

DECISION ON ADMISSIBILITY

COMPLAINT No. 9/2000

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 168th session attended by:

Messrs Matti MIKKOLA, President
 Rolf BIRK, Vice-Président
 Stein EVJU, Vice-President
 Konrad GRILLBERGER
 Alfredo BRUTO DA COSTA
Ms Micheline JAMOULLE
Messrs Nikitas ALIPRANTIS
 Tekin AKILLIOĞLU

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

Having regard to the complaint registered as number 9/2000, lodged on 20 June 2000 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;

Having regard to the documents appended to the complaint;

Having regard to the observations submitted on 29 September 2000 by the French Government represented by the Director of Legal Affairs of the Ministry of Foreign Affairs,

Having regard to the Revised European Social 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 6 November 2000;

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° 2000-37 of 19 January 2000 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 French Government to pay the CFE-CGC trade union the sum of FRF 78 billion as compensation for collective damage caused to the profession".
3. In its observations on admissibility, the French Government considers that the complaint "seems to meet all of the formal requirements of the Additional Protocol, in particular Article 4, and of the Committee's Rules of Procedure."
4. However, the Government asks the Committee to reject the CFE-CGC's claim for damages. It considers that it cannot be based on any of the articles of the Additional Protocol.
5. The Committee notes that the Protocol providing for a system of collective complaint 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 1st 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.
6. 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. Furthermore, the CFE-CGC is considered by French law as being nationally representative. 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 (Complaint n°6/1999, *Syndicat national des professions du tourisme v. France*, decision on admissibility, para. 6).
7. Having made an overall assessment of the documents in the file, the Committee considers that the CFE-CGC is a representative trade union for the purposes of the collective complaints procedure. It also notes that this is not contested by the Government.
8. Moreover, 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.

9. Noting that the complainant alleges that the situation in France does not comply with Articles 2, 4, 6 and 27 of the Revised European Social Charter, without prejudice to a decision concerning whether failure to satisfactorily apply the said Articles may give grounds for a claim for compensation, 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 31 January 2001 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 31 January 2001.

Matti MIKKOLA
President and Rapporteur

Régis BRILLAT
Executive Secretary