EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

22 July 2011

Case Document No. 1

***Syndicat de Défense des Fonctionnaires* v. France**
Complaint No. 73/2011

COMPLAINT

Registered at the Secretariat on 19 July 2011

COUNCIL OF EUROPE

COMPLAINT FOR INCORRECT APPLICATION OF PROVISIONS OF THE EUROPEAN SOCIAL CHARTER (REVISED)

LODGED BY: Syndicat de Défense des Fonctionnaires (hereinafter the complainant)
domiciled at 17, rue Jean XXIII, 33700 Mérignac (France)

Represented jointly or separately by
Mr Serge MUZARD, Chairman,

and/or Mr Jean MEYER, a member,

AGAINST: FRANCE

The complainant is a trade union competent at national level for defending civil servants; its statutes (*appended, see* ***exhibit 1***) were filed on 18 May 2003 with the municipal authority of Mérignac, where it is domiciled.

On 31 May 2011 the general meeting of the complainant trade union approved the submission of the complaint and, to that end, appointed Messrs Serge Muzard and Jean Meyer to represent it, as stated in the report of the general meeting (*appended, see* ***exhibit 2***).

The complainant requests the examination of certain rules, facts and situations in respect of which the provisions of the European Social Charter (hereinafter the Charter) are being incorrectly applied.

This concerns Articles 2, 12, 20 and E of the Charter.

On the merits the claim concerns measures applicable to state civil servants (hereinafter designated the "redeployed" by reason of the right of option allowed by parliament when it adopted Law 90-568 of 2 July 1990) who remained at the grades of the former Post and Telecommunications service (hereinafter designed the PTT); they do not participate in the performance of public authority tasks and no longer have any prerogative in such matters.

The Charter is applicable to them and is not being applied in an appropriate manner.

Although Law 90-568 of 2 July 1990 transforming the PTT placed these civil servants [in a] ***transitional situation*** within two undertakings - France Telecom and La Poste - ***without changing their statutory situation***, the binding statutory provisions of Parts I (Law 83-634 of 13 July 1983) and II (Law 84-16 of 11 January 1984) of the General Civil Service Statute have no longer been applied to them since 1993, or even 1991, in full breach of the law.

The complaint, which concerns rights relating to career development and to work accidents, may also be of interest for the French civil service as a whole.

Excerpts from Law 90-568 of 2 July 1990 are appended hereto ***(exhibit 3)***.

Contents

N.B.: The documents produced in support of the complaint are referred to as exhibits and designated by the letter P followed by a number ***(P ..)***

1 - Incorrect application of the Charter in general

The revised Charter was adopted on 3 May 1996.

France signed the revised Charter on the same date.

Further to Law 99-174 of 10 March 1999 and Decree 2000-110 of 4 February 2000, the Charter was implemented with effect from 1 July 1999.

Since France had signed the Charter on 3 May 1996, the least state institutions could do was to refrain from taking measures that breached its provisions.

French institutions were conversely duty-bound, as from the Charter's signature, to manifest their intention to apply the Charter by eliminating any incompatible legislation or measures.

The obligations of means and of performance required under public international law are lacking, and France is therefore liable.

Alongside the Charter, certain treaties and EU Directives had to be applied, and France was also required to abstain from any act in breach thereof. This concerns all branches of the state - the legislature, the executive and the judiciary, and, in the case under consideration here, the complainant notes a failure to recognise discrimination and denial of the right to information, the right to career development and the right to social security.

The complainant will show that France clearly intended not to apply the Charter in an appropriate manner.

The legislation and the administrative decisions disregarded various treaties entered into by France.

The complainant raises only a limited number of individual cases here, but could bring others to the fore.

Some legal proceedings have been pending for more than twenty years and, without any need to refer to the Charter, a number of principles predating that instrument, which were incorporated in its provisions, are being incorrectly applied.

The complainant is acting above all on behalf of so-called "redeployed" civil servants, employed by France Telecom and La Poste in particular, but also, in general, on behalf of all civil servants.

The complainant also produces correspondence from ministers who oppose the application of the Charter and are against career reconstitution.

Exhibits: letters from the Ministry of the Economy, Industry and Employment of 21 June 2010 ***(P4)*** *and the Ministry of Labour, Solidarity and the Civil Service of 28 September 2010 (****P5)****.*

Similarly, the French Parliament is challenging the Charter's application.

Exhibit: extracts from the record of the debates of the National Assembly of 17 December 2009 ***(P6)***

Of France's volition, discrimination, including in the form of harassment, has taken place owing to the refusal to grant rights relating to work accidents to all state civil servants and rights concerning career development to civil servants at La Poste and France Telecom.

It should be noted that the term "redeployed" is used to distinguish the civil servants concerned from the so-called "graded" civil servants who, in 1993, accepted the grades resulting from the reform, in accordance with the implementing decrees of Law 90-568 of 2 July 1990.

The complainant will submit arguments and conclusions concerning various instances of incorrect application of the Charter.

The arguments will relate to the lack of relevant rules permitting the application of the Charter and will be supported by descriptions of the individual cases of a number of civil servants.

2 - Incorrect application of Article 2-6

This provision of the Charter concerns the undertaking *to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship*.

