EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 19 October 2022

Notification: 9 November 2022

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Syndicat CFDT général des transports et de l'environnement de l'Aube
v. France

Complaint No. 181/2019

and

***Syndicat CFDT de la métallurgie de la Meuse* v. France**

Complaint No. 182/2019

The European Committee of Social Rights, committee of independent experts ("the Committee") established under Article 25 of the European Social Charter, during its 330th session in the following composition:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
Jozsef HAJDU
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Tatiana PUIU
Paul RIETJENS
George N. THEODOSIS
Mario VINKOVIĆ
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 15 September and 19 October 2022,

On the basis of the report presented by Karin Møhl LARSEN,

Delivers the following decision, adopted on this date:

PROCEDURE

1. The complaints lodged by *Syndicat CFDT général des transports et de l'environnement de l'Aube* (hereafter *"CFDT Transports de l'Aube"*) and *Syndicat CFDT de la métallurgie de la Meuse* (hereafter *"CFDT Meuse Metallurgy"*) were registered on 20 May 2019.

2. In both complaints, the complainant trade unions allege that the French Labour Code as amended by Ordinance No. 2017-1387 of 22 September 2017, and more particularly the provisions of Articles L. 1233-2, L. 1233-4, 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 in breach with Articles 2, 24, 25 and 29 of the revised European Social Charter ("the Charter").

3. On 13 May 2020, the Committee declared the complaints admissible.

4. Referring to Article 7§1 of the 1995 Additional Protocol providing for a system of collective complaints ("the Protocol"), the Committee invited the Government to make written submissions on the merits of the complaints by 22 July 2020.

5. Referring to Article 7§§1, 2 of the Protocol and pursuant to Rule 32§§1, 2 of its Rules ("the Rules"), the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter, and the international organisations of employers or workers referred to in Article 27§2 of the Charter, to notify any observations they may wish to make on the merits of the complaints by 22 July 2020.

6. Observations by the Government of Finland on both complaints were registered on 17 July 2020.

7. On 28 May 2020, the Government asked for an extension to the deadline for submitting its submissions on the merits of the complaints. The President of the Committee extended this deadline until 20 August 2020. The Government's submissions on the merits of both complaints were registered on 20 August 2020.

8. On 16 July 2020, the European Trade Union Confederation (ETUC) asked for an extension to the deadline for submitting its observations on the merits of the complaints. The President of the Committee extended this deadline until 17 August 2020. ETUC's observations on the merits of both complaints were registered on 17 August 2020.

9. Pursuant to Rule 28§2 of the Rules, the Government and the complainant organisations were invited to submit, if they so wished, a response to the observations by ETUC and those made by the Government of Finland by 13 November 2020. On 23 October 2020, the Government asked for an extension to the deadline for submitting its response to the observations by ETUC. The President of the Committee extended this deadline until 4 December 2020. On 4 December 2020, the Government informed the Committee that it did not intend to submit a response to ETUC's observations.

10. Pursuant to Rule 31§2 of the Rules, the complainant organisations were invited to submit a response to the Government's submissions on the merits of their respective complaints by 30 October 2020.

11. The response from *CFDT Transports de l'Aube* to the Government's submissions on the merits of Complaint No. 181/2019 was registered on 12 November 2020. No response from *CFDT Meuse Metallurgy* was received.

12. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to the response from *CFDT Transports de l'Aube* by 21 December 2020.

13. On 1 December 2020, the Government asked for an extension to the deadline for submitting its reply to the response from *CFDT Transports de l'Aube* on the merits of Complaint No. 181/2019. The President of the Committee extended this deadline until 15 January 2021. The Government's reply on the merits of Complaint No. 181/2019 was registered on 15 January 2021.

14. Pursuant to Rule 26A§1 of the Rules, the Committee decided at its 324th session (6-10 December 2021) to join the above-mentioned complaints submitted by *CFDT Transports de l'Aube* and *CFDT Meuse Metallurgy*.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

15. The complainant organisations ask the Committee to rule that France is in breach of Articles 2, 24, 25 and 29 of the Charter, in particular by introducing new provisions in the Labour Code as modified by the Order of 22 September 2017 (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).

B – The respondent Government

16. The Government asks the Committee to reject the complaints in their entirety and consider that the situation in France is in conformity with Articles 2§2, 24, 25 and 29 of the Charter.

THIRD PARTY OBSERVATIONS

A – European Trade Union Confederation (ETUC) (submitted in respect of both Complaints No. 181/2018 and 182/2019)

17. ETUC states that whereas both complaints concern Articles 2 (the right to just conditions of work), 24 (the right to protection in case of dismissal), 25 (the right of workers to the protection of their claims in the event of the insolvency of their employer) and 29 (the right to information and consultation in collective redundancy procedures) of the Charter, the observations of ETUC focus primarily on the alleged violations of Articles 25 and 29 of the Charter and these observations aim mainly to clarify the international and European legal framework applicable to the issues at stake.

18. ETUC refers to international and European standards regarding the protection of workers and their claims in case of insolvency of the employer as well as in case of collective redundances. It notes that these rights are explicitly and/or implicitly recognised as fundamental rights under international and European human rights law and its related case law. These rights have furthermore a direct relationship to the basic principle and foundation of all human rights which is human dignity and the respect of principles and rights at work are critical for ensuring human dignity.

19. The protection applies in principle to all workers and eventual limitations/exclusions in relation to certain categories of workers are restrictively listed (often so-called atypical workers (fixed-term, part-time, domestic, etc.) and these limitations/exclusions are not unconditional as for instance they can only be established “where/when necessary”, “in consultation/ agreement with the social partners”, and/or “when equivalent protection is provided”.

20. ETUC considers that as for the right to protection of workers’ claims in case of insolvency of their employer, the complainant organisations highlight that the Macron Order of 22 September 2017 has led to a considerably reduced and partial protection for workers. However, according to the international and European standards eventual limitations of the amount of workers’ claims to a prescribed amount is possible but again is in no way unconditional and that in any case the amount should be of a socially acceptable level. As for the protection of workers in cases of collective redundancies, the complainant organisations highlight that the Order of 22 September 2017 has led to a reduced protection, in particular by limiting the existing geographical possibilities within the company group for redeployment.

21. Special procedures of information and consultation with workers’ organisations have to be respected, in particular with a view to reaching an agreement to mitigate the negative/adverse (social) consequences of such dismissals. In fact, dismissal is to be considered the last resort and all other alternative solutions/possibilities have to be considered first. Most relevant alternative solutions/possibilities listed by international and European (case) law are in first instance redeployment, internal transfers, priority

of rehiring, etc. None of the above described international and European norms limit these possibilities in a geographical way, on the contrary employers should assist in every possible way the concerned workers in finding (alternative) employment even if this would require a change of residence.

22. ETUC states that even if the measures introduced by France would or could from a prima facie point of view look in conformity with international and European norms, consideration has to be given to the underlying fundamental nature of those measures. The Macron Order of 22 September 2017 has clearly been taken (and even been stimulated by certain EU institutions) in the context of mitigating the negative effects of the 2008 economic crisis on businesses, and with a view to ensure in first instance a “business friendly regulatory framework/environment” by providing more flexibility and ensuring less “red tape” and costs for those businesses. And this with no or hardly any consideration of the protection of the workers’ concerned.

23. ETUC considers that all the above mentioned international and European standards and related case law, including of the Revised European Social Charter and the ECSR, is explicitly clear on the fact that in particular in times of crisis, including the current Covid-19 crisis which is leading already to a devasting wave of insolvencies and collective redundancies, (deliberate) retrogressive measures leading to reduced protection of fundamental social and workers’ rights are in violation of these standards.

24. On the contrary, all those standards prescribe and promote a more favourable/greater protection and (progressive) improvement of their underlying social objectives, principles, and rights. Hence, in the ETUC view, the contested Macron Order of 22 September 2017 cannot be reconciled with both the letter, the spirit and the progressive attainment of the objectives and rights enshrined in those international and European human rights standards.

25. In conclusion, the ETUC considers that the measures criticised by the complainant organisations in Complaints No. 181/2019 and 182/2019 are indeed not in conformity with, in particular, Article 25 and 29 of the Charter on which these ETUC observations focus.

B – Observations by the Government of Finland (submitted in respect of both Complaints No. 181/2019 and 182/2019)

26. The Government of Finland states that in the complaints from *Syndicat CFDT des Transports de l'Aube* v. France, Complaint No. 181/2019, and *Syndicat CFDT de la Métallurgie de la Meuse* v. France, Complaint No. 182/2019, the complainant organisations consider, inter alia, that French legislation does not satisfy the requirements of the following provisions of the Charter:

- it does not guarantee several public holidays with pay, but only one (Article 2§2);
- workers' claims are only partially protected in the event of the employer's insolvency, and the amount secured by law has been halved (Article 25);

- the legislation requires a real and serious cause for dismissal, instead of a valid reason in accordance with the wording of Article 24 of the Charter (Article 24);
- the employer's redeployment or reinstatement obligation does not apply to redeployment or reinstatement to the employer’s branches outside France (Article 29).

27. As regards Article 2§2, the Government of Finland is of the view that this provision of the Charter cannot be considered to require several public holidays with pay. According to the case law of the Committee, the Charter does not specify the number of public holidays, which varies from State to State. No violations of the Charter have been found on the grounds that there are too few paid public holidays under national practice.

28. As regards Article 25, the Government of Finland notes that the case law of the Committee on Article 25 does not require the protection of all claims of workers in the event of the employer's insolvency. According to the specific case law of the Committee, the protection of workers' claims in the event of insolvency may be limited nationally to a prescribed amount, which must nevertheless be socially acceptable.

29. As regards Article 24, the Government of Finland holds that Article 24 of the Charter cannot be considered to require a verbatim wording as regards the reason for terminating employment.

30. As regards Article 29, according to the case law of the Committee, Article 29 concerns the employer's obligation to consult workers' representatives, and the purpose of the consultation. As far as is known, the Committee, in its case law, has not taken a stand on the redeployment or reinstatement of workers to be dismissed or its extent. Therefore, the Government of Finland is of the view that Article 29 of the Charter cannot be considered to require that the extent of redeployment or reinstatement be regulated by legislation in the manner suggested in the complaints.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Overview of the legislative framework

1. Legislation relating to public holidays

31. The French legislation provides for eleven public holidays plus additional public holidays in certain territories (Alsace-Moselle, overseas territories).

Article L. 3133-1 of the Labour Code

"The legal holidays designated below are public holidays:
1° January 1;
2° Easter Monday;
3° May 1;
4° May 8;
5° The Ascension;
6° Whit Monday;
7° July 14;
8° The Assumption;
9° All Saints Day;
10° November 11;
11° Christmas Day."»

32. Only 1 May is obligatorily not worked, while the other public holidays may be worked if a collective agreement stipulates it (L. 3133-3-1 of the Labour Code), or failing that, by unilateral decision of the employer (L 3133-3-2 of the Labour Code).

33. In the event of unemployment on a public holiday, this must be paid, as provided for in Article L. 3133-3 of the Labour Code

Article L3133-3-1

"A company or establishment agreement or, failing that, a branch agreement or convention shall define the public holidays."

Article L3133-3
"
Unemployment on public holidays may not result in any loss of pay for employees with at least three months' seniority in the company or establishment. These provisions apply to seasonal employees if, due to various successive contracts or not, they accumulate a total seniority of at least three months in the company. These provisions do not apply to home workers, intermittent employees or temporary employees."

Article L3133-4

"1st of May is a holiday and a day off."

Article L3133-5

"Unemployment on 1 May may not be a cause for a reduction in salary. Employees paid by the hour, by the day or by performance are entitled to an indemnity equal to the salary lost due to this unemployment. This compensation shall be paid by the employer".

