



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

3 March 2023

Case Document No. 1

**Fédération internationale des associations de personnes âgées (FIAPA)
v. France**
Complaint No. 210/2022

COMPLAINT

Registered at the Secretariat on 28 April 2022

COLLECTIVE COMPLAINT NO. 2
ON ARTICLE L4125-8 OF THE PUBLIC HEALTH CODE
PROHIBITING HEALTH PROFESSIONALS AGED 71 OR OVER FROM STANDING FOR ELECTION TO THEIR
ASSOCIATION'S DÉPARTEMENT-LEVEL COUNCILS

A - THE PARTIES

I – THE COMPLAINANT ORGANISATION

1. Details of FIAPA

1. The International Federation of Associations of the Elderly (FIAPA) is an international non-governmental organisation holding participatory status with the Council of Europe. Its headquarters and postal address are 5 rue de Rottembourg, 75012 PARIS – France. Acting on its behalf is Alain Koskas, its current President, domiciled in this capacity at those headquarters.

Represented by Marie-Hélène Isern-Real, member of the Paris Bar, 14 rue Malar, 75007 PARIS – France, Tel. +33 (1) 45 56 91 00 - +33 (6) 09 02 33 55 - m-h.isern-real@wanadoo.fr.

2. FIAPA's competence to submit a collective complaint

2. The International Federation of Associations of the Elderly (FIAPA) is an international non-governmental organisation, which was set up on 26 September 1980. In France it has the status of an association recognised as serving the public interest. **Doc. 1**

It was granted participatory status with the Council of Europe on 18 August 1983 under number 5103.

It is therefore a member of the Council of Europe Conference of INGOs.

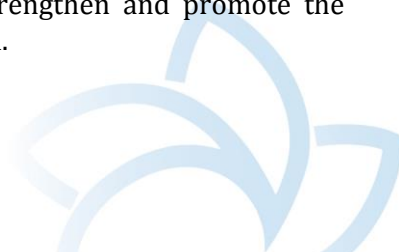
At its extraordinary general meeting on 14 June 2016, it decided to lodge collective complaints against France with regard to its application of the European Social Charter (the Charter). **Doc. 2**

For this purpose, it appointed Ms Isern-Real to prepare and submit a collective complaint alleging a violation by France of the Charter.

3. FIAPA's right to lodge a collective complaint against France

3. The Governmental Committee of the European Social Charter and the European Code of Social Security authorised FIAPA to lodge collective complaints in the event of a violation of the European Social Charter from 1 July 2014 onward and this authorisation has been renewed on a regular basis. **Doc. 3**

FIAPA's goal as an association is to launch activities and campaigns to strengthen and promote the implementation of regulations protecting elderly people throughout the world.



This includes:

- a charter on the right of elderly people to protection;
- participation in the work of various national, European and world bodies for the protection of the elderly;
- studies on discriminatory behaviour and failure to apply social rights to the elderly, including two reports, one to the Ombudsman of the French Republic and the other, on financial abuse, to the Secretary of State responsible for the elderly and autonomy, a parliamentary hearing, a flash survey and participation in Confcap2017;

- training for health and social work professionals at national and international level;
- evaluation and relief work in the event of natural disasters. **Doc. 4 Activity report 2020**

As a result, FIAPA is particularly well disposed and qualified to lodge a collective complaint against any of the fifteen countries authorising a collective complaints procedure, among which is France.

II – FRANCE - HIGH CONTRACTING PARTY

1. On 5 May 1949, France joined the Council of Europe as one of its ten founding members. On 18 October 1961, in Turin, it signed the European Social Charter, which came into force on 26 February 1965. France ratified it on 9 March 1973 and it came into force in respect of France on 8 April 1973. France has undertaken to guarantee the economic and social rights of European citizens.
 2. France ratified the 1988 Additional Protocol then the revised European Social Charter on 7 May 1999, and it is bound by all the articles of the latter.
 3. France also ratified the Additional Protocol of 9 November 1995, which authorises collective complaints under the conditions laid down in Articles 1 et seq. The aim of the Protocol is to enhance the monitoring of member States through a more effective mechanism than mere annual reports drawn up, ex parte, by the member States themselves. These two texts came into force on 1 July 1999.
4. France recognises the right of international non-governmental organisations (INGOs) holding consultative status with the Council of Europe and registered on a special list to lodge collective complaints (Article 1b of the Additional Protocol of 9 November 1995).

