

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

29 May 2019

Case Document No. 1

Syndicat CGT YTO France v. France
Complaint No. 183/2019

COMPLAINT

Registered at the Secretariat on 20 May 2019

COMPLAINT SUBMITTED BY THE SYNDICAT CGT YTO France
V. THE FRENCH REPUBLIC

**

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

Saint-Dizier, 15 May 2019

The trade union *Syndicat CGT YTO France* previously called the CGT CIMA founded on 25 February 1970, pursuant to the law of 30 December 1968 implementing the Grenelle agreements of May 1968, which at last recognised the trade union section of business in France, is a representative trade union in the company which since 2010 has been called YTO France.

The majority of the members of the works council were elected by the staff from a list presented by the said trade union.

The secretary of the works council is Mr Fabrice Quille, who is also the treasurer of the trade union. Since its foundation it has been affiliated to the Confédération générale du travail (CGT).

The trade union is now faced with a reorganisation plan that seeks to eliminate the bulk of the jobs in this company (80 out of 118 jobs), which will stop manufacturing transmission units for farm tractors, despite the fact that it has been present on the Saint-Dizier site (Haute-Marne) since the end of the First World War.

This activity is to be “relocated” to the People’s Republic of China within the SINOMAC group.

The trade union and its members will very soon have to deal with notifications of dismissals for economic reasons for which the French courts, given that there are no valid reasons, will be unable to order the reinstatement of its employees or adequate compensation for loss of employment, pursuant to the law of 13 July 1973 and the Macron Order of 22 September 2017, both incorporated into the provisions of Article L 1235-3 of the Labour Code.

Bearing in mind the time scale and the lack of options, the Syndicat CGT YTO France 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, L 1233-4, L 3133-1, L 3133-3, L 3133-4, L 3133-5, L 3253-8, L 3253-9, L 3253-10, L 3253-14, L 3253-17 and D 3253-5 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.

Under these circumstances, the complainant CFDT trade union therefore asks the Committee, under the urgent procedure, to find that the French legal rules under Articles L 1233- 2, L 1233-4, L 3133-1, L 3133-3, L 3133-4, L 3133-5, L 3253-8, L 3253-9, L 3253-10, L 3253-14, L 3253-17 and D 3253-5 of the Labour Code are contrary to the provisions of Articles 2, 24.1, 25 and 29 of the revised European Social Charter of 3 May 1996.

Saint-Dizier 15 May 2019

For the Syndicat CGT YTO France, the Trade Union Bureau

Mr Michel Armenio (signature)
Secretary General

Mr Fabrice Quille (signature)
Deputy Secretary General and Treasurer

Mr Christophe Targa (signature)
Bureau member

Mr Franck Brawand (signature)
Bureau member

Attachments:

1. Statute of the Syndicat CGT CIMA, now called YTO France dated 25 February 1970
2. Receipt of the deposit of the Statute of the Trade Union and the new membership of its Bureau, dated 13 May 2019
3. List of Bureau members of the Syndicat CGT YTO France dated 28 November 2018 and receipt of deposit with the municipal authorities of the new membership of the Bureau of the Syndicat CGT YTO France dated 19 December 2018
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
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
10. Minutes of the election of the YTO France works council, dated 1 July 2010
11. Planned redundancies on economic grounds, and YTO France employment preservation programme, dated 26 November 2018