2. Legislation on dismissal for economic reasons

Article L. 1233-2

"Any dismissal for economic reasons is motivated under the conditions defined by this chapter. It is justified by a real and serious cause".

Article L. 1233-3

"Constitutes a dismissal for economic reasons the dismissal carried out by an employer for one or more reasons not inherent to the person of the employee resulting from a deletion or transformation of employment or a modification, refused by the employee, of an essential element of the employment contract, consecutive in particular:

1° Has economic difficulties characterized either by the significant change in at least one economic indicator such as a drop in orders or turnover, operating losses or a deterioration in cash or surplus gross operating profit, or by any other element likely to justify these difficulties.

A significant drop in orders or turnover is constituted when the duration of this drop is, in comparison with the same period of the previous year, at least equal to:

a) One quarter for a company with less than eleven employees;
b) Two consecutive quarters for a company with at least eleven employees and less than fifty employees;
c) Three consecutive quarters for a company with at least fifty employees and less than three hundred employees;
d) Four consecutive quarters for a company with three hundred or more employees;

2° To technological changes;

3° To a reorganization of the company necessary to safeguard its competitiveness;

4° When the company ceases to operate.

The materiality of the abolition, the transformation of employment or the modification of an essential element of the employment contract is assessed at company level.
Economic difficulties, technological changes or the need to safeguard the competitiveness of the company are assessed at the level of this company if it does not belong to a group and, if not, at the level of the common sector of activity. to this company and to the companies of the group to which it belongs, established on the national territory, except for fraud.

For the purposes of this article, the concept of group designates the group formed by a company called the dominant company and the companies it controls under the conditions defined in article L. 233-1, in I and II of the Article L. 233-3 and Article L. 233-16 of the Commercial Code.

The sector of activity allowing the economic cause of the dismissal to be assessed is characterized, in particular, by the nature of the products, goods or services delivered, the target clientele, as well as the networks and distribution methods, relating to the same market.

The provisions of this chapter are applicable to any termination of the employment contract resulting from one of the causes set out in this article, excluding the conventional termination referred to in Articles L. 1237-11 et seq. and the termination of by mutual agreement within the framework of a collective agreement referred to in Articles L. 1237-17 et seq “

3. Legislation relating to the protection of employee claims in the event of the insolvency of the employer

Article L. 3253-1

“Claims resulting from the employment contract are guaranteed under the conditions provided for in 4° of article 2331 and 2° of article 2375 of the Civil Code, relating to liens on the movable and immovable property of the debtor. In addition, in the event of safeguard, reorganization or judicial liquidation, they are guaranteed, in accordance with Articles L. 625-7 and L. 625-8 of the Commercial Code, under the conditions provided for in Articles L. 3253-2 to L.3253-21. “

34. Under French law, employees' claims are, in the event of the employer's insolvency, protected by a mechanism combining the systems of privilege (Articles L. 3253-2 to L. 3253-5 of the Labour Code) and guarantee (Articles L. 3253-6 to L. 3253-18-9 of the Labour Code).

Article L. 3253-6

"Any employer governed by private law insures its employees, including those seconded abroad or expatriates mentioned in Article L. 5422-13, against the risk of non-payment of the sums due to them in performance of the employment contract. , in the event of safeguard, reorganization or judicial liquidation proceedings."

35. The debts covered by this insurance are detailed in article L. 3253-8 of the Labour Code. They include in particular "amounts due to employees on the date of the judgment opening any reorganization or judicial liquidation proceedings" and "claims resulting from the termination of employment contracts".

Article L. 3253-8

"The insurance mentioned in Article L. 3253-6 covers :

1° The sums due to employees on the date of the opening judgment of any receivership or judicial liquidation procedure, as well as the contributions due by the employer in the context of the professional security contract;

2° Claims resulting from the termination of employment contracts occurring :
a) During the observation period ;
b) In the month following the judgement which adopts the safeguard, recovery or transfer plan;
c) Within fifteen days, or within one month after the judgement which adopts the plan
c) Within fifteen days, or twenty-one days where a job protection plan is drawn up, following the liquidation judgment;
d) During the provisional maintenance of the business authorised by the judicial liquidation judgment and within fifteen days, or twenty-one days where a job protection plan is drawn up, following the end of such maintenance of the business;

3° Claims resulting from the termination of the employment contract of employees who have been offered the professional securitisation contract, provided that the administrator, the employer or the liquidator, as the case may be, has offered this contract to the interested parties during one of the periods indicated in 2°, including the contributions due by the employer in the context of this contract and the salaries due during the period of the employee's response;

4° Accompanying measures resulting from a job protection plan determined by a majority collective agreement or by a document drawn up by the employer, in accordance with Articles L. 1233-24-1 to L. 1233-24-4, provided that it has been validated or approved under the conditions set out in Article L. 1233-58 before or after the opening of the receivership or compulsory liquidation procedure;

5° When the court pronounces the judicial liquidation, within the limit of a maximum amount corresponding to one and a half months of work, the sums due :
a) During the observation period ;
b) During the fifteen days, or twenty-one days where a job protection plan is drawn up, following the liquidation judgement;
c) During the month following the liquidation judgment for the employee representatives provided for in Articles L. 621-4 and L. 631-9 of the Commercial Code;
d) During the provisional maintenance of activity authorised by the liquidation judgment and during the fifteen days, or twenty-one days where a job protection plan is drawn up, following the end of this maintenance of activity.

The guarantee of the sums and claims mentioned in 1°, 2° and 5° includes the social security and employee contributions of legal origin, or of conventional origin imposed by law, as well as the withholding tax provided for in Article 204 A of the General Tax Code."

36. The Government states that the official name of the guarantee institution is the Association for the management of the employee debt guarantee scheme (AGS). It was created in February 1974 pursuant to Law No. 73-1194 of 27 December 1973 to ensure, in the event of legal settlement or liquidation of assets, the payment of claims resulting from the employment contract. It is an organisation bringing together professional organisations of employers based on interprofessional solidarity and financed by their contributions. AGS has entrusted Unédic's AGS Delegation with the operational management of the guarantee scheme. The latter compensates employees at the request of legal representatives, through the operational centers of the CGEA (AGS Center for Management and Study).

Article L. 3253-17

"The guarantee of the guarantee institutions mentioned in Article L. 3253-14 is limited, all sums and claims advanced combined, to one or more amounts determined by decree (…)."

Article D. 3253-5

"The maximum amount of the guarantee provided for in Article L. 3253-17 is set at six times the monthly ceiling used for the calculation of contributions to the unemployment insurance scheme. This amount is set at five times this ceiling when the employment contract giving rise to the claim was concluded less than two years and at least six months before the date of the judgment opening the collective proceedings, and at four times this ceiling if the contract giving rise to the debt was concluded less than six months before the date of the opening judgment.
It is assessed on the date on which the employee's debt is due and at the latest on the date of the judgment approving the plan or pronouncing the judicial liquidation."

37. The Government indicates that according to the AGC's latest annual report, 188,150 employees were compensated in 2018 by this organisation for a total amount of €1,487 billion.

4. Legislation relating to the protection of employees in the event of collective redundancies

38. French law is governed by Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. The purpose of this directive is "the methods and procedure for collective redundancies as well as the measures likely to mitigate the consequences of such redundancies for workers" (3rd recital of the preamble). In particular, it provides in article 2 that:

"1. When an employer plans to carry out collective redundancies, he is required to consult in good time with the workers' representatives with a view to reaching an agreement.

2. Consultations shall cover at least the possibilities of avoiding or reducing collective redundancies as well as the possibilities of mitigating their consequences by resorting to accompanying social measures aimed in particular at assisting in the redeployment or retraining of dismissed workers (...)".

39. These provisions have been transposed into French law in Article L. 1233-8 (when the economic redundancy concerns two to nine employees) and in Article L. 1233-28 (when the economic redundancy concerns ten employees or more) with regard to the consultation of staff representatives.

> **Article L. 1233-8**
>
> "An employer who plans to make collective redundancies for economic reasons of less than ten employees within the same thirty-day period shall convene and consult the social and economic committee in undertakings with at least eleven employees, under the conditions provided for by this sub-section.
>
> The social and economic committee shall give its opinion within a period which may not exceed one month from the date of the first meeting during which it is consulted. In the absence of an opinion within this time limit, the social and economic committee is deemed to have been consulted."
>
> **Article L. 1233-28**
>
> An employer who plans to make collective redundancies for economic reasons of at least ten employees within the same thirty-day period shall convene and consult the social and economic committee under the conditions provided for by this paragraph.

40. In addition, French law provides specific provisions on redeployment:

> **Article L. 1233-4**
>
> "The dismissal of an employee for economic reasons can only take place when all training and adaptation efforts have been made and when the reclassification of the person concerned cannot be made on the available jobs, located on the national territory in the company or other companies in the group to which the company belongs and whose organisation, activities or place of operation ensure the rotation of all or part of the personnel. (…)"

B – National case law

a) Constitutional Council (*Conseil Constitutionnel*)

41. The Constitutional Council, in its decision No. 2018-761 of 21 March 2018 ruled that the new Article L.1235-3 in the Labour Code establishing the compensation scale was compatible with the Constitution:

> **"With regard to certain provisions of Article L.1235-3 of the Labour Code as amended by the 7th subparagraph of paragraph I of Article 11 of the law under consideration:**
>
> 83. Article L.1235-3 of the Labour Code provides that, in the event of dismissal without real and serious cause and where the employee has not been reinstated in the undertaking, the court shall award the latter compensation payable by the employer, the amount of which shall be within the lower and upper limits set by the same article. These minimum and maximum amounts will vary depending on the employee's length of service. Furthermore, the lower limits will vary depending on whether the undertaking employs eleven or more employees or fewer than eleven employees. In an undertaking with at least eleven employees the minimum compensation ranges from zero to three months' gross pay; in an undertaking with fewer than eleven employees it ranges from zero to two and a half months' gross pay. The maximum amount of compensation ranges from one to twenty months' gross pay. These compensation amounts may be combined with the compensation provided for in the event of procedural irregularities in the way the dismissal was effected or in the event of failure to honour the priority principle of reinstatement, within the limits of the above-mentioned maximum amounts.

84. The members of the National Assembly argue that points 2 to 7 of Article L.1235-3 of the Labour Code, which lay down a compensation scale in the event of dismissal without real and serious cause, are contrary to the Constitution. They consider first of all that these provisions contravene the guarantee of rights insofar as the lower compensation limits provided for are insufficiently dissuasive and that, as a result, they enable an employer to dismiss an employee unjustifiably. They then argue that the principle of equality before the law has also been violated insofar as the scale set by the legislature takes into account, as far as the employee is concerned, solely the latter's length of service, to the exclusion of any other criteria such as age, sex or qualifications, which is therefore prejudicial to the employee. Lastly, it is claimed that these provisions disproportionately infringe the right to be compensated for damage, guaranteed by Article 4 of the 1789 Declaration. On the one hand, the upper limits laid down could, when the employee has only a short length of service, lead to derisory compensation in relation to the damage he or she has actually sustained. On the other, they are such that it is not possible to provide fair compensation for the damage suffered, since the compensation payable by the employer in the event of a procedural irregularity in the dismissal or in the event of failure to honour the priority principle of reinstatement can be combined, within the limits of these maximum amounts, with the compensation for dismissal without real and serious cause.

85. Firstly, under Article 4 of the 1789 Declaration: "Freedom consists in being able to do anything that does not harm others". It follows from these provisions that, in principle, if a person carries out an act which causes damage to others, he or she is obliged to make reparation. The right to sue for damages gives effect to this constitutional requirement. However, the latter does not prevent the legislature from adjusting, on the grounds of public interest, the conditions under which liability may be incurred. For such grounds of public interest, the legislature may make exclusions or limitations to this principle, provided that this does not disproportionately infringe the rights of victims of wrongful acts.

