COMITÉ EUROPÉEN DES DROITS SOCIAUX
EUROPEAN COMMITTEE OF SOCIAL RIGHTS

DECISION
ON THE MERITS

Adoption: 4 December 2025

Notification: 9 March 2026

Publication: 10 July 2026

***Fédération nationale des syndicats de salariés des mines et de l'énergie - Confédération générale du travail* (FNME-CGT) v. France**

Complaint No. 222/2023

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 352nd session in the following composition:

Aoife NOLAN, President
Tatiana PUIU, Vice-President
George THEODOSIS, Vice-President
Kristine DUPATE, General Rapporteur
Karin Møhl LARSEN
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Alla FEDOROVA
Grega STRBAN
Olivier DE SCHUTTER
Kristina KOLDINSKA
Carmen-Constantina NENU

Assisted by Henrik KRISTENSEN, Executive Secretary

Having deliberated on 15 October 2025 and 4 December 2025,

On the basis of the report presented by Mario VINKOVIĆ,

Delivers the following decision adopted on this date:

PROCEDURE

1. The complaint lodged by the *Fédération nationale des syndicats de salariés des mines et de l'énergie - Confédération générale du travail* (FNME-CGT) was registered on 14 March 2023.

2. FNME-CGT alleges that the new regulations on medical checks under the special social security scheme for the electricity and gas industries (IEG) seriously undermines the right to safe working conditions, the right to a fair remuneration, the right to protection of health and the right to social security of the staff concerned. The new regulations institute a new mechanism for the medical examination of workers in said industries, which, on the one hand, gives the IEG medical advisors the power to invalidate sick leave granted to workers by their general practitioners, and, on the other hand, sets up a non-independent medical conciliation commission. FNME-CGT alleges that France is in breach of Articles 3§1, 4§§1 and 5, 11§1 and 12§§1 and 3 of the Charter in these circumstances and that the resulting restrictions of these rights cannot be justified with reference to Article G of the Charter.

3. On 17 October 2023, the Committee declared the complaint 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 complaint by 15 December 2023. Upon the Government's request, the time limit was extended until 10 January 2024.

5. Referring to Article 7§§1 and 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 as well as the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter, to notify any observations they may wish to make on the complaint by 15 December 2023.

6. Observations by the *Confédération générale du travail* (CGT) were registered on 8 December 2023.

7. The Government's submissions on the merits of the complaint were registered on 10 January 2024.

8. Pursuant to Rule 28§2 of the Rules, the Government and FNME-CGT were invited to submit, if they so wished, a response to the observations by CGT by 15 February 2024.

9. Pursuant to Rule 31§2 of the Rules, FNME-CGT was invited to submit a response to the Government's submissions by 15 March 2024. The response of

FNME-CGT to the Government's submissions on the merits was registered on 12 March 2024.

10. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to FNME-CGT's response by 15 May 2024. The Government's reply was registered on 15 May 2024.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

11. FNME-CGT alleges that the mechanism of medical control of workers in the special social security scheme for the IEG as set up by the Order of 27 December 2021 undermines Charter rights of workers in the said industries. FNME-CGT alleges in particular that the power given to IEG medical advisor to invalidate sick leave granted to workers by their general practitioners, the insufficient independence of medical advisors and of the medical conciliation commission (CMRA) as well as the non-suspensive nature of the appeal to the CMRA are contrary to Articles 3§1, 4§§1 and 5, 11§1 and 12§§1 and 3 of the Charter and that the resulting restrictions of these rights cannot be justified with reference to Article G of the Charter.

B – The respondent Government

12. The Government rejects the allegations of the complainant organisation with regard to the medical controls under the special social security scheme for the IEG and asks the Committee to find that there is no violation of the Charter provisions invoked.

OBSERVATIONS OF THE THIRD PARTIES

A – *Confédération générale du travail* (CGT)

13. CGT submits that the new regulations governing medical checks for the special social security scheme for the IEG, as set out in the Order of 27 December 2021, have established a problematic mechanism. CGT states that, firstly, the new regulations grant employer's medical advisors, whose independence is highly questionable due to their remuneration and career progression being dependent on employers, the power to invalidate sick leave issued by an employee's general practitioner. Secondly, CGT states that the same regulations establish a medical conciliation commission (CMRA) whose independence may also be questioned, as it is composed of two physicians, including an IEG medical advisor and a medical expert, appointed by the national IEG medical advisor. An appeal by the employee to the CMRA does not suspend the medical advisor's decision. CMRA must rule within three months.

14. CGT submits that the question of independence of IEG medical advisors is real and serious, particularly in light of the removal of "social control" by staff representatives who previously had to decide on the employment of an IEG medical advisor and had to monitor the doctor's activity.

15. CGT emphasises that employees whose sick leave is contested are faced with a difficult choice: either return to work within 24 hours, to the detriment of their health, or remain on sick leave and refer the matter to the CMRA, thereby exposing

themselves to a total loss of their remuneration (the maintenance of which, in the case of the IEG scheme, is ensured in its entirety by the employer and not by a social security organisation), until a decision is taken by the CMRA. The CGT notes that one of the many problems that this system raises is that most of the sick leave is short-term (less than three months), meaning that a decision of CMRA often comes after the employee has already returned to work. CGT is of the opinion that the system's implicit goal is to discourage employees from appealing to the CMRA.

16. CGT further states that the mechanism implemented in the IEG sector resembles however the system used in the general social security scheme. CGT states that under the general social security scheme, employers can demand a second medical examination (counter-visit), conducted by a doctor of their choice and at their expense, which the employee is obliged to undergo. CGT questions the independence of such medical inspectors ("*médecin contrôleur*"), who are chosen and paid by the employer and operate outside the social security or occupational medicine systems. If the medical inspector deems the absence unjustified, or if the employee refuses the examination, the employer can cease paying the supplementary compensation, depriving the employee of a substantial part of their income during their sick leave.

17. CGT submits that the lack of independence of medical advisors for the IEG and medical inspectors for the general scheme vis-à-vis employers tends indirectly to confer on them a certain responsibility for decisions that could be taken by practitioners to the detriment of the health of employees. In the view of CGT this raises the question of the civil and criminal responsibilities of the employer and the medical advisor, as the FNME-CGT points out in its complaint, as well as those of medical inspectors for the general scheme. It also submits that the lack of suspensive effect of the employee's appeal plunges both IEG employees and general scheme employees into extreme precariousness, as in order to assert their right to appeal, they risk a substantial loss of their resources during their convalescence. A situation that, in the view of CGT, goes against one of the founding principles of social security.

18. CGT also notes that the FNME-CGT complaint highlights the undermining of decisions made by general practitioners, who know their patients best and ensure regular medical follow-up. CGT submits that sick leave certificates are issued by them with careful consideration of individual patient circumstances, which are not always known to IEG medical advisors or general scheme inspectors.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Domestic legislation

19. Constitution of 1946

Preamble

"It [the Nation] shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have the right to receive suitable means of existence from society."

20. **Law No. 46-628 of 8 April 1946 on the nationalisation of electricity and gas**, Article 47 sets out that employees of the French electricity and gas industries are covered by a special social security scheme, whose content is determined by decree.

Article 47

"Decrees adopted on the basis of a report by the Ministers of Labour and Industrial Production, following consultation with the trade unions most representative of employees, shall determine the statutes governing the status of serving and retired employees of enterprises that have been the subject of a transfer.

These national statutes, which may not reduce rights acquired by serving or retired employees at the date of publication of the present law, but which may improve them, shall automatically replace the statutory or convention-based rules and the retirement or provident schemes previously applicable to such employees. […]"

21. **Decree No. 46-1541 of 22 June 1946 approving the national statutes governing the status of employees of the electricity and gas industries**

Article 22, paragraph 1: "In the event of illness or injury not covered by the legislation on accidents at work, employees subject to the present statutes and thus unable to work shall be entitled, for the duration of their incapacity for work, to their full salary or wages, including allowances and benefits of any kind, with the exception of duty allowances, up to a maximum period of:
a) 365 days in any fifteen-month period in the case of routine illness or injury;
b) three years in the case of long-term illness of any kind."