It is consistent with Council Directive 77/187/EEC of 14 February 1977, Article 3 of which provides that the member states shall protect "the interests of employees ... in respect of rights conferring on them immediate or prospective entitlement", whom the transferor and transferee are required to inform of the legal, economic and social implications of a transfer.

Following a number of judgments by the Court of Justice of the European Communities, the above-mentioned directive was amended by Council Directive 98/50/EC of 29 June 1998, which makes reference to the Charter in its 13th recital and which maintains the protective provisions of the directive of 1977.

The essential aspects of the employment relationship are defined in Law 90-568 of 2 July 1990, as amended, Law 83-634 of 13 July 1983 and Law 84-16 of 11 January 1984, in particular in Chapter X and Article 44 of the law of 2 July, respectively laying down "Transitional provisions" and providing for "no change of statutory situation".

However, in the context of this employment relationship, particularly as regards transfers and promotions, other vague, unwritten rules (that is rules that did not exist and still do not exist) were applied by France Telecom and La Poste, detracting from those laid down in the laws of 2 July 1990, 13 July 1983 and 11 January 1984, in particular. The complainant notes that the civil servants in active service were not informed of the waiver of these essential aspects by France Telecom and La Poste.

In support of these assertions, the complainant will present the cases of a number of civil servants who were not informed of these "new rules" and who have agreed to their names being used here.

The decision of the Conseil d'Etat concerning Bernard Steveler

This judgment No. 250338 of Friday 3 October 2003 stipulated that France Telecom was not exempt from organising, in accordance with Article 26 of Law

84-16 of 11 January 1984, the promotion of civil servants who had remained at the grades of the former Post and Telecommunications service

This judgment shows that France Telecom (FT) waived essential aspects of the rules on promotion and constitutes a strong reminder issued to FT concerning application of the law, the lists of suitable candidates, the promotion tables and competitions; France Telecom, and also La Poste, disregarded acquired rights, which were by law still valid, without informing their staff.

The Steveler judgment is merely a follow-up to Judgment No.192289 of 9 April 1999, concerning Georges Maupome, recognising that "provisions continue to apply"; the career development rights of those who had been redeployed had already been identified by the administrative courts.

The Steveler judgment shows that France Telecom thought it was above the law.

The redeployed civil servants' career development rights were flouted.

Exhibits: judgments of the Conseil d'Etat: Maupome, No. 192289 of 9 April 1999, ***(P7)*** *and Steveler, No.250338 of 3 October 2003,* ***(P8)***

By failing to fulfil its legal obligation of supervision under both the law of 2 July 1990 and decrees 93-1272 of 1 December 1993, 98-976 of 2 November 1998 and 2009-37 of 12 January 2009, the French administration condoned the failure to apply the Charter.

It is clear that, with regard to the change of the rules governing promotion and career development, Article 2-6 of the Charter was incorrectly applied. The complainant maintains that the information required by the Charter and other rules was insufficient or inexistent.

The redeployed civil servants' situation must also be examined from the redundancy angle. The Nancy Administrative Court held that when a budget item corresponding to a post was eliminated, the post ceased to exist and the civil servant was made redundant. The elimination, under Law 90-1168 of 29 December 1990 (Article 65), of the subsidiary budget for the PTT and of the budget items corresponding to their remuneration entailed the redundancy of the redeployed civil servants.

Exhibit: judgment of the Nancy Administrative Court No. 96NC02419 of 18 October 2001 ***(P9)***

The fact that the law of 2 July 1990 created a new employment relationship as from 1 January 1991 changes nothing regarding this redundancy or the information requirement. In addition, there is no document of consent to the transfer.

3 - Incorrect application of Article 12

This article ensures *the effective exercise of the right to social security*, and *the Parties undertake 1- to establish or maintain a system of social security; 2- to maintain the social security system at a satisfactory level, at least equal to that necessary for ratification of the European Code of Social Security; 3- to endeavour to raise progressively the system of social security to a higher level.*

For all civil servants, the right to social security is implemented in part by the administration or authority concerned, in this instance La Poste or France Telecom, under state supervision.

What is at issue is the incorrect application of the rules on work accidents to civil servants, in general, and those employed by France Telecom, in particular, in accordance with Article 31 of the **European Code of Social Security** whereby **"**Each Contracting Party for which this part of the Code is in force shall secure to the persons protected the provision of employment injury benefit...".

French government departments and agencies continue to apply Circular FP 4 No. 1711 of 30 January 1989, which provides "A work accident, to be recognised as such, must result from the sudden, violent effects of an external cause leading to bodily harm suffered while at work or travelling to or from work", whereas the social security services dealing with private sector employees apply a provision resulting from a judgment handed down by the Social Division of the Court of Cassation on 2 April 2003 in appeal No. 00-21768, which reads "Having regard to Article L.411-1 of the Code of Social Security; whereas it ensues from that legislative instrument that a work accident is an occurrence or series of occurrences on definite dates, due to or in the course of work, which has resulted in bodily harm, whatever the date on which it becomes apparent". In addition, in its judgment Marie v. CPAM (Sickness Insurance Fund) of Côte-d'Or of 17 December 2002, the Dijon Social Security Court held that a sign of bodily harm is the need for subsequent psychological care.

Exhibits: excerpts from Circular FP4 of 30 January 1989 ***(P10)*** *and the Court of Cassation's judgment No. 00-21768 of 2 April 2003* ***(P11)***

The circular was not amended in the light of the Charter and the judgment.

