

DECISION ON ADMISSIBILITY

COMPLAINT No. 16/2003

From the *Confédération française de l'Encadrement CFE-CGC*
against France

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 195th session in the following composition:

Messrs Jean-Michel BELORGEY, President
Nikitas ALIPRANTIS, Vice-President
Ms Polonca KONCAR, Vice-President
Messrs Stein EVJU, General Rapporteur
Rolf BIRK
Matti MIKKOLA
Konrad GRILLBERGER
Tekin AKILLIOĞLU
Ms Csilla KOLLONAY LEHOCZKY
Mr Andrzej SWIATKOWSKI

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter

Having regard to the complaint registered as number 16/2003, lodged on 14 May 2003 by Me Jean-Jacques GATINEAU, *avocat au Conseil d'Etat et à la Cour de Cassation*, on behalf of the *Confédération française de l'Encadrement CFE-CGC*, represented by its President Mr Jean-Luc CAZETTES, requesting that the Committee find that France fails to apply in a satisfactory manner Articles 2, 4, 6 and 27 of the Revised European Social Charter (hereafter referred to as "Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 16 June 2003 by the French Government represented by the Deputy Director of Legal Affairs of the Ministry of Foreign Affairs,

Having regard to the Revised Charter and, in particular, to Articles 2, 4, 6 and 27 which read as follows:

Article 2 — The right to just conditions of work

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

- 1 to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
- 2 to provide for public holidays with pay;
- 3 to provide for a minimum of four weeks’ annual holiday with pay;
- 4 to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
- 5 to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
- 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;
- 7 to ensure that workers performing night work benefit from measures which take account of the special nature of the work.”

Article 4 — The right to a fair remuneration

“With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

- 1 to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
- 2 to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
- 3 to recognise the right of men and women workers to equal pay for work of equal value;
- 4 to recognise the right of all workers to a reasonable period of notice for termination of employment;
- 5 to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

Article 6 — The right to bargain collectively

“With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

- 1 to promote joint consultation between workers and employers;

- 2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- 3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
and recognise:
- 4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Article 27 — The right of workers with family responsibilities to equal opportunities and equal treatment

"With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

- 1 to take appropriate measures:
 - a to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
 - b to take account of their needs in terms of conditions of employment and social security;
 - c to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
- 2 to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
- 3 to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment."

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 on 9 September 1999 during its 163rd session;

After having deliberated on 16 June 2003;

Delivers the following decision, adopted on the above date:

1. The CFE-CGC is a trade union, established in France, whose members are managerial staff. According to French law, it is nationally representative. It submits to be representative also for the purposes of the collective complaints procedure.
2. It alleges that Act n° 2003-47 of 17 January 2003 on the reduction of working hours constitutes a violation of Articles 2, 4, 6 and 27 of the Revised European Social Charter. Moreover, should the Committee find a violation of these provisions, it requests the Committee, "to order the France to pay the CFE-CGC trade union the sum of € 9,000 as compensation for the costs of the present complaint".
3. In its observations on admissibility, the French Government considers that the complaint does not seem to meet the formal requirements of the Protocol or of the Committee's Rules of procedure.
4. The Committee notes that the Protocol providing for a system of collective complaints was ratified by France on 7 May 1999 and entered into force for this State on 1 July 1999. In addition, France ratified, on 7 May 1999, the Revised Social Charter, which entered into force in its respect on 1 July 1999. According to Article 4 of the Protocol, the complaint is presented in writing and concerns Articles 2, 4, 6 and 27 of the Revised Social Charter, provisions accepted by France at the time of ratification of the Revised Charter.
5. Exercising its activities in France, the *Confédération française de l'Encadrement* CFE-CGC is a trade union within the jurisdiction of this country as required by Article 1 para. c of the Protocol.
6. The Committee has already considered that this trade union is representative for the purposes of the collective complaints procedure (Collective Complaint No. 9/2000 – CFE-CGC v. France, decision on admissibility of 6 November 2000, para. 7). It confirms this decision since no significant change has taken place.
7. In addition, the complaint submitted on behalf of CFE-CGC is signed by Mr Jean-Luc CAZETTES, President of the trade union, entitled according to Article 47 of the Union's statute to represent it. The Committee, therefore, considers that the condition provided for in Article 20 of its Rules of procedure is fulfilled.
8. Moreover, the Committee notes that the present complaint is directed against a new legislation (Act n° 2003-47 of 17 January 2003) which repeats only in part the provisions complained of in Collective Complaint No. 9/2000 – CFE-CGC v. France.

9. Concerning the request from the complainant organisation in respect of procedural costs in the complaint, without prejudice to a decision concerning whether failure to satisfactorily apply the Revised Charter may give grounds for a claim for compensation, in respect of costs, the Committee in the present case considers that this ancillary claim made by the CFE-CGC in its complaint does not preclude the admissibility of the complaint and that the issue of compensation shall be considered at the stage of the assessment of the merits of the complaint.

10. For these reasons, the Committee, on the basis of the report presented by Mr Matti MIKKOLA, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE,

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

Invites the French Government to submit in writing by 30 September 2003 all further relevant explanations or information.

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

Invites the *Confédération française de l'Encadrement CFE-CGC* to submit in writing by a deadline which it shall determine all relevant explanations or information in response to the observations of the French Government.

In application of Article 7 para. 2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27 para. 2 of the Charter and to invite them to submit their observations by 30 September 2003.

Matti MIKKOLA
Rapporteur

Jean-Michel BELORGEY
President

Régis BRILLAT
Executive Secretary