



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

29 May 2019

**Case Document No. 1**

**Syndicat CFDT des Transports de l'Aube v. France**  
Complaint No. 181/2019

**COMPLAINT**

**Registered at the Secretariat on 20 May 2019**



EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COMPLAINT SUBMITTED BY THE SYNDICAT CFDT GENERAL DES  
TRANSPORTS ET DE L'ENVIRONNEMENT DE L'AUBE V. THE FRENCH  
REPUBLIC

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VIOLATION OF ARTICLES 2, 24, 25 and 29 OF THE SOCIAL CHARTER  
REVISED ON 3 MAY 1996

Troyes, 24 April 2019

## EUROPEAN COMMITTEE OF SOCIAL RIGHTS

The trade union *Syndicat CFDT général des transports et de l'environnement de l'Aube* is a representative trade union affiliated to the Fédération générale des transports et de l'environnement and to the Confédération française démocratique du travail, which is defined by Article 2 of its Statute as a nationally representative confederation.

The trade union *Syndicat CFDT général des transports et de l'environnement de l'Aube* asks the European Committee of Social Rights to rule in this complaint that France is in breach of Articles 2, 24, 25 and 29 of the European Social Charter as revised on 3 May 1996, in the light of its Labour Code as modified by the Macron Order of 22 September 2017, and more particularly the provisions of Articles L 1233-2 and L 1233-4 of the Labour Code.

First of all, Article 2-2 of the European Social Charter provides for public holidays with pay.

In other words, national legislation should provide for a number of public holidays with pay.

This is not the case in France, given that 1 May is the only paid public holiday.

For the remainder, French legislation merely refers to collective agreements, which may often supplement the law.

In France, however, almost four million employees (a rather considerable number) are not covered under such agreements.

These employees therefore benefit only from this public holiday on 1 May, in breach of the Charter.

Secondly, Article 25 of the Charter explicitly provides for "the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer".

The Charter does not limit itself to partial protection but rather reaffirms employees' effective right to the protection of all their claims arising both from the fulfilment and the termination of their employment contract.

However, French legislation provides only for partial protection limiting the guarantee of protection, entrusted since 1974 to the Assurance Garantie des Salaires, to a maximum amount which, since 2004, has been more than halved, leaving many workers, and in particular, management staff, in difficulty, as they very quickly reach this maximum amount in view of the level of their salary, and therefore they do not receive the full amount of what is due to them as a result of their employer's insolvency.

Here again, the provisions of Articles L 3253-8, L 3253-9, L 3253-10, L 3253-14, L 3253-17 and D 3253-5 of the French Labour Code fail to comply with the scope of Article 25 of the 1961 European Social Charter, revised in 1996.

Thirdly, the first indent of Article 24 of the Charter stipulates that in the event of dismissal on economic grounds, there has to be, without exception, a valid reason to justify termination of contract.

However, since the law of 13 July 1973, inserted under article L 1233-3 of the Labour Code, French law provides that only a real and serious cause needs to be cited.

The indispensable need to terminate an individual's contract of employment in order to safeguard the legitimate interests of the company is a much more explicit ground for termination than that provided for in French law, which has always failed to take account of this concept.

Here too, national legislation does not appear to be in line with the express provisions of the Charter.

Finally, Article 29 of the Charter refers to the need to inform and consult workers in good time prior to any collective redundancies, on the ways and means of avoiding such redundancies and/or mitigating their consequences, for example by redeploying the workers concerned.

The Charter does not limit the geographical scope of this redeployment process, placing the emphasis on the possibilities for avoiding redundancies.

To this end, if the company belongs to a group, the possibilities for redeployment are limited to those within the group, taking into account its national, European and international presence.

This is, we believe, the meaning of the European Social Charter, which purposefully seeks to limit the consequences for employees of collective economic redundancies taking place for absolutely essential reasons.

This was the position in French legislation as formulated by the law of 17 January 2002 on social modernisation and the law of 18 May 2010 (see in this connection former Articles L 1233-4 and L 1233-4-1 of the Labour Code).

This protection disappeared with the Macron Order of 22 September 2017, which excluded the group's European and international sites from the possibilities of redeployment.

With regard to the group to which the company belongs, French law has limited the scope for redeployment to its sites located in France and not beyond, even though the economy is becoming increasingly more globalised every day.

Clearly, once again national legislation is in conflict with both the spirit and the letter of the Charter.

Consequently, the complainant CFDT trade union asks the Committee to find 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.

Troyes, 24 April 2019

For the Syndicat CFDT Général des Transports et de l'environnement de l'Aube and in accordance with Articles 9 and 12 of its Statute

Mr Pascal Quiroga, Secretary General and Secretary of the Brinks Evolution trade union branch

Mr Patrice Huart, Deputy Secretary General

Mr Jean-François Wysoczinski, Treasurer

Mr Didier Paret, Deputy Treasurer

Mr Jean-Marie Blin, Bureau member

Mr Joël Legrand, Bureau member

Mr Raymond De Saint Jean, Bureau member

Mr Reynald Ceenaeme, Bureau member.

Mr Christophe Marmelo, Bureau member

Mr Marc Davesne Bureau member

Ms Solange Goulet, Secretary of the Geodis Walbaum trade union branch

Mr Romain Petit, Secretary of the Les Courriers de l'Aube trade union branch

Mr Fabrice Verstraete, Secretary of the GAMBA and ROTA trade union branch

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

**Attachments:**

1. Statute of the Syndicat CFDT général des transports et de l'environnement de l'Aube trade union and receipt of deposit with the municipal authorities
2. List of the members of the Trade Union council of the Syndicat CFDT général des transports et de l'environnement de l'Aube and receipt of deposit with the municipal authorities
3. N/A
4. Articles L 1233-4 and L 1233-4-1 of the Labour Code 2016
5. Articles L 1233-4 and L 1233-4-1 of the Labour Code 2018
6. Articles L 3133-1, L 3133-3, L 3133-4 and L 3133-5 of the Labour Code
7. Articles L 3253-8, L 3253-9, L 3253-10, L 3253-14, L 3253-17 and D 3253-5 of the Labour Code
8. Former Article D 143-2 of the Labour Code
9. ILO Convention No. 158