



European
Social
Charter

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

DECISION ON ADMISSIBILITY

7 December 2011

***Syndicat de Défense des Fonctionnaires
v. France***

Complaint No. 73/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 254th session attended by:

Messrs Luis JIMENA QUESADA, President
Colm O’CINNEIDE, Vice-President
Mrs Monika SCHLACHTER, Vice-President
Mr Jean-Michel BELORGEY, General Rapporteur
Mrs Csilla KOLLONAY LEHOCZKY
Messrs Andrzej SWIATKOWSKI
Lauri LEPPIK
Rüçhan IŞIK
Petros STANGOS
Mrs Jarna PETMAN
Mr Giuseppe PALMISANO
Mrs Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 15 July 2011, registered on 19 July 2011 as number 73/2011, lodged by the trade union *Syndicat de Défense des Fonctionnaires* (“the trade union”) and signed by its Chairman, Mr Serge Muzard and by one member, Mr Jean Meyer, requesting the Committee to find that France is not in conformity with Articles 2, 12, 20 of the Revised European Social Charter (“the Charter”), as well as with Article E in conjunction with each of these provisions;

Having regard to the documents appended to the complaint;

Having regard to the observations of the French Government (“the Government”) received on 28 October 2011;

Having regard to the Charter, and in particular to Articles 2, 12, 20 and E which read as follows:

Article 2 – The right to just conditions of work

Part I: “All workers have the right to just conditions of work.”

Part II: “With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

(...)

6 to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;

(...)”

Article 12 – The right to social security

Part I: " 12 All workers and their dependents have the right to social security.”

Part II: “With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1 to establish or maintain a system of social security;

2 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

3 to endeavour to raise progressively the system of social security to a higher level;

(...)“

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

Part I: “All workers have the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.”

Part II: “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields: (...)

- a access to employment, protection against dismissal and occupational reintegration;
- b vocational guidance, training, retraining and rehabilitation;
- c terms of employment and working conditions, including remuneration;
- d career development, including promotion.”

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground 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.”

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 revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session (“the Rules”);

Having deliberated on 7 December 2011;

Delivers the following decision, adopted on the above-mentioned date:

1. The trade Union *Syndicat de Défense des Fonctionnaires* alleges that the situation in France is not in conformity with Articles 2§6, 12, 20 and E of the Charter on the grounds that the state civil servants (so-called "redeployed" by reason of the right of option allowed by parliament when it adopted Law 90-568 of 2 July 1990 transforming the PTT) who are employed by France Télécom and La Poste but who have remained at the grades of the former Post and Telecommunications service, are victims of denial of the right to career development, of the right to social security, of the right to information, and of the lack of finding discrimination in the enjoyment of the above mentioned rights.

2. The Government does not contest that the complaint meets the conditions for admissibility laid down in Article 1 c) and Article 4 of the Protocol. This is without prejudice to its views on the merits.

THE LAW

3. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by France on 7 May 1999 and entered into force for this state on 1 July 1999, the complaint has been submitted in writing and concerns Articles 2, 12, 20 and E of the Charter, provisions accepted by France when it ratified this treaty on 7 May 1999 and to which it is bound since the entry into force of this treaty in its respect on 1 July 1999.

4. Moreover, the grounds for the complaint are indicated.

5. Exercising its activities in France, the *Syndicat de Défense des Fonctionnaires* is a trade union within the jurisdiction of this country as required by Article 1 c) of the Protocol. The Committee recalls that, for the purposes of the collective complaints procedure, representativity is an autonomous concept, not necessarily identical to the national notion of representativity (*Syndicat national des professions du tourisme v. France*, complaint No. 6/1999, decision on admissibility of 10 February 2000, § 6).

6. Having made an overall assessment, taking into account [in particular] the aim of the trade union and the activities it carries, the Committee considers that the *Syndicat de Défense des Fonctionnaires* is a representative trade union for the purposes of the collective complaints procedure. It also notes that this is not contested by the Government.

7. Moreover, the complaint submitted on behalf of the *Syndicat de Défense des Fonctionnaires* is signed by its Chairman, Mr Serge Muzard, and one of its member, Mr Jean Meyer, as established by the mandate signed by the Union national office, according to Article 14 of the Union's statute, entitling each of them to represent it in this complaint. The Committee, therefore, considers that the condition provided for in Rule 23 of its Rules is fulfilled.

8. For these reasons, the Committee, on the basis of the report presented by Mr Luis JIMENA QUESADA and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the 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 paragraph 2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 3 February 2012.

Invites the *Syndicat de Défense des Fonctionnaires* to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 3 February 2012, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 3 February 2012.



Luis JIMENA QUESADA
President and Rapporteur



Régis BRILLAT
Executive Secretary