

**DECISION ON ADMISSIBILITY**

**30 March 2009**

***Confédération générale du travail (CGT)***  
**v. France**

Complaint No. 55/2009

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 235<sup>th</sup> session attended by:

Mrs Polonca KONČAR, President  
Mssrs Andrzej SWIATKOWSKI, Vice-President  
Colm O'CONNOR, Vice-President  
Jean-Michel BELORGEY, General Rapporteur  
Mrs Csilla KOLLONAY LEHOCZKY  
Mr Lauri LEPPIK  
Mrs Monika SCHLACHTER  
Birgitta NYSTRÖM  
Lyudmilla HARUTYUNYAN  
Mssrs Alexandru ATHANASIU  
Luis JIMENA QUESADA  
Rüçhan IŞIK  
Petros STANGOS  
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 14 January 2009, registered on 21 January 2009 as number 55/2008, lodged by the *Confédération générale du travail* ("The CGT") and signed by its Secretary General, Mr Bernard THIBAUT, requesting the Committee to find that France is not in conformity with Article 2§§1 and 5, Article 4 §§1 and 2, as well as Article 11§§1 and 3 of the Revised European Social Charter ("the Revised Charter");

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter and, in particular, to Article 2§1 and §5 and to Article 4 §2 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 :

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduces to the extent that the increase of productivity and other relevant factors permit ; (...)"
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;

(...)"

**Article 4 – The right to a fair remuneration**

Part I : " All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families."

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

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases ;

(...)"

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 201<sup>st</sup> session and revised on 12 May 2005 at its 207<sup>th</sup> session and on 20 February 2009 at its 234<sup>th</sup> session ("the Rules");

Having deliberated on 30 March 2009;

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

1. The CGT, referring in particular to Working Hours Act No. 2008-789 of 20 August 2008 (Official Gazette of the French Republic of 21 August 2008) claims that :

- the annual working days system infringes the right to reasonable working hours provided by Article 2§1 and Article 4§2 of the Revised Charter;

- the rules on on-call service infringe the right to reasonable working hours provided by Article 2§1 of the Revised Charter and the right to rest periods provided by Article 2§5 of the Revised Charter;

- the rules on the “Solidarity Day” and on the annual working days system infringe the right to a fair remuneration provided by Article 4§2 of the Revised Charter.

2. The complaint also contains allegations relating to Article 11§1 and 3 and to Article 4§1 of the Revised Charter.

## **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§1 and 4§2 of the Revised 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 as far as they concern Article 2§1 and 5 and Article 4§2. On the contrary no ground is presented in respect of the allegations of violation of Articles 11§§ 1 and 3 and Article 4§1.

5. Exercising its activities in France, the CGT is a confederation of trade unions within the jurisdiction of this country as required by Article 1c of the Protocol.

6. The Committee has already considered that the CGT is a representative confederation of trade unions for the purposes of the collective complaints procedure (CGT v. France, complaint n° 22/2003, decision on admissibility of 9 February 2004, §5). It confirms this decision since no significant change has taken place.

7. Moreover, the complaint submitted on behalf of the CGT is signed by Mr Bernard THIBAULT, entitled according to Article 38 of the CGT’s statutes to represent it before the courts, whether national or international. The Committee, therefore, considers that the condition provided for in Article 20 of its Rules of procedure is fulfilled

8. For these reasons, the Committee, without finding it necessary to invite the respondent Government to submit observations on admissibility (Article 6 of the Protocol and Rule 29§3), on the basis of the report presented by Ms Birgitta NYSTRÖM and without prejudice to its decision on the merits of the complaint,

**DECLARES THE COMPLAINT ADMISSIBLE AS FAR AS IT CONCERNS ARTICLE 2§§ 1 AND 5 AND ARTICLE 4§2 AND DECLARES THE REMAINDER OF THE COMPLAINT INADMISSIBLE.**

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.

Invites the Government to make written submissions on the merits of the complaint by 12 June 2009.

Invites the CGT 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 12 June 2009, should they so wish.

In application of Article 7§2 of the Protocol, requests the Executive Secretary to inform the international organisations of employers or workers mentioned in Article 27§2 of the Charter and to invite them to make observations by 12 June 2009.

Birgitta NYSTRÖM  
Rapporteur

Polonca KONČAR  
President

Régis BRILLAT  
Executive Secretary