



European  
Social  
Charter

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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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

**DECISION ON ADMISSIBILITY**

**28 January 2020**

**CFDT Meuse Metallurgy v. France**

Complaint No. 175/2019

The European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 311<sup>th</sup> session attended by:

Giuseppe PALMISANO, 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  
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 30 January 2019 as No. 174/2019, lodged by the trade union CFDT *de la métallurgie de la Meuse* (“CFDT Meuse Metallurgy”) against France and signed by José Souel, Secretary General, Thierry Defossez, Deputy Secretary, Michel Prevot, Treasurer, Christian Mairel, Deputy Treasurer, as well as Benoît Desavis, Manuel Dos Paladares, Marius Germinal, Boumedienne Ghorzi, Thierry Gonot, Geoffrey Quinet and Sylvain Rousselle, members of the Board of the trade union, requesting the Committee to find that the situation in France amounts to a violation of Article 24 of the Revised European Social Charter (“the Charter”).

Having regard to the documents appended to the complaint;

Having regard to the observations of the French Government (“the Government”) on the admissibility of the complaint, registered on 1<sup>st</sup> April 2019;

Having regard to the observations by CFDT Meuse Metallurgy in response to the Government’s observations, registered on 15 May 2019;

Having regard to the additional observations of the Government in response to the observations by CFDT Meuse Metallurgy registered on 12 July 2019;

Having regard to the Charter and, in particular, to its Article 24 which reads as follows:

**Article 24 – The right to protection in cases of termination of employment**

Part I: “All workers have the right to protection in cases of termination of employment”.

Part II: “With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
- b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body.”

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 16 October 2019, 6 December 2019 and 28 January 2020;

Delivers the following decision adopted on the latter date:

1. CFDT Meuse Metallurgy alleges that the provisions of the Law of 13 July 1973 and Order No. 2017-1387 of 22 September 2017 on the predictability and increased security of employment relationships, as inserted in paragraphs 1 and 2 of Article L 1235-3 of the Labour Code, which amended the provisions relating to the financial compensation for dismissals without a valid reason, by setting mandatory compensation ranges, according to the worker's length of service and the size of the undertaking. CFDT Meuse Metallurgy claims that these provisions constitute a violation of Article 24 of the Charter both on the issue of the adequate compensation in case of unfair dismissal and on the issue of the right to reinstatement.

2. The Government in its observations raises the following objections to admissibility:

- (a) CFDT Meuse Metallurgy, pursuant to Article 3 of its Statutes has as its geographical scope solely the department of Meuse and cannot therefore be considered as a national trade union;
- (b) CFDT Meuse Metallurgy cannot be considered as a representative trade union within the meaning of Article 1§c of the Protocol.

3. CFDT Meuse Metallurgy contests these objections and argues that the complaint must be declared admissible given its capacity as a legally constituted trade union affiliated to the *Confédération française démocratique du travail* (CFDT).

## THE LAW

### *As to the admissibility conditions set out in the Protocol and the Committee's Rules*

4. 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 24 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.

5. Moreover, the grounds for the complaint are indicated. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility.

6. The Committee observes that the complaint submitted on behalf of CFDT Meuse Metallurgy is signed by José Souel, Secretary General, Thierry Defossez, Deputy Secretary, Michel Prevot, Treasurer, Christian Mairel, Deputy Treasurer, as well as Benoît Desavis, Manuel Dos Paladares, Marius Germinal, Boumedienne Ghorzi, Thierry Gonot, Geoffrey Quinet and Sylvain Rousselle, who constitute the CFDT Meuse Metallurgy Bureau following the Union Congress meeting on 19 October 2015. The Committee notes that the Bureau decides on legal proceedings and appoints a member to represent it in accordance with Article 12 of its Statutes. The Committee therefore considers that the condition provided for in Rule 23 of its Rules is fulfilled.

*As to the Government's objections concerning the admissibility*

7. With respect to the first objection (a) raised by the Government, the Committee notes that according to Article 6 of its Statutes the aim of the trade union is to "to bring together workers of the same sector of activity in order to ensure the individual and collective defence of their professional, economic and social interests by the most appropriate means; to develop demands, lead and support action, bargain and sign collective agreements and conventions in its scope of activity." Article 2 states that "the union is affiliated with *Confédération française démocratique du travail* (CFDT). (...) As a result of this affiliation with CFDT, the union is necessarily a member of *Fédération Générale des Mines et de la Métallurgie* (FGMM-CFDT) and *Union Régionale Interprofessionnelle CFDT de Lorraine*."

