Syndicat des Agrégés de l’Enseignement Supérieur (SAGES) v France (Complaint no. 26/2004)

1) Reference Details

Jurisdiction: European Committee of Social Rights
Date of Decision: 1 July 2005

2) Facts

The complaint, lodged on 27 April 2004, related to Article 5 (right to organise) alone or in combination with Articles E (non-discrimination), G (restrictions) and I (implementation of the undertakings given) of the Revised European Social Charter. It was alleged that French legislation impaired the freedom to organise since Decree No. 89-1 on the National Council for Higher Education and Research (CNESER) does not guarantee collective legal remedies.

3) Law

National Law

- Decree No. 89-1 on the National Council for higher education and research (CNESER)

International Law

- Article 5 of the Revised European Social Charter (right to organise)
- Article 5 (right to organise) in combination with Articles E (non-discrimination), G (restrictions) and I (implementation of the undertakings given) of the Revised European Social Charter

4) Legal Arguments

The Complainant

SAGES argued that the right laid down by Article 5 of the Revised Charter is inconceivable unless the organisations concerned have the right to take collective action, including legal action, on behalf of the workers they represent. They asserted case law of the European Court of Human Rights to support this argument. SAGES submitted that, pursuant to s. 6(3) of Decree No. 89-1, action to set aside elections can only be initiated by the minister responsible for higher education and by individual voters, and that in this respect only a minority of delegates are authorised to attend the final vote count and the declaration of the result, meaning that voters had no direct way of knowing whether there are serious grounds for suspecting irregularities.

SAGES argued that the possibility for a trade union to challenge the result of an election is a fundamental guarantee linked to its right to put forward candidates for election and that as far as the private sector is concerned the lawfulness of elections to the employment
tribunals may be challenged by any person or organisation presenting a list pursuant to Article 513-108 of the Labour Code. As this was not the case in respect of CNESER elections and as the rights of trade unions presenting lists of candidates to representative elections to challenge the legality of these elections in their own name therefore differ according to whether they concern private sector employees or teachers or teacher-researchers in higher education, the complainant maintained that the national regulations are in breach of Article E of the Revised Charter, in conjunction with Article 5.

*The State*

The State reiterated its argument presented during the admissibility stage that the CNESER is not concerned with social rights or defending employees and its membership is not confined to representatives of staff working in higher education establishments and that the complaint therefore falls outside the scope of the Revised Charter. The State also argued that any voter belonging to the relevant electoral category, and any candidate, may challenge the election result in the administrative court. The situation therefore did not infringe trade unions’ right to defend employees since each trade union candidate, and more generally each member with the right to vote, can personally take action in the administrative court, either spontaneously or at the request of the organisation to which he or she belonged.

The State added that it is quite usual for the right to challenge elections in the courts to be restricted to voters and candidates. In respect of Article E, the State submitted that elections to the employment tribunals and to the CNESER relate to "quite different circumstances that cannot be compared", and therefore different arrangements for electing staff representatives to the CNESER and employee representatives to the employee tribunals did not constitute discrimination against the public sector trade unions.

**5) Decision**

The European Committee of Social Rights concluded that there was no violation of Article 5 alone or in combination with Articles E, G and I of the Revised European Social Charter on the basis that the regulations applicable to the CNESER do not exceed the margin of appreciation of the national authorities and it therefore finds that there is no violation of Article 5 of the Revised Charter, and that the case did not give rise to an issue under Article E.