In spite of the circular, the definition of a work accident is also determined by case-law, including in administrative matters. Whereas the Court of Cassation has broadened the definition to a number of specific events, the executive authorities and the administrative courts refuse to allow civil servants as a whole the benefit of the rights enjoyed by private-sector workers.

Not even the minimum level of application required under the Charter and the European Code of Social Security is assured, and no effort is made progressively to raise the system of social security to a higher level, as provided for in the Charter.

This deficiency has adverse consequences for all civil servants who suffer a depression after being discriminated against and/or harassed in the performance of their duties.

Article 12 is not applied in respect of work accidents, since, at least as regards France Telecom, it cannot be invoked concerning the recognition of problems of anxiety and depression caused by work.

A civil servant working for France Telecom is currently even being denied the right to suffer from an illness. This concerns Jean-Luc Chauvet, whose situation will be described along with the other cases.

The French administrative courts are slow to decide such cases, give no decision or dismiss the plaintiffs' arguments.

Article 11 of the above-mentioned Law No. 83-634 affords protection in the following terms: "In the performance of their duties, civil servants shall benefit from protection organised by the public authority that employs them in accordance with the rules laid down in the Criminal Code and the special laws." and "The public authority shall be obliged to protect civil servants from threats, violence, trespass to their person, insults, defamation or verbal attacks they may suffer while performing their duties and to make good any resulting damage."

This protection does not in fact exist.

According to French case-law, trespass is an occurrence on a definite date which, without physically affecting the person, is such as to cause him or her a strong emotional reaction rather than merely disturbing him or her.

There is no right to recognition of a work accident in the event of depression suffered as a result of harassment or discrimination, which can legally be

qualified as trespass to the person. It is the administration or the authority concerned that decides whether a work accident has occurred. If the decision is negative, the administrative courts take at least five or six years to decide the matter.

The French authorities do not apply to themselves the effective, proportionate and dissuasive sanctions required under Article 17 of Council Directive 2000/78/EC of 27 November 2000 for harassment or discrimination. **The obligation to impose sanctions is not transposed**.

It should be noted that, since the above directive came into force, no provision on compensation for victims of harassment (a series of occurrences) or discrimination (an ongoing occurrence) has been included in the rules.

Exhibits: see the description of the cases Meyer, de Sio and Chauvet.

The cynicism of France Télécom's managers has been documented in the French press. On 16 September 2009 the newspaper "Le Canard Enchainé" quoted Mr Olivier Barberot as saying "Is isn't that bad, I've seen worse ...".

Respect for human dignity and human life is not a priority for France Telecom.

Exhibit: excerpts from the 16 September 2009 issue of "Le Canard Enchainé" ***(P12)***

4 - Incorrect application of Articles 20 and E

This aspect of the complaint concerns the right to career development recognised in Article 26 of Law 84-16 of 11 January 1984 and the implementing regulations, which the redeployed civil servants (and also the others) were to enjoy by virtue of the right of option instituted by parliament, allowing them the choice of retaining the grade they held within the PTT (see also the above-mentioned Maupome and Steveler judgments).

Article 20 ensures the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, not least regarding the right to **career development, including promotion**.

While Article 20 prohibits discrimination on grounds of sex, it does not rule out equality for all in general.

Article E (Non-discrimination) provides "The enjoyment of the rights set forth in this Charter shall be secured without discrimination 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 of the Charter is of the same nature as the ban on discrimination contained in the Constitution of the Fifth Republic (the "block of constitutionality"), which is based on the fifth paragraph of the preamble to the Constitution of 27 October 1946 (the Constitution of the Fourth Republic), providing "No one may suffer prejudice in his/her work or employment by virtue of his/her origins, opinions or beliefs."

Another element of the "block of constitutionality", the Declaration of the Rights of Man and the Citizen, sets out the ban on discrimination in its Articles 1 and 6.

The complainant points out that these provisions predating the Charter were also no longer applied.

In the fourth recital of the above-mentioned directive of 27 November 2000, the High Contracting Parties even refer to the right to protection against discrimination as a **universal right**.

One category of civil servants at France Telecom and La Poste, those who remained at the grades of the former PTT, have been deprived of the rights to career development and promotion since 1 January 1991, the date of application of Law 90-568 of 2 July 1990, although the civil service statutes make provision for career development.

Despite many actions brought before the administrative courts and numerous contacts with state authorities (ministers, senators, members of the National Assembly and so on), they have been unable to assert their rights to career development and promotion.

Certain civil servants even complained, without success, to the French equal opportunities and anti-discrimination body, the HALDE (Haute Autorité de Lutte contre les Discriminations et pour l'Egalité).

The administrative courts' judgments noted legal errors and faults committed by both the appellants' direct managers and the competent ministers, but that was not enough; these appellants are seeking compensation, since promotion rights are also and above all direct and definite pecuniary and economic rights.

The state authorities were required to supervise the application of the statutory and regulatory provisions and those authorities and the ministers concerned could enforce compliance with the rules, but they preferred to abandon the civil servants they were required to protect, a situation which renders France liable.

Exhibits: documents written by parliamentarians and ministers, parliamentary statements and debates.

