

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



9 June 2008

Case document no. 1

Confédération Française Démocratique du Travail (CFDT) v. France
Complaint no. 50/2008

COMPLAINT

(TRANSLATION)

registered at the Secretariat on 1 April 2008

**APPLICATION TO FIND A VIOLATION
OF THE REVISED EUROPEAN SOCIAL CHARTER**

**GENERAL SECRETARIAT OF THE EUROPEAN SOCIAL
CHARTER**

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

I. THE PARTIES

THE APPLICANT:

**The CONFEDERATION FRANCAISE
DEMOCRATIQUE DU TRAVAIL CFDT**, French trade
union confederation with headquarters at 4 boulevard de la
Villette – 75019 PARIS (France)

Tel: 01.42.03.80.00

Represented by its Deputy Secretary General, Mr Jacky
Bontemps

Legally represented by the civil law professional partnership
H. Masse-Dessen and G. Thouvenin
Lawyers at the Conseil d'Etat and the Court of Cassation
13 rue du Cherche-Midi 75006 Paris,
telephone 01 53 63 20 00
email: mdgt.avocass@wanadoo.fr

To whom all procedural documents should be sent

THE HIGH CONTRACTING PARTY

France

II. BACKGROUND TO THE COMPLAINT AND THE FACTS OF THE CASE

This complaint concerns the situation of foreign civilian staff of the French forces stationed in Germany.

More specifically, it concerns the discrimination suffered by these staff because the services they have performed in Germany are not valued as they would have been had they been performed within French territory.

The treatment of these staff constitutes a violation of the revised Social Charter and unjustified discrimination that is incompatible with the aims of the Charter, as specified in particular in Articles 4, 18 and 19 and Article E of Part V.

III. THE ADMISSIBILITY OF THE COMPLAINT

France ratified the revised Social Charter on 7 May 1999 and it came into force on 1 July 1999.

It ratified all the articles of the Charter, by which it is therefore bound, without exception.

On the same day it ratified the 1995 Additional Protocol, which came into force on 9 September 1999, and it has also ratified the Rules adopted by the European Committee of Social Rights on 9 September 1999.

This makes it possible to lodge collective complaints.

Under Article I, paragraph C of the Protocol, the contracting parties to the Protocol, including France, recognise the right of representative national organisations of employers and trade unions within the jurisdiction of the contracting party to submit complaints alleging unsatisfactory application of the Charter.

Trade unions, and in particular one of the major representative bodies, may therefore lodge complaints with the Committee if they consider that certain principles are being violated by the law of their country.

The applicant, the Confédération française démocratique du travail (CFDT), is a representative trade union at national level and satisfies the conditions in Article 1, paragraph C of the Protocol.

It is therefore entitled to formulate complaints based on the Charter and submit these complaints to the Committee.

The present complaint is signed by Mr François Chérèque, General Secretary of the CFDT, who is authorised to commit the trade union in accordance with its Statute.

It is therefore admissible.

IV. THE VIOLATIONS OF THE CHARTER

1. The situation of civilian staff of foreign forces stationed in other countries was governed by the Agreement between the

Parties to the North Atlantic Treaty regarding the Status of their Forces, signed in London on 19 June 1951.

Article IX, paragraph 4 of the Agreement refers to the local civilian labour requirements of a force or civilian component and specifies conditions of employment and work. In particular wages, supplementary payments and conditions for the protection of workers should be those laid down by the legislation of the receiving state.

It is further stated that civilian workers employed by a force or civilian component should not be regarded for any purpose as being members of that force or civilian component.

However, the agreement was inapplicable to the forces stationed in Germany.

It was therefore followed by the Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany, signed at Bonn on 3 August 1959 and sometimes referred to as the Supplementary Agreement.

Under this agreement, these staff were subject to German labour legislation.

A collective agreement for employees of the French armed forces stationed in the Federal Republic of Germany was concluded on 16 December 1966.

Article 44 of the agreement granted staff entitlement to the protection against dismissal and guaranteed income specified in appendix 0 of the agreement.

This appendix gives staff guaranteed employment.