86. By laying down a mandatory reference table for damages awarded by the courts in the event of dismissal without real or serious cause, the legislature sought to increase the predictability of the consequences of the termination of employment contracts. Accordingly, it pursued a public interest goal.

87. The purpose of the compensation regulated in this way was to make good the damage caused by dismissal without real and serious cause and, where applicable, the damage caused by the failure to honour the priority principle of reinstatement, disregard for the procedures for consulting staff representatives or notifying the administrative authority, or the obligation to set up a social and economic committee. The maximum amounts of this compensation laid down by the law vary, depending on the employee's length of service, between one and twenty months' gross salary. The preparatory documents show that these amounts were determined on the basis of "recorded average sums" of compensation awarded by the courts. Moreover, in accordance with the provisions of Article L.1235-1 of the Labour Code, these maximum amounts are not applicable when the dismissal is ruled to be invalid as a result of the violation of a fundamental freedom, psychological or sexual harassment, discriminatory dismissal or dismissal following legal proceedings, infringement of gender equality at work, the reporting of crimes and offences, the exercise of an elected office by a protected employee or the protected status afforded to certain employees.

88. It follows from the foregoing that the derogation from the ordinary law of liability for fault, resulting from the maximum amounts provided for in the provisions at issue, does not entail restrictions that are disproportionate to the public interest objective pursued.

89. Second, the legislature may, without violating the principle of equality, adjust the maximum compensation amount that is due to an employee who has been dismissed without real and serious cause, provided that for the purposes of such adjustment it uses criteria that are closely related to the damage suffered. This is the case for the criterion of length of service in the undertaking. Moreover, as the principle of equality does not oblige the legislature to treat people in different situations differently, it was not required to set out a scale taking into account all the criteria determining the prejudice suffered by the dismissed employee. By contrast, it is up to the courts, within the limits set out in the scale, to take account of all the factors determining the

damage suffered by the dismissed employee when deciding on the amount of compensation due from the employer.

90. Consequently, the difference in treatment brought about by the provisions at issue does not infringe the principle of equality before the law.

91. It follows from all of the above that points two to seven of Article L.1235-3 of the Labour Code, which do not violate the guarantee of rights or any other constitutional requirement, comply with the Constitution."

b) Court of Cassation (*Cour de Cassation*)

42. Court of Cassation, Social Division, 23 April 1985, Appeal No. 83-40.229:

"On the single plea, alleging violation of Articles L. 122-14-4, L. 321-7 and L. 321-12 of the Labour Code ;
Whereas Mr X..., a site supervisor working for the company Compagnie de signaux et d'entreprises électriques, who was dismissed on 17 March 1981 because of the end of the company's projects abroad, complains that the judgment under appeal, which reduced the amount of damages awarded by the first judges, applied the provisions of Article L. 321-12 of the Labour Code instead of those of Article L. 122-14-4, on which he had based his claim, and that the judgment was based on the provisions of Article L. 122-14-4 of the Labour Code. on which he had based his claim, whereas, on the one hand, it was up to the judges to rule on the real and serious nature of the dismissal without being able to substitute this basis with that of an irregular economic dismissal, whereas, on the other hand, supposing that the reason for the dismissal was economic, the damages provided for in Article L. 321-12 were not limited to the sole prejudice caused by the failure of the employer to submit the request for administrative authorisation;

But whereas the judge must give or restore their exact legal qualification to the disputed facts and acts without stopping at the name that the parties would have proposed;

That after having noted that it resulted from the documents produced that Mr. X... had lost his job because the employer could no longer provide him with work either in France or abroad and no longer had a job corresponding to his qualification, which meant that the dismissal had a real and serious cause, the Court of Appeal considered that it was economic causes of a cyclical nature that were the sole cause of the termination of the employment contract and that, in these conditions, the abusive nature of the dismissal consisted solely of the formal defect resulting from the absence of administrative authorisation;

That it was therefore right to limit the employee's compensation to the prejudice in causal relation with this irregularity;"

43. Court of Cassation, Social Division, 23 October 1999, Appeal No. 88-44.099:

"Having regard to Article L. 122-14-3 of the Labour Code ;

Whereas in order to dismiss Mr. X..., an employee who was dismissed by SNECMA by letter dated 28 March 1985, from his claim for damages for dismissal without real and serious cause, the Court of Appeal stated that it was not for the Court to investigate the allegedly real reason for the dismissal which, according to the employee, was part of the plan to disengage from the industrial gas turbine activity which was to be accompanied by a massive reduction in the workforce and would therefore be of an economic nature;

that it is only for the judges to check whether the reason as alleged by the employer is real and serious in nature;

That in so ruling, the Court of Appeal, which disregarded the scope of its powers, violated the above-mentioned text;

On these grounds:

Quashes and annuls, but only insofar as it dismissed Mr X...'s claim for damages for dismissal without real and serious cause, the judgment of the Paris Court of Appeal of 24 June 1988, between the parties; consequently, as far as this is concerned, puts the case and the parties back to the state they were in before the said judgment and, in order to be heard, refers them back to the Paris Court of Appeal otherwise composed."

44. Court of Cassation, Social Division, 26 February 1992, Appeal No. 90-40.364:

"On the appeal brought by the limited liability company La Pierre Saint-Honoré, whose registered office is in Paris (1st), ..., in cassation of a judgment delivered on 20 November 1989 by the Paris Court of Appeal (22nd Chamber, Section A), in favour of Mr Christian B..., residing in Conflans Sainte-Honorine (Yvelines), ..., defendant in the cassation; THE COURT, in the public hearing of 29 January 1992, in which were present :

Mr Cochard, President, Mrs Pams-Tatu, Conseiller référendaire rapporteur, Mr H..., Mr E..., Mr I..., Mr G..., Mr Y..., Mr A..., Mr Pierre, Mr Boubli, Councillors, Mrs X..., Mr Z..., Miss F..., Mr D..., Mrs C..., Mr Choppin de Janvry, Conseillers référendaires, Mr On the report of the legal adviser Pams-Tatu, the observations of SCP Lyon-Caen, Fabiani and Thiriez, lawyer for the company La Pierre Saint-Honoré, the conclusions of Mr Graziani, lawyer, and after having deliberated in accordance with the law; On the single plea :

Whereas Mr B.. hired on 1 December 1986 by the company La Pierre Saint-Honoré as an accounting and financial manager under an adaptation contract, was dismissed on 13 May 1987 for economic reasons, his post having been abolished; the employee brought an action before the industrial tribunal to obtain damages for dismissal without real and serious cause; Whereas the company complains that the judgment under appeal (Paris, 20 November 1989), granted the request, whereas, according to the appeal, on the one hand, the real and serious cause of the dismissal is assessed at the time of the dismissal; that the Court of Appeal, after having recognised that on the day of the dismissal the economic situation of the company justified this decision, could not, without violating Article L. 122-14-3 of the Labour Code, grant the request. 122-14-3 of the Labour Code, it could not consider that any fault committed by the employer on the day of the hiring, due to the knowledge that he would have had of the company's dire situation, also constituted a fault on the day of the dismissal, making the latter abusive; whereas, on the other hand, the Court of Appeal merely asserted that the employer had been aware of the difficult situation of the company at the time of the employee's hiring, without justifying this assertion in fact; by proceeding in this way, by way of assertion, the judgment did not put the Court of Cassation in a position to exercise its control over the correct application of the law and violated Article L. 122-14-3 of the Labour Code; the Court of Appeal did not take into account the fact that the employer had been aware of the difficult situation of the company at the time of the employee's hiring, without justifying this assertion in fact. 122-14-3 of the Labour Code;
But whereas, on the one hand, under the cover of unfounded complaints of lack of legal basis and violation of the law, the second part of the plea seeks only to call into question the assessment of the evidence by the judges of the court of first instance; Whereas, on the other hand, the Court of Appeal, after having noted that the employer, who was aware of the company's difficult situation at the time of the employee's hiring, by virtue of an adaptation contract providing him with twelve months' training, was able to decide that he had shown blameless carelessness; that it thus justified its decision to award him damages in reparation for his loss."

45. Court of Cassation, Social Division, 13 January 1993, Appeal No. 91-45.894:

"Whereas, by judgment of 9 February 1987, the Commercial Court of Marseilles ordered the sale of Rica Lévy International to the Italian company Riorda, under the terms of a plan by which the buyer undertook to retain one hundred employees for a minimum of two years and to make the necessary investments by concentrating its production in the Miramas workshop; whereas, on 7 July 1988, the employees of this factory were collectively made redundant on economic grounds;

Whereas Rica Lévy International complains that the judgment under appeal (Aix-en-Provence, 29 October 1991) ordered it to pay damages to the employees who were dismissed for dismissal without real and serious cause, whereas, according to the plea, it was common ground that Riorda was, in February 1987, the only company in a position to propose the continuation of the business, the only company in a position to propose the continuation of the operation of the business of Rica Lévy International, that this operation was effectively continued for 17 months, which enabled the staff to keep their jobs throughout this period, that the operation of Rica Lévy International nevertheless resulted in a loss of 9,562,960 francs, as noted by the first judges ; that the Labour Court also noted that, taking into account the sale of existing stocks, the operation resulted in an operating loss of 1,770,356 francs for the Riorda Group; that in addition to this final loss, the price of 3,500,000 francs paid for the acquisition of the company Rica Lévy International should be added; that in view of this indisputable factual situation, noted both by the Court of Appeal itself and by the first judges, the decision of the Court of Appeal in respect of Article L. 122-14-4 of the Labour Code is not justified. 122-14-4 of the Labour Code, the judgment under appeal, which awarded damages to the employees on the grounds that "if the economic situation invoked to justify the dismissals is in line with reality, it cannot be considered as a serious cause for dismissal, in that it stems from an intentional and quasi-fraudulent attitude on the part of the Riorda Group";

But whereas the Court of Appeal, which noted that the economic situation invoked to justify the dismissals resulted from an intentional and fraudulent attitude on the part of the Riorda Group, legally justified its decision;"

46. Court of Cassation, Social Division, judgment of 11 May 2022, Appeal No. H 21-15.247:

"20. It follows from the above-mentioned provisions of the European Social Charter that the Contracting States intended to recognise principles and objectives pursued by all appropriate means, the application of which requires them to adopt additional implementing acts in accordance with the procedures referred to in paragraphs 13 and 17 of this judgment and the review of which they reserved exclusively for the system referred to in paragraph 18 (Plenary Assembly, opinion of the Court of Cassation, 17 July 20). 19, 19-70.010 and 19-70.011; 1st Civ., 21 November 2019, Appeal No. 19-15.890, published).

21. The Court of Appeal was therefore right to hold that, since the provisions of the European Social Charter did not have direct effect in domestic law in disputes between individuals, the reliance on Article 24 could not lead to the non-application of the provisions of Article L.1235-3 of the Labour Code and that consequently, the employee should be awarded compensation set at a sum between the minimum and maximum amounts determined therein."

c) *Conseil de Prud'hommes*

47. Troyes *Conseil de Prud'hommes*, decision No. 18/00418 of 13 December 2018:

"Insofar as Article L.1235-3 of the Labour Code introduces a capped upper limit on industrial tribunal awards, it means that tribunals are unable to assess the entirety of the individual situations of employees who have been unfairly dismissed and compensate them fairly for the damage they have suffered.
Moreover, these scales do not serve as a deterrent for employers who wish to dismiss an employee without real and serious cause. These scales give greater security to wrongdoers than to victims and are therefore unfair.
Consequently, the Tribunal considers that this scale violates the European Social Charter and ILO Convention No. 158.
The scales laid down by Article L.1235-3 of the Labour Code are in breach of the above instruments."

