

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

December 2025

***Confédération générale du travail (CGT) and Confédération française de
l'encadrement-CGC (CFE-CGC) v. France***
Complaint No. 149/2017

**FINDING ON FOLLOW-UP
TO COMPLAINT NO. 149/2017**

Finding on follow-up: *Confédération générale du travail (CGT) et Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Complaint No. 149/2017, decision on the merits of 19 May 2021, Recommendation [CM/RecChS\(2022\)1](#)

1. Decision of the European Committee of Social Rights on the merits of the complaint

In its decision of 19 May 2021, the European Committee of Social Rights (ECSR) found that the situation in France is in violation of Article 2§1 of the Charter due to:

A. The assimilation of an on-call period in its entirety to a rest period

The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employees *a priori* did not have at their disposal, could not constitute an adequate criterion for regarding such a period a rest period. The Committee held that the equivalisation of an inactive part of an on-call period to a rest period, in its entirety, constituted a violation of the right to reasonable working hours, both in respect of stand-by duty at the employer's premises as well as for on-call time spent at home. As regards the situation of workers on on-call duty, the ECSR observed that the amended provisions of the Labour Code did not change the situation in this respect either, other than removing the obligation of the worker to stay at home during on-call duty (Article L.3121-9).

B. The absence of statutory limitations to the maximum permissible weekly working hours

The ECSR observed that the provisions applicable to maximum daily and weekly working time under the annual working days system had not been modified. Article L.3121-62 (public policy provision) still provides that the employees having concluded package agreement on annual working days shall not be subject to the provisions concerning maximum effective working hours per day and per week (L.3121-18, -20 and -22).

The ECSR noted the introduction of an obligation imposed on the employer to regularly monitor the workload of an employee in annual working days system. This obligation appears in several revised provisions of the Labour Code, such as Article L.3121-60 (public policy provision), L.3121-64 (collective bargaining provision) and L.3121-65 (default provision). Under this legal framework, the employer remains the guarantor of a reasonable workload.

Moreover, the ECSR noted that the Court of Cassation had on several occasions expressly stated that collective agreements that do not respect the reasonable weekly working time were to be considered null and void and that any individual agreement for annual working days must provide for guarantees of compliance with maximum working hours and daily rest periods, and weekly rest periods.

However, the ECSR considered that in the absence of statutory limitations to the maximum permissible weekly working hours in the annual working day system and irrespective of the statutory obligation of the employer to monitor the workload, a control *a posteriori* by a court of a defaulting package agreement on annual working days is not sufficient to guarantee reasonable working time.

2. Information provided by the Government

A. The assimilation of an on-call period in its entirety to a rest period

The Government refers to the judgment of 9 March 2021 (Judgment of the Court (Grand Chamber) of 9 March 2021. *D. J. v. Radiotelevizija Slovenija*), in which the Court of Justice of the European Union (CJEU) held that it was appropriate to assess the nature of the constraints imposed on the worker during on-call periods in order to determine whether they constituted working time for the purposes of Article 2 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

The CJEU held that the concept of working time covers "all periods of on-call duty, including those under standby duty, during which the constraints imposed on the worker are of such a nature that they objectively and very significantly affect the worker's ability to freely manage, during those periods, the time during which his or her professional services are not required and to devote that time to his or her own interests." Conversely, "when the constraints imposed on the worker during a given on-call period do not reach such a degree of intensity and allow him or her to manage his or her time and devote himself or herself to his or her own interests without major constraints, only the time linked to the work that is, where applicable, actually performed during such a period constitutes "working time."

According to the Government, since 2021, the case law of the Court of Cassation has aligned itself with that of the CJEU. In several judgments, the social chamber of the Court of Cassation has specified that a period of on-call duty must be considered as actual working time if it subjects the employee to constraints of such intensity that they very significantly affect his ability to manage his free time. This is particularly the case when the employee is subject to a short response time after being requested, affecting their ability to freely manage their time during periods when their professional services are not required.

Furthermore, according to the Government, discussions have been initiated to try to better take into account intermediate times that would not obviously fall under working time or rest time. Taking these times into account specifically, by allowing for example partial counting to be considered as working time, could make it possible to secure these intermediate situations. However, in view of the existing binarity between "rest time" and "working time" as distinguished by the CJEU in its *Simap* decision of 2000, these discussions would have to be conducted at the European level. Thus, the Government indicates that France currently has no plans to change the existing framework.

