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

25 November 2013

Case Document No. 2

Bedriftsforbundet v. Norway
Complaint No. 103/2013

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 7 November 2013



ATTORNEY GENERAL - CIVIL AFFAIRS

The European Committee of Social Rights
Executive Secretary
Council of Europe
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Your reference
ESC 506 LV/IE

Our reference
2013-0737 MEM/ac

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WRITTEN OBSERVATIONS ON ADMISSIBILITY

SUBMITTED BY THE GOVERNMENT OF THE KINGDOM OF NORWAY

to

THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

in

**Case of Bedriftsforbundet v. Norway
(Complaint No. 103/2013)**

1 INTRODUCTION

- (1) Reference is made to the Executive Secretary's letter of 24 September 2013 informing the Permanent Representative of Norway to the Council of Europe of the collective complaint submitted by Bedriftsforbundet pursuant to Article 5 of the Additional Protocol to the European Social Charter.
- (2) The Government of the Kingdom of Norway has been invited to submit written observations on the admissibility of the complaint by 7 November 2013.
- (3) In the view of the Government the complaint should be declared inadmissible as the complainant has not furnished requisite evidence in support of the contention that the requirements of admissibility set out in Article 1 c) and Article 4 of the Additional Protocol to the Charter are met.

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2 THE REPRESENTATIVENESS REQUIREMENT IN ARTICLE 1 C) OF THE ADDITIONAL PROTOCOL

(4) The Government respectfully submits that in the circumstances of the present case the complainant has failed to satisfy the requirement set out in Article 1 c) of the Additional Protocol.

(5) The relevant part of Article 1 c) of the Additional Protocol states that the Contracting States, which includes Norway, “recognize the right ... to submit complaints alleging *unsatisfactory application of the Charter*” to “*representative national organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint*” [emphasis added here].

(6) The complainant argues that it fulfills the representativeness criterion in the following terms, cf. section 3 at page 2 of the complaint:

It is a representative national organization of employers, representing approximately 3000 small and medium sized businesses. Bedriftsforbundet has members from all over Norway and is nationwide, assisting the members of a wide range of issues, the majority of which being employment relations, employment contracts, collective agreements within the businesses, lay-offs, notices, salaries etc. Bedriftsforbundet is seen as an alternative to the larger employment organizations like Næringslivets Hovedorganisasjon (The Confederation of Norwegian Enterprise, hereinafter referred to as NHO with 22000 members) or Virke (The Enterprise Federation of Norway with 16000 members).

(7) However, the complainant has not furnished evidence in support of the claim that it is a “representative national organizations of employers”. According to *The European Charter’s Procedure of Collective Complaints*, prepared by the Council of Europe and available on <http://www.coe.int/T/DGHL/Monitoring/SocialCharter/>, for a complaint to be found admissible it “must necessarily ... if the complainant is a national trade union or a national employer’s organization, provide proof that these bodies are representative within the meaning of the collective complaints procedure” (p. 10).

(8) The system for collective complaints provided for in the Additional Protocol requires that the complainant bear responsibility for submitting requisite documentary evidence that the mandatory admissibility conditions are observed.

(9) This is also reflected in the practice of the European Committee of Social Rights, see, e.g., para. 7 of the Committee’s admissibility decision regarding Complaint no. 6/1999, *Syndicat national des Professions du tourisme v. France*:

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.
[emphasis added]

(10) See further *The European Charter’s Procedure of Collective Complaints*, which states as follows at p. 13:

The European Committee of Social Rights judges whether the organisation meets this criterion when examining whether the complaint is admissible, in the light of information and observations submitted by the State and the organisation concerned. [emphasis added]

- (11) Absent such evidence the Government will not be in a position to form an opinion as to whether the complainant may fulfill the criterion of representativeness. Further, the Government will not be able to observe its treaty-based competence to comment on the issue of admissibility when asked to do so by the European Committee of Social Rights (see Article 6 of the Additional Protocol and Rule 29 § 1 of the Rules of Procedure).
- (12) Moreover, without necessary documents supporting the claim of representativeness, the European Committee of Social Rights will not be able to fulfill its task, laid down in Articles 6 and 7 of the Additional Protocol, to make an informed and proper decision on the issue of admissibility with regard to the autonomous concept of representativeness.
- (13) The Government observe that pursuant to Rule 29 § 3 of the Rules of Procedure the Committee is entitled to ask the complainant to respond to the Government's observations. In the event that the complainant fails to furnish requisite evidence, the Government respectfully asks the Committee to dismiss the case on that basis.