48. Amiens *Conseil de Prud'hommes*, decision No. 18/00040 of 19 December 2018:

"Whereas the provisions of Article L.1235-3 of the Labour Code grant Mr [...] compensation of half a month's salary. [...]

Whereas this indemnity cannot be considered to be appropriate and to provide redress for dismissal without real and serious cause, in accordance with ILO Convention 158, and also with French legislation and the applicable case-law in this area.

Whereas, as a result, it is necessary for the Tribunal to restore the provision of appropriate compensation for dismissal without real and serious cause […]."

49. Lyon *Conseil de Prud'hommes*, decision No. 18/01238 of 21 December 2018 (refusal to apply the scale, justified as follows):

"Whereas the employee's compensation is assessed in line with the damage incurred.

Whereas under the terms of Article 24 of the European Social Charter of 3 May 1996, ratified by France on 7 May 1999, the following principle is stipulated: "*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."*

50. Lyon *Conseil de Prud'hommes*, decision No. 15/01398 of 7 January 2019:

"Having regard to Article 10 of International Labour Organisation Convention No. 158 on Termination of Employment [...];
Having regard to Article 24 of the European Social Charter of 3 May 1996 [...];

Whereas the compensation awarded must be commensurate with the damage suffered and sufficiently dissuasive to comply with the European Social Charter of 3 May 1996;
Whereas the European Social Charter is a treaty of the Council of Europe adopted in Turin in 1961 which guarantees fundamental social and economic rights and must therefore be considered as the social Constitution of Europe;

Whereas the binding nature of the said Social Charter is no longer in doubt and the principles it contains are directly applicable before the French courts;

Whereas the Court of Cassation recognised its direct applicability in a judgment of 14 May 2010 (No. 09-6 426) with particular reference to Articles 5 and 6;

Whereas, as a result, the European Social Charter of 3 May 1996 and its interpretation by the European Committee of Social Rights are directly applicable in French domestic law and must lead the Tribunal to assert the need for full compensation of the damages suffered by the employee;

Whereas a short length of service does not preclude the need to compensate the employee based on:

- his/her personal situation following the loss of employment (age, family situation, disability, etc.)
- and/or a work situation making it more difficult to find a new job (geographical distance, rare specialisations, etc.).
- and/or genuine occupational damage, having a greater impact than mere length of service."

d) Courts of Appeal

51. Reims Court of Appeal, Judgment No. 19/00003 of 25 September 2019. First, it confirmed the *in abstracto* conformity of the compensation scale laid down in Article L.1235-3 with ILO Convention No. 158 and the European Social Charter (which it accepted had direct effect, contrary to the position of the Court of Cassation in its advisory opinion of July 2019). It therefore stated that the French scale complied, in an objective and abstract manner, with international and European standards. It made the point that adequate compensation or appropriate relief did not in itself entail full compensation for the damage suffered by wrongful dismissal and could therefore be consistent with a maximum limit on compensation. Nevertheless, the Court of Appeal held that it was also necessary to carry out a review of compliance in practice in order to verify the application of the legal norm to the circumstances of the case. It added that this *in concreto* review could entail disregarding the rule of law deemed to be compliant *in abstracto* if it disproportionately affected the employee's rights. This line of reasoning opened the way for other appeal courts to disregard the application of the scale. However, the Reims Court of Appeal decided in this case not to disregard the stipulated scale, on the ground that the employee had not explicitly requested an *in concreto* compliance review; the Court of Appeal was therefore able only to carry out an *in abstracto* review leading to a finding of compliance.

52. Bourges Court of Appeal, Judgment No. 19/00585 of 6 November 2020 (first appeal court to award a compensation amount higher than the maximum amount laid down in order to compensate entirely for the damage suffered by the employee).

53. Paris Appeal Court, Judgment No. 19-08.721 of 16 March 2021 in which the Paris Appeal Court disregarded the scale laid down by Article L.1235-3 basing this approach on Article 10 of ILO Convention No. 158 and taking into account the "specific and particular" situation of the unjustly dismissed employee; it held that the scale laid down by the Labour Code in this case represented "barely half of the damage suffered in terms of reduced financial resources since the dismissal". In this judgment of 16 March 2021, the Paris Appeal Court carried out a so-called *"in concreto"* compliance review which resulted in the scale being disregarded: it should be noted, however, that in two previous judgments (judgment No. 17/06676 of 18 September 2019 and judgment No. 16/05602 of 30 October 2019), the Appeal Court had acted in line with the advisory opinion of the Court of Cassation and had ruled that the scales were in conformity with the relevant treaties.

RELEVANT INTERNATIONAL MATERIALS

A – United Nations

54. The International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976

Article 6

"1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

55. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Article 6 of the ICESCR), adopted on 24 November 2005

"4. The right to work, as guaranteed in the ICESCR, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. (…)

"11. ILO Convention No. 158 concerning Termination of Employment (1982) defines the lawfulness of dismissal in its article 4 and in particular imposes the requirement to provide valid grounds for dismissal as well as the right to legal and other redress in the case of unjustified dismissal."

Violations of the obligation to protect

"35. Violations of the obligation to protect follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties. They include omissions such as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others; or the failure to protect workers against unlawful dismissal."

56. UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the fourth periodic report of France, adopted on 24 June 2016

The right to just and favourable working conditions

24. The Committee is concerned by the fact that derogations from acquired rights regarding working conditions, including derogations intended to increase the flexibility of the labour market, are being proposed in the current labour bill (draft legislation aimed at introducing new freedoms and new safeguards for businesses and workers) without it having been demonstrated that the State party has considered all other possible solutions (arts. 6 and 7).

25. The Committee urges the State party to make certain that the mechanisms for increasing the flexibility of the labour market that it is proposing do not have the effect of rendering employment less stable or reducing the social protection available to workers. It calls upon the Committee to ensure that any and all retrogressive measures relating to working conditions:
(a) Are unavoidable and fully justified in relation to the totality of the rights under the Covenant in the light of the State party's obligation to pursue the full realization of those rights to the maximum of its available resources;
(b) Are necessary and proportionate to the situation, i.e., that the adoption of any other measure, or the failure to adopt any measures, would have an even more adverse impact on Covenant rights;
(c) Are not discriminatory and do not have a disproportionate impact on disadvantaged or marginalized groups.

26. The Committee draws the State party's attention to its general comment No. 23 (2016) on the right to just and favourable conditions of work.

B – International Labour Organisation (ILO)

Convention No. 158 on Termination of Employment, 1982, entry into force 24 November 1985

57. Convention No. 158 deals with termination of employment in general, but also includes specific supplementary, in particular procedural, provisions for collective redundancies. In cases of collective redundancies, the Convention provides in particular that governments should aim at encouraging employers to consult workers' representatives and to develop alternatives to mass lay-offs (such priority of rehiring, a hiring freezes or working time reductions, etc.).

Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:
(a) workers engaged under a contract of employment for a specified period of time or a specified task;
(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
(c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

58. Part III of the Convention provides for supplementary provisions concerning terminations of employment for economic, technological, structural or similar reasons (or thus ‘collective dismissals’) and specifies the following:

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment. (…)

Recommendation No. 166

(1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the worker or workers concerned.
(2) Where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated. (…)

MEASURES TO AVERT OR MINIMISE TERMINATION
The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages

for the normal hours not worked, financed by methods appropriate under national law and practice. (…)

PRIORITY OF REHIRING

(1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.
(2) Such priority of rehiring may be limited to a specified period of time.
(3) The criteria for the priority of rehiring, the question of retention of rights-particularly seniority rights-in the event of rehiring, as well as the terms governing the wages of rehired workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

MITIGATING THE EFFECTS OF TERMINATION

(1) In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.
(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.
(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

(1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.
(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in subparagraph (1) of this Paragraph, in accordance with national law and practice.

Convention No. 173 and Recommendation No. 180 on the Protection of Workers' Claims (Employer's Insolvency)

Article 11

1. In the event of the bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors either as regards wages due to them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national laws or regulations, or as regards wages up to a prescribed amount as may be determined by national laws or regulations.
2. Wages constituting a privileged debt shall be paid in full before ordinary creditors may establish any claim to a share of the assets.
3. The relative priority of wages constituting a privileged debt and other privileged debts shall be determined by national laws or regulations.

59. As for the personal scope of the Protection of Wages Convention n° 95, this is defined very broadly in its Article 2 and allows only for certain restricted exclusions and does also not provide – like Convention n° 158 – for territorial/geographical limitations/exclusions:

Article 2

1. This Convention applies to all persons to whom wages are paid or payable.

2. The competent authority may, after consultation with the organisations of employers and employed persons directly concerned, if such exist, exclude from the application of all or any of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto. (…)

PART II. PROTECTION OF WORKERS' CLAIMS BY MEANS OF A PRIVILEGE

PROTECTED CLAIMS
(…)
Article 6

The privilege shall cover at least:

(a) the workers' claims for wages relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
(b) the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of the employment occurred, and in the preceding year;
(c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months, prior to the insolvency or prior to the termination of the employment;
(d) severance pay due to workers upon termination of their employment.

LIMITATIONS

Article 7

1. National laws or regulations may limit the protection by privilege of workers' claims to a prescribed amount, which shall not be below a socially acceptable level.

2. Where the privilege afforded to workers' claims is so limited, the prescribed amount shall be adjusted as necessary so as to maintain its value.

PART III. PROTECTION OF WORKERS' CLAIMS BY A GUARANTEE INSTITUTION:

CLAIMS PROTECTED BY A GUARANTEE INSTITUTION

Article 12
The workers' claims protected pursuant to this Part of the Convention shall include at least:

(a) the workers' claims for wages relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of the employment;
(b) the workers' claims for holiday pay due as a result of work performed during a prescribed period, which shall not be less than six months, prior to the insolvency or prior to the termination of the employment;
(c) the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than eight weeks, prior to the insolvency or prior to the termination of employment;
(d) severance pay due to workers upon termination of their employment.

Convention No. 158 on termination of employment

60. The relevant case law of the Committee of Experts on the Application of Conventions and Recommendation (CEACR) regarding Convention No. 158 is contained in its General Survey 1995. As for the personal scope, the CEACR confirms in this General Survey that:

> these terms refer to all persons in an employment relationship. The Convention applies to both foreign and national employed persons. It also covers public servants, who may, however, be excluded from its scope under certain conditions; it should be noted that the very purpose of the Convention rules out its application to self-employed persons.
>
> Although the scope of the Convention is very broad, it does at the same time afford a great deal of flexibility: having laid down the principle of general application, it offers ratifying States the option of excluding certain types or categories of workers (Article 2, paragraphs 2 to 6). Such exclusions are based on the nature of the contract of employment or the category of workers concerned. The Committee points out that the exclusions may be made with respect to all or some of its provisions. However, the Convention makes this possibility of exclusion subject to adequate safeguards in the case of exclusions based on the nature of the contract of employment. It lays down procedures, conditions and criteria, including consultation with employers' and workers' organizations, for the exclusion of certain permitted categories of employed persons "in so far as necessary" (para. 34)

61. In relation to collective redundancies, the General Survey states in first instance that the concerned Articles 13 and 14 of the Convention:

> (…) must be read in conjunction with Parts I and II of the Convention, and in particular with Articles 2 (scope) [including the allowed/necessary exclusions according to the accompanying footnote 2], 3 (definitions), 4 (justification), 8 to 10 (procedure of appeal) of the Convention. Indeed, Articles 13 and 14 supplement rather than replace the preceding Articles.

