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

15 May 2020

**Case Document No. 4**

**Fédération FIECI et Syndicat SNEPI CFE-CGC c. France**
Réclamation n° 142/2017

# ADDITIONALOBSERVATIONS BY THE GOVERNMENT ON THE MERITS

**Registered at the Secretariat on 24 April 2020**

# FURTHER SUBMISSIONS
# BY THE GOVERNMENT OF THE FRENCH REPUBLIC ON THE MERITS OF COMPLAINT NO. 142/2017
## *FIECI and SNEPI CFE-CGC v. FRANCE*

1. In a letter dated 10 February 2017, the European Committee of Social Rights (hereinafter "the Committee") forwarded to the French Government the complaint lodged on 23 January 2017 by the French trade union federation, the Fédération de syndicats des métiers de l'ingénierie, de l'informatique, du conseil, de la formation, des bureaux et d'études (hereinafter "the FIECI") and the Syndicat national de l'encadrement du personnel de l'ingénierie (hereinafter "the SNEPI CFE-CGC"), requesting the Committee to find that the situation in France was not in conformity with Article 5 (right to organise) of the European Social Charter (hereinafter "the Charter").

2. More specifically, the FIEPI and the SNEPI CFE-CGC alleged in their complaint that Article L. 2143-3 of the Labour Code, as interpreted by the French courts, prohibiting a trade union from appointing a trade union representative from among its members in a company in the event that candidates it put forward for the workplace elections who received at least 10% of the vote have withdrawn, infringes Article 5 of the Charter because it unreasonably restricts the freedom of trade unions to choose their own trade union representatives.

3. On 4 July 2017, the Committee declared the complaint admissible.

4. On 13 October 2017, the Government presented the Committee with its submissions on the merits of the complaint, in which it asked the Committee to find that there was no violation of Article 5 of the Charter.

5. In view of the changes in the legislation since these submissions were made, the Government would like to make the following further submissions.

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6. The Government points out that on the date on which the complainant organisations lodged the complaint with the Committee, Article L. 2143-3 of the Labour Code provided for two exceptions to the principle that trade unions must appoint a trade union representative from among the candidates who have obtained a personal score of at least 10% at the last workplace elections, namely:
   - if none of the candidates put forward by the trade union to the workplace elections has reached a personal score of at least 10%;
   - if there is no longer a candidate to the workplace elections left in the company or establishment who has reached a personal score of at least 10%.

7. As stated in paragraph 28 of the Government's submissions of 13 October 2017, the Court of Cassation had found, since its judgment of 29 June 2011, that it was not valid for a union representative to be appointed from among candidates who had obtained a score of less than 10% even if all the candidates presented by the trade union who had reached this score made it known that they did not wish to perform the function of representative.

8. However, Article 6 of Law No. 2018-217 of 29 March 2018 ratifying various orders issued pursuant to Law no. 2017-1340 of 15 September 2017 authorising the adoption by order of measures to strengthen social dialogue added a further circumstance exempting trade unions from the requirement to appoint their representatives from among candidates who had obtained a personal score of at least 10% of the votes cast. This new provision was designed precisely to cover the situation in which all the candidates meeting this requirement had waived their right to be appointed as a union representative in writing.

9. In the wording deriving from Law No. 2018-217, Article L. 2143-3 of the Labour Code now provides as follows:

*"Each representative trade union in a company or an establishment with fifty employees or more, constituting a trade union branch, shall appoint one or more trade union representatives to represent it in dealings with the employer from among candidates to the workplace elections, who have received, in their personal capacity and in their category, at least 10% of the votes cast in the first round of the last elections for the social and economic committee, irrespective of the number of voters, although within the limits set by Article L. 2143-12.*

*If none of the candidates put forward by the trade union for workplace elections satisfies the conditions set out in the first paragraph above, if there is no longer any candidate to the workplace elections in the company or establishment who satisfies these conditions or <u>if all the elected candidates satisfying these conditions waive their right to be appointed as a trade union representative in writing</u>, a representative trade union may appoint a trade union representative from among the other candidates or, failing that, from among its members within the company or establishment or from among former elected representatives who have reached the upper limit on the length of their term of office in the social and economic committee set in the second paragraph of Article L. 2314-33. …"* (emphasis added).