Article 22, paragraph 6: "In order to enable a unified approach to the monitoring of persons who have suffered occupational injuries or accidents and other beneficiaries of the so-called social security provisions contained herein, special monitoring rules shall be introduced by order of the minister responsible for social security and the minister responsible for energy.
These special monitoring rules shall be common to all enterprises and bodies required to cover the employees referred to herein."

22. **Order of 13 September 2011 introducing special rules on medical checks under the special social security scheme for the electricity and gas industries – amended by Order of 27 December 2021 – Article 1**

Article 2

Employees who are ill shall be placed under the medical authority of their general practitioner, with the medical adviser for the special scheme playing a supervisory and advisory role. The medical adviser shall not interfere in the patient's relationship with their general practitioner.

Medical checks shall be carried out as provided in Articles 5 to 8 hereof, in a way that respects medical confidentiality vis-à-vis the employer. They may also be carried out at the request of the employer.

The medical checks shall relate to the general practitioner's assessment of the insured person's state of health and capacity for work and to the prevention of invalidity and occupational exclusion. Acting within the scope of their powers, the medical adviser shall work with the occupational physician to contribute to the measures taken by the employer to enable the insured person to remain at or return to work.

The medical adviser shall refrain from making any diagnosis or treatment assessment in front of the patient and shall under no circumstances, except in an emergency, administer treatment to an employee of the electricity and gas industries.

Whenever they consider it appropriate in the interests of the patient or the examination, the medical adviser shall contact the general practitioner or any other medical adviser or

occupational physician concerned, with every precaution being taken to ensure that medical confidentiality is observed.

Article 3

Medical advisers for the special social security scheme for the electricity and gas industries shall be called upon to verify that the state of health of employees covered by the sectoral statutes justifies the award of earnings-related benefits under the special scheme for the electricity and gas industries, as provided for in Article 22 of the national statutes, and the cash benefits provided for in Part IV of Appendix 3 to the national statutes. […]

Article 6

I.-Where the medical adviser considers that sick leave is not justified, they shall inform the employer, who shall notify the staff member of the decision made in line with this opinion by any written means that confers a definite date. This notification shall specify the time limits and remedies available to the employee.

In the event of a medical dispute, any appeal lodged by the employee against the decision of the employer shall be referred to an amicable medical appeals board made up of two physicians designated by the national medical adviser for the special scheme for the electricity and gas industries:

1° A physician on the lists drawn up pursuant to Article 2 of Law No. 71-498 of 29 June 1971 on court-appointed experts and who is a specialist in, or qualified to adjudicate, the medical dispute in question;

2° A medical adviser for the special scheme for the electricity and gas industries.

The employee shall refer the matter to this board by any means that confers a definite date.

The physician who treated the patient or the victim and the medical adviser for the special social security scheme for the electricity and gas industries who issued the contested medical opinion shall not sit on the board.

The members of the board secretariat shall be placed under the responsibility of the national medical adviser.

In the event of a tie, the physician referred to in 1° shall have the casting vote.

On receiving a copy of the preliminary appeal, the secretariat of the amicable medical appeals board shall forward it to the local medical control service and to the employer who made the contested decision.

Within ten days from the date of receipt of the copy of the preliminary appeal, the local medical adviser shall forward to the board, by any means that confers a definite date, a copy of the contested medical opinion and the full medical report on which this opinion is based.

The secretariat of the medical board shall send to the employee without delay, by any means that confers a definite date, a copy of the medical report referred to in the previous paragraph. Within twenty days following receipt of the medical report together with the opinion or, if these documents were sent before the appeal was lodged, within twenty days following the lodging of the appeal, the employee may submit comments by any means that confers a definite date. They shall be informed accordingly by the board secretariat by any means that confers a definite date.

Where the board carries out the clinical examination itself, the board secretariat shall inform the staff member at least fifteen days in advance, notifying them of the place, date and time of the examination. The employee may arrange for themselves to be accompanied by the physician of their choosing.

For each case examined, the amicable medical appeals board shall prepare a report containing its assessment of the case, its findings and its reasoned conclusions. It shall issue an opinion, which shall be binding on the employer.

The secretariat shall immediately forward the opinion of the amicable medical appeals board to the employer and a copy of the report to the local medical service and, at their request, to the employee.

The employer shall notify the employee of its decision, in line with the opinion of the amicable medical appeals board. If the employer fails to make a decision within three months following the lodging of the preliminary appeal, the application shall be deemed to have been rejected.

Articles R. 142-8-4, R. 142-8-4-1and R. 142-8-6 of the Social Security Code shall apply to appeals lodged by employees with the amicable medical appeals board. [...]

Article 13

The benefits provided for in Article 22 of the national statutes shall be paid from the date of commencement of incapacity for work and within the limits laid down in that article.

They shall cease to be paid on the date set for the return to work, which, unless there is disagreement between the medical adviser and the general practitioner, shall coincide with the expiry of the period of validity of the last sick note issued by the general practitioner.

Where the medical adviser considers that sick leave is not justified, the employee must comply with the employer's decision in line with this opinion and return to work within twenty-four hours from the date of notification of this decision. If the employee fails to comply with the administrative decision notified to them and does not return to work, the benefits provided for in Article 22 of the national statutes shall be withdrawn.

23. Law No. 2019-1446 of 24 December 2019 on social security funding for 2020

Article 87 abolished the system of medical expert's reports in the general social security scheme.

24. Social Security Code

Article L315-1

I.-The medical examination shall cover all medical aspects relating to the award and payment of all sickness, maternity and invalidity insurance benefits, as well as benefits provided pursuant to Articles L. 251-2 and L. 254-1 of the Social Action and Family Code.

II.-The medical control service shall identify any abuses in the provision of care, in the prescription of sick leave and in the application of charges for procedures and other benefits.

Where the amount of sick leave prescribed appears to be abnormally high in relation to the practice observed among health professionals belonging to the same profession, systematic checks on these prescriptions shall be carried out as provided in the agreement referred to in Article L. 227-1.

Where a check carried out by a physician at the request of the employer, pursuant to Article L. 1226-1 of the Labour Code, finds that there is no justification for granting sick leave or that it is not possible to examine the insured person, the physician shall send their report to the medical control service of the relevant insurance fund within a maximum of forty-eight hours. The report shall state whether or not the physician instructed by the employer has carried out a medical examination of the insured person concerned. In the light of this report, this service shall:

1° Either ask the insurance fund to suspend the daily allowances. Within a period set by decree from the date of receipt of the notice of suspension of daily allowances, the insured person may ask their health insurance provider to refer the matter to the medical control service in order that their case may be assessed. The medical control service shall make its decision within a period set by decree;

2° Or carry out a review of the insured person's case. Such review shall be automatic if the report states that it was not possible to examine the insured person.

Article R142-8-4

Where a prior appeal is lodged by the insured person, the amicable medical appeals board may decide, on its own initiative or at the request of the insured person, to carry out a medical examination of the insured person or, if it is not possible to make the journey because of the distance involved or if it is necessary to seek additional medical advice, to designate a practitioner who is a specialist in, or qualified to assess, the condition in question, for the purpose of carrying out the medical examination or an expert assessment based on documentary evidence and sending their reasoned opinion to the board, in accordance with the procedures set out in Article R. 142-8-4-1.

Where the board carries out the clinical examination itself, the board secretariat shall inform the insured person at least fifteen days beforehand, notifying them of the place, date and time of the examination. The insured person may arrange for themselves to be accompanied by the physician of their choosing.

Article R142-8-4-1

The amicable medical appeals board shall set out the tasks of the practitioner whom it has designated pursuant to the first paragraph of Article R. 142-8-4 and shall specify whether a clinical examination is required.

The board secretariat shall immediately provide the designated practitioner with the description of their tasks together with a copy of the report referred to in Article L. 142-6 and the appeal lodged by the insured person.

Where a clinical examination is requested by the board, the designated practitioner shall examine the insured person within eight days following receipt of the documents mentioned in the second paragraph at their practice or at the home of the insured person if the latter is unable to travel. They shall inform the insured person at least eight days prior to the clinical examination of the place, date and time of the examination. The insured person may be accompanied by the physician of their choosing.

