

3d assessment of follow-up: Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 2 July 2013, Resolution ResChS(2013)17

Violation of Articles 1§2 and 24

Decision of the Committee on the merits of the complaint

Resolution ResChS(2013)17

In its decision, the Committee concluded that there was a violation of Article 24 of the Charter on the ground that Section 19, paragraph 1, subsection 7 of the Seamen's Act enables dismissal directly on grounds of age and does therefore not effectively guarantee the seamen's right to protection in cases of termination of employment.

In addition, it found that there was a violation of Article 1§2 of the Charter on the ground that the age-limit set out in Section 19, paragraph 1, subsection 7 of the Seamen's Act amounts to discrimination on grounds of age and constitutes a violation of the effective right of a worker to earn one's living in an occupation freely entered upon, as provided for under Article 1§2 of the Charter.

Information provided by the GovernmentThe Government refers to the previous simplified report on the follow up submitted on 16 December 2015. Reference is also made to Norway's 15th report dated 11 April 2018 which includes information on the Norwegian social insurance scheme, including the right to old-age pension.

The Committee recalls that Section 19, paragraph 1 of the Seamen's Act of 30 May 1975 (No. 18) was repealed by the Act of 21 June 2013 (No. 102) relating to employment protection etc. for employees on board ships (Maritime Labour Act) (Lov om stillingsvern mv. for arbeidstakere på skip), which entered into force on 20 August 2013.

Pursuant to Section 5-12, paragraph 1 of the Maritime Labour Act, employment may first be terminated when the employee reaches 70 years of age. By exception, a lower age limit than 70 may be determined, provided that such differential treatment meets the requirements set out in Section 10-3, paragraphs 1 (just cause; no disproportionate intervention in relation to the person so treated; necessity for the performance of work or profession) or 2 (necessity for the achievement of a just cause; no disproportionate intervention in relation to the person so treated; no contravention to the prohibition against indirect discrimination, discrimination on the

basis of age or discrimination against an employee who works part-time or on a temporary basis) of the Maritime Labour Act.

The Committee further recalls that the general age limit set out in Section 15-13a, paragraph 1 of the Working Environment Act was increased to 72 as of 1 July 2015.

The Government explains that the age limit of 70 years at that time, i.e. in 2013, corresponded to the general age limit in the Working Environment Act. The justification for the adaptation of an age limit of 70 years was that the old age limit of 62 years was not justified, and had to be abolished. The decision was made to put in place a limit of 70 years as it would make the age limit in the Maritime Labour Act the same as for the rest of the general work force in Norway. The intention was to harmonize the Maritime Labour Act with the Working Environment Act.

According to the Government there was no need for a special consideration on what grounds could justify this limit as the limit in the Working Environment Act had been the same for several years. It is generally considered that the age limits in Norway is within the limits of anti-discrimination on the basis of age. This assessment is made taking into consideration the systems of benefits workers are entitled to as they reach the age limit.

However, the Government acknowledges that subsequently changes were made to the age limit for the protection against dismissal on the grounds of age in the Working Environment Act. As noted above, in 2015, the general age limit was raised to 72 years.

The Government finally states that it has not yet been considered to raise the age limit in the Maritime Labour Act, but it is possible that this will be included in an upcoming evaluation of certain age limits in the labour market.

Assessment of the follow-upThe Committee recalls that in its previous finding (Findings 2017) it considered that no specific evidence had been submitted about the reasons/ justifications for the adoption of 70 as the age when employment may be terminated for seamen, which is two years earlier than the mandatory retirement age set by the Working Environment Act. It asked for comprehensive information in this respect and meanwhile reserved its position.

The Committee takes notes of the explanations provided and finds that the age limit of 70 years for seamen under the circumstances can be regarded as compatible with Article 24 and 1§2 of the Charter, in particular in the light of the health and safety considerations that may apply to the seamen's occupation. It also takes into account that consideration may be given to raising the age limit for seamen in the

near future.

On this basis, the Committee therefore finds that the situation in this respect has been brought into conformity with Article 24 and 1§2 of the Charter and decides to bring its examination of the follow-up to the decision to an end.