



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

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Union Syndicale Solidaires SDIS v. France
Complaint No. 176/2019

**OBSERVATIONS BY THE EUROPEAN TRADE UNION
CONFEDERATION**

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Collective Complaint

Union Syndicale Solidaires SDIS v. France

Complaint No. 176/2019

**Observations
by the
European Trade Union Confederation
(ETUC)**

(14/02/2020)

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- 1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (CCPP - Article 7§2), the European Trade Union Confederation (ETUC) would like to submit the following observations. The ETUC welcomes the fact that the respondent State has ratified not only the Revised European Social Charter (RESC)¹ but also the Collective Complaints Procedure Protocol (CCPP).

I. Introduction

- 2 The complainant organisation SUD SDIS (SIDS or the complainant) alleges that the legal situation of volunteer firefighters as defined by Articles L. 723-5 and L. 723-8 of the Internal Security Code does not meet the requirements of Articles 2, 3, 4, 11 and 24 taken separately, as well as of Article E in conjunction with Articles 2, 3, 4, 11 and 24 of the Charter¹, because France does not consider volunteer firefighters as workers except on very rare occasions, to the detriment of their rights related to the protection of health and to just, safe and healthy working conditions.
- 3 While the complaint raises nearly all aspects of individual labour law its core is the question whether volunteer fire fighter have to be considered as ‘workers’. If the European Committee of Social Rights (hereafter the ‘ECSR’) would answer in the affirmative, all provisions or all other aspects referred to in the complaint would (or at least should) follow consequently without legal problems. It is for this reason that the ETUC will focus its Observations on the main question of the status of volunteer firefighters as ‘workers’.

II. International law and material

- 4 The ETUC would like to start by referring to pertinent international law and material.² From the outset, it should be noted that France has ratified all instruments (as far as they are open for ratification) mentioned below, unless mentioned otherwise.
- 5 A similar question on the status of volunteers as ‘worker’ has been raised in the case 150/2017 (*YFJ v Belgium*). In its Observations, the ETUC referred to a large extent to international/European law and material which is, however, more related to a (pre-)employment context.³ Nevertheless, in order to avoid as much as possible duplications, the ETUC would like to refer to all documents already mentioned or quoted in those Observations, unless they appear crucial for the case at hand.

¹ All references to the ‘Charter’ or ‘ESC’ as well as all references to articles without further indication relate to the Revised European Social Charter (1996) ratified by France.

² As to legal impact of the ‘Interpretation in harmony with other rules of international law’ see the ETUC Observations in No. 85/2012 *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden - [Case Document no. 4, Observations by the European Trade Union Confederation \(ETUC\)](#)*, paras. 32 and 33; see the compilation of the ECSR’s view in [Digest of the Case Law of the European Committee of Social Rights](#), December 2018 (ECSR Digest 2018), Part II, in particular: vii. Interpretation of the Charter in the light of other international instruments, p. 48 ff.

³ See ETUC Observation, in case No. 150/2017, *European Youth Forum (YFJ) v. Belgium [Case-document no. 4, Observations of the European Trade Union Confederation \(ETUC\)](#)* (27.2.2018), in particular in relation to ‘International Law’, paras. 32-41 and 57, 70 – 73 on ECSR case law, 96 – 97 on EU law; and in the section on ‘International law and material on voluntary work/volunteering’ (paras. 118ff.) in particular paras. 122, 123, 126 – 132 on EU material and 133 – 134 on CoE material.

6 In relation to the specific articles, the ETUC has already provided information in its previous Observations in relation to:

- Articles 2 and 4 ESC,⁴
- Article 24 ESC.⁵

A. International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶

1. The Right to just and favourable conditions at work (Article 7 ICESCR)

7 The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains a specific provision on very important aspects for the protection of individual workers' rights. The main provision is Article 7 on the right to just and favourable conditions which very much corresponds to Articles 2, 3 and 4 ESC of work and which reads as follows:

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.⁷

2. General Comment No. 23 on the Right to just and favourable conditions of work (Article 7 ICESCR)

8 Concerning the right to just and favourable conditions of work, its main monitoring body, the Committee on Economic, Social and Cultural Rights (CESCR), CESCR has elaborated a 'General Comment' on Article 7 ICESCR⁸ which defines the content and legal obligations deriving from this provision.

