard to the aim of the complainant organisation and the activities it carries out (*Syndicat de Défense des Fonctionnaires v. France*, Complaint No. 73/2011, decision on admissibility of 7 December 2011, §6).

15. The Committee consider that the number of members and the role performed at the national negotiations are not conditions of an exclusive nature (see Explanatory Report to the Additional Protocol to the Charter). It accordingly makes an overall assessment to establish whether or not an employers' organisation or a trade union is representative within the meaning of Article 1§c of the Protocol (*FFFS v. Norway*, cited above, §20).

16. It further recalls that the application of criteria of representativeness should not lead to an automatic exclusion of small organisations to the advantage of larger and longer-established organisations, thereby prejudging the effectiveness of the right of all employers' organisations to bring a complaint before the Committee (*FFFS v. Norway*, cited above, §21).

17. As concerns the position of *Bedriftsforbundet* in the official statistics on employers' organisations maintained by Statistics Norway, the Committee considers in this regard that it is not bound by national definitions of a complainant organisation.

18. Having regard to the entirety of the material before it, the Committee considers that *Bedriftsforbundet* is a representative employers' organisation for the purposes of the collective complaints procedure.

*As to the Government's other objections concerning the admissibility*

19. As concerns the Government's third objection on the allegedly individual nature of the complaint on the grounds that the subject-matter of the complaint is under examination at a national court, the Committee considers that litigation pending at the national level does not change the collective nature of the complaint. It observes that the complaint concerns all public ports in Norway and therefore extends beyond the scope of the individual case referred to.

20. With regard to the Government's final objection, the Committee observes having already examined a complaint lodged by an employers' organisation concerning the negative aspect of the right to organise in the context of collective bargaining (*Confederation of Swedish Enterprise v. Sweden*, Complaint No. 12/2002, decision on admissibility of 19 June 2002). A trade union or an employers' organisation deemed to be representative for the purposes of the procedure in accordance with Article 1§c of the Protocol has the right to lodge a complaint against the state party concerned on any issue within the bounds of Article 4 of the Protocol (*Syndicat SUD Travail Affaires Sociales v. France*, Complaint No. 24/2004, decision on admissibility of 7 December 2004, §11).

21. It follows that the Government's objections on these points cannot be sustained.

22. For these reasons, the Committee, on the basis of the report presented by Elena MACHULSKAYA 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 organisation 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§2 of the 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 15 July 2014.

Invites *Bedriftsforbundet* 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§2 of the Charter to make comments by 15 July 2014, should they so wish.

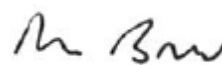
In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 15 July 2014.



Elena MACHULSKAYA  
Rapporteur



Luis JIMENA QUESADA  
President



Régis BRILLAT  
Executive Secretary