It should be added that promotions of civil servants at La Poste and France Telecom were subject to a publication requirement, and decree 63-280 of 19 March 1963, as amended, was not complied with.

If the obligatory publications required by this regulation had been made, it would have been possible to know which of the regraded civil servants had been promoted, the posts offered for promotion and the competencies required in order to be promoted and to gauge the extent of the discrimination that was suffered.

Exhibit: Decree 63-280 of 19 March 1963, as amended ***(P13)***

5 - Other arguments and evidence of incorrect application of the Charter

The complainant here comments on elements of the French authorities' refusal of the right to career development and highlights the fallacious arguments they advance.

Discrimination

Complaint lodged with the Haute Autorité de Lutte contre les Discriminations et pour l'Egalité (HALDE). Law No. 2004-1486 of 30 December 2004.

The HALDE was competent to "deal with all forms of direct or indirect discrimination prohibited by law or by an international commitment entered into by France". It was therefore competent to recognise cases of discrimination, and hence obstacles to career development and promotion.

The HALDE constitutes a "tribunal" within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms; it was a national body resembling a court of investigation and an arbitral tribunal.

The complaint to the HALDE stated the applicants' belief in and commitment to the French concept of public service, whereas the European Union refers to the concept of universal service. The HALDE deemed these beliefs to be mere ideas, although, under French law, the concept of public service is laid down in the Constitution and the principles of the Republic.

The complainant would point out that choosing to stay at the PTT grades was also an issue of freedom of thought and beliefs, parliament allowed this freedom of choice, and this decision was a way of showing one's commitment to the public service.

On 14 November 2005 the HALDE issued its decisions concerning the situation of the applicants, concluding that there had been two breaches of the principle of equality and hindrance of their career development but leaving aside the treaties and the failure to protect their property (salaries) corresponding to the direct and definite pecuniary effects of promotion.

The treaties signed by France were not mentioned, in particular the principle established in the fourth recital of EU Directive 2000/78/EC.

Above all, no mention was made of the Charter!

These decisions clearly violated the Convention: lack of a fait trial concerning civil interests and failure to safeguard property.

The applicants cannot accept that a national body empowered to deal with cases of its own motion in the light of the law and treaties should have disregarded protection against discrimination, which is a **universal right recognised** by European Union member states.

Exhibits: the HALDE's decision concerning Claude Buret of 14 November 2005 ***(P14)****, the HALDE's refusal to examine the case of Jean Meyer of 2 January 2007* ***(P15)****, letter from the deputy minister for industry to the HALDE of 20 December 2005* ***(P16)*** *and letter from the HALDE to Serge Muzard of 24 April 2008* ***(P17)***

Since the HALDE gave no finding of discrimination regarding their careers, the complainant considers that this constituted a denial of the right to career development and, consequently, an element of the failure to apply the Charter in an appropriate manner.

Parliamentary questions

The complainant has collated questions put to the government by French members of parliament of all political persuasions astonished at the civil servants' situation. This concerns the following MPs: Paul, Urvoas, Lamy, Cosyns, Richard, Roy, Renucci, Wojciechowski, Lachaud, Gournac, Marcel, Mamère, Andrieu and Vaxès; the list could be longer and the complainant could produce other questions.

The most recent question was posed by Mr Roland Courteau, a senator (written question No.18489, Official Gazette of the Senate of 12 May 2011).

It has the merit of raising the situation at La Poste. The situation at France Telecom is the same, and both situations constitute an injustice.

Mr François Hollande (written question No. 67391 of 22 December 2009) also raised the fact that the redeployed civil servants had no career development.

These members of parliament note the lack of career development, which is nonetheless required by law, and hence that the Charter is being incorrectly applied.

*Exhibits: the parliamentarians' questions **(P18)**,Roland Courteau's question of 12 May 2011 **(P19)** and François Hollande's question of 22 December 2009 **(P20)***

Probatio diabolica

"*Probatio diabolica*": the proof required here is impossible to achieve; under French civil law the matter is settled by the statute of limitations.

The complainant finds itself *mutatis mutandis* confronted with this problem: when the administrative courts maintain, as they did with regard to C. Nogues, that he "does not justify his allegations that, in the light of his qualifications and his service record compared with those of his colleagues, he has been deprived of serious chances of promotion given the failure since 1993 to draw up lists of suitable candidates and to organise internal competitions…" they cannot be unaware that no one can say the opposite and that the only argument that can be relied on here is the employee's satisfactory and normal performance, a matter the courts did not raise with either La Poste or France Telecom .

On 4 October 2000 the Conseil d'Etat by its judgments Nos. 211989 and 212126 annulled the decision refusing the repeal of decree No. 96-285 of 2 April 1996. The decree was repealed by decree 2001-614 of 9 July 2001. The latter decree governs the new manner of appraising civil servants' performance.

*Exhibit: the Conseil d'Etat's decision of 4 October 2000 **(P21)***

In fact, the complainant would point out that not only do the appraisals prior to 9 July 2001 no longer exist, but the civil servants' appraisals are in the hands of La Poste and France Telecom, who above all refrain from producing them. The civil servants are therefore unable to adduce incontrovertible documentary evidence of their professional competencies.

Accordingly, they could but place their hopes in a reversal of the burden of proof in matters of discrimination so as to obtain justice and redress for the denial of their right to career progression. Their right to a fair trial is barred.