The designated practitioner shall submit their report, which shall include reasoned conclusions, within fifteen days following the clinical examination or within twenty days following receipt of the documents mentioned in the second paragraph.

The report of the designated practitioner shall not be binding on the amicable medical appeals board. It shall be attached to the report drawn up by the said board.

Article R142-8-6

The fees and travel expenses payable to the physicians referred to in 1° of Article R. 142-8-1 and in Article R. 142-8-1 and in Article R. 142-8-4 for the purposes of examining the preliminary appeal provided for in this sub-section shall be paid as per the rates set by order of the minister responsible for social security and the minister responsible for the budget.

Where the insured person is summoned to a medical examination, their travel expenses shall be reimbursed in accordance with the provisions of Article R. 322-10. These expenses shall be borne by the body which made the contested decision.

25. Order of 27 December 2021 amending the Order of 13 September 2011 introducing special rules on medical checks under the special social security scheme for the electricity and gas industries

Article 1 amended the Order of 13 September 2011, the relevant amendments are reflected in the text of the latter Order above.

B – Domestic case law

26. In its decision No. 461581 of 7 November 2022, the Council of State annulled the Order of 27 December 2021 amending the Order of 13 September 2011 establishing special regulations for medical monitoring of the special social security scheme for the electricity and gas industries only with regard to the fact that it had not provided for transitional measures until 1 April 2022. The remaining arguments of FNME-CGT concerning the lack of independence of IEG medical advisors and of the CMRA as well as the non-suspensive nature of appeals to the CMRA were dismissed.

RELEVANT INTERNATIONAL MATERIAL

A – The United Nations (UN)

27. Universal Declaration of Human Rights (1948)

Article 25

"1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his control. […]"

28. The International Covenant on Economic, Social and Cultural Rights (1966)

Article 9

"The States Parties to the present Covenant recognise the right of everyone to social security including social insurance."

29. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, adopted on 1 December 1998

C. The role of legal remedies

"Legal or judicial remedies?

9. The right to an effective remedy need not be interpreted as always requiring a judicial remedy. Administrative remedies will, in many cases, be adequate and those living within the jurisdiction of a State party have a legitimate expectation, based on the principle of good faith, that all administrative authorities will take account of the requirements of the Covenant in their decision making. Any such administrative remedies should be accessible, affordable, timely and effective. An ultimate right of judicial appeal from administrative procedures of this type would also often be appropriate. […]"

B – International Labour Organisation (ILO)

30. Convention (No. 130) concerning Medical Care and Sickness Benefits (adopted on 25 June 1969, entry into force on 27 May 1972)

Article 7

"The contingencies covered shall include— […]
(b) incapacity for work resulting from sickness and involving suspension of earnings, as defined by national legislation."

Article 18

"Each Member shall secure to the persons protected, subject to prescribed conditions, the provision of sickness benefit in respect of the contingency referred to in subparagraph (b) of Article 7."

31. Convention (No. 102) concerning Minimum Standards of Social Security (adopted on 28 Jun 1952, entry into force on 27 Apr 1955)

Article 70

"1. Every claimant shall have a right of appeal in case of refusal of the benefit or complaint as to its quality or quantity.
2. Where in the application of this Convention a Government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this Article may be replaced by a right to have a complaint concerning the refusal of medical care or the quality of the care received investigated by the appropriate authority.
3. Where a claim is settled by a special tribunal established to deal with social security questions and on which the persons protected are represented, no right of appeal shall be required."

C – Council of Europe

32. European Convention of Human Rights

Article 13. Right to an effective remedy

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

D – European Union (EU)

33. Charter of Fundamental Rights of the EU

Article 34 – Social security and social assistance

"1. The Union recognises and respects the entitlement to social security and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices. […]"

Article 47 – Right to an effective remedy and to a fair trial

"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. […]"

34. European Pillar of Social Rights

Principle No. 12 of the Pillar:

12. Social Protection

"Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection."

THE LAW

PRELIMINARY CONSIDERATIONS

As to the provisions of the Charter at stake

35. The Committee notes that the allegations of the complainant organisation relate mainly to changes to the regulations on medical checks under the special social security scheme for the IEG, which allegedly undermine the right to safe working conditions, the right to a fair remuneration, the right to protection of health and the right to social security of the staff concerned. The Committee considers that the present complaint rests mainly on Article 12 which imposes obligations on States Parties to ensure the right to social security through the existence of a social security system established by law and functioning in practice which covers the traditional social risks, including sickness, providing adequate benefits.

36. As to Article 3 of the Charter, the Committee recalls that it guarantees the right to occupational safety and health for workers and thus concerns the working environment which must be safe and healthy for all workers and all sectors of activity. Article 3 does not concern workers who are on sick leave. While the Committee is mindful that in certain circumstances there might be some consequences on the health and safety of workers whose sick leave has been invalidated by the medical advisors of the IEG, it considers that the allegations and the facts of the present complaint relating to changes to the regulations on medical checks under the special social security scheme for IEG do not pertain to Article 3 of the Charter.

37. The Committee further recalls that Article 4 of the Charter guarantees the right to a fair remuneration such as to ensure a decent standard of living and that under Article 4 "remuneration" relates to the compensation – either monetary or in kind – paid by an employer to a worker for time worked or work done.

38. The Committee notes that the information and arguments put forward in the present complaint concern the situation of workers who are in incapacity of work following a sick leave prescribed by their general practitioner, as well as the alleged suspension of their sick leave benefits in certain conditions. This situation pertains to Article 12 of the Charter, not to Articles 3 and 4.

39. Furthermore, while noting the allegations expressed in general terms by the complainant organisation in relation to Article 11 of the Charter, the Committee recalls that Article 11 refers mainly to access to healthcare, health education and screening as well as prevention of epidemic, endemic and other diseases for the population at large. The Committee therefore observes that the facts of the complaint pertain to Article 12 rather than Article 11 as they mainly relate, as mentioned above, to the suspension of sick leave benefits and available remedies for the concerned workers.

40. As to Article 12 of the Charter, while noting that FNME-CGT allegations refer to both Articles 12§1 and 12§3, the Committee recalls that changes to the social security system are assessed under Article 12§3 which provides for the obligation to raise progressively the system to a higher level (Conclusions XIV-1, Statement of interpretation on Article 12, p. 47; Conclusions XVI-1, Statement of interpretation on Article 12). The Committee has examined under Article 12§3 measures that result in the reduction of the level of benefits or changes in coverage (see for example Panhellenic Association of Pensioners of the OTE Group Telecommunications (PAP-OTE) v. Greece, Complaint No. 165/2018, decision on the merits of 17 May 2022, §48; see also General Federation of employees of the national electric power corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, §45). Since the changes related to medical checks under the special social security scheme for the IEG criticised by the complainant organisation do not concern the level of benefits or the coverage, the Committee will not examine this complaint under Article 12§3 of the Charter.

41. As to Article 12§1 of the Charter, the Committee recalls that a social security system must guarantee an effective right to social security with respect to the benefits provided under each branch of that system (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12). Under Article 12§1, the Committee has examined whether remedies are available to appeal against a suspension of unemployment benefits (see Conclusions 2017, Estonia, Ireland; Conclusions XXI-2 Luxembourg; Conclusions 2013, Finland) and the functioning of an appeal system to solve any disputes relating to decisions of employers or insurance companies on the granting and payment of sickness benefits (Conclusions 2013 and 2009, the Netherlands).

42. In light of these considerations, the Committee decides to examine FNME-CGT's allegations exclusively from the standpoint of Article 12§1 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 12§1 OF THE CHARTER

43. Article 12§1 of the Charter reads as follows:

> **Article 12 – The right to social security**
>
> Part I: "All workers and their dependents have the right to social security."
>
> Part II: "With a view to ensuring the effective exercise of the right to social security, the Parties undertake:
>
> 1. to establish or maintain a system of social security; (…)"

A – Arguments of the parties

1. The complainant organisation

44. FNME-CGT submits that employees in the electricity and gas industries (IEG) are covered by a special social security scheme, established by Law No. 46-628 of 8 April 1946. Through Decree No. 46-1541 of 22 June 1946, the Government approved the national regulations of the staff of the IEG. Under Article 22, paragraph 1, of these staff regulations, in the event of an illness not covered by the legislation on occupational disease, staff rendered incapable of working are entitled to full salary or

pay, including allowances and benefits of all types. FNME-CGT states that a special regulation, enacted through the Order of 13 September 2011, set up a medical advice service for the electricity and gas industries' special scheme, tasked with controlling whether employees' state of health justifies the granting of sickness benefits.