⁴ ETUC Observations in the case *Greek General Confederation of Labour (GSEE) v. Greece*, No. 111/2014, [Case Document no. 3, Observations by the European Trade Union Confederation \(ETUC\)](#)

⁵ ETUC Observations in the case *Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 158/2017, [Case Document no. 4, Observations by the European Trade Unions Confederation](#); *Finnish Society of Social Rights v. Finland*, Nos. 106 and 107/2014, [Case Document no. 3, Observations by the European Trade Union Confederation \(ETUC\)](#).

⁶ Ratified by France in 1980.

⁷ Any emphasis in quotations by underlining is added.

⁸ CESCR, [General comment No. 23](#) (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights); Adopted on 27 April 2016.

9 In relation to the categories of workers, it states:

49. The right to just and favourable conditions of work relates to specific workers: ...

(j) *Unpaid workers*:(...) Unpaid workers, such as workers in the home or in family enterprises, volunteer workers and unpaid interns, have remained beyond the coverage of ILO conventions and national legislation. They have a right to just and favourable conditions of work and should be protected by laws and policies on occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security.

10 Concerning the obligations of Contracting States more widely it requires:

B. Specific legal obligations

For example, States should ensure that laws, policies and regulations governing the right to just and favourable conditions of work, ..., are adequate and effectively enforced. States parties should impose sanctions and appropriate penalties on third parties, including adequate reparation, criminal penalties, pecuniary measures such as damages, and administrative measures, in the event of violation of any of the elements of the right.⁹

IV. Violations and remedies

States parties must demonstrate that they have taken all steps necessary towards the realization of the right within their maximum available resources, that the right is enjoyed without discrimination ...

Violations of the right to just and favourable conditions of work can occur through acts of commission, which means direct actions of States parties.¹⁰

3. CECSR Concluding observations concerning France

11 In its Concluding observations on the fourth periodic report of France, adopted in 2016, the CECSR drew the attention of the French Government in relation to 'The right to just and to the General Comment no. 23 (see above) in the following terms:¹¹

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)

12 In principle, the term 'worker' is normally understood by ILO supervisory bodies in a wide sense. The following examples may confirm this assessment in relation to volunteers. Although related mainly the freedom of association (i.e. Conventions No. 87/98), the broad understanding is an important feature of ILO supervisory bodies.

13 The case law of the Committee on Freedom of Association (CFA), as compiled in its most recent Digest (2018)¹², concerning 'Civic volunteers' may serve as an example:

The work of civic volunteers, which entails compensation, determination of working hours, and continuity of service must similarly afford these workers with the protection afforded by freedom of association principles, including the right to collective bargaining.¹³

⁹ Ibid, para. 59.

¹⁰ Ibid, para. 77.

¹¹ CECSR, [Concluding observations](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fITA%2fCO%2f5&Lang=en) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fITA%2fCO%2f5&Lang=en on the fourth periodic report of France, adopted at its 58th meeting of 6-24 June 2016.

¹² [Digest](#) on Freedom of association, 6th ed. 2018 (CFA Digest 2018).

- 14 In its last 'General Survey', the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its most recent report¹⁴ noted

While the exclusion of the armed forces and the police from the right to organize is not contrary to the provisions of the Convention, the same cannot be said for fireservice personnel and prison staff.¹⁵

- 15 Evaluating developments in a positive sense, the CEACR, in its latest report,¹⁶ noted in relation to Poland:

with *satisfaction* that under the amended Act, the right to establish and join trade unions will be extended to “persons working for money”, which includes not only employees but also any person providing work for remuneration irrespective of the legal basis of contractual relationship. The Government indicates that the new definition of “a person working for money” means that membership in trade unions will now be open to persons hired under a mandate, contract for provisions of service, contract to perform specific tasks, as well as self-employed (i.e. sole traders and persons running a one-person business, other than in agriculture). Volunteers, interns and other persons who work without receiving remuneration will also be granted the right to join trade unions on the terms and conditions specified in the trade unions' by-laws.¹⁷