62. Articles 13 and 14 encompass a number of objectives (mainly to avert or minimise terminations of employment and mitigate their consequences) within the framework of certain procedures, namely information and consultation of workers (Article 13) and notification to the authorities (Article 14). As paragraph 282 of the General Survey states:

> ‘except for an explicit reference to ‘finding alternative employment’ in Article 13, the Convention does not indicate the substantive content of such measures. It therefore leaves the determination of their content to national methods of implementation. The matters covered by such consultation might usefully, although they do not have to be based on Recommendation No. 166, Paragraphs 21 to 26, which specify the kind of measures which could be adopted. Since specific mention is made in the Convention of measures to find alternative employment, consultations should in any event include this aspect of the measures. Finding alternative employment, either within the establishment or elsewhere, is one of the measures which can be taken to avoid terminations of employment and mitigate the adverse effects’.

63. Whereas Articles 13 and 14 of the Convention concern mainly procedures to be followed in order to avert or minimize termination of employment and to mitigate its effects, the accompanying Recommendation No. 166 also refers to these procedures, but in addition puts forward a number of specific measures to achieve this aim (paragraphs 21-22). Furthermore, it contains provisions with regard to the criteria to be applied in selecting workers whose employment is to be terminated (para. 23) and in

determining priority of rehiring workers whose employment has been terminated (para. 24). Lastly, it includes provisions on the measures to be taken to mitigate the effects of termination of employment (paras. 25-26). The following references in the General Survey (paras. 315-349) are of particular relevance to the complaints at stake:

> Measures to avert or minimize termination
>
> Paragraphs 21 and 22 reflect the principle whereby, when an employer is faced with economic difficulties or when he is obliged to introduce technological or other changes, he should only use termination of employment as a last resort as a means of solving these problems, and he should first consider all other possible measures that would allow him to avoid terminations. (…)
>
> Internal transfers are another way of limiting the number of terminations of employment. Rapidly changing technology generally means that such transfers go hand in hand with training and retraining measures to allow workers who have been transferred to adapt to their new jobs.
> 325. When the Recommendation was adopted, the legislation of some countries made provision for finding alternative employment, which was also the subject of negotiation between the social partners. As pointed out by the Committee, its importance was recognized in the Convention, which emphasizes the finding of alternative employment as one of the measures to be considered in the consultation with workers' representatives with a view to averting or minimizing the terminations and mitigating their effects. Alternative employment is now recognized in the legislation and collective agreements in some countries as an essential component of measures to limit terminations of employment. In some cases, the obligation to find alternative employment was established in case-law before being incorporated into legislation.(…)
>
> Priority of rehiring
>
> This provision [paragraph 24 of the Recommendation] is based on the idea that, where an employer who has had to reduce his staff for any of the reasons mentioned may later have to hire staff once again, out of fairness a certain priority should be granted to the workers whose employment was previously terminated. (…)
>
> The legislation in many countries establishes the principle of priority of rehiring, when the employer takes on staff once again, for workers who have had their employment terminated for economic, technological, structural or similar reasons.25 In other countries, the principle is included in collective agreements or other methods of implementation. (…)

64. However, if reinstatement is not possible, desired or wanted, the CEACR states the following:

> In the light of the above, the Committee considers that compensation, in the case of termination of employment impairing a basic right, should be aimed at compensating fully, both in financial and in occupational terms, the prejudice suffered by the worker, the best solution generally being reinstatement of the worker in his job with payment of unpaid wages and maintenance of acquired rights. In order to do this, the impartial bodies should have all the necessary powers to decide quickly, completely and in full independence, and in particular to decide on the most appropriate form of redress in the light of the circumstances, including the possibility of reinstatement. When reinstatement is not provided as a form of redress, when it is not possible or not desired by the worker, it would be desirable for the compensation awarded for termination of employment for a reason which impairs a fundamental human right to be commensurate with the prejudice suffered, and higher than for other kinds of termination. (…)

65. As for specific case law in relation to France, reference should be made to the CEACR Direct Request as adopted in 2017 and published in the framework of the 107th ILC session of 2018. In relation to Convention No. 158, the CEACR

> notes the detailed information contained in the Government's report for the period ending August 2016. The Committee notes that, at its 329th Session (March 2017), the Governing Body declared receivable a representation alleging non-observance of the Convention by France, made under article 24 of the ILO Constitution by the General Confederation of Labour–Force Ouvrière (CGT–FO) and the General Confederation of Labour (CGT). The Committee will therefore take up its examination under article 22 of the ILO Constitution once again when the Governing Body procedure has been concluded.

Convention No. 173 on the Protection of Workers' Claims (Employer's Insolvency)

66. The relevant case-law of the Committee of Experts on the Application of Conventions and Recommendation (CEACR) regarding Convention No. 173 is contained in its General Survey concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949, in particular in Chapter V on 'The preferential treatment of workers' wage claims in case of employer's bankruptcy'.

67. The General Survey starts off with recalling that:

> Article 11 of the Convention [n° 95 on protection of wages; ratified by France] embodies one of the oldest measures of social protection, namely the priority accorded to wage debts in the distribution of the employer's assets in case of bankruptcy. To avoid a situation where wage earners are deprived of their livelihood in the event of the bankruptcy of their employer, provisions have to be made to guarantee the immediate and full settlement of debts owed by employers to their workers. (…) Article 11 of the Convention was partially revised by the Protection of Workers' Claims (Employer's Insolvency) Convention (No. 173), which was adopted in 1992, with a view to improving the protection provided for in 1949 in two ways: first, by setting specific standards concerning the scope, limits and rank of the privilege, which are scarcely addressed in Convention No. 95, and secondly by introducing new concepts, such as wage guarantee schemes, designed to offer better protection than the traditional privilege system.

68. As for the personal scope, the General Survey states that 'the legislation in all countries primarily seeks to protect the wages of those employed under a formal contract of employment or those who are in an employment relationship with the insolvent employer.' (with the exception of public servants) and 'in certain countries the preferential treatment of wage claims covers all workers without distinction' whatsoever. In some countries, 'the legislation excludes specific employees from privileged protection on account of their possible responsibility for the insolvency of the enterprise. Thus, claims of managerial employees or other influential persons considered as having clearly contributed to the financial straits of the enterprise are granted no privilege. The assumption is that those accountable for business failure should not, by the mere fact of their legal status as employees of the insolvent enterprise, be allowed to benefit from the legal mechanism designed to protect the unintentional victims of the insolvency'. However, 'in other cases, while no creditors are excluded from privileged protection of their wage claims on account of their managerial position in the insolvent enterprise or their close relationship with the insolvent employer, they are conferred a lower priority in the distribution of assets.' So

even for certain excluded groups the exclusion is conditional or not at all but they are referred a lower priority only.

> With respect to the privilege system, Convention No. 173 marks a clear improvement over the standards set out in Convention No. 95 in three different respects. First, it defines the minimum coverage of the privilege, namely: (i) workers' claims for wages relating to a prescribed period of not less than three months prior to the insolvency or prior to the termination of the employment; (ii) claims for holiday pay as a result of work performed during the year in which the insolvency or the termination of the employment occurred and in the preceding year; (iii) claims for amounts due in respect of other types of paid absence (e.g. sick leave or maternity leave) relating to a prescribed period which may not be less than three months prior to the insolvency or prior to the termination of the employment; and (iv) severance pay. Secondly, the Convention requires that national laws or regulations must give workers' claims a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system for arrears in taxes or unpaid contributions. Thirdly, the Convention specifies that whenever national laws or regulations set a ceiling to the protection by privilege of workers' claims, the prescribed amount may not fall below a socially acceptable level, and that it therefore has to be reviewed periodically so as to maintain its value.
>
> As regards wage guarantee schemes, Convention No. 173 provides that they must cover as a minimum: (i) workers' claims for wages relating to a prescribed period of not less than eight weeks prior to the insolvency or prior to the termination of the employment; (ii) claims for holiday pay as a result of work performed during a prescribed period which may not be less than six months prior to the insolvency or the termination of the employment; (iii) claims for amounts due in respect of other types of paid absence relating to a prescribed period which may not be less than eight weeks prior to the insolvency or prior to the termination of the employment; and (iv) severance pay. The minimum coverage under a wage guarantee scheme is more limited than that afforded by the privilege system, since a guarantee institution offers an assurance of payment which is not present in the case of privilege. The Convention allows for the limitation of guaranteed compensation to a certain amount, but requires such amount not to fall below a socially acceptable level, and to be periodically adjusted so as to maintain its value.

C – Council of Europe

European Court of Human Rights (ECHR)

69. In recent times, the European Court of Human Rights (ECtHR) has developed its jurisprudence on in particular Article 8 ECHR (right to respect of private life) as containing more and more the protection against unfair dismissals. In part, it refers to ILO-Convention No. 158 (as well as Article 24 European Social Charter). The Court stresses in its case law that the dramatic consequences that usually result from a dismissal, not only in financial terms but also regarding the capacity to develop a 'social private life":

> Personal consequences of dismissals are described in a way that "the applicant's dismissal had an impact on her "inner circle" as the loss of her job must have had tangible consequences for the material well-being of her and her family (see *Oleksandr Volkov*, cited above, § 166). The applicant must also have suffered distress and anxiety on account of the loss of her post. What is more, the applicant's dismissal affected a wide range of her relationships with other people, including those of a professional nature and her ability practise a profession which corresponded to her qualifications (see *Sidabras and Džiautas*, § 48; *Oleksandr Volkov*, § 166; and *İhsan Ay,* § 31). Thus, the Court considers that Article 8 is applicable to the applicant's complaint."

D – European Union

1. Primary law

70. **Treaty of the Functioning of the European Union (TFEU),**

> Article 153
>
> 1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:
>
> d) **protection of workers where their employment contract is terminated**;

71. **Charter of Fundamental Rights of the European Union, proclaimed on 7 December 2000 :**

> Article 30 Protection in the event of unjustified dismissal
>
> "Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices."

2. Secondary law

72. EU has developed specific legislative acts relating to collective dismissals as well as for the protection of workers' claims in cases of insolvencies. Council Directive on insolvencies (Directive 2008/94) as well as Council Directive on collective redundancies (Directive 98/59/EC) are indeed of particular relevance to the collective complaints at stake.

Directive 98/59/EC on collective redundancies

73. Under the Directive, any employer contemplating collective redundancies must hold consultations in good time with the workers' representatives, with a view to reaching an agreement (Article 2§1) and these consultations must, at the minimum, cover means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences, in particular by recourse to accompanying social measures aimed at redeploying or retraining those workers made redundant (Article 2§2).

74. As for the personal scope of the Directive, it in principle covers all workers with the exception of (a) collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts, (b) workers employed by public administrative bodies or by establishments governed by public law (or, in Member States where this concept is unknown, by equivalent bodies), and (c) the crews of seagoing vessels (Article 1§2).

Directive 2008/94 on the protection of employees in the event of the insolvency of their employer

75. According to Article 4 of this Directive, Member States shall have the option to limit the liability of the guarantee institutions in particular in relation to the length of the period for which outstanding claims resulting from contracts of employment or employment relationships, including, where provided for by national law, severance pay on termination of employment relationships, are to be met by the guarantee institution. However, this may not be shorter than a period covering the remuneration of the last three months of the employment relationship. Article 4§3 allows Member States to set ceilings on the payments made by the guarantee institution, however these ceilings must not fall below a level which is socially compatible with the social objective of this Directive.

76. Although the Directive does not explicitly as such clarifies the 'social objective of this Directive', it should be borne in mind that the initial Council Directive 80/987/EC contained a similar consideration in its Preamble like Directive 98/59/EC (see above), which made reference to (then) Article 117 EC Treaty (now Article 151 TFEU) which states:

> "The Community and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion."

77. As for the personal scope, the Directive applies to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency. However, Member States may, by way of exception, exclude claims by certain categories of employee from the scope of this Directive, by virtue of the existence of other forms of guarantee if it is established that these offer the persons concerned a degree of protection equivalent to that resulting from this Directive. Where such provision already applies in their national legislation, Member States may continue to exclude from the scope of the Directive: a) domestic servants employed by a natural person and b) share-fishermen. (Article 1, §§1-3) Furthermore, the Directive explicitly states that Member States may not exclude from the scope of this Directive: a) part-time employees, (b) employees with a fixed-term contract and c) employees with a temporary employment relationship within the meaning of Article 1(2) of Directive 91/383/EEC. Member States may also not set a minimum duration for the contract of employment or the employment relationship in order for employees to qualify for claims under this Directive.