45. FNME-CGT submits that this medical advice service was not independent from the sector’s employers, who were responsible for paying the advisors and managed their recruitment and careers. FNME-CGT states that, however, this lack of independence did not previously have a decisive impact on the situation of employees due to the "social oversight" measures applied to the medical advice service until 2011. FNME-CGT states that after 2011, disputes regarding sick leave were resolved through expert medical reports, as provided by Article L. 141-1 of the Social Security Code.

46. FNME-CGT notes that before the changes introduced by Order of 27 December 2021, if a disagreement arose between the general practitioner who issued the sick leave notice and the scheme’s medical advisor, an expert was appointed, whose conclusions were binding on everyone. FNME-CGT states that employees concerned were able to continue with their paid sick leave until the expert decided, if applicable, that the employee should return to work and they were notified of this decision. FNME-CGT states that the sick leave notice from the employee's doctor continued to apply, along with the guarantee of continued remuneration set out in Article 22 of Decree No. 46-1541 of 22 June 1946.

47. FNME-CGT submits that Law No. 2019-1446 of 24 December 2019, on social security funding for 2020 (Article 87), abolished the expert’s medical report system for the general social security scheme. FNME-CGT alleges that, consequently, under the guise of harmonisation with the general scheme, the Government amended the Order of 13 September 2011 establishing the special regulations on medical control of the special social security scheme for the IEG, through the amending Order of 27 December 2021, but failed to incorporate necessary safeguards. Since then, medical disputes have been subject to a prior mandatory appeal by the employees themselves, to be brought before a medical conciliation commission (CMRA), made up of an expert and an IEG medical advisor.

48. More specifically, firstly, FNME-CGT submits that the amending Order of 27 December 2021 gives IEG medical advisors the power to invalidate sick leave granted to employees by their general practitioners, despite the lack of independence of the medical advisors from employers. FNME-CGT states that the invalidation of sick leave by an IEG medical advisor obliges employees to return to work within 24 hours of its notification or face full wage withdrawal.

49. Secondly, FNME-CGT submits that the amending Order of 27 December 2021 established a medical conciliation commission (CMRA) located in Paris, which also lacks independence, to handle the appeals of employees against the invalidation decisions issued by the sector’s medical advisors. FNME-CGT notes that such referral to the CMRA is not suspensive, meaning that the employee must return to work even while appealing, and the commission's decision can take up to three months.

50. FNME-CGT alleges that this new, significantly diminished mechanism for medical controls within the IEG therefore raises the possibility that the sick leave of

employees whose condition has been ascertained by a doctor will be invalidated by a medical advisor who is not independent from their employer, and the employee be required to return to work within 24 hours. FNME-CGT submits that the employee's only remedy is a non-suspensive appeal to a non-independent commission, triggering a procedure that can last up to three months. FNME-CGT points out that during this period, the employee must choose between preserving their health and continuing to be paid.

51. FNME-CGT mentions that it requested the Council of State (*Conseil d'État*) to set aside the Order of 27 December 2021, or failing that, at least to set it aside insofar as it made no provision for applications to the CMRA to have suspensive effect or for the commission to rule as promptly as possible. The request of FNME-CGT to suspend the Order as an interim measure was rejected by an Order on 3 March 2022. FNME-CGT states that the Council of State ruled on 7 November 2022, setting aside the Order only because it came into force without providing for transitional measures for the CMRA's setup.

On the lack of proximity with employees of the CMRA

52. FNME-CGT points out that pursuant to the amending Order of 27 December 2021, medical advisors have lost all proximity with employees as they are no longer appointed locally, as it was the case under the previous procedure. The commission handling appeals is now national, making it less accessible to affected employees, particularly due to physical, material or financial barriers. FNME-CGT claims that this may potentially dissuade employees from appealing, particularly if the appeal does not have any suspensive effect.

On the lack of sufficient independence from employers of the IEG medical advisors and of the CMRA

53. FNME-CGT alleges that IEG medical advisors lack sufficient independence from employers to guarantee employees' rights to safety, fair remuneration, health, and social security. FNME-CGT states that unlike medical advisors in the general social security scheme, whose status, grade scales and remuneration are set out in a national collective agreement, IEG medical advisors are beholden to employers, particularly financially, which influences their independence. FNME-CGT points to the structural dependence of medical advisors arising from the rules and procedures for their promotion and refers in this sense to the agreement of 15 October 2010 on the contractual rules governing medical advisors.

54. FNME-CGT alleges that the current system, as set by the disputed Order, lacks necessary independence, having removed prior social oversight without any equivalent safeguard, and shifted full control of sick leave to medical advisors largely managed by the employers, excluding collaboration with the employee’s general practitioner.

55. FNME-CGT further alleges that the lack of independence of the medical advisors towards employers has an impact on the independence of the CMRA itself, as the CMRA is composed of two doctors – a medical expert and an IEG medical advisor – and both are appointed by the national medical advisor to the special scheme. FNME-CGT is of the view that even though the other member, the medical expert, has the casting vote, this is most certainly not an adequate safeguard. FNME-

CGT further alleges that the CMRA's head office being located in a building belonging to the Human Resources of the EDF Group further demonstrates its dependence to employers.

On the non-suspensive nature of appeals to the CMRA

56. FNME-CGT alleges that the non-suspensive nature of appeals to the CMRA is highly dissuasive, as employees must return to work when they should have been on sick leave or face wage withdrawal, placing them in a situation of extreme hardship and discouraging appeals.

57. FNME-CGT considers that, contrary to the Council of State's authoritative ruling, the fact that employees may be retrospectively granted pay wrongly withheld from them does not erase the harmful effects and the irreparable infringements of employees' fundamental rights.

58. FNME-CGT points out that a key distinction of the special IEG scheme is that the employer directly pays sick leave wages, meaning the cost and risk fall individually on each employer, rather than being pooled by a social security body as in the general scheme. FNME-CGT submits that the abolition of the former dispute procedure occurred in a context of pressure being exerted on medical advisors to meet the employers' aim of lowering numbers of days of sick leave, with instances of notes for general practitioners encouraging them to consider recommending adapted working arrangements instead of sick leave and systematic meetings with superiors for employees on sick leave. FNME-CGT refer to a rise in reports of irregular conduct by IEG medical advisors, including instances where medical advisors did not respect the rules.

59. In its reply to the Government's submission on the merits, FNME-CGT emphasises the following main points.

60. Firstly, FNME-CGT strongly objects to the solution proposed by the Government that in case of invalidation of the sick leave notice by the medical advisor, the employee may at any time ask a new sick leave from his general practitioner. FNME-CGT is of the view that the employee could not legally, without fear of being accused of committing an abuse of rights with the complicity of their general practitioner, request a new sick leave in order to circumvent the invalidation by the medical advisor of the previous sick leave. FNME-CGT submits that, in practice, the IEG's medical advisors and employers do not consider new sick leave notices issued by the general practitioners when they occur after the medical advisor has invalidated the initial sick leave. FNME-CGT provides examples showing that such new sick leave notices are ignored when they refer/prolong to the initial sick leave invalidated by the medical doctor; or the employer may only consider a new sick leave issued by the general practitioner if they refer to "new facts".

61. FNME-CGT challenges the argument of the Government that the medical control does not concern the diagnosis made by the general practitioner as being incorrect. FNME-CGT refers in this sense to the provisions of the Order of 13 September 2011 as amended which provides that the medical control covers the assessment made by the general practitioner of the state of health and ability to work

of the insured person (Article 2) and that the medical advisor shall check the validity of periods of absence from work for any reason whatsoever (Article 5).