Article 3 of the Additional Protocol provides that “***the international non-governmental organisations and the national non-governmental organisations referred to in Article 1.b and Article 2 respectively may submit complaints in accordance with the procedure prescribed by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence***”. Competence is assessed in the light of the goals set out in the organisation’s statutes.

In addition, Rules 22, 23 and 24 of the Rules of the European Committee of Social Rights (the Committee), adopted on 29 March 2004 and revised on 12 May 2005, state that complaints must be addressed to the Executive Secretary acting on behalf of the Secretary General of the Council of Europe. It is stipulated that they must be in one of the official languages of the Council of Europe, one of which is French. Complaints must be signed by the person(s) with the competence to represent the complainant INGO.

5. Furthermore, the Committee has consistently held, on the subject of claims for compensation, that while *“the Protocol does not regulate the issue of compensation for expenses incurred in connection with complaints ...; it does consider that as a consequence of the quasi-judicial nature of the proceedings under the Protocol, in [the] case of a finding of a violation of the Social Charter, the defending State should meet at least some of the costs incurred”* (decision of 12 October 2004 on Collective Complaint No. 16/2003).

B - THE COMPLAINT

1/ THE RELEVANT LEGISLATION

6. Article 5 of Ordinance No. 2017-192 of 16 February 2017 amended the Public Health Code as follows:

Doc. 5

Article L4125-8

- Created by [Ordinance No. 2017-192 of 16 February 2017 – Article 5](#)

The age limit for standing for election as a member of a council or an assessor of a disciplinary chamber is seventy-one years on the closing date for receipt of notices of candidature.

NOTA:

Under Article 19 of Ordinance No. 2017-192 of 16 February 2017, these provisions shall come into force after the next renewals of each of the professional councils following the publication of the ordinance;

Cited by:

[Decree No. 2017-1418 of 29 September 2017 – Article 12 \(VD\)](#) [Public Health Code – Article L4312-9 \(V\)](#)
[L4312-9 \(V\)](#)

Created by [Ordinance No. 2017-192 of 16 February 2017 – Article 5](#)



This text or a text with the same provisions applies to all health professionals with their own professional association ("*ordre*"), namely doctors, dentists, nurses, midwives, masseurs and physiotherapists.

Articles 19 and 20 of the ordinance make provision for its application and for derogations.

- Article 19
 - Amended by [Law No. 2017-1841 of 30 December 2017 – Article 7](#)
 - Subject to the last two sub-paragraphs of this article, the provisions of this ordinance shall enter into force after the next renewals of each of the professional councils following its publication.
 - The provisions of the new Article L4125-7 of the Public Health Code created by this ordinance shall enter into force the day after its publication.

Points 2° and 3° and the 13th sub-paragraph of Article L4231-4 of the Public Health Code, in the wording arising from this ordinance shall enter into force on the date of the publication of Law No. 2017-1841 of 30 December 2017 ratifying Ordinance No. 2017-644 of 27 April 2017 on adjustments to legislation on the functioning of the associations of the health professions.

- Article 20

For the next renewal or, with regard to councils of which only half the members are renewed, for the next two partial renewals of each of the professional councils following the publication of this ordinance, a decree of the Conseil d'Etat shall specify where necessary the rules to be applied temporarily to these elections which are required to take account, where appropriate and for each of the professional bodies concerned, **of changes in territorial jurisdictions or in the number of seats on councils, of the implementation of renewals of half the members and of the implementation of pairing**. Within the limits necessary for the realisation of this aim, this decree of the Conseil d'Etat may provide for the extension or the interruption of terms of office being served at the date of the next renewal or the next two partial renewals.