3. European Pillar of Social Rights

78. The European Pillar of Social Rights was proclaimed and signed on 17 November 2017 by the Council of the European Union, the European Parliament and the European Commission during the Göteborg Social Summit for fair jobs and growth.

Principle No. 7 of the Pillar:

7. Information about employment conditions and protection in case of dismissals

(…)

"b. Prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation."

79. The Preamble to the Pillar refers on several occasions to the European Social Charter and ILO Conventions in particular in relation to the interpretation and implementation of the Pillar:

The European Pillar of Social Rights shall not prevent Member States or their social partners from establishing more ambitious social standards. In particular, nothing in the European Pillar of Social Rights shall be interpreted as restricting or adversely affecting rights and principles as recognised, in their respective fields of application, by Union law or international law and by international agreements to which the Union or all the Member States are party, including the European Social Charter signed at Turin on 18 October 1961 and the relevant Conventions and Recommendations of the International Labour Organisation.

In the explanatory notes to the Pillar, it is stated that:

The Pillar also goes beyond the existing acquis by introducing procedural and substantive safeguards for workers in case of dismissals. Adequate reasoning should be provided and a reasonable period of notice be respected. Moreover, the Pillar provides that workers should have access to effective and impartial dispute-resolution procedures. This can include arbitration, mediation or conciliation procedures. The Pillar also introduces the right to adequate redress in case of unjustified dismissals, such as re-instatement or pecuniary compensation. Unjustified dismissals are to be understood as those that are in breach of the rules applicable to the employment relationship in question.

THE LAW

I ALLEGED VIOLATION OF ARTICLE 2§2 OF THE CHARTER

80. Article 2§2 of the Charter reads:

Article 2 –The right to just conditions of work

Part I: "All workers have the right to just conditions of work."

Part II: "With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

(…)

2. to provide for public holidays with pay;"

A – Arguments of the parties

1. The complainant organisations

81. The complainant organisations allege that national legislation only provides for 1 May as a paid public holiday. For the remainder of public holidays, the legislation merely refers to collective agreements, which may often supplement the law. In France, however, almost four million workers are not covered under such agreements. These employees therefore benefit only from one paid public holiday on 1 May, in breach of Article 2§2 of the Charter.

2. The respondent Government

82. According to the Government, Article 2§2 of the Charter guarantees the right to paid public holidays, in addition to weekly rest (Article 2§5) and annual leave (Article 2§3). With regard to the number of paid public holidays, the Government observes that the Charter does not specify how many public holidays must be provided for. The Government recalls that public holidays are intended to allow the commemoration of particularly important dates with regard to the history, culture and traditions of each country. In this respect, the terms used by the Charter on the number of paid public holidays, unlike other matters such as paid holidays, clearly reflect the desire to leave flexibility and room for manoeuvre to the States Parties to adapt their legislation to the national context.

83. Consequently, according to the Government, the legislation which provides for eleven public holidays is in conformity with Article 2§2 of the Charter.

84. With regard to paid public holidays being stipulated by collective agreement, the Government maintains that the Charter does not prescribe any method for determining which days should be public holidays. The legislation provides for a list of public holidays, but leaves the question of whether they are paid or worked to collective agreements. Moreover, contrary to the allegation of the complainant organisations that workers not covered by a collective agreement would only benefit from 1 May as a paid public holiday, the Government asserts that the legislation leaves the definition of paid public holidays other than 1 May to company-level agreements and only in their absence to branch agreements. Finally, in the absence of stipulations provided for in a company or branch agreement, it is up to the employer to decide on public holidays. Consequently, workers not covered by a branch agreement can benefit from public holidays (in addition to 1 May) when the employer so decides.

85. Consequently, the Government asks the Committee to reject the complainant organisations' claim that the situation in France is not in conformity with Article 2§2 of the Charter in that it does not provide for a sufficient number of paid public holidays.

B – Assessment of the Committee

86. Article 2§2 guarantees the right to public holidays with pay, in addition to weekly rest periods and annual leave. Paid public holidays may be specified in law or in collective agreements (Conclusions 2018, Latvia).

87. The Committee recalls that the Charter does not stipulate any particular number of public holidays that must be provided for. The number of public holidays varies widely across the States Parties. The Committee has never made a finding of non-conformity with Article 2§2 on the basis that States Parties grant too few public holidays. However, the right of all workers to paid public holidays must be guaranteed (Conclusions XXI-3 (2019), United Kingdom).

88. The Committee further recalls that under Article I of the Charter, without prejudice to the methods of implementation foreseen in these articles, the relevant provisions of Articles 1 to 31 shall be implemented by: *a.* laws or regulations; *b.* agreements between employers or employers' organisations and workers' organisations; *c.* a combination of those two methods or *d*. other appropriate means. Compliance with the undertakings shall be regarded as effective if the provisions are applied to the great majority of the workers concerned.

89. In the instant case, the Committee observes that public holidays are specified in law and that paid public holidays (in addition to 1 May) are stipulated by collective agreements covering the great majority of workers.

90. On this basis, the Committee holds that there is no violation of Article 2§2 of the Charter in this respect.

II ALLEGED VIOLATION OF ARTICLE 24 OF THE CHARTER

91. Article 24 of the Charter reads:

> **Article 24 – The right to protection in cases of termination of employment**
>
> Part I: "All workers have the right to protection in cases of termination of employment".
>
> Part II: "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:
>
> 1. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
>
> 2. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.
>
> To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

A - Arguments of the parties

1. The complainant organisations

Alleged violation of Article 24.a

92. According to the complainant organisations, 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 the termination of a contract.

93. Since the entry into force of the Law of 13 July 1973, Article L 1233-3 of the Labour Code provides that only a real and serious cause needs to be cited. The complainant organisations state that the indispensable need to terminate an individual's contract of employment in order to safeguard the legitimate interests of the company is more limited in scope as a ground for termination than that provided for in French law. Therefore, according to the complainant organisation, national legislation does not appear to be in line with Article 24.a of the Charter.

Alleged violation of Article 24.b

94. In its reply to the submissions of the Government concerning *CFDT Transports de l'Aube*, Complaint No. 81/2019, the complainant organisation alleges another violation of Article 24 of the Charter, which was not raised in the original complaint. Namely, that the situation in France is also contrary to Article 24 of the Charter on the ground that firstly, the law does not provide for a right to reinstatement in case of unlawful dismissal and secondly, since the entry into force of Ordinance of 22 September 2017, amending Article L 1235-3 of the Labour Code, the right to adequate compensation in case of unlawful dismissal is not guaranteed. Because of the ceilings to the compensation that the legislation now establishes, the judge can find him/herself in a situation where the maximum compensation that he/she can award does not cover the damages incurred (the compensation can only vary between 1 and 20 months of pay).

95. The complainant organisation refers to the decisions of the Prud'hommes of Troyes of 13 December 2018 as well as of Conseil de Prud'hommes of Amiens of 19 December 2018 in which the Prud'hommes ruled that the compensation levels accorded were contrary to Article 24 of the Charter and Article 10 of ILO Convention No. 158.

96. Therefore, the complainant organisation asks the Committee to find that the provisions of the Ordinance of 2017 (Article L 1235-3) violate Article 24.b of the Charter, on the one hand because the right to reinstatement is not ensured and on the other hand as regards adequate compensation in case of unlawful dismissal.

2. The respondent Government

Alleged violation of Article 24.a

97. The Government refers to the Statement of interpretation on Article 24 of the Charter, in which the Committee stated that Article 24 sets out in a restrictive manner the grounds on which an employer may terminate an employment relationship. Two types of grounds are considered valid: on the one hand, those related to the aptitude

or conduct of the worker, and, on the other hand, those based on the operational needs of the company (economic reasons).

98. With regard to the economic grounds, the Committee considered that the courts must be empowered to examine cases of dismissal in the light of the facts which gave rise to the economic reasons invoked, and not only on points of law.

99. As regards the legislation, the Government recalls that Article L. 1233-3 of the Labour Code defines precisely what constitutes an “economic reason” within the meaning of Article L. 1233-2: either economic difficulties characterised by the significant change in at least one economic indicator such as a drop in orders or turnover, operating losses or a deterioration in cash or gross surplus of operation, either technological changes, or a reorganisation of the company necessary to safeguard its competitiveness, or the cessation of activity of the company.

100. According to the Government, all of these criteria as set out by the legislator and required to justify the real and serious cause of an economic dismissal therefore fall perfectly within the definition of the "operating needs of the company, the establishment or service" within the meaning of Article 24 of the Charter.

101. Furthermore, the Government points out that the courts are fully empowered to verify the existence of the real and serious cause for the dismissal, in accordance with the requirements of Article 24 of the Charter.

102. The Government also states that by virtue of the established case law, the Court of Cassation considers that "the judge must give or restore their exact legal qualification to the facts and acts in dispute without stopping at the name that the parties would have proposed". Therefore, the judge must verify whether the exact cause of the dismissal is not of an economic nature, and he/she cannot limit him/herself to the reason given in the termination letter (Court of Cassation, Appeals No. 83-40.229 and No. 88-44.099).

103. In addition, according to the Government, the judge exercises internal and external control over the notion of economic motive. Through internal control, it verifies, on the one hand, the existence of an economic cause as set out in Article L. 1233-3 and, on the other hand, the effects of this economic cause on employment (termination or transformation of employment, modification of an essential element of the employment contract). Through external control, the judge ensures, on the one hand, that the employer has not shown carelessness, likely to engage his liability vis-à-vis the employee, for example they already knew "the economically perilous situation of the company at the time of the employee's engagement", and, on the other hand, that the deterioration of the economic situation of the company is not attributable to the "intentional and fraudulent attitude" of the employer, for example if they knowingly and artificially organised a situation making redundancies necessary (Court of Cassation, Appeals No. 90-40.364 and No. 91-45.894).

104. The Government also refers to the Committee's conclusions on Article 24, France where the Committee consistently found that the situation was in conformity with the Charter (Conclusions 2003, 2007, 2012 and 2016).

105. The Government takes the view that the situation in France with regard to dismissals for economic reasons is fully in conformity with Article 24.a of the Charter as long as the legislation precisely defines the cases in which dismissal may be justified.

Alleged violation of Article 24.b

106. In its further response on the merits in the complaint *Syndicat CFDT des Transports de l'Aube* v. France, Complaint No. 181/2019 the Government responds to the additional allegation presented by the complainant organisation in its reply to the Government's submissions on the merits, concerning Article L. 1235-3 of the Labour Code. The Government underlines that in the context of its initial complaint, the complainant organisation only challenged Article L. 1233-3 of the Labour Code under the angle of the cause of dismissal. The issue of reinstatement and compensation of wrongfully dismissed employees, governed by Article L. 1235-3 of the Labour Code, is therefore clearly separate. The Government points out that it was only at the merits stage that the complainant organisation alleged that the provisions of paragraphs 1 and 2 of Article L. 1235-3 are in conflict with the stipulations of Article 24 of the Charter with regard to adequate compensation for unfair dismissal and the right to reinstatement. Therefore, the Government asks the Committee to dismiss this new allegation, as a matter of principle, as it was not included in the initial complaint and was therefore not declared admissible by the Committee.

107. Consequently, the Government asks the Committee to reject this new allegation.

108. Nevertheless, the Government states that if the Committee were to examine the merits of this new allegation presented after its decision on admissibility, the Government would ask the Committee to find that the legislation on the reinstatement and compensation of dismissed workers complies with Article 24 of the Charter.