The complainant refers to the terms of the above-mentioned Maupome and Steveler judgments.

In addition, civil servants are mostly recruited by means of competitions in which it is fairly hard to succeed since there are numerous applicants, competition is fierce and the pass mark is set at a high level. When the courts ask themselves on what competencies the civil servants base their claims to promotion and to compensation, they should be aware that those who successfully passed the entrance examinations and were appointed already possessed certain competencies, which had not disappeared by the time they should have been promoted.

In short, the best applicants are selected, and it is surprising that the abilities and talents previously required and acknowledged are not discernible (or there is no will to discern them).

A disguised disciplinary measure

In accordance with legal theory and drawing on comments by senior judge Auby published in the Recueil Dalloz in 1964, Mr Genevois, the Government Commissioner, in his conclusions concerning the Conseil d'Etat's Spire judgment No. 8397 of 9 June 1978, reiterated the case-law rules on disguised disciplinary measures. These conclusions were published in the 9 June 1978 issue of La Revue Administrative.

There are two criteria that qualify a decision as a disguised disciplinary measure, a subjective one and an objective one.

The first criterion - the subjective one - lies in the intention of the party taking the decision to interfere to some extent with the professional status of an employee against whom it has some grievance. In the case under consideration here, the lack of any promotion since 1993, or even 1991, is an interference with

the civil servants' statutory status under Article 44 of Law 90-568 of 2 July 1990. As a result of France's intention not to comply with this legislation and the failure to award any promotion, they did not receive pay increases, which constitutes a genuine tangible disciplinary measure. What was held against the redeployed civil servants was above all that they did not opt for the new grades. The secretary of state even explained why he had favoured one category of civil servants in breach of the law.

The second criterion - the objective one - concerns the effects of the measure, which in itself has the effects of a disciplinary sanction. Article 66 of the above-mentioned Law 84-16 provides that the second group of disciplinary measures shall include **"elimination from the promotion table"**. Being eliminated or excluded from the promotion tables is therefore a disciplinary measure provided for by law; the objective criterion is met and the redeployed civil servants are subject to a disguised disciplinary measure.

The lack of any promotion table for the past twenty years, which has the same effects as a disciplinary measure, is of a nature to render France liable. It should also not be forgotten that certain civil servants had passed competitions whereby they were entitled to promotion.

In its Spire judgment the Conseil d'Etat found against the appellant, holding that a "reorganisation ... did not qualify as maladministration". However, the failure to implement both Article 44 of the above-mentioned law 90-568 and the ensuing obligations constitute maladministration for which the French state can be held liable.

Since the disguised disciplinary measure is invalid there must be career reconstitution with payment of the corresponding compensation. Circular No. 1471 of 24 June 1982 is explicit in that respect.

By avoiding the qualification of the decision as a disguised disciplinary measure, which allows career reconstitution, France is again breaching the right to career development required by the Charter.

Exhibit: Excerpt from the 9 June 1978 issue of La Revue Administrative. ***(P22)***

Broken promises

According to the United Nations Administrative Tribunal, a promise is the attitude of an authority which raises hopes of a favourable outcome and thereby harms an employee's interests (Mr Ho, 1 November 1968) or deceives the employee as to its real intentions (Mr Al Abed, 22 May 1969).

The Prime Minister's letter to the Chairman of FT of 15 March 1996 sums up the authorities' broken promises.

Parliament made promises, through the option included in Law 90-568, to the effect that the grades of the former PTT could be retained without difficulty and with the corresponding statutory guarantees. At the same time, the government failed to implement any real review of the lawfulness of the implementing decrees. The complainants were accordingly deceived as to the authorities' real intentions.

The failure to apply the law made these promises wrongful.

An association, ADIFE, even sought to obtain the promotions through the courts, but the judgment handed down was without further effects.

On 24 October 2005, in its judgment No. 266319 on the appeal lodged by ADIFE, the Conseil d'Etat dismissed the appeal, but stated *"Whereas parliament, by deciding, via the previously cited provisions of the law of 26 July 1996, that external recruitment of civil servants by France Telecom would cease by no later than 1 January 2002, did not intend to invalidate the provisions of Article 26 of the law of 11 January 1984 on the right to internal promotion; whereas at the date of the decision appealed against, which is subsequent to that of 1 January 2002, the statutory decrees governing the corps of redeployed civil servants did not provide for means of internal promotion other than those linked to appointment on a permanent basis following external recruitment and had therefore become unlawful; whereas, subsequently, the decision whereby the Chairman of France Telecom refused to take any internal promotion measure in respect of the redeployed civil servants on the basis of these unlawful statutory provisions was itself unlawful; whereas, the above-mentioned association accordingly has good cause to seek its cancellation. ...".*

This is the crux of the problem: the state consented to an illegality in accordance with the wishes of a subordinate authority. In other words, the subordinate authority commanded the superior authority's conduct.

This again shows the unlawfulness of France's refusal to allow career development rights.

Exhibit: judgment No. 266319 of the Conseil d'Etat of 24 October 2005 ***(P23)***

The ministers' promises: Senator Longuet and Minister Estrosi have acknowledged that they have addressed this matter at length. According to the Official Gazette of the Senate of 8 November 2009 (page 9772), the Senate sought to remedy the career problem by voting an amendment, but this amendment was opposed in the National Assembly.