The Government also indicates that, nevertheless, it continues to examine the implementation procedures for the Recommendations made by the Committee of Ministers on 23 February 2022.

B. the absence of statutory limitations to the maximum permissible weekly working hours

The Government states that the recent case law has recalled and clarified the employer's obligations in terms of monitoring working time under the annual working

days system. Under the terms of Article L. 3121-64 of the French Labour Code, collective agreements authorising the annual working days system must determine, on the one hand, the terms and conditions by which the employer ensures the regular assessment and monitoring of the employee's workload and, on the other hand, the terms and conditions by which the employer and the employee communicate periodically on the employee's workload, on the balance between their professional activity and their personal life, on their remuneration and on the organisation of work.

The Court of Cassation recently recalled that an annual working days agreement is void when it is concluded on the basis of a collective agreement whose provisions "do not enable the employer to remedy in good time a workload that may be incompatible with a reasonable duration, such as to guarantee that the scope and workload remain reasonable and ensure a good distribution, over time, of the work of the person concerned, and, therefore, to ensure the protection of the safety and health of the employee".

The same applies when the collective agreement does not establish "effective and regular monitoring enabling the employer to remedy in good time a workload that may be incompatible with a reasonable duration" and is therefore "not such as to guarantee that the scope and workload remain reasonable and to ensure a good distribution, over time, of the work of the person concerned".

The Government further emphasises that French law requires the employer, even in the absence of specific clauses in the collective agreement, to ensure that the workload is reasonable and compatible with the right to rest.

The Government also specifies that the conformity of the control document drawn up by the employer, provided for in Article L. 3121-65 I of the Labour Code, is strictly subject to the control of the judge. The Court of Cassation recently censured a court of appeal that had not sufficiently characterised that a company agreement relating to the organisation of working time was such as to meet the requirements of Article L. 3121-65 of the Labor Code. The Court of Cassation is also attentive to ensuring that all the provisions provided for by Article L. 3121-65-I are strictly respected, otherwise the annual working hours agreement will be null and void. Thus, the employer must ensure that the workload monitoring control document is correctly completed and in line with reality.

3. Assessment of the Committee

A. The assimilation of an on-call period in its entirety to a rest period

In Recommendation CM/RecChS(2022)1 concerning *Confédération générale du travail* (CGT) and *Confédération française de l'encadrement-CGC* (CFE-CGC) v. France, Complaint No. 149/2017 (Adopted by the Committee of Ministers on 23 February 2022), the Committee of Ministers recommended that France:

- pursue its efforts and take all necessary legislative measures to ensure that a period of on-call, when no effective work is carried out, is no longer considered as a rest period in its entirety, including when it occurs on Sundays

The Committee also notes that in observations submitted on 15 July 2025 by CGT concerning the Government's follow up to Complaint No.149/2017, the CGT emphasises that the CJEU harmonized its case law by considering that the entire period of on-call duty "during which the constraints imposed on the worker are of such

a nature that they objectively and very significantly affect the ability to freely manage the time during which their services are not required and to devote that time to their own interests" falls within the scope of working time. Conversely, on-call periods that do not reach this level of intensity remain rest periods and are then only considered working time if actual work is performed during them. In this regard, the CGT welcomes the Court of Cassation's alignment with these principles since 2021. Indeed, the labour chamber now analyses on-call duty in light of the constraints imposed during it, recalling in particular that it is necessary to determine whether the employee was subjected to constraints "of such intensity that they affect their ability to freely manage their time" while on-call. In CGT's view, the imposed response time, or the frequency of calls, then allow on-call time to be considered actual working time, given the significant constraints experienced by the employee. These developments in case law, in accordance with European Union law, strengthen the protection of workers subjected to significant constraints while on-call.

Nevertheless, according to CGT, the law still does not preclude a period of on-call duty from being considered rest time in its entirety. Article L.3121-9 of the French Labour Code defines as on-call duty any "period during which the employee, without being at the employer's permanent and immediate disposal, is required to remain at home in order to be able to intervene".

The CGT considers that as things stand, Recommendations of the Committee of Ministers to implement the decisions of the ECSR have not been fulfilled as regards on-call duty.