- 16 In a more occupational-oriented approach, an ILO Expert Meeting elaborated 'Guidelines on decent work in public emergency services' (PES) in which it attributed specific attention to person in volunteer work.¹⁸

XII. The special case of persons in volunteer work participating in crisis response

23. Volunteer work may be used in PES. It is defined as “non-compulsory work performed for others without pay”, and is one of the five distinct forms of work recognized by the International Conference of Labour Statisticians. By definition, PES volunteers are not employees of PES. Nonetheless, they are workers, and therefore the fundamental principles and rights at work should be observed in respect to volunteer workers, to the greatest possible extent.

24. Many persons in volunteer work participate in crisis response, including fighting fires and epidemics, tending to displaced persons and engaging in rescue operations. Since managing and motivating paid staff and volunteers demand different approaches, PES employers should carefully consider the conditions under which they take on volunteer staff and whether paid PES workers and volunteers should be designated different specific activities.

25. The use of volunteers should not impair the coordination of PES, substitute PES workers, or undermine the wages or working conditions of other PES workers, or be used to justify the understaffing or underfunding of PES.¹⁹

¹³ Ibid, para. 1284 with reference to the 377th Report, Case No. 3100, para. 373.

¹⁴ ILO (ed.), [Giving globalization a human face](#), International Labour Conference, 101st Session, 2012, Report III (Part 1B), Report of the Committee of Experts on the Application of Conventions and Recommendations.

¹⁵ Ibid, par. 69.

¹⁶ ILO (ed.), [Application of International Labour Standards 2019](#), International Labour Conference, 108th Session, 2019, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations.

¹⁷ Ibid, Poland, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), p. 135; see also the long-standing CEACR's criticisms in relation to Japanese firefighters being denied the right to organise, *ibid.* p. 93-4.

¹⁸ ILO (ed.), [Guidelines on decent work in public emergency services](#) - Meeting of Experts to adopt Guidelines on Decent Work in Public Emergency Services (Geneva, 16–20 April 2018); Sectoral Guidelines.

Council of Europe

- 17 The Council of Europe (CoE) is characterised by its two main human rights instruments, the European Convention on Human Rights (ECHR) and the European Social Charter (ESC). The latter is at the very core of this complaint.
- 18 Within the text of the ESC nearly all provisions dealing with the employment relation contain as addressees ‘workers’, in particular those referred to by the complainant (with the exception of Article 11).

1. Compilation of ECSR case law

- 19 In the recent ‘Digest of the Case Law of the European Committee of Social Rights,’ the main principles deriving from its case law, based on Statements of Interpretation, Conclusions or Decisions, are compiled.²⁰ Several quotations appear important in relation to the case at hand:

(1) Definition of the term ‘worker’ for the purpose of Articles 2, 3, 4 and 24 ESC

(a) *General approach*

- 20 The ECSR did not yet define in a general way the term ‘worker’.
- 21 However, it appears important to recall the ECSR’s approach in the *ICTU v. Ireland* case²¹ in which it had to decide whether ‘self-employed’ are to be considered as ‘workers’ for the purpose of Article 6§2 ESC:

The Committee does not consider it appropriate to elaborate a general definition of how self-employed workers are covered by Article 6§2. However, even without developing the precise circumstances under which categories of self-employed workers fall under the personal scope of Article 6§2, an outright ban on collective bargaining of all self-employed workers would be excessive as it would run counter to the object and purpose of this provision (see *mutatis mutandis*, *European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, §94).²²

(b) *Specifically wide definition for Article 3 ESC*

- 22 Referring to the right to life the ECSR lays down a specifically wide definition of the term ‘worker’ in relation to safe and healthy working conditions. The health of persons working does not depend from their legal status or the sector of activities in which the work is executed:

The right of every worker to a safe and healthy working environment is a widely recognised principle, stemming directly from the right to personal integrity, one of the fundamental principles of human rights.²⁹⁵ The purpose of Article 3 is thus directly related to that of Article 2 of the European Convention on Human Rights, which recognises the right to life.²⁹⁶ It applies to the whole economy, covering both the public and private sectors, employees and the self-employed.²⁹⁷²³ (footnotes omitted)

¹⁹ Ibid, Part 3. Means of action.

