
Recommendation CM/RecChS(2023)2

Confédération générale du travail (CGT) v. France

Complaint No. 155/2017

*(Adopted by the Committee of Ministers on 6 September 2023
at the 1473rd meeting of the Ministers' Deputies)*

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints,

Taking into consideration the complaint registered on 28 July 2017 by the *Confédération générale du travail* (CGT) against France,

Having regard to the report transmitted by the European Committee of Social Rights (ECSR),

Having noted that the ECSR, in its decision on the merits, found that the situation in France is in violation of the following provisions of the Revised European Social Charter ("the Charter"):

Article 6§4 of the Charter on the grounds that the rule of the indivisible thirtieth results in a disproportionate deduction from the wages of strikers and is punitive in nature

The ECSR recalled that, according to its long-standing interpretation under Article 6§4 of the Charter, deductions from strikers' wages must be proportionate to the duration of the strike. In other words, deductions from strikers' wages cannot exceed the wages that would normally have been received during the strike period.

With regard to the legislative framework of the indivisible thirtieth rule, the ECSR took note of the creation by Order No. 2021-1574 of 24 November 2021 of the legislative part of the General Civil Service Code, which came into force on 1 March 2022. In particular, it noted that paragraph 2 of Article L. 711-3 of this Code restricts the application of the rule of deduction for absence of service rendered solely to agents of the State and public administrative establishments of the State who have declared themselves to be on strike.

The ECSR noted that, following the legislative amendments, the event giving rise to the deduction was precisely the strike and not the failure to perform the service as such. It held that the rule of the indivisible thirtieth results in a disproportionate deduction from the wages of strikers and is punitive in nature, which is not compatible with the exercise of the right to strike.

Article E read in conjunction with Article 6§4 of the Charter on the grounds that it has not been established that the difference in treatment between the different categories of staff, as regards the application of the indivisible thirtieth rule in the event of strike action, is objectively and reasonably justified

The ECSR considered it appropriate to assess whether the application of the indivisible thirtieth rule gave rise to discrimination contrary to Article E in conjunction with Article 6§4 of the Charter. It also recalled that Article E prohibits different treatment of persons in comparable situations, unless there is objective and reasonable justification for it.

¹ In conformity with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the Deputies, in their composition restricted to the Representatives of States Parties to the European Social Charter or the Revised European Social Charter, participated in the vote.

The ECSR examined the government's argument, based on the terms of the Constitutional Council's decision of 28 July 1987, that the difference in treatment between the different categories of civil servants was justified by the different nature of the public services concerned and in particular by the general interest, which required the continuity of certain public services to be ensured. In the government's view, it is in the general interest to disincentivise repetitive strikes of short duration so as to avoid creating a "stop-and-go" State as referred to by the Constitutional Council.

The ECSR considered that the government's argument did not demonstrate what it is in the nature of the public services provided by staff of the State and State bodies of an administrative nature that makes it necessary to disincentivise short strikes of less than one day and conversely what it is in the nature of the public services provided by other public sector staff, such as staff of public or private enterprises, entities and bodies responsible for managing a public service, civil servants employed by local and regional authorities and staff of the State hospital service that obviates the need for any such disincentives in their respect.

The ECSR therefore considered that it had not been established that the difference in treatment between the different categories of staff, with regard to the application of the indivisible thirtieth rule in the event of a strike, was objectively and reasonably justified.

Having regard to the response provided by France in which the government emphasised the following points in particular:

The government points out that the indivisible thirtieth rule is an accounting rule of general application which does not have the character of a disciplinary sanction. Indeed, when there is no service rendered, whatever the cause, a salary deduction is made, equal to one thirtieth. The cause of the deduction is therefore not the strike but the absence of service.

Consequently, the act of restoring this rule in State administrations and in State establishments of an administrative nature in the event of a strike was declared constitutional by a decision of the Constitutional Council dated 28 July 1987 (Decision No. 87-230 of 28 July 1987).

Also, the government informs the ECSR that in the absence of legislative intervention, this rule will continue to apply to public officials of the State.²

Recommends that France:

- examine ways and means of implementing the principle that deductions from strikers' wages should be proportionate to the duration of the strike;
- report on the measures taken to comply with this recommendation in the report on the follow-up to decisions on collective complaints, to be submitted in two years' time.

² Constant case law of the *Conseil d'État* which specifies that the provisions of the European Social Charter produce no direct effect with regard to individuals and cannot, consequently, be usefully invoked in support of conclusions tending to the annulment of an administrative act (CE, October 2, 2009, No. 301014; March 19, 2010, No. 317225; December 23, 2010, No. 335738; August 24, 2011, No. 332876; February 10, 2014, No. 358992; January 30, 2015, No. 363520; April 19, 2022, No. 451727).