Decree No. 2017-1418 of 29 September 2017 sets out the transitional measures:

- Article 12

I. - The partial renewal of the *département*-level councils of the doctors' association scheduled in November and December 2017 shall be held for the *départements* concerned in January 2018. The terms of office of the council members elected in these *départements* shall begin on 1 February 2018 and expire on 31 January 2024. Accordingly, the terms of office of the outgoing members shall be extended to 31 January 2018. The terms of office of outgoing members who are also members of a disciplinary chamber shall be extended for the same length of time. II. For the next partial renewal of the council of the national doctors' association: 1° The terms of office of the outgoing member of the regional and interregional councils of Brittany, Centre-Val de Loire, Normandy and Occitanie shall be extended by three years; 2° **The National Council shall draw lots among the outgoing members of the regional and interregional councils of New Aquitaine, Grand Est and Ile-de-France who have not reached the age limit referred to in [Article L4125-8 of the Public Health Code](#) on the date of the end of their term to appoint, subject to the limit of a single outgoing member for each of these councils, the three members whose terms of office shall be extended by three years.** After the second renewal, lots shall be drawn at the first council session to determine, among the newly elected pairs representing the regions or interregional bodies, those whose terms of office shall expire after three years and six years respectively so as to allow for the subsequent half renewal of members. III. At the elections originally planned for the next partial renewal of the regional and interregional councils of the doctors' association, the national council shall arrange for the complete renewal of all regional and interregional councils. The national council shall be the organising body for

these elections. IV. The next two partial renewals of the *département*-level councils of the doctors' association shall be conducted in accordance with the following rules:

1° For *département*-level councils made up of twelve full members and twelve substitute members, the renewal shall be carried out in two instalments of three pairs of full members and three pairs of substitute members;

2° For *département*-level councils made up of fifteen full members and fifteen substitute members, the renewal shall be carried out in two instalments of four pairs of full members and four pairs of substitute members. For *départements* in which the number of outgoing full members at the first renewal is seven, the transitional membership between the two renewals shall be fifteen full members and fifteen substitute members. For *départements* in which the number of outgoing full members at the first renewal is eight, the transitional membership between the two renewals shall be sixteen full members and sixteen substitute members;

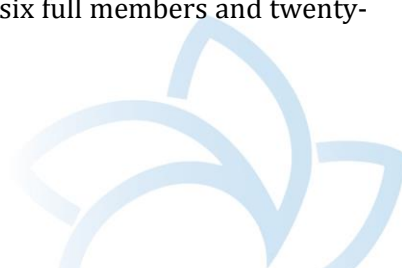
3° For *département*-level councils made up of eighteen full members and eighteen substitute members, the renewal shall be carried out in two instalments of four pairs of full members and four pairs of substitute members;

4° For *département*-level councils made up of twenty-one full members and twenty-one substitute members, representing between 2 001 and 7 000 registered doctors, the renewal shall be carried out in two instalments of five pairs of full members and five pairs of substitute members. For *départements* in which the number of outgoing full members at the first renewal is ten, the transitional membership between the two renewals shall be twenty-one full members and twenty-one substitute members. For *départements* in which the number of outgoing full members at the first renewal is eleven, the transitional membership between the two renewals shall be twenty full members and twenty substitute members;

5° For *département*-level councils made up of twenty-one full members and twenty-one substitute members, representing between 7 001 and 20 000 registered doctors, the renewal shall be carried out in two instalments of six pairs of full members and six pairs of substitute members. For *départements* in which the number of outgoing full members at the first renewal is ten, the transitional membership between the two renewals shall be twenty-three full members and twenty-three substitute members. For *départements* in which the number of outgoing full members at the first renewal is eleven, the transitional membership between the two renewals shall be twenty-two full members and twenty-two substitute members;

6° For the *département*-level council of the City of Paris, the renewal shall be carried out in two instalments of seven pairs of full members and seven pairs of substitute members, resulting in a transitional membership between the two renewals of twenty-six full members and twenty-six substitute members.

