

COMPLAINT N° 1/1998

From the International Commission of Jurists
Against Portugal

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (hereafter referred to as "the Committee"), during its 160th session attended by:

Messrs	Matti MIKKOLA, President
	Rolf BIRK, Vice-President
	Stein EVJU, Vice-President
Ms	Suzanne GRÉVISSE, General Rapporteur
Messrs	Konrad GRILLBERGER
	Tekin AKILLIOGLU
	Nikitas ALIPRANTIS
Ms	Micheline JAMOULLE

Assisted by Mr Régis BRILLAT, Secretary to the Committee

In the presence of Ms. Anna-Juliette POUYAT, observer of the International Labour Organisation.

Having regard to the complaint registered as number 1/1998, lodged on 12 October 1998 by the International Commission of Jurists represented by its Secretary-General, Mr Adama Dieng requesting that the Committee find that Portugal fails to apply in a satisfactory manner Article 7 para. 1 of the European Social Charter;

Having regard to the documents appended to the complaint;

Having regard to the observations communicated on 6 January 1999 by the Portuguese Government represented by Ms. Maria Josefina Leitão, Deputy Director-General of the Ministry of Labour and Solidarity;

Having regard to the observations in response of the International Commission of Jurists communicated on 1 February 1999;

Having regard to the European Social Charter and in particular to Article 7 para. 1 which reads as follows:

"With a view to ensuring the effective exercise of the right of children and young persons to protection, the Contracting Parties undertake:

to provide that the minimum age of admission to employment shall be fifteen years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;..."

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

Having regard to the rules of procedure adopted by the Committee during its 144th session (17-21 March 1997);

After having deliberated on 10 March 1999;

Delivers the following decision:

1. The International Commission of Jurists states that, according to its statute, it is “dedicated to the support and advancement of those principles of justice which constitute the basis of the Rule of Law” (Article 4). Its mandate is to “foster understanding of and respect for the Rule of Law and give aid and encouragement to those peoples to whom the Rule of Law is denied” (Article 4). It is also one of the international non-governmental organisations that participated in the drafting of the United Nations Convention on the rights of the child and has organised international seminars on its application, in particular with reference to the exploitation of child labour.

2. The International Commission of Jurists alleges that, notwithstanding the statutory provisions adopted and the measures taken by Portugal to prohibit child labour and to ensure that this rule is enforced, a large number of children under the age of 15 years continue to work illegally in many economic sectors, especially in the north of the country. It further maintains that the Labour Inspectorate, which is the principal body for supervising compliance with the legislation on child labour, is not in a position to perform its functions effectively. It states that the working conditions imposed on these children are harmful to their health. It recalls that states which are bound by Article 7 para. 1 of the Social Charter are required not just to set the minimum age of admission to employment at 15 but also to take the necessary measures to ensure satisfactory application of this rule. Moreover, it recalls that the prohibition on employing children under the age of 15 also applies to children working in family businesses.

3. The Portuguese Government declares that it does not contest the conformity of the complaint with the admissibility conditions laid down in Articles 1 b), 3 and 4 of the Additional Protocol.

4. However, the Portuguese Government maintains that the complaint is inadmissible for the following reasons:

- the complaint amounts to a useless procedural exercise because it pursues the same objective and, essentially, covers the same reference period as the negative conclusion adopted by the Committee during supervision cycle XIII-5 and which lead to Recommendation No. RChS (98)5 adopted on 2 July 1998 by the Committee of Ministers on the application of the European Social Charter during the period 1994-1995;
- the complaint may lead to a new recommendation, contravening the principles of *res judicata* and *non bis in idem*;
- the Portuguese authorities have taken measures to implement the Recommendation cited above.

5. In response, the International Commission of Jurists contests the objections of inadmissibility raised by the Portuguese Government and requests that the complaint be declared admissible.