8. On this basis, the Committee considers that the activities carried out by the complainant organisation are of a trade union nature. Moreover, since it exercises its activities in France, CFDT Meuse Metallurgy is a trade union within the jurisdiction of this country as required by Article 1§c of the Protocol. The fact that CFDT Meuse Metallurgy exercises its activities in a specific geographical area (Meuse), does not lead the Committee to take any other view of the situation (see in this regard *Syndicat occitan de l'éducation v. France*, Complaint No. 23/2003, decision on admissibility of 13 February 2004, §5)

9. As regards the second objection (b) raised by the Government, on the representativeness of the complainant trade union, the Committee recalls that a lack of representativity as defined under national law, does not necessarily affect representativeness within the meaning of Article 1§c of the Protocol, since this constitutes an autonomous concept, not necessarily identical to the national notion of representativity (see *Confédération française de l'Encadrement* (CFE-CGC) v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6; *Associazione sindacale "La Voce dei Giusti"* v. Italy, Complaint No. 105/2014, decision on admissibility of 17 March 2015, §13).

10. The Committee examines representativeness in particular with regard to the field covered by the complaint, to the aim of the trade union and the activities which it carries out (see *Syndicat de Défense des Fonctionnaires v. France*, Complaint No. 73/2011, decision on admissibility of 7 December 2011, §6). It also considers that in order to qualify as representative, a trade union must be real, active and independent.

11. Moreover, in determining representativeness, the Committee takes into account the number of members a trade union represents and the role it plays in collective bargaining. However, it has also held that the application of criteria of representativeness should not lead to the automatic exclusion of small trade unions or of those formed recently to the advantage of larger and long-established trade unions (see *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §§20-21).

12. The Committee notes that CFDT Meuse Metallurgy is a trade union which, in the geographical area where it is established (Meuse), carries out activities to defend

the material and moral interests of workers in the metallurgy sector (see also §7 above).

13. The Committee notes that CFDT Meuse Metallurgy is a trade union recognised as representative at the level of the metallurgical branch within the Meuse department on the basis of its electoral support recorded during the last trade union elections in accordance with the criteria laid down in Article L. 2121-1 and the rules defined in Article L. 2122-5 of the Labour Code relating to the trade union representativeness at branch level.

14. The Committee further notes that, according to the Decree No. 1315 of 22 December 2017 establishing the list of trade unions recognised as representative in the regional collective agreement for the metallurgical, mechanical and related industries of Haute-Marne and Meuse, CFDT is recognised as representative at the level of this branch.

15. The Committee also notes that, according to its statutes, CFDT Meuse Metallurgy is affiliated with higher-level trade union federations and most notably with CFDT, an organisation previously having been considered as representative for the purposes of the collective complaints procedure (see *Confédération Française Démocratique du Travail* (CFDT) c. France, Complaint No. 50/2008, decision on admissibility of 23 September 2008).

16. The Committee further recalls its decision in U.I.L. *Scuola – Sicilia* v. Italy, Complaint No. 113/2014, decision on admissibility of 9 September 2015, where it held that a regional branch of a national-level trade union was a representative trade union in the meaning of Article 1§c of the Protocol.

17. On the basis of the above, and considering the scope and reach of the activities of CFDT Meuse Metallurgy, both geographically and at the level of the industry concerned, the Committee considers that it is representative for the purposes of the collective complaints procedure.

18. It follows that the Government's objections cannot be sustained.

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

**BY 9 VOTES AGAINST 4, 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;

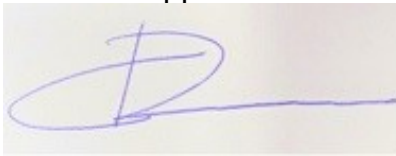
Invites the Government to make written submissions on the merits of the complaint by 28 April 2020;

Invites CFDT Meuse Metallurgy 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 28 April 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 28 April 2020.

Karin Møhl LARSEN  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary

