

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



26 February 2009

Case document no. 4

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

**RESPONSE FROM THE CFDT
TO THE GOVERNMENT'S OBSERVATIONS ON THE
MERITS**

(TRANSLATION)

registered at the Secretariat on 18 February 2009

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APPLICATION TO FIND A VIOLATION
OF THE REVISED EUROPEAN SOCIAL CHARTER

GENERAL SECRETARIAT OF THE EUROPEAN SOCIAL CHARTER

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

OBSERVATIONS IN REPLY

FOR:

**The CONFEDERATION FRANCAISE DEMOCRATIQUE DU TRAVAIL
(CFDT)**

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On complaint no. 50/2008

The observations submitted by the French Government call for certain clarifications while in all other respects the complainant organisation can only uphold its previous statements and conclusions.

I.

Firstly, it is alleged that the staff in question did not have public employee status but were subject to employment rules governed by German legislation.

The fact remains that these staff were employees of the French state without civil service status.

In this capacity, they had to be regarded as non-established state employees.

Moreover, it matters little under what status they were employed, as the French state employs workers under many different statuses.

The only relevant criteria for comparing and determining entitlement to these rights are whether these employees were employed on behalf of the state, which was the case, and whether they performed duties contributing to a public service, which was also the case.

These two conditions were satisfied so, in accordance with the principle of equality, they can only be regarded as public employees.

This was conceded, moreover, in a decision of the Strasbourg Administrative Court of 24 May 2006, in which it departed from its previous case-law on the subject and acknowledged the public employee status of the staff concerned.

The Minister's assertions in this respect need to be corrected as the judgments to which he refers have been referred to the Nancy Administrative Court of Appeal and it has not yet given its ruling on them.

In view of these circumstances, there is nothing to prevent these workers from being covered by Article 6 of Decree 70-79 of 27 January 1970 on the career structure of C and D category public officials, which provides: "*Non-established officials 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 above 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”.

Admittedly, for reasons explained during the proceedings, the employment conditions of the staff concerned differed from that of staff working for other French government departments.

However, this purely formal difference was not sufficiently relevant to imply that these staff should not enjoy the same rights on being integrated into the civil service as colleagues who had performed their tasks for other public bodies.

While the situations are not *identical*, they are nonetheless sufficiently *comparable* to mean that any refusal by the French authorities to grant civilian officials 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, will constitute a violation of the principle of equality enshrined in the Charter.

Consequently, there has been a violation of the relevant provisions of the Charter referred to in the complaint, which reflect the principle of equality in the sphere of social rights.

And it is precisely because of their migrant status that these employees were denied their rights, as they would have been regarded as public employees and been able to rely on the provisions in question if they had been performing the same duties in France.

It is therefore to no avail that the Minister claims that, as French nationals now integrated into the French public services, they cannot rely on any provisions concerning migrants, especially those of Article 18 of the Charter, as their rights and guarantees have indeed been reduced because they were employed in another state.

For the remainder, the complainant organisation refers to its previous submissions.

FOR THESE REASONS and any others that may be adduced, even of the Committee's own motion, the CFDT maintains its conclusions.

APPENDED DOCUMENTS

1. Judgment of the Strasbourg Administrative Court of 24 May 2006.

Representing the CFDT

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