



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

25 February 2015

Case Document No. 4

European Council of Police Trade Unions (CESP) v. France
Complaint No.101/2013

**FURTHER RESPONSE FROM THE GOVERNMENT
(Translation)**

Registered at the Secretariat on 16 February 2015

OBSERVATIONS IN REPLY BY THE GOVERNMENT OF THE
FRENCH REPUBLIC ON THE MERITS OF
COMPLAINT No.101/2013,
EUROPEAN COUNCIL OF POLICE TRADE UNIONS v.
FRANCE

1. In a decision dated 21 October 2013, the European Committee of Social Rights (hereafter “the Committee”) declared admissible Complaint No.101/2013 lodged against France by the European Council of Police Trade Unions (hereafter “CESP”). CESP claims that the military status of the national gendarmerie is unwarranted because their duties are similar to those of the national police force, and therefore considers that France is violating Articles 5 and 6 of the revised European Social Charter by depriving the military personnel of the national gendarmerie of the rights enshrined in those articles.

2. The French Government submitted observations to the Committee, to which CESP replied on 5 March 2014.

3. The French Government wishes to submit further observations to the Committee in order to bring to its attention some information relevant to an assessment of the merits of this complaint.

- I. The need to take account of the *Adefdromil v. France* and *Matelly v. France* judgments delivered by the European Court of Human Rights on 2 October 2014

4. On 2 October 2014, the European Court of Human Rights (hereafter “the Court”) delivered judgments in the cases of *Adefdromil v. France* (no. 32191/09) and *Matelly v. France* (no. 10609/10), in which it found France to be in breach of Article 11 of the Convention on the grounds that the ban on military personnel forming or joining a trade union infringes the very essence of the freedom of association guaranteed by the European Convention on Human Rights (ECHR).

5. In its judgments, the Court stated that Article 11 § 1 presents trade-union freedom as a special form or aspect of freedom of association (§ 41 of the *Adefdromil v. France* judgment and §55 of the *Matelly v. France* judgment).

6. While Article 11 § 2 specifically mentions the armed forces as being one of the groups on which states may impose “lawful restrictions”, such restrictions should be strictly construed and should be confined to the “exercise” of the rights in question (§ 57 of the *Matelly v. France* judgment and § 44 of the *Adefdromil v. France* judgment).

7. The Court recognises the special nature of the armed forces’ mission, which calls for an adaptation of trade-union activity and the possibility of imposing restrictions, even significant ones, on the forms of action and expression of a professional association and the military personnel who join it. It considers, however, that these restrictions must not deprive military personnel and their trade unions of the general right of association in defence of their professional interests.

8. In the cases in point, the Court found that the provisions of the Defence Code (Articles L. 4121-1 to 4) prohibiting military personnel in active service from joining groupings or associations of a political or trade-union nature amount to a ban on forming or joining a trade union and thus infringes the very essence of the freedom protected by Article 11 of the ECHR (§ 60 of the *Adefdromil v. France* judgment and § 75 of the *Matelly v. France* judgment)..

9. The French Government takes note of these judgments against it by the Court, which became final on 2 January 2015 without a referral being requested to the Grand Chamber.

10. In a letter dated 16 October 2014, the President of the Republic asked Mr Bernard Pêcheur, Chair of the Reports and Studies Section of the *Conseil d'Etat*, to assess the precise implications of these judgments. His report was submitted to the President of the Republic on 18 December 2014.

II. The main recommendations of the Pêcheur report

11. The report recommends a reform in two parts.

12. First, the report considers the changes needed to bring positive law into line with the requirements of the Court's case law. Its implementation will involve the introduction of draft legislation, which will be directly and immediately applicable as regards the right to form professional associations and whose application will be deferred, over a period of 12-18 months, as regards the representativeness of these associations.

13. Secondly, the report analyses the possibility of renewing certain military consultation bodies, with or without a connection to association-type activities, by way of regulations (decree of the *Conseil d'Etat* and ordinary decree).

14. The report's main recommendations are as follows:

- introducing a right of professional association adapted to the status of military personnel while maintaining the prohibition on trade-union rights for military personnel, except when they are seconded to the civil service;

- authorising military personnel, whichever branch of the armed forces they serve and whatever their grade or gender, to set up national military professional associations (hereafter "APNM") governed by the Defence Code and, to the extent that they are not contrary thereto, the provisions of the Law of 1 July 1901, and to join such associations;

- assigning a sole aim to APNMs, namely to preserve and promote the interests of military personnel with regard to their status, while respecting both republican values and all the obligations falling to them (readiness to serve, loyalty, neutrality, discipline etc.);

- making the legal operation of APNMs and their acquisition of legal capacity conditional on the filing of articles of association with the Ministry of Defence, without any prior approval procedure;

- making APNMs subject to the membership, organisational and financial and asset management rules of the general law on associations (Law of 1901);

- prohibiting discrimination based on membership or non-membership of an APNM;

- and having the criteria for representativeness and the list of representative APNMs drawn up by the ministerial authorities.

III. Progress report on follow-up to the *Adefdromil v. France* and *Matelly v. France* judgments

15. Execution of the judgments of the Court is an obligation for Contracting Parties to the ECHR and the French Government intends to draw the full implications from the *Adefdromil v. France* and *Mattely v. France* judgments. In line with the Pêcheur report, the French authorities are currently working to frame appropriate legal instruments permitting compliance with the requirements of the ECHR as interpreted by the Court.

16. The President of the Republic has tasked the Minister of Defence and the Minister of the Interior with submitting draft legislation on the right of professional association of military personnel. Amendments will need to be made to the Defence Code to enable French military personnel to enjoy the rights provided for in Article 11 of the ECHR.

17. Given their purpose, the arguments set out in the CESP complaint about non-recognition of trade-union rights therefore lose their relevance.

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18. In conclusion, the French Government asks the Committee to note that it is engaged on a process of amendment of its legislation to bring it into line with Articles 5 and 6 of the European Social Charter.