62. Secondly, FNME-CGT contests the Government’s claim that the control carried out by the medical advisor does not concern the employee’s fitness to return to work and that, according to the Government, that is the role of the occupational physician. FNME-CGT clarifies that the role of the occupational physician is to check whether the employee can take up their post at the end of a work stoppage, while the medical advisor may challenge a sick leave in progress issued by the general practitioner. FNME-CGT submits that, in practice, occupational physicians do not dispute the medical advisor's decision; and that in any event, occupational medicine only sees 10% of employees returning to work, since 90% of work stoppages are of short duration (article R. 4624-31 only makes a return visit compulsory for sick leave of at least 60 days).

63. Thirdly, in reply to the Government’s submission that FNME-CGT fails to show how its claim relating to the independence of the medical advisors and the CMRA falls within the scope of the Charter provisions invoked, FNME-CGT points out that the lack of independence leads to a tendency on the part of the medical advisors and the CMRA to take decisions in favour of employers' interests, which consist in getting employees back to work at any price. FNME-CGT claims that, as a result, the health and safety of employees, their right to remuneration during convalescence, and the very substance of the social security system are undermined.

64. FNME-CGT refers to the contractual arrangements for the IEG's medical advisors and experts which shows that these medical personnel are highly dependent on the employers: their salary is paid by the employer, their promotion is at the employer's discretion, and they enjoy benefits such as housing in buildings belonging to the employer. FNME-CGT submits that the general medical advisory and control service (hereinafter the SGMCC) had no financial autonomy, as it does not have its own budget, and it cannot therefore be regarded as a guarantee of the independence of the IEG's medical advisors. It also refers to the decision no. 2023-860 DC of 21 December 2023 of the Constitutional Council which highlights the infringements that may be made to employees' right to health protection and to the existence of social security, due to the lack of independence of doctors in assessing an employee's ability to return to work.

65. Fourthly, FNME-CGT submits that the choice of a non-suspensive nature of appeal before the CMRA could not seriously be presented, as the Government did, as "precisely intended to guarantee the rights of the persons concerned”. FNME-CGT emphasises that it is clearly preferable for employees to have to pay back any overpayment of salary *a posteriori*, rather than having to face the dilemma of seeing their health deteriorate by being forced to return to work when their state of health does not allow them to do so, or else being deprived of all pay. FNME-CGT submits documents pointing out the disastrous consequences for an employee of the absence of suspensive effect of the appeal before the CMRA, such as psychological distress in the face of a total loss of salary. FNME-CGT maintains that the non-suspensive effect of the appeal therefore has very concrete and immediate harmful effects on the situation of employees. It also has the consequence of risking breaking the balance and equality of arms in the appeal before the CMRA.

66. In conclusion, FNME-CGT alleges that, as a result of all the circumstances described above, France is in breach of the invoked provisions of the Charter.

67. FNME-CGT also requests the Committee of Ministers to recommend that France award it €3,000 in costs for legal representation incurred in connection with this complaint.

2. The respondent Government

68. The Government submits that under the first paragraph of Article 47 of Law No 46-628 of 8 April 1946 on the nationalisation of electricity and gas, employees of the French electricity and gas industries are subject to a special social security scheme. Decree no. 46-1541 of 22 June 1946 approving the national status of employees in the electricity and gas industries sets out this special scheme. The national regulations governing employees in the electricity and gas industries stipulate that in the event of sick leave prescribed by the doctor treating the employee due to illness, regular injury, maternity or paternity leave or an accident at work or occupational disease, such sick leave shall be covered by compensation paid directly by the employer, without being pooled by a social security scheme.

69. The Government points out that Article 22 of the Staff Regulations approved by the Decree of 22 June 1946 provides for the payment of a benefit corresponding to the maintenance of full salary in the event of sick leave or injury not covered by the legislation on accidents at work. This benefit is paid for a maximum of 365 days in the case of ordinary illness or injury, and for a maximum of three years in the case of long-term illness of any kind.

70. With regard to the procedures for monitoring patients, the Government states that the special monitoring regulations provided for in Article 22 of the national regulations governing the personnel of the electricity and gas industries were established by an Order dated 13 September 2011. Article 1 of the Order of 13 September 2011 requires the exclusive use of the IEG's medical advisors to check that employees' state of health justifies the granting of sickness benefits. The Government states that this medical service is organised to ensure the autonomy and unity of the medical control process, for the benefit of all statutory employees of the companies and bodies in the electricity and gas industries.

71. The Government describes the procedure under the regulations resulting from the Order of 13 September 2011, before the changes introduced by Law no. 2021-1446 of 24 December 2019 and the Order of 27 December 2021. Any disagreements between the employee's general practitioner and the IEG special scheme's medical advisor regarding the validity of a work stoppage were arbitrated within the framework of the medical expert’s report provided for in Article L. 141-1 of the Social Security Code. If the medical expert confirmed the general practitioner's decision, the work stoppage continued normally until its end. On the other hand, if the expert confirmed the medical advisor's decision and invalidated the sick leave, the employer immediately imposed a return to work, even though the employee could contest the conclusions of the medical expert's report before the social section of the judicial court.

72. The Government points out that the medical expert’s report provided for in Article L. 141-1 of the Social Security Code was abolished by Law No. 2019-1446 of

24 December 2019 on the financing of social security for 2020. Article 1(6) of the Order of 27 December 2021 now provides for a pre-litigation appeal to a medical conciliation commission (CMRA) in the event of a medical challenge by the insured person against the opinion of the medical advisor as to whether the insured person's sick leave is justified. This appeal to the CMRA, whose composition and operation are set out in the said Order, does not have suspensive effect.

73. The Government states that consultations on the Order of 27 December 2021 have enabled trade unions, including the CGT, FO, CFE-CGC and CFDT, to submit their observations to the Social Security Department and the Higher Energy Council. This consultation led the CGT to propose amendments, which were officially presented to the Social Security Department and the CSE.

74. The Government mentions that the FNME-CGT challenged the new rules introduced by the Order of 27 December 2021 before the administrative judge. In a decision dated 7 November 2022, the Council of State annulled the disputed order only insofar as it had not provided for transitional measures until 1 April 2022.

75. The Government refers to the principles applicable under the Charter articles invoked by the complainant organisation. It considers that the complainant organisation does not demonstrate in what way the new mechanism would be contrary to the provisions of Articles 3, 4, 11 and 12 of the Charter.

The new system of medical examination of the special social security scheme for the electricity and gas industries

76. With regard to the complainant organisation's criticism concerning the loss of proximity to staff members through the creation of a national CMRA, the Government emphasises that the choice made by the contested Order for a single CMRA was made because of the foreseeable number of referrals, namely 300 medical assessments requested per year on average out of 150,000 sick leave cases. In addition, the Government states that the CMRA’s examination of cases will essentially be based on documentary evidence, i.e. without the need for employees to travel.

77. With regard to the right given to the medical advisor to challenge sick leave directly, as criticised by the complainant organisation, the Government points out that the Order of 27 December 2021 provides that if the medical advisor issues an opinion invalidating the medical leave issued by the general practitioner, the employer must notify the employee of the medical advisor's decision and the employee must resume work within 24 hours of the date of notification of this decision. The employee is obliged to return to work, even if they have the option of challenging the medical advisor's decision before the CMRA.

78. The Government further points out that employees can ask their general practitioner for more time off work at any time, as the medical examination carried out by the medical advisor of the IEG scheme does not concern the diagnosis made by the general practitioner. The Government states that the task of the medical advisor is to check that the state of health presented in the medical leave certificate is genuine, in order to prevent abuse. This control does not concern the employee's fitness to return to work since that is the role of the occupational physician. In this respect, article

R. 4624-31 of the Labour Code requires the employee to undergo a medical examination by the occupational physician before returning to work.

79. The Government also points out that in response to the abolition of medical expert's report and the decision to give the medical advisor the power to cancel work stoppages, a pre-litigation appeal procedure before a CMRA has been set up, under procedures identical to those provided for under the general scheme by Articles R. 142-8-1 to R. 142-8-6 of the Social Security Code.

80. The Government considers that the procedure before the CMRA ensures respect of the rights of the defense and the adversarial principle. It points out that the medical expert is a member of the CMRA and that the procedure provided for by the Order of 27 December 2021, which is identical in every respect to that provided for the general scheme in Articles R. 142-8-1 to R. 142-8-6 of the Social Security Code, provides the necessary guarantees for the pre-litigation phase, with compliance with a protocol and an adversarial procedure.

