DEcision ON ADMISSIONALITY
23 September 2008

Confédération Française Démocratique du Travail (CFDT) v. France

Complaint No. 50/2008

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 231\textsuperscript{th} session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, First Vice-President
    Tekin AKILLIOĞLU, Second Vice-President
    Jean-Michel BELORGEY, General Rapporteur
    Alfredo BRUTO DA COSTA
    Nikitas ALIPRANTIS
    Stein EVJU
Mrs Csilla KOLLONAY LEHOCZKY
Mssrs Lucien FRANCOIS
    Lauri LEPPIK
    Colm O’CINNEIDE
Mrs Monika SCHLACHTER
    Birgitta NYSTRÖM
    Lyudmila HARUTYUNYAN
    Annalisa CIAMPI

Assisted by Mr Régis BRILLAT, Executive Secretary
Having regard to the complaint dated 28 March 2008, registered on 1 April 2008 as number 50/2008, lodged by the Confédération Francaise Démocratique du Travail (CFDT) and signed by its Deputy Secretary General, Mr Jacky Bontemps, requesting the Committee to find that France is not in conformity with Articles 4, 18 and 19 of the Revised European Social Charter ("the Revised Charter") read in conjunction with Article E;

Having regard to the documents appended to the complaint;

Having regard to the Revised Charter and, in particular, to Articles 4, 18, 19 and E, which read as follows:

**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:

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 18 – The right to engage in a gainful occupation in the territory of other Parties**

Part I: "The nationals of any one of the Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter, subject to restrictions based on cogent economic or social reasons."

Part II: "With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake:

1. to apply existing regulations in a spirit of liberality;
2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
3. to liberalise, individually or collectively, regulations governing the employment of foreign workers; and recognise:
4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Parties."

**Article 19 – The right of migrant workers and their families to protection and assistance**

Part I: "Migrant workers who are nationals of a Party and their families have the right to protection and assistance in the territory of any other Party."
Part II: "With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1 to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2 to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3 to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4 to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
   a remuneration and other employment and working conditions;
   b membership of trade unions and enjoyment of the benefits of collective bargaining;
   c accommodation;

5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9 to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10 to extend the protection and assistance provided for in this article to self employed migrants insofar as such measures apply;

11 to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

12 to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

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 ("the Rules");

Having regard to the observations of the French Government ("the Government") on the admissibility received on 11 June 2008;

Having deliberated on 23 September 2008;
Delivers the following decision, adopted on the above date:

1. The CFDT alleges that France fails to comply with Articles 4, 18 and 19 of the Revised Charter read in conjunction with Article E. It submits that the situation of the civilian staff of the French forces stationed in Germany (FFSA) integrated into the French civil service following the dissolution of these forces is discriminatory because the services they performed in Germany cannot be taken into consideration in the same way as they would have been had they been performed in France.

THE LAW

As to the admissibility conditions laid down by the Protocol and Rules of Procedure:

2. The Committee observes that France accepted the collective complaint procedure by ratifying the Protocol on 7 May 1999 which entered into force for this state on 1 July 1999. In addition, in accordance with Article 4 of the Protocol, the complaint has been submitted in writing. It concerns Article 4, 18 and 19 in conjunction with Article E 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. The complainant organisation relies on sufficiently precise and detailed items of law and practice that are related to the rights guaranteed by the Revised Charter. As to the allegations made, the Committee will decide when assessing the merits of the complaint to what extent they fall within the ambit of the provisions cited by the CFDT or other provisions of the Revised Charter.

4. The Government does not contest the right for CFDT to lodge a complaint alleging a non-satisfactory application of the Revised Charter.

5. Exercising its activities in France, the CFDT is a trade union within the jurisdiction of this country as required by Article 1c of the Protocol. Furthermore, the CFDT is considered by French law as being representative on the national level. 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 (Confédération Française de l'Encadrement "CFE-CGC" v. France, Complaint No. 9/1999, decision on admissibility, paragraph 6). As regards the current case, in view of the documents in its possession, the Committee considers that, for the purpose of the collective complaint procedure and in accordance with Article 1c of the Protocol, the CFDT is a representative national organisation of trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint. It also notes that this is not contested by the Government.
6. The complaint is signed by Mr Jacky Bontemps, Deputy Secretary General of the CFDT. According to Article 24 of its rules, the Deputy Secretary General is empowered to represent the CFDT. In addition, the CFDT Executive Board expressly mandated him to do so by a decision of 11 February 2008. The Committee considers that Mr Bontemps is duly authorised to represent the complainant organisation in the collective complaint procedure. Therefore the conditions stipulated in Rule 23 of the Rules are fulfilled.

7. As to the complainant organisation's claim concerning the procedural costs of the complaint, the Committee would point out that this type of ancillary claim does not preclude the admissibility of the complaint (Confédération française de l'encadrement (CFE-CGC) v. France, Complaint No. 16/2003, decision on admissibility, §9). It will consider this matter when assessing the merits.

8. For these reasons, the Committee, on the basis of the report presented by Mr Lucien François 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§2 of the Revised Charter, and to make it public.

Invites the Government to make written submissions on the merits of the complaint by 21 November 2008.

Invites the CFDT 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§2 of the Revised Charter to make comments by 21 November 2008 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 21 November 2008.

Lucien FRANÇOIS
Rapporteur

Polonca KONČAR
President

Régis BRILLAT
Executive Secretary