Exhibits: Excerpt from the Official Gazette of the Senate of 8 November 2009 ***(P24)*** *and the record of debates of the National Assembly of 17 December 2009* ***(P6)***

Promises were made during the debate that took place in the National Assembly on 11 May 1990 (Official Gazette, page 1270): "the fundamental statute governing PTT employees will continue to be the civil service statute".

But that did not occur in practice.

Exhibit: Excerpt from the Official Gazette of the National Assembly of 11 May 1990 ***(P26)***

Civil service corps that are becoming extinct

On 29 July 2002, the Conseil d'Etat, by its judgment No. 219710 in the case of the Association de Défense des Fonctionnaires Reclassés de la Poste et de France Telecom (AFREPT Auvergne), found that the corps of redeployed civil servants were becoming extinct.

This judgment is of the nature of a regulatory instrument, which is strictly prohibited under the principle of separation of powers as in force in France. It is the government, which commands the administration, and the Prime Minister, vested with regulatory authority, who can decide to do away with civil service corps, in accordance with the principle of parallelism of forms and procedures. Even if a civil service corps no longer had any members, the administration or the appointing authority could always decide to reappoint civil servants to it, which would merely be a question of expediency.

The redeployed civil servants were made subject to a judgment of the nature of a regulatory instrument!

On 26 October 1999 an application was made seeking, firstly, the opening of the promotion tables with effect from 1 January 1993 for all the civil service corps that had been redeployed and, secondly, the promotion of the staff who would normally have been entitled to be included in the promotion tables since that date if they had existed; the appeal was registered by the secretariat of the Conseil d'Etat on 4 April 2000.

Mention must also be made of the change of legal circumstance, since the corps established by decrees Nos 93-514 to 93-519 of 25 March 1993 were replaced, at France Telecom, by decrees 2004-765 to 2004-768 of 29 July 2004 and, at La Poste, by decrees 2007-1329 to 2007-1333 of 10 September 2007.

That the corps of redeployed civil servants are becoming extinct can be seen to be inexact if they are compared with the above-mentioned corps of 1993, 2004 and 2007, which are indeed extinct or to which no new recruitments are made, which amounts to the same thing. By giving preference to promoting the corps of 1993, 2004 and 2007, France has created a new breach of the principle of equality.

It should be noted that it is the government that commands the administration, not the courts. By acting in the government's place, a court commits a "coup d'état".

Exhibit: judgment No. 219710 of the Conseil d'Etat of 29 July 2002 ***(P25)***

A disguised redundancy plan

The NEXT plan provided for 20,000 jobs to be cut at France Telecom. In this context, what became of the redeployed civil servants was of no importance.

According to Médiapart, with a view to the job cuts, the managers of France Telecom organised harassment. It can be noted that here too there was virtually no state supervision.

Exhibit: excerpts from press reports ***(P27)***

Promotion of administrative officers

On 18 September 2008, the Order of 2 September 2008 was published in the Official Gazette. It concerned the preparation of a promotion table for administrative officers working in the posts and telecommunications service.

The table was drawn up by the supervising minister.

This constitutes proof that it was the government which was really in charge.

It proves that lists of suitable candidates existed.

It is also proof that Article 26 of Law 84-16 was in fact applied.

This constituted discrimination against staff at the lowest grades and shows that the complainant's action before the Council of Europe is founded.

Exhibit: Order of 2 September 2008 ***(P28)***

6- INDIVIDUAL CASES

The complainant cites examples of individual cases in which the Charter was not applied, so as to show that breaches of the Charter exist at this level.

Each case is described only in brief, but the complainant undertakes to give full details should the need arise.

It should be noted that, in the cases described below, the discharge boards were consulted not with a view to discharging individuals as medically unfit for service, but to give an opinion on whether work accidents had occurred, as required by Decree 86-442.

With regard to leave for long-term illnesses or protracted periods of leave, Decree 86-442 also requires the medical boards to give an opinion on the follow-up action to be taken in cases of illness, but strangely does not require it to be based on any medical examination.

The case of Marc Magnoni

Mr Magnoni, who was appointed with the grade of "contrôleur" in October 1981, passed the competition to become a "contrôleur divisionnaire" on 17 November 1991, but was never appointed to that grade. Both La Poste and France Telecom did everything they could to ensure he did not receive a promotion.

Conversely, a colleague at La Poste, Ms Arluison, who was lower on the list (No. 264 on the national appointments list whereas he was No. 251 and therefore in a better position), was appointed to the post office of Hettange-Grande (Moselle) in August 1992.

On 12 January 2000 he was even transferred from Thionville to Metz, but, although he had the competencies required for the higher grade, he was never promoted.

This treatment constitutes blacklisting and harassment.

He was denied the right to be informed of essential aspects of the employment relationship, namely management's shelving of the promotion rights.

Although he lodged a number of complaints and appeals, his superiors and the administrative courts refused him his career rights.