²⁰ ECSR Digest 2018, note 2.

²¹ Decision on the merits, 12.9.2018, No. 123/2016, [Irish Congress of Trade Unions \(ICTU\) v. Ireland](#).

²² Ibid, para. 40.

²³ ECSR Digest 2018, note 2, p. 72.

(c) *Specific situation in relation to Article 11 ESC*

- 23 It appears important to note that one article referred to by the complainant, i.e. Article 11, is not directly addressed or limited to workers. The ECSR Digest 2018 defines the relationship between Article 11 ESC and Articles 2 and 3 ECHR as follows:

The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise.⁷³⁰ The rights relating to health embodied in the two treaties are inextricably linked, since “human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights - and health care is a prerequisite for the preservation of human dignity”.⁷³¹

Respect for physical and psychological integrity is an integral part of the rights to the protection of health guaranteed by Article 11.^{732 24} (footnotes omitted)

(2) *Relationship to EU law*

- 24 The ECSR declared the complaint at hand admissible on 6 December 2019. In general terms, it noted:

that the complainant organisation repeatedly argues that the existing national situation is potentially incompatible with EU law. In this respect, the Committee wishes to emphasize that it has no competence to the conformity of national situations with EU law as such. It is solely responsible for assessing whether or not the State Party concerned by a complaint has ensured the satisfactory application of the Charter.

- 25 The ECSR Digest 2018 summarises the case law as follows:

The non-equivalence of Community law and European Social Charter

Referring to the Court’s *Cantoni v. France* judgment of 1996, the Committee asserts that the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and the supervision of the Committee.^{146 147 148} (footnotes omitted)

Furthermore, the Committee points out that even though the Court has found that in certain circumstances there may be a presumption of conformity of European Union law with the European Convention on Human Rights, no similar presumption – even rebuttable – may be applied with regard to the European Social Charter.²⁵

C. European Union

1. Primary law

a) *Charter of Fundamental Rights of the European Union (CFREU)*

- 26 Based on Article 6(1) TEU, the Charter of Fundamental Rights of the European Union (CFREU) provides in its social rights for the protection of ‘workers’, in its individual labour aspects in particular in Article 30 (“Protection in the event of unjustified dismissal”) and Article 31 (“Fair and just working conditions”):²⁶

²⁴ Ibid, p. 129.

²⁵ Ibid, p. 46.

²⁶ For more details on both Articles see *Schmitt*, Article 30 – Protection in the Event of Unjustified Dismissal, and *Lörcher*, Article 31 – Fair and Just Working Conditions, both in: Dorssemont/Lörcher/Clauwaert and Schmitt (eds.), *The Charter of Fundamental Rights of the*

Title IV SOLIDARITY

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.

Article 31 - Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

b) Treaty of the Functioning of the European Union (TFEU)

27 Based on the Treaty of the Functioning of the European Union (TFEU), the EU has a wide competence on regulating many aspects of in particular individual labour law, and nearly all of which are attributed to 'workers' by virtue of Article 153(1) TFEU:

1. With a view to achieving the objectives of Article 151,²⁷ the Union shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions; ...
- (d) protection of workers where their employment contract is terminated; ...

2. Fundamental rights texts

28 Over the course of time, the EU has developed several mainly politically binding catalogues of fundamental social rights.