109. The complainant organisation *Syndicat CFDT des Transports de l'Aube* maintains that Article L. 1235-3 of the Labour Code, resulting from Ordinance No. 2017-1387 of September 22, 2017, relating to the predictability and security of labour relations, by fixing in an imperative way floors and ceilings of compensation of the damage suffered by a worker dismissed without real and serious cause, is in violation of Article 24 of the Charter.

110. According to the Government, the aforementioned Ordinance of 22 September 2017 aims at strengthening the predictability and securing the employment relationship or the effects of its termination for employers and their employees, and at modifying the provisions relating to dismissal for economic reasons. This ordinance modifies, by way of its Article 2, the rules applicable in the event of dismissal without real and serious cause by creating a scale of compensation.

111. The Government recalls that the concept of dismissal "without valid reason" within the meaning of Article 24 a) of the Charter cannot be limited to dismissal without real and serious cause but covers all unjustified dismissals, such as unlawful dismissals, which are void. Thus, the examination of the compatibility of the French system with the Charter and the concept of appropriate and adequate reparation must necessarily include the sanctions and reparations which apply to void dismissals, which fall outside the contested scale and for which reinstatement is by right.

112. According to the Government, the assessment must therefore take into account all the exceptions provided for in the application of the scale in the presence of violations of fundamental freedoms, situations of harassment or discrimination, ignorance of the protection due to certain categories of workers, exceptions for which the nullity of the dismissal is incurred and maintained, with the employee's right to reinstatement and uncapped compensation.

113. According to the Government, account must be taken of the employer's order to reimburse the unemployment benefits paid to the worker under certain conditions. All of these rules constitute an overall system of sanctions and compensation which fully satisfies the requirements arising from Article 24 of the Charter.

114. The Government further states that in the context of its constitutional review, the Constitutional Council considered that the ceiling on compensation for dismissal without real and serious cause "did not establish disproportionate restrictions" on the rights of victims of wrongful acts in relation to the objective of general interest to reinforce the foreseeability of the consequences which attach to the termination of the employment contract.

115. The Government further refers to the response of *CFDT Transports de l'Aube* in which the latter alleges that the provisions of Article L. 1235-3 of the Labour Code do not comply with the Article 24 of the Charter, on the one hand by limiting the power of the judge in his assessment of the damage, because the latter can no longer award compensation covering the damage suffered in certain situations (a) and, on the other hand, because the legislation does not provide for a right to reinstatement in the event of unfair dismissal (b).

(a) on adequate compensation or appropriate reparation

116. According to the Government, the dissuasive nature of the allowances and the compensation for the damage suffered by the employee must be analysed with regard to all the provisions in force, in a global approach and *in abstracto* and not with regard to the scale and a case assessed *in concreto.*

117. With regard to the existence of other legal remedies, in addition to the possibility of reinstatement in the company, the Government specifies that the scale was not intended to cover all the damage linked to unfair dismissal. Article L. 1235-3 of the Labour Code only concerns damage arising from the unjustified loss of employment (dismissal without real and serious cause). The scale therefore does not cover compensation for damages distinct from the absence of real and serious cause for dismissal, nor those arising from distinct faults on the part of the employer: damage due to the vexatious circumstances surrounding the termination of the employment

contract (Cass. Soc., 7 March 1991, No. 89-41352), damage related to the impossibility for the dismissed employee to exercise stock options (Cass. Soc., 29 September 2004, No. 02-40027), damage related to the loss of opportunity for the employee to capitalise on his capital invested in the company savings plan (Cass Soc., 16 January 2008, No. 06-40543), damage related to the failure to indicate to the employee the criteria for the order of dismissals in in the context of a dismissal procedure for economic reasons (Cass. Soc., 24 September 2008, No. 07-42200), prejudice arising from the loss of opportunity to participate in training (Cass. Soc., 21 September 2010, No. 09-41107), damage resulting from the deterioration of the state of health of the employee attributable to the employer (Cass. Soc. 2 March 2011, No. 08-44977), damage related to the loss of chance of being able to benefit from the retirement benefit applicable in the company (Cass. Soc., 31 May 2011, No. 09-71350), or even damage due to disregard of contractual guarantees of procedure (Cass. Soc., 27 September 2017, No. 16-14040).

118. In this regard, the Government further argues that the financial aspect of the loss of employment (deprivation of wages) is partly compensated by the unemployment insurance mechanism, partially financed by an employer's contribution and which aims precisely to guarantee the employee against the risk of involuntary loss of his employment. Moreover, and contrary to Finnish law, French law does not provide for the deduction of the amount of this unemployment benefit, or any remuneration received by the employee, from the compensation awarded by the judge on the basis of the scale.

119. Finally, the Government wishes to point out that some Prud'hommes rejected the unconventionality of the scale in the light of Articles 10 of ILO Convention No. 158 and 24 of the Charter and applied the scale to their specific case. This is the case, for example, of the Prud'hommes of Le Mans on 26 September 2018, Caen, 18 December 2018 and Le Havre, 15 January 2019, not counting all the disputes where the question was not debated and where the law was applied.

120. The Chambéry Court of Appeal, although it did not recognise the direct effect of the European Social Charter, was the first court of second instance to recognise that the scale was not contrary to the Article 10 of ILO Convention No. 158, drafted in terms similar to Article 24 of the Charter. It therefore applied the scale to the specific case submitted to it and granted the employee compensation between the thresholds set by the scale in its judgment of 27 June 2019.

121. In view of the above, the Government maintains that the legislation provides for adequate compensation in the event of unfair dismissal, in accordance with the requirements of Article 24 of the Charter.

(b) on the reinstatement of the worker

122. In its response, *CFDT Transports de l'Aube* alleges that the French situation is presented in strictly the same terms as the Finnish situation and maintains that the right to reinstatement in the event of unfair dismissal does not exist in France.

123. According to the Government the French situation is different since the Labour Code provides for two separate schemes for the reinstatement of the employee, depending on whether the dismissal is without real and serious cause or it is invalidated by a nullity provided for by the Labour code.

124. In cases where the dismissal is judged without real and serious cause, the judge may decide to reinstate the worker, if the latter requests it and provided that the employer does not oppose it (Article L. 1235-3). In cases where the dismissal is null and void, i.e. for the most serious violations, reinstatement is a right which the employer cannot oppose, unless it is materially impossible (Article L.1235-3-1).

125. Therefore, according to the Government, the legislation provides for a right to reinstatement in the event of unfair dismissal, in accordance with Article 24.b of the Charter.

B. Assessment of the Committee

Alleged violation of Article 24.a

126. The Committee recalls that Article 24.a of the Charter establishes in an exhaustive manner the valid grounds on which an employer can terminate an employment relationship. Two types of grounds are considered valid, namely on the one hand those connected with the capacity or conduct of the employee and on the other hand those based on the operational requirements of the enterprise (economic reasons) (Conclusions 2012, Statement of Interpretation on Article 24).

127. Economic reasons for dismissal must be the reasons based on the operational requirements of the undertaking, establishment or service (Conclusions 2016, Latvia). The courts must have the competence to review a case on the economic facts underlying the reasons of dismissal and not just on issues of law (Conclusions 2012, Turkey). Article 24 of the Charter requires a balance to be struck between an employer's right to direct/run their enterprise as they see fit and the need to protect the rights of the employees (Conclusions 2016, Latvia).

128. The Committee considers that the definition of economic reasons provided in the Labour Code as well as the domestic case law, according to which the judges have internal and external control and power to judge on the merits, meets the requirements of Article 24.a. Real and serious cause of dismissal that is stipulated in the legislation as a valid ground of dismissal corresponds to the valid reasons of termination of employment on economic grounds as provided by Article 24.a of the Charter.

129. Therefore, the Committee holds that there is no violation of Article 24.a of the Charter.

Alleged violation of Article 24.b

130. As regards the second allegation of *CFDT Transports de l'Aube* concerning Article 24.b, the Committee considers that although this allegation was only introduced in the response of the complainant organisation to the Government's submissions on the merits and not in the initial complaint, it should be examined insofar as the

Government was given a possibility to respond to the allegation and also availed itself of this possibility.

131. In this connection, the Committee refers to its decisions on the merits of 23 March 2022 in *Confédération Générale du Travail Force Ouvrière* (CGT-FO) v. France Complaint No. 160/2018 and *Confédération générale du travail* (CGT) v. France, Complaint No. 171/2018, as well as its decision on the merits of 5 July 2022 in *Syndicat CFDT de la métallurgie de la Meuse* v. France, Complaint No. 175/2019.

132. In these decisions the Committee examined the complainant organsations' allegations as regards the issues of reinstatement and compensation in case of unlawful dismissal.

133. As regards the issue of reinstatement, the Committee observed that in French law reinstatement is optional for dismissals without real and serious cause. According to Article L.1235-3 of the Labour Code, if a worker is dismissed for a reason that is not real and serious, the court may propose that he or she be reinstated, with the retention of all of his/her accrued benefits. If either of the parties objects to such reinstatement, the court shall award the worker compensation instead. With respect to reinstatement in cases of the most serious unlawful dismissals, which are null and void, Article L.1235-3-1 of the Labour Code stipulates that in cases, where workers do not ask for reinstatement or their reinstatement is impossible, the court shall grant them compensation.

134. The Committee also emphasised that "it has consistently held that reinstatement should be available as a remedy under many other provisions of the Charter as interpreted by the Committee, for example under Article 8§2 and 27§3" (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, op.cit., §55). As regards the instant case, the Committee observes that reinstatement is one of the possible remedies provided for in French law. The Committee considered that as long as the possibility exists for the workers dismissed without a real and serious cause to be reinstated in the same or a similar post, the situation is compatible with Article 24.b of the Charter in this respect. As regards the instant case, the Committee reiterates its previous decision regarding the issue of reinstatement.

135. As regards the issue of compensation, the Committee held in particular that the ceilings set by Article L.1235-3 of the Labour Code are not sufficiently high to make good the damage suffered by the victim and to be dissuasive for the employer. Moreover, the courts have a narrow margin of manoeuvre in deciding the case on its merits by considering individual circumstances of unjustified dismissals. For this reason, the real damage suffered by the worker concerned, linked to the individual characteristics of the case, may be inadequately considered and therefore, not be made good. As regards the instant case, the Committee reiterates its previous decisions and holds that the levels of compensation set by Article L.1235-3 are not deterrent for the employer and therefore, do not provide adequate protection of workers against unlawful dismissal.

136. Therefore, the Committee holds that there is a violation of Article 24.b of the Charter in this respect.

III. ALLEGED VIOLATION OF ARTICLE 25 OF THE CHARTER

137. Article 25 of the Charter reads:

> **Article 25 – The right of workers to the protection of their claims in the event of the insolvency of their employer**
>
> Part I: "All workers have the right to protection of their claims in the event of the insolvency of their employer."
>
> Part II: "With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection."

A – Arguments of the parties

1. The complainant organisations

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

139. Nevertheless, 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 due to them as a result of their employer's insolvency.

140. In its response to the Government's submissions on the merits, *CFDT Transports de l'Aube* provides examples, in support of its claim, of workers whose employment was terminated due to economic reasons. In particular it refers to the situation of employees of *PREVENT GLASS* and *SEAFRANCE* who received reduced severance pay because of the applicable ceilings. It also refers to the employees of *BRODARD GRAPHIQUE* whose claims have been only partially satisfied.

141. According to the complainant organisations, 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 thus fail to comply with Article 25 of the Charter.

2. The respondent Government

142. According to the Government, the complainant organisations maintain that the legislation on the protection of employees' claims in the event of the employer's

insolvency is not in conformity with Article 25 of the Charter in that it would only guarantee partial protection of claims. They allege more specifically that a very large number of workers, in particular supervisory staff, would quickly reach the guarantee ceiling, which does not allow their claims to be fully covered.