Doc. 6 Decree on transitional provisions



FIAPA is only reporting the regulations concerning doctors. Each health profession has been subject to similar arrangements in the part of the Public Health Code which governs it.

As stated in Complaint No. 162/2018, this ordinance was said to have been ratified by Law No. 2017-1841 of 30 December 2017.

However, this text only ratifies Ordinance No. 2017-644 of 27 April 2017, which did not relate to the text of Article L4125-8 of the Public Health Code.

French Official Journal No. 0100 of 28 April 2017, Text No. 40

Ordinance No. 2017-644 of 27 April 2017 on adjustments to legislation on the functioning of the associations of the health professions

NOR: AFSH1708096R

ELI <https://www.legifrance.gouv.fr/eli/ordonnance/2017/4/27/AFSH1708096R/jo/texte>

Alias: <https://www.legifrance.gouv.fr/eli/ordonnance/2017/4/27/2017-644/jo/texte>

Therefore, Article L4125-8 of the Public Health Code was published in the form of an ordinance.

* * *

FIAPA is compelled to refer back to collective complaint No. 162/2018 concerning Article L1425-8 of the Public Health Code and similar provisions.



The Government and Parliament did not take into account the Social Charter Committee's observations on the validity of this text from the point of view of ensuring the social integration of the elderly and of prohibiting the deprivation of any citizens' rights.

I- By decision of 10 December 2020, published on 12 May 2021, the European Committee of Social Rights accepted the collective complaint submitted by FIAPA regarding Ordinance No. 2017-191 of 16 February 2017 introducing Article L1425-8 of the Public Health Code, setting the age limit of 71 years for standing for election to the councils of associations of the health professions.

Article L4125-8

Created by Ordinance No. 2017-192 of 16 February 2017 – Article 5

The age limit for standing for election as a member of a council or an assessor of a disciplinary chamber is seventy-one years on the closing date for receipt of notices of candidature.

NOTA: Under Article 19 of Ordinance No. 2017-192 of 16 February 2017, these provisions shall come into force after the next renewals of each of the professional councils following the publication of the ordinance.

1° FIAPA relied on Article 5 of the Social Charter on the right of workers to form and join trade unions to protect their economic and social interests. The Government considered that the professional associations, by virtue of their mission to guarantee professional competence, ethics and quality healthcare, were not responsible for defending economic and social interests, since other trade unions existed.

FIAPA argued that because of the particular way in which healthcare professions were organised in France, the roles and responsibilities of the associations covered both defending professions and their members' interests, even if the associations' remits included drawing up regulations governing the mode of operation of professions and enforcing them as disciplinary bodies.

As a result of the dual nature of these responsibilities and especially because they were disciplinary bodies, the professional associations should be protected from any interference from legislative and executive power as regards their mode of operation. They had a public service mission and were entitled to bargain collectively. Their independence must be preserved because of the disciplinary power conferred on them by law.

The decision accepted FIAPA's arguments:

The Committee recalls that Article 5 of the Charter enshrines the individual freedom of workers and employers to form trade union organisations. The present complaint concerns measures in domestic law affecting one aspect of the internal life of such organisations, that is to say the right of persons who are already their members, to be elected to the governing bodies of the association of health professionals. The Committee considers that the right to stand for election to the governing body of an organisation representing the interests of workers or employers, is inseparable from the membership in such organisation and therefore, Article 5 is applicable in the present case. [...]

Furthermore, the Committee recalls that Article 5 does not expressly refer to trade unions, but to all local, national or international organisations which are set up to protect the economic and social interests of their members.

In the light of the above, the Committee considers that the associations of health professionals fall within the scope of Article 5 of the Charter.

Accordingly, Article 5 is applicable in the present case.