29 Whereas the **Community Charter of Fundamental Social Rights of Workers** (1989) does not contain any definition of the term 'worker', the recently solemnly proclaimed **European Pillar of Social Rights** (November 2017) (EPSR)²⁸ provides for a wide definition of 'workers'. Indeed, in the Preamble it states:

... Where a principle refers to workers, it concerns all persons in employment, regardless of their employment status, modality and duration.²⁹

3. Case law of the European Court of Justice of the European Union (CJEU) - The *Matzak* case

30 Despite several attempts to arrive at legislative and autonomous EU definition of the term 'worker', there is still no uniform interpretation. In a formal sense, it is still related to the specific instrument the CJEU is dealing with. Accordingly, the latter continues to define it in relation to the instrument/provision at stake. However, in substance there is a clear common understanding of the main conditions.

European Union and the Employment Relation, Hart Publishing, Oxford, 2019, pp. 505 ff. and 535 ff., respectively.

²⁷ To note is that Article 151(1) TFEU states the following: 'The Union 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, (...)'.
²⁸ European Parliament, Council and Commission, Interinstitutional Proclamation, [The European Pillar of Social Rights](#), OJ C 428/10, 13.12.2017.
²⁹ Recital 15.

31 Against this background, the core of the CJEU's case in relation to the case at hand is obviously the *Matzak* case (to which the complainant refers to in particular) in which the CJEU dealt with working time issues of a volunteer firefighter.³⁰

32 On the basis of previous case law, the CJEU found in the *Matzak* case that volunteer firefighters are to be considered as 'worker' if they are remunerated.

a) The general application of the definition of the term 'worker' to volunteer firefighters

33 First, it is to be noted that the CJEU has held that the activities of the fire service are included in the working time provisions as volunteers provide the same activities as professionals:

27 ... the Court has held that Directive 2003/88 is to apply to the activities of the fire service, even when they are carried out by operational forces on the ground and it does not matter whether the object of those activities is to fight a fire or to provide help in another way, so long as they are carried out under normal circumstances, consistent with the task allocated to the service concerned, and even though the actions which those activities may entail are inherently unforeseeable and liable to expose the workers carrying them out to certain safety and/or health risks (order of 14 July 2005, *Personalrat der Feuerwehr Hamburg*, C-52/04, EU:C:2005:467, paragraph 52).

34 Second and most importantly, the CJEU stated:

28 ..., as regards Mr Matzak's classification as 'worker', it should be noted that, for the purposes of applying Directive 2003/88, that concept may not be interpreted differently according to the law of the Member States but has an autonomous meaning specific to EU law (judgment of 14 October 2010, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraph 28). In accordance with settled case-law on the matter, any person who pursues real, genuine activities — with the exception of activities on such a small scale as to be regarded as purely marginal and ancillary — must be regarded as a 'worker'. The defining feature of an employment relationship resides in the fact that for a certain period of time a person performs for and under the direction of another person services in return for which he receives remuneration (judgment of 26 March 2015, *Fenoll*, C-316/13, EU:C:2015:200, paragraph 27 and the case-law cited).

b) The specific problem of remuneration

35 However, the CJEU left it to the national courts to decide to which extent the (volunteer) firefighters were 'remunerated', an indispensable condition to be classified as worker:

26 As the Advocate General stated in point 20 of her Opinion, it appears from the order for reference that the referring court seeks to establish the interpretation of Article 2 and Article 17(3)(c)(iii) of Directive 2003/88, which that court considers necessary in order to be able to resolve the dispute pending before it. The fact that the dispute ultimately concerns a question of remuneration is irrelevant, in that context, since it is for the referring court and not for the Court of Justice to resolve that question in the context of the main proceedings.³¹

³⁰ CJEU, 21.2.2018, C-518/15, [Matzak](#).