143. The Government states that according to Article 25 of the Charter workers' claims to be covered by the employer in the event of insolvency must relate to a fixed period, which must not be less than three months in a privilege system and eight weeks in a guarantee system. In addition, the employer is obliged to pay claims in respect of amounts due for other paid absences (holidays, sick leave) relating to a specified period, which must not be less than three months in a privilege system and eight weeks in a guarantee system. States may limit the protection of workers' claims to a specific amount which must, however, be of an acceptable level.

144. With regard to France, the Government observes that under Article D. 3253-5 of the Labour Code, the guarantee ceiling is set at:

- six times the monthly ceiling used for the calculation of contributions to the unemployment insurance scheme when the employment contract from which the claim results was concluded more than two years before the date of the judgment opening the collective proceedings,
- five times when the employment contract from which the claim results was concluded less than two years and at least six months before the date of the judgment opening the collective proceedings,
- four times if the contract giving rise to the debt was concluded less than six months before the date of the opening judgment.

145. Furthermore, the Government indicates that in 2020, the guarantee system covered, on the date of the opening of the insolvency proceedings, salaries and severance pay:

- up to € 82,272 for employment contracts concluded more than two years before;
- up to € 68,560 for contracts concluded between two years and six months before;
- up to € 54,848 for contracts concluded less than six months before.

146. According to the Government, these ceilings are of a socially acceptable level and offer extensive protection for the claims of workers facing the insolvency of their employer. The Government refers in this connection the Committee’s Conclusions regarding Article 25, France, where the Committee observed (2008) that the maximum amount of the guarantee was already set at six times the monthly ceiling used for calculating unemployment insurance contributions when the contract was concluded more than two years before the date of the opening judgment, at five times the ceiling when it was concluded less than two years before this date and at four times the ceiling if it was concluded less than six months before the date of judgment.

147. The Government also refers to the Committee’s Conclusions 2012 (Article 25, France) in which the Committee concluded that French law complies with Article 25 of the Charter.

148. The Government also provides the latest figures available from the French National Institute of Statistics and Economic Studies (INSEE) for 2017, when the average full-time equivalent monthly salary of a person working in the private sector was € 2,314 net. By way of illustration, in the event of a worker with less than 6 months of seniority, the applicable ceiling in 2020 stood at € 54,848, i.e. an average monthly salary of nearly € 11,000 for a worker with 5 months of seniority (€ 54,848/5=€ 10,970). Nearly 99% of French workers had a monthly salary below this amount and were therefore covered by the wage guarantee scheme.

149. The conclusion of conformity was reiterated in the Committee's most recent conclusion on Article 25 (Conclusions 2016, France).

150. The Government also indicates that since 2016 there have not been any changes to this situation. Consequently, according to the Government, the legislation on the protection of workers' claims in the event of the insolvency of their employer complies with Article 25 of the Charter.

B – Assessment of the Committee

151. The Committee recalls that Article 25 of the Charter guarantees workers the right to protection of their claims in the event of the insolvency of their employer (Conclusions 2003, France). States Parties benefit from a margin of discretion as to the form of protection of workers' claims. While a privilege system may amount to effective protection in cases where formal insolvency proceedings are opened, this is not so in situations where the employer no longer has any assets (Conclusions 2012, Statement of Interpretation on Article 25). It serves no purpose to have a privilege system when there are no assets to divide among creditors and consequently States Parties must provide for an alternative mechanism to effectively guarantee workers' claims in those situations Therefore, situations where there is no alternative to the privilege system are not in conformity with the Charter as such a system does not itself provide effective guarantees of protection of workers' claims in situations where the employer no longer has any assets (Conclusions 2012 and 2020, Albania).

152. States Parties may limit the protection of workers' claims to a prescribed amount which shall be of a socially acceptable level (Conclusions 2012, Ireland). Three times the average monthly wage of the worker has been held to be an acceptable level (Conclusions 2012, Slovakia). In addition, the employer is also obliged to pay for claims in respect of other types of paid absence (holidays, sick leave), at not less than three months under a privilege system and eight weeks under a guarantee system (Conclusions 2012, Slovakia).

153. The Committee recalls that in respect of France it has considered that the protection afforded by Articles L. 3253-17 and D.3253-5 was acceptable under Article 25 of the Charter as regards the amounts paid to workers in case of insolvency of the employer (Conclusions 2012 and 2016).

154. As regards the instant case, the Committee observes that according to Article L.3253-8 of the Labour Code the compensation that the workers receive in case of insolvency of the employer covers all claims due to them at the date of the opening of liquidation proceedings and the claims resulting from the termination of employment.

155. The Committee further notes that the ceilings established under Article D.3253-5, which are periodically revised and which limit the amounts that can be awarded, are set at a level that can be considered as socially acceptable. In particular, the Committee observes that the lowest limit in 2020 was set at € 54,848 for workers with less than 6 months of seniority, which is the amount considerably higher than 10 times the average salary in France. The Committee further notes that as the Government indicates, according to the annual report of the Association for the management of the employee debt guarantee scheme (AGC) 188,150 workers were compensated in 2018 for a total amount of €1,487 million, which would suggest that €7,900 were paid on average in compensation. The Committee also notes that according to the AGC, in the first quarter of 2022, € 268 million were paid in compensation to 37,279 beneficiaries.

156. The Committee considers that the guarantee system in place in France provides for an adequate protection of workers' claims with the average amount of compensation granted being at a social acceptable level.

157. On this basis, the Committee holds that there is no violation of Article 25 of the Charter.

IV. ALLEGED VIOLATION OF ARTICLE 29 OF THE CHARTER

158. Article 29 of the Charter reads:

> **Article 29 – The right to information and consultation in collective redundancy procedures**
>
> Part I: "All workers have the right to be informed and consulted in collective redundancy procedures."
>
> Part II: "With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned."

A – Arguments of the parties

1. The complainant organisations

159. According to the complainant organisations, Article 29 of the Charter guarantees the right to information and consultation of 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.

160. According to the complainant organisations, the Charter purposefully seeks to mitigate the consequences for workers of collective economic redundancies. To this end, if the company belongs to a group, the perimeter for redeployment should be extended to the entire group, taking into account its national, European and international presence.

161. The complainant organisations assert that 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 (former Articles L. 1233-4 and L. 1233-4-l of the Labour Code). However, this protection disappeared with the so-called Macron Order of 22 September 2017, which excluded the group's European and international sites from the possibilities of redeployment.

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

163. Therefore, the complainant organisations consider that the legislation is in violation of Article 29 of the Charter.

1. The respondent Government

164. According to the Government, the complainant organisations dispute the fact that the redeployment of workers whom the employer intends to dismiss for economic reasons cannot include positions located abroad when the employer concerned has establishments or subsidiaries in foreign countries.

165. The Government refers to the Committee's Statement of interpretation on Article 29 (Conclusions 2014) according to which this provision requires States Parties to put in place, when an employer plans to resort to collective redundancies, a procedure for information and consultation which enable employees to know the reasons for and extent of the planned dismissals and to take their position into account with regard to the number of these dismissals and their terms. According to the Government, this Article also provides that the information and consultation procedure must not only aim at preventing collective redundancies or limiting their extent as far as possible, but also seek to mitigate the consequences. To this end, this procedure should provide for the possibility of having recourse to measures for the redeployment or reintegration of the workers concerned.

166. When initiatives intended to limit the repercussions of collective redundancies are deployed, the employer must be required to cooperate with the administrative services in charge of the policy to combat unemployment, by notifying them, for example, of the planned collective redundancies and/or by cooperating with them to put in place retraining assistance schemes or other forms of assistance in finding a new job.

167. The Government asserts that the Charter only mentions the question of redeployment as one possibility among others, in order to limit the effects of collective redundancies, and does not provide for any stipulation relating to a possible geographical scope of the posts proposed for reclassification.

168. Moreover, the Government points out that the legislation provides for a procedure for informing and consulting staff representatives when an employer plans to resort to collective redundancy (Articles L. 1233-8 et seq. of the Labour Code and Articles L. 1233-28 et seq) and also provides for specific provisions regarding redeployment (Article L. 1233-4).

169. The Government further notes that, in all of its conclusions on Article 29 concerning France, the Committee concluded that the legislation was in conformity with the Charter and that the question of the scope of redeployment was not even mentioned.

170. Therefore, the Government considers that the legislation on information and consultation in collective redundancy procedures complies with Article 29 of the Charter.

B – Assessment of the Committee

171. The Committee recalls that Article 29 guarantees the right of all workers to be informed and consulted in collective redundancy procedures. Under Article 29 the collective redundancies are those affecting several workers within a period of time set by law and decided for reasons which have nothing to do with individual workers, but correspond to a reduction or change in the firm's activity (Conclusions 2003, Statement of Interpretation on Article 29). Under Article 29, consultation procedures must take place in good time prior to collective redundancies. National law should also guarantee the right of workers' representatives to be provided with all relevant information throughout the entire duration of the consultation process.

172. Consultation should be conducted within a time period that is sufficient to ensure that employees' representatives have an opportunity to present suitable proposals with a view to avoiding, limiting or mitigating the effect of the proposed redundancies. Simple notification of redundancies to workers or their representatives is not sufficient (Conclusions 2014, Georgia). The consultation procedure must cover the redundancies themselves, including the ways and means of avoiding them or limiting their occurrence; and support measures, such as social measures to facilitate the redeployment or retraining of the workers concerned and the redundancy package (Conclusions 2014, Georgia).

173. As part of this process, employers should be required to cooperate with administrative authorities or public agencies which are responsible for the policy counteracting unemployment, by for example notifying them about planned collective redundancies and/or cooperating with them in relation to retraining employees who are made redundant, or by providing them with other forms of assistance with a view to obtaining a new job.

174. The Committee notes that Article L. 1233-4 provides that "the dismissal of an employee for economic reasons can only take place when all training and adaptation efforts have been made and when the redeployment of the person concerned cannot be made on the available jobs, in the company or other companies in the group to which the company belongs and whose organisation, activities or place of operation ensure the rotation of all or part of the personnel (…)".

175. The Committee also notes that the former Article L. 1233-4 provided that when the company or the group to which it belongs is located outside the national territory, the employer, prior to the dismissal, asked the worker if he/she would agree to receive redeployment job offers outside the territory. Offers of redeployment outside the national territory were only addressed to the worker who had agreed to receive them. The worker remained free to refuse these offers.

176. The Committee considers that following the amendments to Article L. 1233-4 the scope of redeployment of employees affected by collective redundancy procedures has been limited to the national territory. The Committee however considers that the States Parties have a margin of discretion to choose the modalities of redeployment of employees concerned, which will depend on the operational and economic characteristics of the enterprise concerned. Therefore, limiting the territorial scope of redeployment to the national territory does not, as such, violate Article 29 of the Charter as long as all procedures required by this provision are fully adhered to, i.e. prior consultation and information, and as long as social measures to facilitate the redeployment or retraining of the workers concerned are implemented. The Committee considers that there is nothing in the submissions of the parties that would indicate that this is not the case.

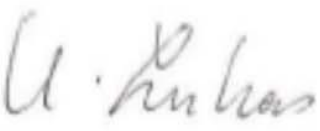
177. Therefore, the Committee holds that there is no violation of Article 29 of the Charter.

CONCLUSION

For these reasons, the Committee concludes :

- unanimously that there is no violation of Article 2§2 of the Charter
- unanimously that there is no violation of Article 24.a of the Charter;
- unanimously that there is a violation of Article 24.b of the Charter;
- unanimously that there is a no violation of Article 25 of the Charter;
- unanimously that there is no violation of Article 29 of the Charter.

Karin Møhl LARSEN
Rapporteur



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