

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

DECISION ON ADMISSIBILITY

11 September 2024

Norwegian Association of Small & Medium Enterprises (*SMB Norge*) v. Norway

Complaint No. 238/2024

The European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 343rd session, in the following composition:

Aoife NOLAN, President
Eliane CHEMLA, Vice-President
Tatiana PUIU, Vice-President
Kristine DUPATE, General Rapporteur
József HAJDÚ
Karin Møhl LARSEN
Yusuf BALCI
Paul RIETJENS
George THEODOSIS
Mario VINKOVIĆ
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA
Grega STRBAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint registered on 12 February 2024 as number 238/2024, lodged by the Norwegian Association of Small & Medium Enterprises (*SMB Norge*) against Norway and signed by Attorney Nicolay Skarning, Partner at *Kvale Advokatfirma*, Oslo, on behalf of *SMB Norge* pursuant to an authorisation dated 12 February 2024 and signed by Karl-Anders Grønland, President of the board of *SMB Norge*, requesting the Committee to find that the situation in Norway is not in conformity with Article 5 of the Revised European Social Charter ("the Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Norway ("the Government") on the admissibility of the complaint, registered on 12 April 2024;

Having regard to the Charter, and in particular to Article 5, which reads as follows:

Article 5 – The right to organise

Part I: "All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests."

Part II: "With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations."

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

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2022 at its 328th session ("the Rules");

Having deliberated on 11 September 2024;

Delivers the following decision, adopted on this date:

1. The Norwegian Association of Small & Medium Enterprises (*SMB Norge*) alleges that the exception in the Working Environment Act, Section 14-12, second paragraph, on the hiring of workers from temporary work agencies is in breach of the right to organise guaranteed by Article 5 of the Charter. Said exception provides that in undertakings bound by collective agreement with trade unions with the right of nomination (*instillingsrett*) pursuant to the Labour Disputes Act, only trade unions with a right of nomination may conclude agreements with the employer on the hiring of workers from temporary work agencies. Under Section 39 of the Labour Disputes Act, a trade union must have at least 10,000 members in order to qualify for the right of nomination. According to *SMB Norge*, the law thereby provides for preferential treatment of trade unions with 10,000 members or more in violation of the positive and negative aspects of the right to organise guaranteed by Article 5 of the Charter.

2. The Government does not contest the admissibility of the complaint recalling that *SMB Norge* has already been considered as a representative employers' organisation for the purposes of the collective complaints procedure. The Government also takes the view that the complaint meets the requirements of Article 4 of the Protocol.

THE LAW

3. The Committee notes that in accordance with Article 4 of the Protocol, which was ratified by Norway on 20 March 1997 and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Article 5 of the Charter, a provision accepted by Norway when it ratified this treaty on 7 May 2001. Norway has been bound by this provision since the entry into force of the treaty in its respect on 1 July 2001.

4. The Committee notes that *SMB Norge* represents approximately 5,500 small and medium-sized businesses. Exercising its activities in Norway, *SMB Norge* is an employers' organisation within the jurisdiction of this country as required by Article 1 (c) of the Protocol. Moreover, *SMB Norge* is recognized by the authorities as an independent organisation.

5. The Committee has already considered that *SMB Norge*, formerly named *Bedriftsforbundet*, is a representative employers' organisation for the purposes of the collective complaints procedure, (*Bedriftsforbundet v. Norway*, Complaint No. 103/2013, decision on admissibility of 14 May 2014, §18 ; *SMB Norge v. Norway*, Complaint No. 198/2021, decision on admissibility of 8 September 2021, §5). The Committee maintains its position in this respect.

6. The Committee notes that the complaint submitted on behalf of *SMB Norge* is signed by Attorney Nicolay Skarning, Partner at *Kvale Advokatfirma*, Oslo, entitled to represent the organisation in respect of this complaint, as established by the authorisation signed by Karl-Anders Grønland, President of the board of *SMB Norge*, who, according to Section 14 of its Statutes, is entitled to issue a power of attorney on behalf of the organisation. The Committee therefore considers that the complaint complies with Rule 23.

7. The Committee notes that the grounds of the complaint are indicated, detailing in what respect *SMB Norge* considers that Norway 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.

8. For these reasons, the Committee, on the basis of the report presented by George THEODOSIS, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

Pursuant to Article 7§1 of the Protocol, requests the Deputy 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§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 20 November 2024.

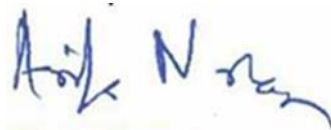
Invites *SMB Norge* to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter to notify by 20 November 2024 any observations they may wish to submit.

Pursuant to 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 20 November 2024.



George THEODOSIS
Rapporteur



Aoife NOLAN
President



Henrik KRISTENSEN
Deputy Executive Secretary