

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**DECISION ON ADMISSIBILITY**

**6 July 2020**

***Confédération Française Démocratique du Travail (CFDT)*  
v. France**

Complaint No. 189/2020

The European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 314<sup>th</sup> session attended by:

Giuseppe PALMISANO, President  
Karin LUKAS, Vice-President  
François VANDAMME, Vice-President  
Eliane CHEMLA, General Rapporteur  
Petros STANGOS  
József HAJDU  
Krassimira SREDKOVA  
Raul CANOSA USERA  
Barbara KRESAL  
Kristine DUPATE  
Aoife NOLAN  
Karin Møhl LARSEN  
Yusuf BALCI  
Ekaterina TORKUNOVA  
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 15 January 2020 as No. 189/2020, lodged by the trade union *Confédération Française Démocratique du Travail* ("the CFDT") against France and signed by Laurent Berger, Secretary General of the CFDT, requesting the Committee to find that the situation in France amounts to a violation of Article 6§2 of the Revised European Social Charter ("the Charter").

Having regard to the documents appended to the complaint;

Having regard to the letter of the French Government ("the Government") on the admissibility of the complaint, registered on 28 May 2020;

Having regard to the Charter and, in particular to Article 6§2, which read as follows:

**Article 6 – The right to bargain collectively**

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

...

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;

...

Having regard to the 1995 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 on 29 March 2004 at its 201<sup>st</sup> session and last revised on 10 September 2019 at its 308<sup>th</sup> session ("the Rules");

Having deliberated on 6 July 2020;

Delivers the following decision adopted on the latter date:

1. The CFDT states that under Section 8 of Order No. 2017-1385 of 22 September 2017 on strengthening collective bargaining (ratified by Law No. 2018-217 of 29 March 2018), as inserted in Articles L. 2232-21, L. 2232-22, L. 2232-22-1 et L. 2232-23 of the French Labour Code, in small enterprises with fewer than 11 employees, where the holding of staff elections is not required, as well as in enterprises with 11 to 20 employees where there is no elected staff representative, the employer can decide to submit a draft agreement directly to the employees for voting. Once approved by a two-thirds majority of the employees, this agreement shall be of the same force and effect as a company-wide collective agreement. CFDT alleges that these provisions enable employers in small enterprises to bypass collective bargaining with trade union representatives in breach of Article 6§2 of the Charter.

2. The Government informed the Committee that it did not wish to make observations on the admissibility of the complaint.

## **THE LAW**

3. The Committee notes 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 Article 6§2 of the Charter, a provision accepted by France when it ratified this treaty on 7 May 1999 and by which it has been bound since its entry into force on 1 July 1999.

4. Moreover, the grounds for the complaint are indicated. The CFDT refers to and relies with sufficient precision on specific national legal provisions, namely the Order No. 2017-1385 of 22 September 2017 as well as detailed examples of practice, which are related to the rights guaranteed by the Charter. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility.

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

6. The Committee has already considered that the CFDT is a representative trade union for the purposes of the collective complaints procedure (CFDT v. France, Complaint No. 50/2008, decision on admissibility of 23 September 2008, §5). Since no significant change has taken place, the Committee maintains its position on this point.

7. Furthermore, the complaint submitted on behalf of the CFDT is signed by Laurent Berger, General Secretary of the CFDT, who, according to the Article 25 of the CFDT's Statutes, is entitled to represent the organisation. The Committee, therefore, considers that the complaint complies with Rule 23 of the Rules.

8. On these grounds, the Committee, on the basis of the report presented by Karin LUKAS and without prejudice to its decision on the merits of the complaint,

## **DECLARES THE COMPLAINT ADMISSIBLE**

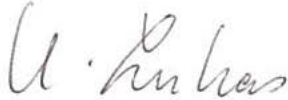
Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter, and to publish it on the Council of Europe's Internet site;

Invites the Government to make written submissions on the merits of the complaint by 9 October 2020;

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 Charter to make comments by 9 October 2020, should they so wish;

Pursuant to Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 9 October 2020.



Karin LUKAS  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary