

DECISION ON ADMISSIBILITY

29 June 2009

Confédération française de l'encadrement CFE-CGC
v. France

Complaint No. 56/2009

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 237th 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
Lyudmilla HARUTYUNYAN
Mssrs Rüçhan IŞIK
Petros STANGOS
Alexandru ATHANASIU
Luis JIMENA QUESADA
Mrs Jarna PETMAN

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 30 April 2009, registered on 4 May 2009 as number 56/2009, lodged 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 – Confédération générale des cadres* (“the CFE-CGC”), and represented by him according to a mandate signed by the President of the CFE-CGC, Mr Bernard VAN CRAEYNEST, requesting the Committee to find that the situation in France is not in conformity with Articles 1§1, 2§1, 3, 4§2, as well as Articles 20 (c), 27§1 and E of the Revised European Social Charter (“the Revised Charter”);

Having regard to the notification addressed to the French Government (“the Government”) on 18 May 2009;

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter and, in particular, to Articles 1§1, 2§1, 3, 4§2, 20 (c), 27§1 and E which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

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

- 1 to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

(...)”

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;

(...)”

Article 3 – The right to safe and healthy working conditions

Part I: “All workers have the right to safe and healthy working conditions.”

Part II: “With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers’ and workers’ organisations:

- 1 to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary

aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment;

- 2 to issue safety and health regulations;
- 3 to provide for the enforcement of such regulations by measures of supervision;
- 4 to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.”

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 ;
(...)”

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: (...)

- c terms of employment and working conditions, including remuneration;

(...)”

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

Part I: “All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.”

Part II: “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;

(...)"

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 and on 20 February 2009 at its 234th session ("the Rules");

Having deliberated on 29 June 2009;

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

1. The CFE-CGC, 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 work provided by Article 1§1 of the Revised Charter in that it induces an increase in employees' workload which has a detrimental effect on job creation;

- the annual working days system, in particular its "forfaits-jours" component, infringes the right to reasonable working hours provided by Article 2§1 of the Revised Charter;

- the annual working days system infringes the right to safe and healthy working conditions provided by Article 3 of the Revised Charter by reason of its adverse consequences on employees' health;

- the annual working days system, in particular its "forfaits-jours" component, infringes the right to a fair remuneration provided by Article 4§2 of the Revised Charter;

- the annual working days system, in particular its "forfaits-jours" component, infringes the right to equal treatment in matters of employment and occupation without discrimination on the grounds of sex provided by Article 20, the right of workers with family responsibilities to equal treatment provided by Article 27 and the right not to be discriminated against in the enjoyment of the rights protected by the Revised Charter provided by Article E, in that this system and its "forfaits-jours" component apply only to certain employees and violate their rights to reasonable working hours and to a fair remuneration.

THE LAW

2. 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 1§1, 2§1, 3, 4§2, 20 (c), 27§1 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.

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

4. Exercising its activities in France, the CFE-CGC is a trade union within the jurisdiction of this country as required by Article 1 (c) of the Protocol.

5. The Committee has already considered that the CFE-CGC is a representative trade union for the purposes of the collective complaints procedure (CFE-CGC v. France, complaint n° 9/2000, decision on admissibility of 6 November 2000, §7; CFE-CGC v. France, complaint n° 16/2003, decision on admissibility of 16 June 2003, §7). It confirms this decision since no significant change has taken place.

6. Moreover, the complaint submitted on behalf of the CFE-CGC is signed by Me Jean-Jacques GATINEAU, entitled to represent the trade union in respect of this complaint, as established by the mandate signed by Mr Bernard VAN CRAEYNST, President of the CFE-CGC, who has capacity to bring or defend legal proceedings on behalf of the CFE-CGC, in accordance with Article 27 of the trade union's statutes. The Committee, therefore, considers that the condition provided for in Rule 23 of the Rules of procedure is fulfilled.

7. For these reasons, the Committee, without finding it necessary to invite the Government to submit observations on admissibility (Article 6 of the Protocol and Rule 29§3), on the basis of the report presented by Mr Alexandru ATHANASIU 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 25 September 2009.

Invites the CFE-CGC 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 25 September 2009, 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 25 September 2009.

Alexandru ATHANASIU
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary