

Syndicat SUD Travail Affaires Sociales v France (Complaint no. 24/2004)

1) Reference Details

Jurisdiction: European Committee of Social Rights

Date of Decision: 20 November 2005

Link to full case:

http://www.coe.int/t/e/human_rights/esc/4_collective_complaints/list_of_collective_complaints/CC24Merits_en.pdf

2) Facts

The complaint, lodged on 6 February 2004, related to Article 1(2) (right to earn one's living in an occupation freely entered upon) of the Revised European Social Charter. The complainant alleged that French legislation prohibiting discrimination in employment is in violation of Article 1(2) of the Revised Charter, partly because certain categories of workers are excluded from the protection of the Labour Code and its Article L.122-45 prohibiting discrimination and alleviating the burden of proof, and partly because civil servants (*fonctionnaires*), public servants without tenure (*agents publics non-titulaires*) and employees of the National Employment Agency (ANPE), are not adequately protected against discrimination by the statutes governing their employment.

3) Law

National Law

- Article L. 122-45 of the Labour Code

International Law

- Article 1(2) (right to earn one's living in an occupation freely entered upon) of the Revised European Social Charter

4) Legal Arguments

The Complainant

The complainant contended that the provisions of Article L.122-45 of the Labour Code, prohibiting discrimination in employment and alleviating the burden of proof in the event of disputes, did not benefit certain categories of private sector employees, namely porters and caretakers of residential buildings, domestic employees and mother's helps working in the home. It also argued that certain *categories of public sector employees and employees of ANPE were also excluded as* legislation relating to them did not provide an adequate guarantee against discrimination as it did not provide for an alleviation of the burden of proof. The complainant further argued that there were no legislative instruments prohibiting discrimination against public servants without tenure, and that these employees are in many cases recruited on the basis of their political profile

The State

The State argued that in promulgating Act No. 2001-1066 it was the intention of the legislator that the protection ensuing from Article L. 122-45 of the Labour Code should apply to all categories of workers, independently of their status, and that the Court of Cassation had always interpreted Article L. 122-45 in this manner. The State further indicated that s. 19 of Act No. 2004-1486 transposing Council Directive 2000/43/EC guarantees the principle of equal treatment and thus a prohibition of all forms of discrimination and that it applies in relation to access to employment as well as to employment in general. Finally, the Government emphasised that s. 19 provides for an alleviation of the burden of proof, except in criminal proceedings.

5) Decision

The Committee found unanimously that there was no violation of Article 1(2) of the revised Charter as regards the situation of certain categories of private sector employees, nor with respect to the prohibition of discrimination for public servants without tenure and ANPE employees. However, it found by eight votes to three that there was a violation of Article 1(2) as the alleviation of the burden of proof was not guaranteed in respect of public employees in a manner consistent with the requirements of this provision.