81. In view of the guarantees provided for in the new system of medical examinations under the special social security scheme for the electricity and gas industries and the unsubstantiated nature of the complaints lodged by the complainant organisation, the Government considers that the Committee cannot conclude that there has been a breach of Articles 3, 4, 11 and 12 of the Charter in the present case.

The alleged lack of sufficient independence of the medical officers of the special scheme and the CMRA vis-à-vis employers

82. Firstly, the Government maintains that the complainant organisation has not shown how its claim relating to the independence of medical officers and of the CMRA fall within the scope of Articles 3, 4, 11 and 12 of the Charter. The Government considers that, in the absence of any justification on this point, this claim should be dismissed.

83. The Government emphasises that the managerial autonomy enjoyed by the SGMCC is a guarantee of the technical independence which should be accorded to all salaried doctors in the interests of insured persons. This service, which has no links with employers and is not subject to supervisory intervention, is placed under the sole authority of the national medical advisor, who exercises medical and technical control over the scheme at national, regional and local level.

84. The Government states that the IEG's medical officers are subject to the rules of salaried and supervisory medicine, must be registered with the Order of Physicians, and are bound by the code of medical ethics. The Government maintains that their independence is guaranteed by the applicable texts, in particular by the obligation of professional secrecy [towards the administration or body that calls upon their services] and the obligation to recuse themselves if a request goes beyond their medical field/expertise or violates the rules of professional ethics.

85. The Government points out that the IEG's medical advisors combine expertise in medical practice with training specific to the profession, which distinguishes them in particular by their practical experience, which is often still active, unlike their counterparts in the general scheme. They follow a structured and continuous training programme, including initial, legal and regional training, as well as professional

development courses supervised by the SGMCC. In addition, they must obtain a diploma in the legal repair of personal injury and comply with their legal obligation of continuing professional development, under the supervision of the National Council of the Order of Physicians.

86. With regard to the presence of a medical advisor within the CMRA, the Government states that the presence of a medical advisor who was not involved in the initial decision and of an independent medical expert provides certain guarantees of independence. Furthermore, in the event of a tie, the independent medical expert has a casting vote over the IEG medical advisor. The patient's general practitioner and the special scheme's medical officer, who issued the disputed medical opinion, may not sit on the commission. Unlike in the general scheme, the Order of 27 December 2021 does not allow the employer to challenge before the CMRA the decision of the medical advisor who has ruled in favour of the insured person.

87. With regard to the complainant organisation's submission that the Council of State, in its decision of 7 November 2022, examined superficially the complaint of lack of independence of the medical advisors of the IEG, the Government maintains that the Council of State responded precisely to this complaint by effectively basing itself on the ethical obligations of the medical advisors, by mentioning more specifically the requirement of objectivity in its conclusions (Art. R. 4127-102 of the Public Health Code) and the fact that the medical advisors are only required to provide the conclusions of their report without indicating the medical reasons for their decision (art. R. 4127-104 of the Public Health Code).

88. In its response to the reply submitted by FNME-CGT to the Government’s submissions on the merits, the Government notes that the complainant organisation relies on the decision of the Constitutional Council of 21 December 2023 which censured the provisions of the Social Security Financing Act for 2024 with regard to the simplification of the medical check-ups provided for in Article L. 315-1 of the Social Security Code for the general social security scheme. The Government submits that, contrary to the control mechanism censured by the Constitutional Council, the CMRA carries out a new medical check of the employee based on the employee's entire medical file, and not just on the opinion issued by the IEG's medical advisor, thus enabling a genuine control/ review of the contested opinion.

89. For all these reasons, the Government considers that the Committee could not conclude that there has been a breach of the Charter in respect of the alleged lack of independence of the medical advisor of the IEG special social security scheme and of the CMRA.

The non-suspensive nature of the action before the CMRA

90. The Government states that the choice not to suspend the decision invalidating the sick leave is justified by the concern to avoid having to require the insured person to reimburse the salary benefit wrongly paid in the event that the CMRA confirms the medical advisor's decision to invalidate the sick leave.

91. The Government points out that under the old system implemented before 1 January 2022, the medical expert agreed with the medical advisor in 85% of cases, directly invalidating the employee's sick leave. To avoid the employee being required

to repay unduly paid salary benefits, which would happen in 85% of cases on average in the event of an appeal, it was decided that the appeal would not have suspensive effect. This absence of suspensive appeal is also found in the general scheme of social security.

92. The Government maintains that, contrary to what the complainant organisation claims, the choice of a non-suspensive appeal is precisely intended to guarantee the rights of the persons concerned. It considers that the complainant organisation does not explain in what way the non-suspensive nature of the appeal before the CMRA would be contrary to Articles 3, 4, 11 and 12 of the Charter.

93. The Government also refers to the decision of 7 November 2022 in which the Council of State expressly ruled that there was no suspensive effect. The Council of State thus held that while a staff member who refuses to comply with their employer's decision based on the medical advisor's opinion and does not return to work is liable to have his full salary withdrawn. The Council of State ruled that, however, this circumstance alone cannot be considered to infringe the right to appeal. It also emphasized that when the CMRA considers, contrary to the medical advisor' s opinion, that the work stoppage is justified, the employee is entitled to the full salary benefits provided for in Article 22 of the staff regulations, which have been withdrawn in the absence of a return to work.

94. For all these reasons, the Government considers that the Committee cannot conclude that there has been a violation of the Charter as regards the lack of suspensive effect of the appeal to the CMRA provided for by the new special social security scheme for the electricity and gas industries.

95. In conclusion, the Government asks the Committee to find that there has been no violation of Articles 3, 4, 11 and 12 of the Charter as regards the regulations on medical checks under the special social security scheme for the electricity and gas industries.

B – Assessment of the Committee

96. The Committee recalls that Article 12 of the Charter provides for the right to social security as a fundamental right. The Committee has consistently held that a social security system in the meaning of Article 12§1 must cover the traditional social risks providing adequate benefits in respect of medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors (see e.g. Conclusions 2017, Georgia, Article 12§1). It has held that Article 12§1 guarantees the right to social security to workers and their dependents including the self-employed (Conclusions XIV-1 (1998), Ireland). States Parties must ensure this right through the existence of a social security system established by law and functioning in practice (Conclusions 2017, Bosnia and Herzegovina).

97. The Committee has also held that a social security system must guarantee an effective right to social security with respect to the benefits provided under each branch of that system (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12).

98. The Committee recalls that the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact

(International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). More specifically, the Committee emphasises that the implementation of the Charter requires the States Parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein (International Movement ATD Fourth World v. France, Complaint No.33/2006, decision on the merits of 5 December 2007, §61; International Association Autism-Europe v. France, Complaint No.13/2002, decision on the merits of 4 November 2003, §53).

99. When assessing States' compliance with the requirements of Article 12§1 of the Charter, the Committee has examined whether remedies are available to appeal against a suspension of unemployment benefits (see Conclusions 2017, Estonia, Ireland; Conclusions XXI-2 Luxembourg; Conclusions 2013, Finland) and the functioning of an appeal system to solve any disputes relating to decisions of employers or insurance companies on the granting and payment of sickness benefits (Conclusions 2013 and 2009, the Netherlands).

100. The Committee refers to its case law in relation to the effectiveness of remedies regarding other provisions of the Charter. For example, under Article 13 of the Charter, States Parties are bound to guarantee an enforceable individual right to social and medical assistance, including the right to appeal decisions concerning social assistance before an independent body (Conclusions 2013, Andorra). The body may be an ordinary court or an administrative body, provided that it offers the following guarantees: it must be a body independent of the executive and of the parties (in deciding whether a body may be considered independent, the manner of appointment of its members is examined, the duration of their term of office and existing safeguards against outside pressure) (Conclusions XVIII-1, Iceland); all unfavourable decisions concerning assistance must be subject to appeal (Conclusions 2009, Andorra); the independent review body must have the power to judge the case on its merits (Conclusions XIII-4, Statement of Interpretation on Article 13).

