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Social
Charter

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

5 February 2019

Case Document No. 1

Syndicat CFDT de la métallurgie de la Meuse v. France
Complaint No. 175/2019

COMPLAINT

Registered at the Secretariat on 31 January 2019

COMPLAINT BY THE TRADE UNION, CFDT DE LA MÉTALLURGIE DE LA MEUSE,
AGAINST THE REPUBLIC OF FRANCE

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VIOLATION OF ARTICLE 24 OF THE REVISED EUROPEAN SOCIAL CHARTER ON
3 MAY 1996

The trade union, *CFDT de la métallurgie de la Meuse*, is a representative trade union affiliated to the Confédération démocratique du travail, which is defined by Article 2 of its statute as a nationally representative confederation.

The trade union, *CFDT de la métallurgie de la Meuse*, requests that the European Committee of Social Rights declare, in the context of this complaint, that France is in breach of Article 24 of the European Social Rights as revised on 3 May 1996, in the light of its Labour Code, as amended in particular by the Macron Order of 22 September 2017.

Article 24 of the Charter entitled "**the right to protection in cases of termination of employment**" provides that, with a view to ensuring the **effective exercise of the right of workers to protection in cases of termination of employment**, the Parties undertake to recognise the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

Your Committee has moreover already held that the following compensation mechanisms are **deemed appropriate**:

- Reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;
- The possibility of reinstatement;
- Compensation at a high enough level to deter the employer.

The Committee has also found (Conclusions 2012 Slovenia) that any upper limit on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive is in principle incompatible with the Charter.

It stated in its decision of 8 September 2016, published on 31 January 2017, on the merits of Complaint No. 106/2014, Finnish Society of Social Rights v. Finland, that the Finnish law relating to employment contracts which provides for a limit on the amount of compensation that may be awarded in the event of an unlawful dismissal of no more than 24 months' pay is incompatible with Article 24 of the European Social Charter; it is also in breach of Article 10 of ILO Convention No. 158 of 1982 concerning Termination of Employment at the Initiative of the Employer.

The Committee considered that such a limit was liable to result in situations where the compensation awarded was not commensurate with the loss suffered.

Similarly, the Committee found **unanimously** that Finnish legislation was incompatible with Article 24 of the Charter on the ground that it made no provision for reinstatement in cases of unfair dismissal.

The situation in France vis-à-vis the above-mentioned legal provisions is exactly the same.

According to Article L 1235-3, paragraph 1, of the Labour Code, deriving from the Law of 13 July 1973 on the rules governing dismissal, the French courts may, in the absence of a real and serious cause for dismissal, only propose that an employee be reinstated by the undertaking concerned, meaning then, according to paragraph 2 of the article, that the decision lies solely with the person who has just unfairly dismissed one of their employees, i.e. the employer.

In other words, the right to reinstatement in the event of unfair dismissal does not exist in France.

This situation is clearly incompatible with the Committee's decision of 8 September 2016, published on 31 January 2017.

With regard to the adequate compensation to which employees are entitled in the event of termination of the employment contract by the employer without a valid reason, it would seem that, for the first time in the history of French social law, since the Macron Order of 22 September 2017, as incorporated into the provisions of Article L 1235-3, paragraph 2, of the Labour Code, French courts cannot fulfil their role regarding the adequate compensation provided for by the European Social Charter, in that the compensation that they may award is limited to an amount between one and 20 months' pay depending on the employee's length of service in the company.

French law is even less generous than the above-mentioned Finnish law in so far as the maximum compensation is **20 months** but only if the employee's **length of service is at least 29 years**.

Clearly, here again and even more so than in Finland, it appears that the courts may find themselves in a situation where the maximum compensation that they may award does not even cover the damage incurred in strictly material terms.

Moreover, you will find attached the first decision by a French court finding that the Order on the matter of appropriate compensation in the event of unfair dismissal is in breach both of Article 24 of the Social Charter and Article 10 of ILO Convention No. 158 (Troyes Labour Court, joint configuration, France Event, 13/12/2018, Amiens Labour Court , SARL JAMLAH, 19/12/2018, and Lyon Labour Court, Rhone ADAPEI, 21/12/2018). Incidentally, the Government had the audacity to expressly condemn this decision, through its Ministry of Labour, even questioning the competence of Champagne's Labour Court judges.

This attitude amounts to unacceptable interference by the executive in the functioning of the Labour Courts, completely at odds with Montesquieu's doctrine of the separation of powers.

It also prompted a strong reaction from the Troyes Labour Court, whose employer and employee presidents and vice-presidents objected to what they considered to be an attack on their independence, pointing out that as judges, setting aside an adopted law because it was in breach of the Charter was not an act of ignorance but, quite on the contrary, a manifestation of the full and free exercise of their legal powers.

The Labour Court also considered it essential to point out that justice in France derives from a democratic state, and is rendered not in the name of the President of the French Republic or his Minister of Labour, but **in the name of the French people**.

We therefore eagerly await the Committee's decision, which we hope it will arrive at as soon as possible.

Consequently, the complainant trade union, the CGT, requests that the Committee hold that the provisions of the Law of 13 July 1973 and the Order of 22 September 2017 incorporated into paragraphs 1 and 2 of Article L 1235-3 of the Labour Code are in breach of the rules set out in Article 24 of the revised European Social Charter of 3 May 1996, with regard both to appropriate compensation in the event of unfair dismissal and to the right to reinstatement.

Done in Bar le Duc on 21 January
2019

For the trade union, *CFDT de la métallurgie de la Meuse*, in accordance with Article 12 of its statute,
Mr José SOUEL, Secretary General

Mr Thierry DEFOSSEZ, Deputy Secretary General



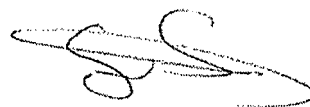
Mr Michel PREVOT, Treasurer



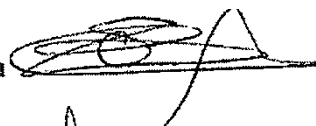
Mr Christian MAIREL, Deputy Treasurer



Mr Benoît DESAVIS, Bureau member



Monsieur Manuel DOS PALADARES, membre du bureau



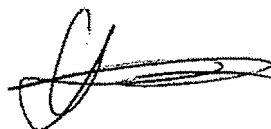
Mr Mnrius GERMINAL, Bureau member



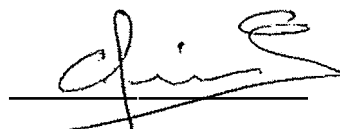
Mr Boumedienne GHORZI, Bureau member



Mr Thierry GONOT, Bureau member



Mr Geoffrey QUINET, Bureau member



Mr Sylvain ROUSSELLE, Bureau member



Attachments:

1. Statute of the trade union, *CFDT de la métallurgie de la Meuse*
2. List of the Bureau members, trade union, *CFDT de la métallurgie de la Meuse*, dated 21/09/2016, and receipt for its submission to the municipal authorities
3. Decision of the European Committee of Social Rights of 8 September 2016, published on 31 January 2017
4. ILO Convention No. 158
5. Labour court of Troyes, *France Event*, 13/12/2018
6. Articles from *Le Monde* dated 16 and 17 December 2018
7. Extract from the press release by Troyes Labour Court, 20 December 2018
8. Amiens Labour Court, *SARL JAMLAH*, 19/12/2018
9. 13. Lyon Labour Court, *ADAPEI*, 21/12/2018