3 THE REQUIREMENT SET OUT IN ARTICLE 4 OF THE ADDITIONAL PROTOCOL

- (14) The complaint as submitted also has not satisfied the requirements set out in Article 4 of the Additional Protocol:

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. [emphasis added]

- (15) The Government refers to the complaint made. Bedriftsforbundet argues that "the Norwegian government has acknowledged and accepted the closed shop practice at all public ports in Norway" and "set up a system where the union Norsk Transportarbeiderforbund/LO registers all workers at Norwegian ports" (section 3 at pp. 2-3 of the complaint).
- (16) It is thus apparently argued that Norway has not ensured its obligations under Article 5 of the Charter, the relevant part of which is worded as follows:

Article 5 – The Right to organize
With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organizations for the protection of their economic and social interests and to join those organizations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom ... [emphasis added]

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- (17) On the basis of the complaint and its supporting documents, the Government does not see in what manner and how the Government “*has not ensured the satisfactory application*” of the provision on which basis the complaint is made. There are two reasons for this.
- (18) *Firstly*, the complainant has not provided requisite evidence so as to “*indicate*”, within the meaning of Article 4 of the Additional Protocol, the Government’s non-observation of its obligations under the Charter.
- (19) It follows from *The European Social Charter’s Collective Complaints Procedure*, referred to above, at p. 11, that the complaint “*must necessarily ...*

... indicate the extent to which the State has failed to implement the Charter. In particular, the complaint must indicate the point(s) in respect of which the State in question has allegedly failed to comply with the Charter or implemented it adequately, along with evidence and the relevant arguments, with supporting documents. In this connection, the complaint could, for instance, allege that the State in question has failed to establish a legal framework for the implementation of the Charter or that the existing framework and/or its application do not comply with the Charter.

- (20) The evidence proffered in support of an alleged general practice of non-compliance by Norwegian authorities with Article 5 of the Charter is anecdotal and has merely been substantiated by one example, proof of which has not been submitted.
- (21) In the view of the Government the complainant should be required to substantiate its contention that Norway accepts “*closed-shop*” practices more thoroughly, in particular as it runs counter to the findings of the European Committee of Social Rights. The Committee in its last conclusions regarding Norway’s compliance with Article 5 of the Charter observed that “*the situation is in conformity with Article 5 of the Revised Charter*” (see p. 14 of the Committee’s Conclusions with regard to Norway in 2010).
- (22) *Secondly*, the complainant fails to substantiate in what manner Norwegian authorities, in their *general practice*, do not observe the obligations of Article 5 of the Charter.
- (23) Section 31 of the Explanatory Report to the Additional Protocol provides that the Committee “

... must take account of the fact that the following was agreed in the course of negotiations within the Charte-Rel Committee:

...

- *because of their “collective” nature, complaints may only raise questions concerning non-compliance of state’s law or practice with one of the provisions of the Charter. Individual situations may not be submitted.*

- (24) However, the complaint clearly suggests that its essence concern an *individual* situation, described in the following words at section 2 at p. 2 of the complaint:

One member of Bedriftsforbundet, the shipping agency Holship Norge AS, was subject to two illegal boycotts in April 2013 from members of NTF, in an

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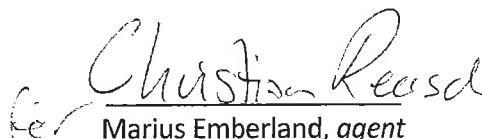
attempt to force upon them a collective agreement. NTF did not have any members employed by the company. Hence, Bedriftsforbundet became aware of the described situation at Norwegian docks and the compulsory membership in NTF.

- (25) The precise and particular grounds for the complaint are not sufficiently identified in it. Further, the grounds of the complaint are unclear. Consequently, the complainant has failed to indicate, within the meaning of Article 4 of the Additional Protocol, in what respect Norway has not ensured the satisfactory application of Article 5 of the Charter.
- (26) In these circumstances the Government respectfully submits that the complaint should be regarded as inadmissible as failing to meet the criteria in Article 4 of the Protocol.
- (27) In the alternative, the Government observes that it is difficult to respond at this stage with particularity to the grounds of the complaint. As such, if the complaint is not instantly declared inadmissible by the Committee, the Government respectfully requests that the Committee accept further observations on admissibility from it once the precise nature of the complaint has become apparent.

4 CONCLUSION


- (28) The Government submits that in the circumstances of the present case the complaint must be rejected as inadmissible as it fails to satisfy the requirements in Article 1 c) and Article 4 of the Additional Protocol.
- (29) In the event that the Committee allows for the complainant to submit further information and evidence in supports of its allegations, the Government respectfully asks the Committee to accept further observations on admissibility in conformity with Articles 6 and 7 of the Additional Protocol and Rule 29 of the Rules of Procedure.

Oslo, 7 November 2013


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