101. As regards the impartiality of an appeal body, the Committee has considered the following issues in the context of Article 24 of the Charter. Firstly, it considers whether the body is independent from the legislative and executive branches as well as from the parties, and this entails the examination of the manner of appointment of judges, the duration of their term of office and safeguards against outside pressure. Secondly, the Committee considers whether the body in question has the appearance of independence, and examines whether the body itself, including in terms of its composition, offers adequate guarantees to exclude all doubts as to the impartiality of the body. In this regard, the Committee also considers the rules on withdrawal of judges from the body in question (Norwegian Association of Small and Medium Enterprises (SMB Norge) v. Norway, Complaint No. 198/2021 and *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 209/2022, §§62-71).

102. Turning to the present case, the Committee notes that statutory employees in the French IEG are covered by a special social security scheme, established by Law No. 46-628 of 8 April 1946. They are subject to the provisions of the national staff regulations in the IEG approved by Decree No. 46-1541 of 22 June 1946. Under Article 22 (1) of these staff regulations, in the event of an illness not covered by the legislation on employment injury, staff rendered incapable of work are entitled to full salary or pay, including allowances and benefits of all types. The staff regulations established that a

special control mechanism shall be set up by an order of the competent minister which will apply to all companies and organisations covering staff referred to in the staff regulations (Article 22 (6)). This control mechanism was set out in Order of 13 September 2011 establishing special regulations for medical monitoring of the special social security scheme for the IEG.

On the relevant rules on medical controls before the amendments brought by the Order of 27 December 2021

103. The Committee notes that before the criticised changes, the Order of 13 September 2011 provided that any disagreements between the general practitioner who issued the sick leave notice and the special scheme's medical advisor shall be resolved by means of an expert's report as provided for in Article L. 141-1 of the Social Security Code, at the initiative of the medical advisor (former Article 6 of the Order of 13 September 2011). The expert was appointed by mutual agreement between the general practitioner and the medical advisor. The worker concerned remained on sick leave until the expert had concluded, if applicable, that work could be resumed and an administrative decision to this effect had not been notified to the worker.

104. The Order of 13 September 2011 also provided that each worker was attached to a local medical advisor (former Article 4 of the said Order).

105. The Committee notes that the system of expert's report in the general social security system mentioned above has been abolished by Law No. 2019-1446 of 24 December 2019 (Article 87).

On the rules on medical controls applicable after the amendments brought by the Order of 27 December 2021

106. The Committee notes that the main changes brought to the Order of 13 September 2011 by the Order of 27 December 2021 concern the following aspects in relation to the control mechanism of the special social security scheme for the IEG:

- the resolution of disagreements through an expert's report has been abolished;

- the medical advisors of the IEG special social security scheme can invalidate sick leave prescribed to IEG workers by their general practitioners (Articles 2 and 5 of Order of 13 September 2011);

- in case the medical advisor considers that a sick leave is unfounded, they inform the employer; the latter notifies the worker of their decision in accordance with the medical advisor's opinion; this notification specifies the time limits and remedies available to the worker (Article 6 of Order of 13 September 2011);

- where the medical advisor considers that a sick leave is unfounded, the worker must comply with the employer's decision in accordance with this opinion and return to work within 24 hours from the date of notification of the employer's decision. If the worker does not comply with the administrative decision notified to him and does not return to work, the benefits provided for in Article 22 of the national statute [namely full pay] are withdrawn (Article 13 of Order of 13 September 2011) ;

- the worker's appeal against the employer's decision is brought before a medical conciliation commission (CMRA) composed of two doctors appointed by the national medical advisor of the special social security scheme for IEG; the appeal is not suspensive (Article 6 of Order of 13 September 2011).

107. The Committee notes that the main allegations of FNME-CGT concern the current system of challenging the medical advisor's decision to invalidate the sick leave prescribed by the general practitioner and the remedies available for workers in this respect. The FNME-CGT criticises, in particular, the lack of sufficient independence from employers of the IEG medical advisors and of the CMRA, the lack of suspensive nature of appeal before the CMRA, and the lack of proximity with the workers of the CMRA which is a national commission. It notes that FNME-CGT highlights that the overall arrangement provided by the new rules on medical checks under the special social security scheme for IEG workers allegedly undermines Charter rights for the staff concerned.

108. The Committee notes that in the event of an illness not covered by the legislation on employment injury, the receipt of the sickness benefits provided by Article 22 (1) of Decree no. 46-1541 of 22 June 1946 by workers rendered incapable of work is subject to the control by the medical advisors of the special social security scheme of IEG. The medical advisor checks the validity of work stoppages and can invalidate sick leave notices issued by the general practitioners of the IEG workers.

109. The Committee observes that before the changes introduced through the Order of 27 December 2021, it was the IEG medical advisor who had the responsibility to contest the general practitioner's sick leave notice and refer the case to an expert for arbitration. Through the changes introduced by the Order of 27 December 2021, it is the worker who may file an appeal against the decision of the medical advisor invalidating the sick leave granted by the general practitioner.

110. The Committee reiterates that States Parties must ensure the right to social security through the existence of a social security system established by law and functioning in practice (Conclusions 2017, Bosnia and Herzegovina). The Committee considers that in order to guarantee the effectiveness of the right to social security, States Parties should take measures to provide effective remedies to the persons concerned and set up procedural and institutional mechanisms to this end. The Committee recalls that the notion of effective remedies encompasses judicial and administrative procedures (see case law referred to above, §§101-102)

111. The Committee will therefore examine whether the mechanism imposed by the new rules on medical checks under the special social security scheme for IEG workers provided by Order of 27 December 2021 undermines the effective exercise of the right to social security under Article 12§1 of the workers concerned.

(i) With regard to the loss of proximity of the CMRA with the workers

112. The Committee notes that the FNME-CGT asserts that medical advisors have lost all proximity with workers as they are no longer appointed locally, and that the CMRA is now national, which renders it less accessible to affected workers, particularly due to physical, material or financial barriers. It notes the Government' emphasis that the choice for a single CMRA was made based on a foreseeable number of referrals

and that CMRA's examinations of cases are essentially based on documentary evidence, i.e. without the need for workers to travel.

113. The Committee considers that remedies, such as the appeal before the CMRA, should be accessible and affordable.

114. While noting the Government's statement that there is no need for workers to travel as examinations are essentially based on documents, the Committee notes that under Article 6 of the Order of 13 September 2011, the CMRA itself could carry out a medical examination whereby the worker may be accompanied by a doctor of his choice. The Committee understands that the medical examination by the CMRA may be carried out in a place different than the worker's place of residence which entails extra physical and financial efforts for the worker. It notes that in these circumstances, the worker's travel expenses are reimbursed (see Article R.142-8-6 and R.322-10 Code of Social Security).

115. The Committee is mindful that, in certain situations, even if the travel costs are covered, workers are expected to present themselves for a medical examination in front of CMRA and additional arrangements for themselves or a doctor of their choice might be needed, which constitutes an extra burden for the workers. However, the Committee considers that overall, the fact that the appeal of workers is decided by a medical commission which is not physically close to the workers does not constitute by itself an obstacle in exercising the said remedy against the medical advisor's decision.

(ii) With regard to the alleged lack of sufficient independence of IEG medical advisors and of the CMRA

116. The Committee notes the complainant organisation's claim that the IEG medical advisors lack sufficient independence from employers and this circumstance has an impact on the independence of the CMRA itself. It also notes the assertions of the Government in response to this allegation that the IEG's medical advisors are subject to the rules of salaried and supervisory medicine, must be registered with the Order of physicians, and are bound by the Code of medical ethics, as well as on the autonomy of the SGMCC service which is placed under the sole authority of the national medical advisor.

117. The Committee notes that the CMRA is a medical conciliation commission ("*commission medicale de recours amiable*") and the appeal formulated by the worker represents a non-judicial remedy. It recalls that the notion of effective remedies encompasses judicial and administrative procedures. Notwithstanding the fact that the CMRA constitutes a non-judicial remedy, the Committee recalls having ruled in relation to Article 13 of the Charter that the individual right must be supported by an effective right of appeal (Conclusions I (1969), Statement of Interpretation on Article 13§1; Conclusions XIII-4 (1996), Statement of Interpretation on Article 13). Moreover, when assessing the impartiality of an appeal body in relation to Article 24, the Committee considered: (i) whether the body is independent from the legislative and executive branches as well as from the parties, including safeguards against outside pressure; (ii) whether the body in question has the appearance of independence, and (iii) whether the body itself, including in terms of its composition, offers adequate guarantees to exclude all doubts as to the impartiality of the body (Norwegian Association of Small

and Medium Enterprises (SMB Norge) v. Norway, Complaint No. 198/2021 and Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 209/2022, §71).