In view of this guarantee of employment, and after numerous difficulties, the civilian staff of the French forces stationed in Germany, whose contracts were governed by German law, were integrated, as state manual employees (*ouvriers d'Etat*), into the French Ministry of Defence (for a more detailed discussion of this issue, see "*L'émergence du droit européen au travail. La garantie de l'emploi du personnel civil de droit allemand au service des Forces françaises stationnées en Allemagne* (the emergence of European labour law: guaranteed employment of civilian staff employed under German law on behalf of the French forces stationed in Germany), by Professor Pierre Eckly, *Mélanges Ortschidt* 2003, copy supplied).

However when they were integrated, their rights were not respected.

2. According to Article 6 of Decree 70-79 of 27 January 1970 on the career structure of C and D category public officials, non-established staff of central government, local government or bodies responsible to them who are recruited in accordance with the normal statutes to one of the grades or posts specified in Article 1 of the Decree shall be classified with reference to three-quarters of the period of civilian service they have completed, on the basis of the average period of service required for each advancement to a higher grade.

These provisions therefore apply to all persons already employed as non-established staff by a public body before being recruited to a C or D category grade, with no distinction as to whether they were previously subject to public law or private law conditions of service.

Yet the French authorities are refusing to grant civilian staff of the French forces in Germany the benefit of these provisions for

the sole reason that their former contracts were private law contracts under German labour legislation and that, as a result, they are not entitled to the status of public officials.

This means that the simple fact of having carried out their duties in the service of French forces stationed in Germany deprives them of rights that are granted to staff who have carried out the same duties in identical authorities or departments within French territory.

The applications and appeals lodged by these staff in the domestic administrative courts have been dismissed by the Strasbourg administrative court and the *Conseil d'Etat* (see, in particular, C.E., 15 November 2006, M. Wagler, application no. 286.272).

The only exceptions have been a number of very recent decisions of the Strasbourg administrative court in appeals on points of law.

3. This distinction between staff of the French forces in Germany and staff performing the same duties within France is directly contrary to the requirements of the Charter.

Under Article 4 of the Charter the parties have recognised the right of men and women workers to equal pay for work of equal value.

Under Article 18, 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 have undertaken to apply existing regulations in a spirit of liberality and to liberalise, individually or collectively, regulations governing the employment of foreign workers; and have recognised the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other parties.

Article 19 requires them to secure for 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, particularly in respect of remuneration.

The difference of treatment between staff performing their duties with the French forces in Germany and those performing the same duties within France is also in breach of their right, under Article 12 of the Charter, to equal treatment in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the parties.

This difference of treatment is completely incompatible with Article E of the 5th part of the revised Charter, which prohibits any difference of treatment 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.

This article, in combination with the others cited, simply increases the unlawfulness of these employees' situation.

From all standpoints, therefore, the situation of civilian staff of the French forces in Germany who have been integrated into the French public service without benefiting from the aforementioned rights comes within the scope of the European Social Charter, and this complaint is thus well-founded.

V. PURPOSE OF THE COMPLAINT AND PROVISIONAL CLAIMS

The purpose of this complaint is to obtain from the French authorities legislation or regulations that take the length of service of staff who have worked or are working with the French forces in Germany fully into account in the context of their integration into the French public service and the determination of their social rights, and in particular their retirement pension.

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FOR THESE REASONS and any others that may be adduced, even of its own accord, the European Committee of Social Rights is asked to:

- **FIND** that the legal provisions concerning the situation of civilian staff of the French forces in Germany, in particular the conditions governing their integration into the French public service, are incompatible with Articles 4, 18 and 19, combined with Article E, of the revised Social Charter and constitute unlawful discrimination against these staff;

- **AWARD** the Confédération française démocratique du travail the sum of 5 000 euros to cover its expenses, with all ensuing legal consequences.

APPENDED DOCUMENTS

1. Statute of the CFDT
2. Decision approving the complaint
3. Quoted article by Professor Ekclý
4. Decisions of the Strasbourg administrative court and the *Conseil d'Etat*

5. Article 6 of Decree 70-79 of 27 January 1970

Jacky Bontemps
Deputy Secretary General of the CFDT
Authorised to act by decision of the Executive Committee of 11 February
2008