2° FIAPA also relied on the right to an effective remedy: insofar as the ordinance establishing Article L1425-8 of the Public Health Code had not been ratified, the injured parties were deprived of their right to effective remedy.

Since the entry into force of the text had been set following the renewals of each of the professional councils in each *département*, such temporal arrangement had forced the citizens concerned to initiate lengthy individual proceedings which were incompatible with the application deadlines linked to each election in the professional association in which they intended to stand.

The Conseil d'Etat had rejected in a preliminary ruling an appeal by the council of the Association of Physiotherapists of the *département* of Hauts de Seine on the ground that the *département*-level association in question had only disputed the ordinance several months after its publication and was therefore debarred from doing so either collectively or individually.

The Committee of Ministers did not consider it necessary to examine this issue, which related to Article 13 of the European Convention on Human Rights and did not directly fall within the scope of the Social Charter.

It did, however, recognise that Article E of the Charter was similar to Article 14 of the European Convention on Human Rights, which provides:

ARTICLE 14

Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

It accepted the argument that discrimination had occurred on the basis of Article 5 read in conjunction with Article E of the Social Charter.

Its response was compelling:

*The Committee considers in the present case that even if no question arises as to the violation of Article 5 read alone, **at the heart of the present complaint lies the question of whether a group of persons has been deprived of the right to participate in the function of representation by a trade union of its members, because of their advanced age and, consequently, whether this group of people has been discriminated against.** It is for this reason that the Committee will examine whether there has been a violation of Article E read in conjunction with Article 5.*

3° With regard to Article 23 of the Social Charter, which is at the core of the complaint, FIAPA alleged discrimination against the elderly in the exercise of their right to stand for election amounted to social exclusion of the persons in question.

The Committee recalls [...] that one of the primary objectives of Article 23 is to ensure the right of elderly persons to take part in society's various fields of activity. This right should be granted to everyone, active or retired, without discrimination.

The Committee considers that standing in an election to the governing body of an organisation, in which the person concerned is a member, can be regarded as an act of participation in a societal field of activity which [...] should be ensured to everyone without discrimination.

FIAPA insisted that discrimination against health professionals over the age of 70 was incompatible with their right to take part in democratic life. It deprived their colleagues of the benefit of their experience and their availability. **To assume that they would not be independent due to their age was insulting towards the professionals involved.**

To deprive them of this role on the grounds that they could still take part in society like any other citizen – with access to resources, dissemination of information and ease of use of services, as the government claimed – was an unacceptably restrictive vision of social life. They were not free and equal in rights in relation to their younger colleagues. **Doc. 7 Decision of 10 December 2020**

II- In three decisions dated 25 May 2018, the Conseil d'Etat annulled the text of Article L1425-8 of the Public Health Code arising from the ordinance in question on the grounds that it was not applicable because it had not been ratified. In particular, judgment 409 869 at the request of the Regional Council of the Association of Physicians of Midi-Pyrénées specified that:

*1° On Article L4125-8 of the Public Health Code: 10. Considering that under Article 212 of the Enabling Law of 26 January 2016 on the modernisation of the healthcare system: “I. In the conditions provided for in Article 38 of the Constitution, within a period of eighteen months from the promulgation of this law, the Government is authorised to adopt by ordinance any measure aimed at adapting the legislative provisions relating to the associations of the health professions in order to: [...] 2° **alter the composition of councils, the allocation of seats at the various tiers and election and appointment procedures so as to simplify the rules on these matters and promote equal access for men and women to the office of member in all the councils [...]**”; 11. Considering that the ordinance of 16 February 2017 inserts into the Public Health Code Article L4125-8 establishing an age limit for standing for election as a member of a council or an assessor of a disciplinary chamber, which the provisions previously in force did not lay down for any of the associations in question; **considering that such a provision, which does not have the effect of simplifying the rules of eligibility within the associations’ bodies, nor of promoting equal access of women and men to the functions of council members, does not fall within the scope of the authorisation given to the Government** by the aforementioned provisions of 2° of I of Article 212 of the Law of 26 January 2016; considering that no other provision of this article authorised the Government to lay down such a rule; considering that therefore, by inserting Article L4125-8 into the Public Health Code, the Government exceeded the limits of its power to legislate by ordinance.*