*Exhibits: his file **(P29)** including an email sent to Stéphane Richard, currently Chairman and Chief Executive of France Telecom, on 5 May 2011, the Strasbourg Administrative Court's judgment of 10 December 1996, the Nancy Administrative Appeal Court's documents of 26 May 1997, 18 April 2002, 25 February 2003 and 15 April 2003, the Strasbourg Administrative Court's judgments of 29 January 2004 and 18 May 2011.*

The case of Jean-Rémy de Sio

Mr de Sio was transferred to new jobs without receiving any kind of training.

Despite judgment No. 04MA01186 of 9 May 2007 of the Marseille Administrative Appeal Court, neither his situation nor his career was unblocked.

He was not notified that he could find himself transferred without receiving the necessary training for the new job.

He was given no information of any kind. At the same time, he took all the necessary steps to secure the application of the Charter's provisions.

He suffered a depression, but, despite several requests, has so far been unable to obtain the benefit of the provisions on work accidents. He has been unable to obtain the documents that would allow him to assert his rights.

In view of the many transfers without training imposed on him, he has had no right to normal career development.

He has never sought to discontinue the appeal proceedings whereby he is seeking compensation,

*Exhibits: his file **(P30)** including the Marseille Administrative Appeal Court's judgments Nos. 04MA01186 of 9 May 2007, 06MA01628 of 17 March 2009 and 08MA01210.*

The case of Jean Meyer

Mr Meyer is one of the complainant's representatives.

He passed a competition to become a works site organiser (conducteur de travaux) on 12 August 1990 but was never appointed despite Article 18 of Decree 90-1225 in the wording of 31 December 1990.

Under this article he should have been appointed a supernumerary Conducteur De Travaux du Service des Lignes (CDTXL) as from 1 January 1990, pending his assignment to a post corresponding to his wishes on the special list of the transfers table.

He saw other staff promoted to the grade of CDTXL although they had passed the competition at later dates.

He suffered a depression in 2001/2002, but, despite several requests and appeals, has so far been unable to obtain the benefit of the provisions on work accidents.

He was given no information of any kind. At the same time, he took all the necessary steps to secure the application of the Charter's provisions.

On 20 January 2004, France Telecom refused to give him information on grade progression and on work accidents. Jean Meyer responded by letter on 19 July 2004.

On 18 March 2010 a discharge board met in Paris, and he was again refused recognition of a work accident. Jean Meyer filed a document with this Board.

In a memorandum of 12 March 2008, the minister acknowledged the validity of the competition he had passed, but made no reference to the career development rights provided for in the Charter, which ranks higher than the French courts' case-law.

*Exhibits: his file **(P31)** including the Strasbourg Administrative Court's judgment of 7 July 2010, the correspondence of 20 January 2004 and 19 July 2004, the document filed on 18 March 2008, an excerpt from the memorandum of 12 March 2008 and Decree No. 90-1225 of 30 December 1990, Official Gazette of 1 January 1991.*

The case of Serge Muzard

Mr Muzard is one of the complainant's representatives.

He joined the PTT on 4 October 1973 as an office assistant, was appointed Agent d'Exploitation (AEXSG) on 21 March 1974 and subsequently Controller (CT) in 1978 under an internal competition. He was later seconded to a post of Postmaster (Receveur), 4th class, in 1988, before being appointed as a titular Postmaster, 3rd class, on 9/09/1991 through his inclusion on the promotion table for 1990. He managed a third class post office, which was upgraded on 1 July 1996, but has been refused appointment to the higher grade, despite the fact that the Clermont-Ferrand Administrative Court annulled the refusal decision in 1999. He was eligible for inclusion on the promotion table for Postmaster, 2nd class, in 1993.

He was given no information of any kind. At the same time, he took all the necessary steps to secure the application of the Charter's provisions.

In a case judged on 26 May 2011, evidence was adduced that La Poste does not organise regular meetings of the medical boards and accordingly fails to comply with its obligations under the social security rules.

Mr Muzard is currently sidelined, having been assigned to the post office of Désertines (Allier)

*Exhibit: his file **(P32)** including the judgments of the Clermont-Ferrand Administrative Court of 22 September 1999, 13 May 2003 and 26 June 2008, the judgment of the Lyon Administrative Court of 20 November 2010 and the judgment of the Clermont-Ferrand Administrative Court of 26 May 2011.*

The case of Alain Dugué

Having passed the competition to become a technician on 11 September 1991, he unsuccessfully petitioned the administrative courts to order the application of Article 17 of Decree 92-932 of 7 September 1992 in his case, whereas the Conseil d'Etat at the same time issued a reminder of the rules in its above-mentioned decision of 3 October 2003.

He was not informed that his right to be appointed would be disregarded in favour of other approaches and he was deprived of his career rights.

*Exhibit: his file **(P33)** including appeals to higher administrative authorities and the judgments of the Nancy Administrative Court of 13 November 2003 and 13 November 2008*

The case of Jean-Luc Chauvet

Due to harassment and discrimination Mr Chauvet suffered a depression, but, despite repeated requests, cannot benefit from the provisions on work accidents.

At present, the depression he has been suffering since December 2009 is not even acknowledged.

In the document dated 24 January 2011, Jean Meyer described Jean-Luc Chauvet's state of health; he provided the medical certificates required for application of the rules on sick leave under the civil service statute, but, as stated in letters of 24 and 27 December 2010, neither France Telecom nor a medical board considered that he should be placed on long-term sick leave or long-term leave in accordance with Decree 86-442.

