

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON ADMISSIBILITY

7 December 2021

European Trade Union Confederation (ETUC), Netherlands Trade Union Confederation (FNV) and National Federation of Christian Trade Unions (CNV) v. the Netherlands

Complaint No. 201/2021

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 324th session attended by:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
József HAJDU
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

FNVthe , General Secretary of the ETUC, Tuur Elzinga and Zakaria Boufangacha, members of the FNV Executive Committee as well as by Piet Fortuin, Chairman of the CNV board and Jan Pieter Daems, CNV board member, requesting the Committee to find that the situation in the Netherlands is not in conformity with Article 6§4 and with Article G of the Revised European Social Charter

Having regard to the observations of the Government of the Netherlands ("the Government") on the admissibility of the complaint registered on 16 September 2021.

the admissibility of the complaint, registered on 10 September 2021,

Having regard to the Charter and, in particular to Articles 6§4 and G, 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.”

Article G – Restrictions

1. “The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.”

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

stth

Having deliberated on 7 December 2021;

Delivers the following decision, adopted on this date:

1. The ETUC, FNV and CNV allege that the assessment by the Dutch Supreme Court regarding restrictions on collective action, namely with reference to an excessively broad framework of criteria and not strictly on the basis of Article 6§4 and Article G of the Charter, is not in conformity with the aforementioned provisions of the Charter. The complainants further allege that the way in which the assessment framework defined by the Supreme Court is applied in the lower courts goes beyond what is provided by Article G of the Charter, lacks the character of being stable and foreseeable and thus does not afford sufficient protection in procedures before the courts.

2. In its observations, the Government does not contest that the admissibility conditions set out in the Protocol are fulfilled.

THE LAW

3. The Committee notes that in accordance with Article 4 of the Protocol, which was ratified by the Netherlands on 3 May 2006 and entered into force for this State on 1 July 2006, the complaint has been submitted in writing and concerns Article 6§4 of the Charter, provision accepted by the Netherlands when it ratified the Charter on 3 May 2006, as well as Article G. The Netherlands is bound by these provisions since the entry into force of this treaty in its respect on 1 July 2006.

4. The Committee notes that 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 European Social Charter of 1961 and thus being entitled to lodge collective complaints.

5. The Committee notes that the FNV and CNV are national trade unions representing more than 1.2 million members and have been involved in the conclusion of most collective agreements in the Dutch labour market. The FNV and CNV are both represented on many Dutch advisory bodies, including the Social and Economic Council of the Netherlands (SER) and the Dutch Labour Foundation (*Stichting van de Arbeid*, STAR).

6. Exercising their activities in the Netherlands, the FNV and CNV are national trade unions within the jurisdiction of this country as required by Article 1(c) of the Protocol. Furthermore, the FNV and CNV are recognised under Dutch law as being representative organisations of workers on the national level. Having made an overall assessment of the information at its disposal, the Committee considers the FNV and CNV to be representative organisations of workers for the purpose of the collective complaints procedure.

7. The Committee notes that the complaint is signed on behalf of the ETUC by Luca Visentini, General Secretary of the ETUC, entitled to represent the ETUC in all matters according to Article 22§3 of its Statutes. The complaint is also signed on behalf of the FNV by Tuur Elzinga and Zakaria Boufangacha, members of the FNV Executive Committee authorised to represent the FNV jointly pursuant to Article 25(1) of its Statutes. Finally, the complaint is signed on behalf of the CNV by Piet Fortuin,

Chairman of the CNV board and Jan Pieter Daems, CNV board member, authorised to represent the CNV jointly pursuant to Article 11(7) of its Statutes. The Committee therefore considers that the complaint complies with Rule 23.

8. The Committee notes that the grounds of the complaint are indicated, detailing in what respect the complainant organisations consider that the Netherlands has not ensured the satisfactory application of the Charter. On this basis, the Committee considers that the complaint fulfils the requirements set out in Article 4 of the Protocol for the purpose of the admissibility.

9. As to the allegation of the complainant organisations relating to Article G of the Charter, the Committee recalls that this provision sets out the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted and cannot taken in isolation lead to a finding of violation (*Syndicat des Agrégés de l'Enseignement Supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005, §31; *Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, decision on admissibility of 23 May 2012, §§5-7). Article G of the Charter may, however, provide a reference for the interpretation of the substantive rights provisions of the Charter which are at stake in a given complaint (*Federation of employed pensioners of Greece (IKA-ETAM) v. Greece*, Complaint No. 76/2012, decision on the merits of 7 December 2012, §48).

10. The Committee therefore considers that the complaint alleges, in substance, a violation of Article 6§4 of the Charter.

11. For these reasons, the Committee, on the basis of the report presented by Karin Møhl LARSEN, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

§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 paragraph 2 of the Charter, and to publish it on the Council of Europe's Internet site.

Invites the Government to make written submissions on the merits of the complaint by 15 February 2022.

Invites the ETUC, FNV and CNV to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to notify by 15 February 2022 any observations they may wish to submit.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 15 February 2022.

Karin Møhl LARSEN
Rapporteur

Karin LUKAS
President

Henrik KRISTENSEN
Deputy Executive Secretary