118. The Committee notes the Government's argument that the presence in the CMRA of a medical advisor who was not involved in the initial decision and of an independent medical expert provides certain guarantees of independence. It also notes the arguments of the complainant organisation that the medical advisors are not sufficiently independent from the IEG employers since their remuneration, promotion and working conditions are decided by those employers. The Committee notes that according to the Agreement of 15 October 2010 on the contractual rules governing medical advisors, the latter are affiliated to the IEG employers, either by being exclusively employed by the industry or exercising at the same time a salaried and liberal activity (see Article 6.3 *Affiliation* of the said agreement). The same agreement provides the conditions in terms of remuneration, promotion and working conditions of medical advisors, including the possibility of being accommodated by their employer, against a fee, in certain conditions (see Article 6.13 *Housing* of the said agreement).

119. The Committee notes that under the actual regulation, the suspension of the benefits intervenes at the employer's decision taking note of the medical advisor's opinion to invalidate a sick leave granted by the general practitioner. The Committee is of the view that the independence of the medical advisors is essential since the suspension of benefits is based on their decision with important consequences for workers, namely the total loss of their remuneration. Moreover, the Committee notes that according to the Government and under Article 6 of the Order of 13 September 2011, the CMRA decides based on documentary evidence and in certain cases the CMRA itself may carry out a physical examination. The Committee understands however that in most cases the physical examination of the worker is potentially performed only by the medical advisor.

120. The Committee notes that under Article 3 of Order of 13 September 2011, the medical advisors have technical independence to carry out their missions in compliance with the principles that govern them. It considers that the financial dependence of the medical advisors on the IEG employers does not necessarily result in a lack of independence in exercising their medical expertise when performing the medical controls or when acting as a member of CMRA. However, doubts as to the independence and impartiality of medical advisors and of the CMRA itself could exist based on the professional relations between the medical advisors and the employers. This could risk creating a discouraging and dissuasive effect for workers to appeal before the CMRA against the decision invalidating their sick leave by the medical advisor.

(iii) With regard to the non-suspensive nature of appeal before the CMRA

121. The Committee notes the FNME-CGT allegation that the non-suspensive nature of appeals to the CMRA is highly dissuasive, as workers must return to work when they should have been on sick leave or otherwise face wage withdrawal, potentially placing them in a situation of extreme hardship, and thus discouraging appeals. It also notes the Government assertion that the decision of a non-suspensive appeal is justified by the concern to avoid having to require the insured person to reimburse the salary benefit wrongly paid in the event that the CMRA confirms the medical officer's decision

to invalidate the sick leave, and the choice of a non-suspensive appeal is precisely intended to guarantee the rights of the staff concerned.

122. The Committee notes that while under the previous regulations, staff remained on sick leave in accordance with their general practitioner's notice until such time as the expert decided that they should return to work and they were notified of the administrative decision to this effect, under the new regulations staff are expected to return to work within 24 hours from the employer's notification of the invalidation of sick leave by the medical advisor, even if the concerned worker formulates an appeal before the CMRA challenging the medical advisor's opinion. If the worker does not comply with the administrative decision notified to them and does not return to work, the benefits provided for in Article 22 of the national staff regulations are withdrawn (Article 13 of the Order of 13 September 2011).

123. The Committee further notes that the employer notifies the worker of its decision, in accordance with the CMRA's decision. The absence of a decision by the employer within three months of the filing of the worker's appeal constitutes rejection of the application (Article 6 of Order of 13 September 2011). The Committee thus understands that it may take up to three months until a decision is taken following the worker's appeal. It notes that according to the information provided by CGT in their third-party submission, most of the sick leave is short-term (less than three months), meaning that in practice a decision of CMRA often comes after the worker has already returned to work. The Committee considers that a remedy should be timely and that, in case of short sick-leave, the decision of CMRA comes too late to be considered timely. The length of appeal proceedings before the CMRA is thus key when assessing the effectiveness of the remedy available to workers, especially given the non-suspensive nature of appeal.

124. The Committee further notes that workers who do not return to work following an employer's notification containing the invalidation of the sick leave by the medical advisor are exposed to a total loss of remuneration since the maintenance of the IEG scheme is ensured in its entirety by the employer and not by a social security organisation, as compared with the general system where management is shared between the employer and the social security scheme.

125. While noting the Government's argument that in case of invalidation of the sick leave notice by the medical advisor, the worker may at any time ask a new sick leave from their general practitioner, the Committee finds that in practice this solution does not seem to be operational as it results from the examples provided by the FNME-CGT that medical advisors and employers do not take into consideration any prolongation in relation with the initial sick leave invalidated or new sick leave for the same reasons with the initial one, unless the worker proves a new fact.

126. The Committee notes that in practice, after the changes introduced by the Order of 27 December 2021, workers are exposed to a total loss of remuneration in case they do not return to work in 24h from the employer's notification following an invalidation of a sick leave by the IEG medical advisor whose independence might be questioned. The only remedy available to the worker is an appeal to a medical conciliation commission which is not suspensive, meaning that the sickness benefits are suspended during the proceedings which might last up to three months. The Committee notes that in case the CMRA confirms the sick leave notice issued by the

general practitioner, the worker is reimbursed the amount of benefits due for the duration of the sick leave which was object of the appeal. However, the Committee notes that, even in the latter situation, the worker is bearing the risk of sickness on the duration of sick leave and until the CMRA decision is rendered, with important consequences for the worker since temporarily their full payment is withdrawn.

127. The Committee recalls having held that in any case, the choices made and the means adopted by States should not be of a nature or should not be applied in a way that deprives the established right of its effectiveness and turns it into a purely theoretical right (European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, §81). In examining the consequences of the non-suspensive nature of the appeal before the CMRA, the Committee is also mindful of the right of workers to safe and healthy working conditions guaranteed under Article 3 of the Charter, which would not be compatible with the situation of a worker who is medically unfit for work to work out of fear of losing their remuneration.

128. In relation to Article 12, the Committee has held that the principle of collective funding [i.e. funded by contributions of employers and workers and/or by the state budget] is a fundamental feature of a social security system as foreseen by Article 12 as it ensures that the burden of risks are spread among the members of the community, including employers, in an equitable and economically appropriate manner and contributes to avoiding discrimination of vulnerable categories of workers (Conclusions XVIII-1 (2006), The Netherlands, Article 12§1).

129. The Committee considers that in the present case the combined effect of the procedural requirements examined above creates a dissuasion in exercising the available remedy by the worker, and finally leaves the worker alone to bear the risk of sickness while appeal proceedings are ongoing. The Committee considers that this creates an imbalance in sharing the burden of risks within the system of the social security special scheme.

130. In light of the above considerations, the Committee considers that the mechanism put in place as a remedy for workers to challenge the medical advisor's opinion of invalidating sick leave prescribed by the general practitioner is not effective. Thus, the effectiveness of the right to social security under Article 12§1 is not ensured. It therefore holds that there is a violation of Article 12§1 of the Charter in this regard.

II. REQUEST FOR COMPENSATION

131. The FNME-CGT requests that the Committee of Ministers recommends that France pay the sum of 3,000 € to the complainant by way of compensation for legal costs.

132. The Committee decides not to make a recommendation to the Committee of Ministers as regards the complainant's request for a payment of 3,000 € in compensation for legal costs incurred in connection with the present proceedings. It refers in this respect to the stance taken by the Committee of Ministers to reimbursement of expenses in the past (see Resolution CM/ResChS(2016)4 in European Roma Rights Centre (ERRC) v. Ireland, Complaint No. 100/2013) and to the letter of the President of the Committee addressed to the Committee of Ministers dated

3 February 2017 in which the President announced that the Committee would for the time being refrain from inviting the Committee of Ministers to recommend reimbursement of costs.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is a violation of Article 12§1 of the Charter.