France Telecom and the state authorities (labour inspectorate) are aware of the situation.

In a report appended to the document dated 24 January 2011, a psychiatrist, Ms Schmitt-Letscher, even attributed his depression to his work.

This report has so far not been followed up.

Jean-Luc Chauvet has not even benefited from recognition of his illness.

*Exhibit: his file **(P34)** including receipt acknowledgments from the state authorities (labour inspectorate) and France Telecom and the document of 24 January 2011.*

7- CONCLUSIONS

In the light of everything set out above,

Firstly, it can be seen that no rules on personnel management, whether general or specific to La Poste and France Telecom, are being implemented since none have been published. These organisations' redeployed (and other) civil servants have seen the compulsory rules on promotion unlawfully set aside (see the above-mentioned Steveler judgment). They were not informed of the new management rules, that is those of the law remaining in force. The Charter has not been duly applied.

Secondly, with regard to work accidents, France has failed to implement appropriate rules to permit civil servants to benefit from protection in respect of the consequences of harassment and discrimination. The incorrect application of the Charter is genuine and has been substantiated.

Thirdly, career development rights are not guaranteed. Here too, the incorrect application of the Charter is genuine and has been substantiated.

Fourthly, France has failed to implement appropriate rules to prohibit discrimination at work.

The Syndicat de Défense de Fonctionnaires submits that the Charter has thus been incorrectly applied on four counts.

15 July 2011,

Serge Muzard Jean Meyer

8- EXHIBITS

1) Report of the general meeting of the Syndicat de Défense des Fonctionnaires (SDF) of 30 May 2011, approving the submission of this complaint and appointing Messrs Serge Muzard and Jean Meyer to represent it before the Council of Europe

2) The SDF's statutes

3) Law 90-568, extracts from the Official Gazette, first page and Article 44

4) Letter from the Ministry of the Economy, Industry and Employment of 21 June 2010

5) Letter from the Ministry of Labour, Solidarity and the Civil Service of 28 September 2010

6) Extracts from the record of the debates of the National Assembly of 17 December 2009

7) Decision of the Conseil d'Etat in the case of Maupome, No. 192289 du 9 April 1999

8) Decision of the Conseil d'Etat in the case of Steveler, No. 250338 of 3 October 2003

9) Judgment of the Nancy Administrative Court No. 96NC02419 of 18 October 2001

10) Excerpts from Circular FP4 of 30 January 1989

11) Judgment of the Court of Cassation on appeal No.00-21728 of 2 April 2003

12) Excerpts from the 16 September 2009 issue of "Le Canard Enchainé"

13) Decree 63-280 of 19 March 1963, as amended

14) Decision of the HALDE concerning Claude Buret of 14 November 2005

15) Refusal by the HALDE to examine the case of Jean Meyer dated 2 January 2007

16) Letter from the deputy minister for industry to the HALDE of 20 December 2005

17) Letter from the HALDE to Serge MUZARD of 24 April 2008

18) Parliamentarians' questions

19) Senator Roland Courteau's question of 12 May 2011

20) François Hollande's question of 22 December 2009

21) Decision of the Conseil d'Etat of 4 October 2000

22) Excerpt from the 9 June 1978 issue of La Revue Administrative

23) Decision of the Conseil d'Etat No. 266319 of 24 October 2005

24) Excerpt from the Official Gazette of the Senate of 8 November 2009

25) Decision of the Conseil d'Etat No. 219710 of 29 July 2002

26) Excerpt from the Official Gazette of the National Assembly of 11 May 1990

27) Excerpts from press reports

28) Order of 2 September 2008

29) Marc Magnoni's file including an email sent to Stéphane Richard, currently Chairman and Chief Executive of France Telecom, on 5 May 2011, the Strasbourg Administrative Court's judgment of 10 December 1996, the Nancy Administrative Appeal Court's documents of 26 May 1997, 18 April 2002, 25 February 2003 and 15 April 2003, the Strasbourg Administrative Court's judgments of 29 January 2004 and18 May 2011.

30) Jean-Rémy de Sio's file including the Marseilles Administrative Appeal Court's judgments Nos. 04MA01186 of 9 May 2007, 06MA01628 of 17 March 2009 and 08MA01210.

31) Jean Meyer's file including the Strasbourg Administrative Court's judgment of 7 July 2010, the correspondence of 20 January 2004 and 19 July 2004, the document filed on 18 March 2008, an excerpt from the memorandum of 12 March 2008 and Decree No. 90-1225 of 30 December 1990, Official Gazette of 1 January 1991.

32) Serge Muzard's file including the judgments of the Clermont-Ferrand Administrative Court of 22 September 1999, 13 May 2003 and 26 June 2008, the judgment of the Lyon Administrative Court of 20 November 2010 and the judgment of the Clermont-Ferrand Administrative Court of 26 May 2011.

33) Alain Dugué's file including appeals to higher administrative authorities and the judgments of the Nancy Administrative Court of 13 November 2003 and 13 November 2008

34) Jean-Luc Chauvet's file including receipt acknowledgments from the state authorities (labour inspectorate) and France Telecom and the document of 24 January 2011

Exhibit No. 33 (P33)

→ Alain Dugué's file including appeals to higher administrative authorities and the judgments of the Nancy Administrative Court of 13 November 2003 and 13 November 2008

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