

**European Trade Union Confederation (ETUC), Centrale Générale des
Syndicats Libéraux de Belgique (CGSLB), Confédération des Syndicats
chrétiens de Belgique (CSC) and Fédération Générale du Travail de
Belgique (FGTB) v. Belgium
Complaint No. 59/2009**

Summary

Right to strike (court intervention in collective disputes under the urgent procedure, particularly in the form of restrictions on the activities of strike pickets, is in breach of the right to strike and to collective action)

The question raised by the complaint is whether the right to collective action is recognised by Belgian law, whether there do exist any restrictions to the enjoyment of the right secured under Article 6§4 of the Revised Charter, and if so, whether these restrictions fulfil the conditions set out in Article G of the Revised Charter.

(i) The right to collective action recognised under Belgian law

The Committee notes that the mere fact that Belgian statutory law does not recognise the right to strike does not in itself constitute a violation of the Charter as long as such a right is guaranteed in law and in fact through an established and undisputed case law of the domestic highest courts.

The Committee also underlines the fact that the Belgian Court of Cassation does not explicitly refer to Article 6§4 of the Revised Charter when establishing the right to strike, does not amount to a violation of the Revised Charter. The Committee emphasizes nevertheless that when the task of implementing the State's obligations resulting from the Charter, in the absence of statutory law, rests on the case law of domestic courts, the latter need be reasonably precise and exclude contradictions.

Article 6§4 of the Revised Charter encompasses not only the right to withholding of work but also other relevant means, *inter alia*, the right to picketing. Both these components deserve consequently a comparable degree of protection.

(ii) Restrictions to the right of Article 6§4

The exercise of the right to strike necessitates striking a balance between the rights and freedoms, on one side, and the responsibilities, on the other, of the natural and legal persons involved in the dispute.

If the picketing procedure operates in such a way as to infringe the rights of non-strikers, through for example to use intimidation or violence, the prohibition of such activity cannot be deemed to constitute a restriction on the right to strike as recognised in Article 6§4.

On the other hand, where picketing activity does not violate the right of other workers to choose whether or not to take part in the strike action, the restriction of such activity will amount to a restriction on the right to strike itself, as it is legitimate for striking workers to attempt to involve all their fellow workers in their action.

The Committee therefore holds that the obstacles to the functioning of strike pickets posed by the operation in practice of the "unilateral application procedure" under Belgian law should be understood as constituting a restriction on the exercise of the right to strike as laid down in Article 6§4 of the Charter.

(iii) Justification of the restriction

Pursuant to Article G, a restriction on the exercise of a right recognised by the Charter can be seen as compatible with the Charter if it fulfils the following conditions:

- it must be prescribed by law;
- it must pursue one of the aims set out in Article G;
- it must be proportionate to the aims pursued.

a) restrictions are not prescribed by law

In providing that restrictions on the enjoyment of Charter rights must be “prescribed by law”, Article G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law. The case-law of domestic courts may also comply with this requirement provided that it is sufficiently stable and foreseeable to provide sufficient legal certainty for the parties concerned. The decisions of the domestic courts adopted under the emergency relief procedure, as brought to the Committee’s attention by the parties to the complaint, do not meet these conditions (see paragraphs 14-16). In particular, inconsistencies of approach appear to exist as between similar cases, and the case law lacks sufficient precision and consistency so as to enable parties wishing to engage in picketing activity to foresee whether their actions will be subject to legal restraint.

In addition, the Committee considered that the expression “prescribed by law” includes within its scope the requirement that fair procedures exist. The complete exclusion of unions in practice from the so called “unilateral application” procedure poses the risk that their legitimate interests are not taken into consideration. Unions may only intervene in the procedure after an initial binding decision has been taken and the collective action has been stopped. As a result of the unilateral nature of this procedure, the judge “may” summon other affected parties, but if he elects not to do so, the decision can be taken without such parties making submissions at the initial hearing or in its immediate aftermath. As a result, unions may be obliged to initiate collective action again, or else must go through a time-consuming appeal procedure. Consequently, the exclusion of unions from the emergency relief procedure may lead to a situation where the intervention by the courts runs the risk of producing unfair or arbitrary results. For this reason, such restrictions to the right to strike cannot be considered as being prescribed by law.

b) restrictions do not pursue one of the aims set out in Article G

Furthermore, any restriction on the right to strike may not go beyond what is necessary to pursue one of the aims set out in Article G. The application of such procedure as described above (§44) may intend to pursue the aim of protecting the right of co-workers and/or of undertakings, but in its practical operation goes beyond what is necessary to protect those rights by reason of the potential lack of procedural fairness.

Therefore, the Committee considers that Belgian law does not provide guarantees for employees participating in a lawful strike within the meaning of Article 6§4 of the Revised Charter.

Violation of Article 6§4 of the Revised Charter (by 8 votes against 4)