

Reflections on EU Anti-discrimination law and the decisions of the Council of Europe's Committee of Social Rights

Prof. Dr. Dr. h.c. Monika Schlachter

- Director -

Institute for Labour Law and Industrial Relations
in the European Union

University of Trier

D-54286 Trier

www.iaaeu.de



IAAEU

Institut für Arbeitsrecht
und Arbeitsbeziehungen
in der Europäischen Union

The European Committee of Social Rights

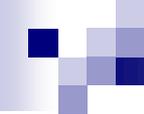
- is the supervising body for the European Social Charter, ensuring that States' obligations arising from the Charter are properly fulfilled.
- is made up of 15 independent and impartial members, elected by the CoE's Committee of Ministers

Function of the Committee

1. **Examining national reports by governments of the 47 Member States on the application and implementation of the ESC-articles, as accepted (“Reporting system”, finished by Conclusions of the Committee)**

www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp

2. **Deciding “collective complaints” against a Member State having accepted this procedure**



No individual application can be considered but Social Partners at European or national level and international NGO's are entitled to lodge a complaint.

- domestic remedies need not be exhausted before lodging the complaint**
- the claimant organisation must not necessarily be a victim of the alleged violation**

Effect of the Committees' decisions

- **Decisions are directed against the respondent State which is, in the case of a resolution of the Committee of Ministers, asked to take appropriate measures to bring the situation in conformity with the charter**
- **decisions are not enforceable in the domestic legal systems**
- **decisions can be made public**
- **the State must inform on the measures taken also under the reporting procedure**

Relation to the EU

- **The EU is prepared to accede to the CoEs' Human Rights Convention**
- **a ratification of the Social Charter deems a more distant option**
- **Some social rights are enshrined in the EU Charter of Fundamental Rights (Art. 27-35) which are based on the ESC**
- **Complementarity should be ensured through interpretation by the Courts (note esp. Art. 53 ChFR)**

Non-discrimination provisions of the ESC

1. Gender:

- the right of men and women workers to equal pay for work of equal value, Art. 4 para. 3**
- the right to equal opportunities and equal treatment in employment for men and women, Art. 20 ESC**
- The right of workers with family responsibilities to equal treatment in employment, Art. 27 ESC**

- 
- 2. the right of persons with disabilities to access to employment and to promotion of their full social integration, Art. 15 paras. 2, 3 ESC**

 - 3. the right of migrant workers and their families to equal treatment as nationals concerning i.a. working conditions and accommodation, Art. 19 para. 4**

4. The General Non-discrimination provisions, Art. E ESC

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status”.

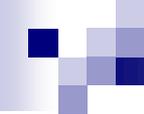
Complaint No. 75/2011

18 March 2013

International Federation for Human Rights v. Belgium

Concerning: serious shortage of accommodation/care solutions for highly dependent adults with disabilities

allegation of the complainant: highly dependent persons with disability are deprived of access to care facilities or accommodated in totally unsuitable facilities such as placement in a psychiatric institution or even the psychiatric wing of a prison.



respondent Government: coordinated measures aimed at supporting persons with disabilities in a manner allowing them to be as independent as possible:

- financial assistance for purchasing technical aids for communication and mobility**
- Personal assistance budget**
- Funding home-help services**
- private accommodation with individualised support**
- sheltered housing services/ integrated housing projects**

Assessment of the Committee

Article 15 § 3: States undertake to adopt a coherent policy on disabilities and coordinated measures having a clear basis in law that aim at social integration and full participation.

- support measures required to overcome barriers to communication and mobility must be established**
- technical aids must be available, either for free or subject to an appropriate contribution to their costs**
- Support services must be available**

Conclusion of the Committee

the alleged shortcomings do not relate to Art. 15 § 3 (right of persons with disabilities to independence and social integration)

but

to Art.14 § 1 (right to benefit from social welfare services) taken in conjunction with Art. E – due to the lack of establishing a sufficient amount of day care and night accommodation centres

Complaint No. 74/2011

17 July 2013

**Fellesforbundet for Sjøfolk
v. Norway**

Concerning compulsory retirement for seamen upon reaching the age of 62 years.

as containing an

unjustified prohibition of employment contrary to Art. 1 § 2 (right to work)

and

discriminatory termination of employment contrary to Art. 24 (protection in case of termination) ESC.

Allegation of the Complaint

Seamen may be given notice of termination of employment solely on the ground of having reached the age of 62 years.

Respondent Government:

the Supreme Court of Norway, in its decision of 18 February 2010, confirmed the compliance of the Seamen's Act with all national and international legal instruments.

Argument:

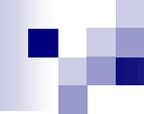
States enjoy a broad margin of discretion in their choice of a legitimate aim in social policy as well as in choosing the measures adequate to achieving this aim.

Conclusion of the Committee

Under Art. 24, the term “termination of employment” means a termination at the initiative of the employer; statutory mandatory retirement clauses are not covered. A dismissal at the initiative of the employer on the ground of the employee becoming entitled to a pension is only compatible with Art. 24 if properly justified by capacity or conduct of the employee or bases on operational requirements of the enterprise.



Goals of the age limit of 62 (employment policy, ensuring the health and safety of ship personnel) are legitimate, but the age limit as such is not necessary for the attainment of such aims. According to international regulations, seamen have to undergo yearly medical examinations beyond the age of 50. When the outcome is positive, basing termination on reaching the age of 62 is no longer justified.



Under Art. 1 § 2 (the right to work), for providing the right of workers to earn their living in an occupation freely entered upon, States must eliminate all forms of discrimination in employment. Domestic legislation must cover direct and indirect discrimination in all aspects of recruitment, employment conditions and dismissal.

The relevant Norwegian statute therefore violates both, Art. 24 and Art. 1 § 2 of the ESC.