10. It follows from these provisions that a representative trade union may now freely appoint a union representative in one of the following circumstances:
    - where none of the candidates put forward by the trade union to the workplace elections has personally reached a score of at least 10% of the votes cast;
    - where there are no longer any candidates to the workplace elections left in the company or establishment who have obtained at least 10% of the votes cast;
    - or, lastly, where all of the elected representatives who have obtained at least 10% of the votes cast have waived their right to be appointed as a union representative in writing.

11. If one of these circumstances applies, the trade union may appoint a representative from among the other candidates or, failing that, from among its members in the company or the establishment or among former elected representatives who have reached the limit of three successive terms on the social and economic committee (document No. 10, appended).

12. It follows from the above that the complainant organisation's complaint has now lost its purpose since the entry into force on 1 April 2018 of Article 6 of Law No. 2018-217.

13. The Committee will have to find that French legislation fully guarantees the freedom of representative trade unions to choose their representatives and hence that the requirements of Article 5 of the Charter are met.

14. Moreover, the Government points out that in June 2019 the Committee on Freedom of Association of the International Labour Organisation (ILO) closed a complaint lodged by the trade union Confédération générale du travail – Force ouvrière (CGT-FO) relating to similar allegations to those made in this complaint.

15. In Case No. 2750, the CGT-FO submitted in particular that French legislation infringed freedom of association and collective bargaining with regard to the freedom to appoint trade union representatives and representatives of union branches.

16. In its communication of 27 August 2018, the French Government informed the Committee on Freedom of Association of changes in the legislation on the appointment of union representatives and stated that Article 6 of Law No. 2018-217 of 29 March 2018 provided for an important additional exemption from the requirement laid down by the Law of 20 August 2008 that the trade union representative must be chosen by his organisation from among candidates who have obtained a personal score of at least 10 per cent of the votes cast in workplace elections. The Government stated that as a result, representative trade unions would never find themselves in a situation in which they could not choose their representative.

17. In its report of June 2019, the ILO Committee on Freedom of Association "*notes with satisfaction that the reform of the legislation on the appointment of trade union delegates contributes, in conformity with the principles of freedom of association, to the preservation of the right of trade union organizations to freely choose their trade union delegates. In these circumstances, the Committee considers that this case does not call for further examination*" (document No. 11, appended).

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18. In the light of all the above and, more specifically, the new exemption introduced by Article 6 of Law No. 2018-217 of 29 March 2018, the Government considers that the complaint by the FIEPI and the SNEPI CFE-CGC has lost its purpose and invites the Committee to dismiss it.

## ANNEXES

***Document No. 1**: Joint position of 9 April 2008 on representativeness, the development of social dialogue and the funding of trade unionism*

***Document No. 2**: Observations by the CFDT of 15 December 2010*

***Document No. 3**: Observations by the CGT of 15 December 2010*

***Document No. 4**: Judgment of the Court of Cassation of 28 September 2011, No. 11-10.601*

***Document No. 5**: Judgment of the Court of Cassation of 28 September 2011, No. 10-26.762*

***Document No. 6**: Judgment of the Court of Cassation of 17 April 2013, No. 12-22.699*

***Document No. 7**: Judgment of the Court of Cassation of 14 November 2013, No. 12-29.984*

***Document No. 8**: Judgment of the Court of Cassation of 14 April 2010, No. 09-60.426 et 09-60.429*

***Document No. 9**: Decision of the Constitutional Council of 12 November 2010, QPC No. 2010-63/64/65*

***Document No. 10**: Q and A on the Social and Economic Committee, Ministry of Labour, question 48: "How are trade union representatives appointed?"*

***Document No. 11**: Report of the ILO Committee on Freedom of Association, June 2019*