In light of the above, the Committee considers it timely to refer to its recent Statement of Interpretation on Article 2§1 (Conclusions 2025):

"The Committee recalls its case-law according to which on-call periods ("périodes d'astreinte") during which the worker is not required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the Charter (Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France, Complaint No. 149/2017, decision on the merits of 19 May 2021, §56). On-call periods are periods during which the worker is obliged to be at the disposal of the employer with a view to carrying out work, if the latter so demands. However, this obligation, even where the possibility of having to carry out work is purely hypothetical, unquestionably prevents the worker from pursuing activities of their own choosing (ibid., §57). The Committee considers that the equivalisation of an inactive part of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both in respect of standby duty at the employer's premises and of on-call time spent at home (ibid., §61).

The Committee wishes to further clarify its position regarding on-call periods. Active parts of on-call period where work performed during an on-call period, irrespective of whether the worker is present at the employer's premises or at home or at another designated place outside the employer's premises, should be considered as working time and remunerated as such.

Inactive parts of on-call period during which no work is carried out but the worker must be present at the employer's premises should also be considered as working time and remunerated accordingly.

With regard to inactive parts of on-call period during which no work is carried out and where the worker stays at home or is otherwise away from the employer's premises, the Committee considers that under no circumstances should such periods be regarded as rest periods in their entirety.

However, there are two situations that need to be examined. Firstly, where the worker, who is on-call away from the employer's premises (at home or at another designated place by the employer), is under an obligation to be immediately available or available at very short notice and on a recurring basis to the employer, and where there are serious consequences in cases of the failure to respond, such on-call periods, including where no actual work is performed (inactive on-call), must be classified as working time in their entirety and remunerated accordingly in order to be in conformity with the Charter. Secondly, where the worker who is away from the employer's premises (at home or at another designated place by the employer) has a certain degree of freedom to manage their free time and is allowed time to respond to work tasks (i.e. they do not have to report for work immediately or at a very short notice or on a recurring basis), the inactive on-call periods amount neither to full-fledged working time nor to genuine rest periods. In such cases the situation may be considered as being in conformity with the Charter if the worker receives a reasonable compensation. The Committee will assess the reasonableness of the nature and level of such compensation on a case-by-case basis and will take into account circumstances such as the nature of the worker's duties, the degree of the restriction imposed on the worker and other relevant factors.

In the light of this Statement, the Committee considers that while the Court of Cassation has followed the latest case law developments at the CJEU, there have been no amendments to the statutory provisions as required by the CM Recommendation. Moreover, there is no indication that for the inactive on-call periods which amount neither to full-fledged working time nor to genuine rest periods, workers may receive reasonable compensation.

Finding

The Committee considers that the situation has not been brought into conformity with respect to inactive part of on-call periods.

B. The absence of statutory limitations to the maximum permissible weekly working hours; the absence of adequate safeguards to guarantee reasonable working time

In Recommendation CM/RecChS(2022)¹ concerning *Confédération générale du travail* (CGT) and *Confédération française de l'encadrement-CGC* (CFE-CGC) v. France, Complaint No. 149/2017 (Adopted by the Committee of Ministers on 23 February 2022), the Committee of Ministers recommended that:

- France review legislation on the annual working days system and reinforce existing measures with a view to introducing statutory limitations of maximum weekly working hours, adequate safeguards ensuring reasonable working time, as well as adequate regulation of working hours

The Committee takes note of the developments concerning the case law of the Court of Cassation, where the Court has invalidated several annual working time agreements as they did not guarantee that the scope and workload of the employee remained reasonable.

The Committee notes that in its observations referred to above the CGT states that from a regulatory perspective, the annual working days system has not changed. Strengthening the courts' review of the validity of agreements does not compensate for the lack of protection in the Labour Code, which does not establish a weekly limit to the working time. The CGT believes that legislative intervention is necessary to establish a secure framework that complies with the Charter, in the common interest of employers and employees.

The Committee considers that the Court of Cassation has in recent years developed new case law in which it considered that the annual working hours system did not guarantee good distribution, over time, of the work of the person concerned, resulting in difficulties to ensure the protection of the safety and health of the employee. The Committee, however, also observes that in the absence of any legislative development to establish the weekly limit to the working time, CM Recommendation has not been fully implemented and the situation has not been brought into conformity with the Charter.

Finding

The Committee considers that the situation has not been brought into conformity with respect to the statutory limitations to the working time in the annual working days system.