**AS TO THE CONDITIONS OF ADMISSIBILITY LAID DOWN BY THE PROTOCOL AND
THE RULES OF PROCEDURE OF THE COMMITTEE**

6. The Committee notes that, in accordance with Article 4 of the Protocol, which was ratified by Portugal on 20 March 1998 and which entered into force on 1 July 1998, the complaint has been lodged in writing and relates to Article 7 para. 1, a provision accepted by Portugal on 6 August 1991 upon its ratification of the Charter. In addition, the grounds for the complaint are indicated.

7. The Committee further notes that, in accordance with Articles 1 b) and 3 of the Protocol, the International Commission of Jurists is an international non-governmental organisation with consultative status with the Council of Europe. It is included on the list, compiled by the Governmental Committee, of international non-governmental organisations which are entitled to lodge complaints.

8. Moreover, as laid down by Article 1 of the rules of procedure of the Committee, the complaint lodged on behalf of the International Commission of Jurists is signed by its Secretary-General who, according to the statute of the organisation, is the person empowered to represent it.

9. The Committee considers that this organisation has lodged a complaint in a field in which it has particular competence within the meaning of Article 3 of the Protocol.

AS TO THE OBJECTIONS OF INADMISSIBILITY RAISED BY THE PORTUGUESE GOVERNMENT

10. The Committee recalls that according to the wording of the Preamble to the Additional Protocol of 1995 the collective complaints procedure was established to improve the effective implementation of the social rights guaranteed by the Charter and to consolidate the participation of the social partners and non-governmental organisations.

The object of this procedure, which is different in nature from the procedure of examining national reports, is to allow the Committee to make a legal assessment of the situation of a state in the light of the information supplied by the complaint and the adversarial procedure to which it gives rise.

Neither the fact that the Committee has already examined this situation in the framework of the reporting system, nor the fact that it will examine it again during subsequent supervision cycles do not in themselves imply the inadmissibility of a collective complaint concerning the same provision of the Charter and the same Contracting Party.

11. Furthermore, in the present case the Committee observes that Article 7 is only examined every four years. It is not part of the “hard core” provisions of the Charter, *ie.* provisions that, in accordance with the system of submission of reports decided by the Contracting Parties, are examined every two years. As the Portuguese Government has rightly observed, there will be a considerable time-lapse between the Committee’s assessment of Portugal’s application of Article 7 para. 1 in Conclusions XIII-5, published in December 1997, and its subsequent assessment of this provision in Conclusions XV-2, which will be adopted and published in December 2000. The present complaint therefore allows the Committee to assess the situation in Portugal before 2000 in an area as important as the prohibition of child labour.

12. Moreover, the Committee recalls that the Recommendation adopted by the Committee of Ministers on 2 July 1998 referred to the situation in Portugal *vis-à-vis* Article 7 para. 1 during the reference period 1994-1995, whereas the complaint refers to texts and circumstances subsequent to that reference period. This procedure also provides the Portuguese Government with an opportunity to

furnish information and evidence pertaining to the action it has taken subsequent to the reference period of its last report.

13. The legal principles *res judicata* and *non bis in idem* relied on by the Portuguese Government do not apply to the relation between the two supervisory procedures.

14. The Portuguese Government maintains it has taken measures in order to implement Recommendation No. RChS(98)5 of the Committee of Ministers. The Committee considers that this is not relevant to the admissibility of the complaint and therefore may not be examined at this stage of the procedure.

15. Consequently, the Committee considers that the objections of inadmissibility raised by the Portuguese Government cannot be sustained.

16. For these reasons, the Committee, on the basis of the report presented by Ms. Suzanne GREVISSE, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE.

In application of Article 7 para. 1 and 2 of the Protocol, requests the Secretary to the Committee to inform the Contracting Parties to the Charter that the present complaint is admissible.

Requests the Portuguese Government and the International Commission of Jurists to submit in writing by 30 April 1999 all relevant explanations or information.

Requests the Contracting Parties to the Protocol to communicate to it by the same date any observations which they wish to submit.

Requests the Secretary to the Committee to inform the international organisations of employers or workers mentioned in Article 27 paragraph 2 of the Charter and to invite them to submit their observations by 30 April 1999.