³¹ Ibid, para. 26.; see also the [Opinion](#) of the Advocate General, 26.7.2017: 'the Court has been provided with little information as to the precise arrangements which govern the position in that Member State and it is thus not possible to comment further. That issue will fall to be determined by the national court, applying the test I have just referred to. Since the concept of 'worker' is an EU one, the precise designation of the status of the person providing services and categorisation of the money

III. The law

1. General considerations

- 36 For the ETUC, the protection of all persons executing work is of utmost importance. While recognising the specific situation persons are in who have an ethical approach to their work and which, accordingly, voluntarily executing it. The ETUC is at the same time aware of the necessity to protect them all the more if the work provided by them is executed in the same way as professionals.
- 37 The specific problem lies in the danger that volunteers are used as ‘cheep labour’ instead of protecting them in the same way as professionals. Confirming this general problem, the complainant quotes an official report of the French Court of Audit:

This extensive use of volunteers is characteristic of French fire and rescue services and reflects a civic commitment which is solidly anchored in the history of the civil defence system. It also makes it possible to substantially reduce the cost of operations. The wage bill of the 200000 volunteer firefighters is ten times less than that of the 39200 professional firefighters. In Moselle, whereas volunteer firefighters take part in two-thirds of operations, the direct expenditure allocated to their remuneration accounts for only 20% of staff costs”.³²

- 38 It is against this background that the legal assessment has to take place.

2. Protection of volunteer firefighters as workers and addressees of the rights enshrined in Articles, 2, 3, 4 and 24 ESC

- 39 Without going into any details on the substance of the Articles mentioned in the complaint, it has to be clarified whether volunteer firefighter are to be considered as ‘workers’ because all those Articles are addressed to ‘workers’.

a) *Wide definition of the term ‘worker’*

- 40 In principle, a wide definition of the term ‘worker’ is required. This is confirmed by several international instruments:
- 41 In its General Comment no. 23, the CESCR considers that all persons working even if they are unpaid are protected by the the right to just and favourable conditions at work (Article 7 ICECSR). Expressly, the CESCR mentions volunteers (see para. 9). The importance of this general interpretation of Article 7 ICECSR is confirmed by the Concluding Observations addressed to the French Government during the last supervision cycle (see para. 11).
- 42 Although the ILO does not provide for a general definition of the term ‘worker’ it is obvious that its supervisory bodies also follow a broad approach, in particular in relation to the ILO Conventions Nos. 87 and 98 including also volunteers (see paras. 13, 14, 15 and 16).

he receives for providing those services under national law cannot by definition be conclusive.’ para. 25.

³² Footnote 47: [Report of the Court of Audit of November 2011 on SDISs](#), p. 48

b) Specific support by EU law

- 43 This is particularly supported by CJEU case law in relation to firefighters in general and volunteers in particular (see para. 32 ff.). Moreover, the EPSR confirms a wide interpretation (see para. 29).
- 44 However, it has to be clarified whether the ESC definition of ‘worker’ also requires ‘remuneration’ (see para. 35). Firstly, this is surely not the case in relation to Article 3 (see para. 22). Given the clear link between Articles 2 and 3, this condition should also not be required in relation to Article 2. Secondly, given the ECSR’s autonomous approach in relation to EU law (see para. 25), this condition should also not apply to Articles 4 and 24.

3. Protection of volunteer firefighters under Article 11 ESC

- 45 However, if – as the complainant admits – there would still be members of the fire-fighting staff who do not fulfil the criteria of being considered as ‘workers’, Article 11 will apply to its full content. Indeed, the specificity of Article 11 lies in the fact that it is not explicitly addressed to workers. Those persons working as volunteers who could possibly not be considered as being ‘workers’ (in particular because of their extremely low working hours or without any remuneration) would still benefit from the rights enshrined in Article 11.
- 46 Based on Articles 2 and 3 of the ECHR, the ECSR has emphasised the importance of physical and psychological integrity as “an integral part of the rights to the protection of health guaranteed” (see para. 23). This has to apply to all members of the firefighting personnel.

IV. Conclusions

- 47 As demonstrated above, the ETUC considers that the exclusion of volunteer firefighters from the benefits of the statute as ‘worker’ is not in conformity with ESC definition of ‘workers’ and therefore their exclusion violates the respective Articles mentioned in the complaint.