Doc. 8 Extract from the reasoning and publication of judgments

Doc. 9abc, Copy of judgments

2° The *rapporteur public* for the three cases pointed out that:

- It was in the interests of professional associations to take action against provisions which might harm the interests of the profession they represent;
- The establishment of an age limit could not be linked to Article 212 of the Enabling Law, which authorised the government to: “2° *alter the composition of councils, the allocation of seats at the various tiers and*

election and appointment procedures so as to simplify the rules on these matters and promote equal access for men and women to the office of member in all the councils.”

He found that the link between the age limit for standing for election and the aim of achieving gender equality in the various bodies was not strong or clear enough to justify the measure.

The implementation of pairing was sufficient to ensure a more democratic renewal of the professional bodies.

3° In assessing the merits of the application, the Committee of Ministers noted that Article 23 of the Social Charter was the first human rights treaty provision to specifically protect the rights of the elderly, who must remain full members of society.

In its view, this meant, that elderly persons must suffer no ostracism on account of their age.

The Committee considered that, prior to its annulment by the Conseil d’Etat, the provision in question amounted to an obstacle for the persons concerned to the enjoyment of their rights.

It deliberately excluded elderly people on the grounds of their age, which was in violation of Article 23 of the Charter.

The Committee was of the view that the means chosen to modernise the functioning of the councils of the associations of health professionals were neither reasonable nor proportionate to the aim pursued.

It did, however, take note of the Conseil d’Etat’s annulment of Article L 1425-8 of the Public Health Code and held that there was no longer a violation of Article 23 of the Charter as a result.

The Committee of Ministers endorsed this decision.

III- The Government did not abandon its plans, however.

Without any debate in either of the two houses, it reintroduced Article L1425-8 of the Public Health Code, which was passed under Article 77 of Law No. 2019-774 of 24 July 2019.

Doc. 10 Article 77 Law No. 2019-774 of 24 July 2019

Article L4125-8

As in force since 27 July 2019

Amended by Law No. 2019-774 of 24 July 2019 – Article 77 (V)

Persons aged seventy-one years or over on the closing date for receipt of notices of candidature may not stand for election as a member of a council or an assessor of a disciplinary chamber.

In accordance with Article 77, paragraph IV, of Law No. 2019-774 of 24 July 2019, these provisions shall come into force as from the next renewals of each of the Association’s councils for which notices of candidature are opened from 1 November 2019.



The candidatures of health professionals aged 70 or over for the *département*-level council of their association will be rejected under this text as and when the *département*-level elections of their respective associations are held.

1° It is worth pointing out to begin with that this text, passed without any debate, violates citizens' constitutional right to have the capacity to challenge laws which do them harm and violates the constitutional principle of equality before the law.

By approving this text presented by the government, Parliament surrendered its legislative powers to the executive.

Doc. 11 Milon Report, Joint committee of National Assembly members and senators

The urgent procedure, under which several dozen texts may be voted through without any debate between the two parliamentary chambers, enabling the ratification of the terms of an ordinance that the Conseil d'Etat found to be incompatible with the Enabling Law and Article 23 of the Social Charter, means France fails to pass legislation in a democratic manner that protects citizens' rights.

The text is contrary to the French Constitution.

The Committee of Ministers should assess the democratic deficit in France arising from its use of the urgent procedure to pass laws.

In this instance, passing laws in this way, without any debate in the name of alleged urgency, ensures from the outset that Article 5 read alone and in conjunction with Article E, and Article 23 of the Social Charter are not applied.

2° Article L4125-8 of the Public Health Code is therefore contrary to the Social Charter.

The doctors to which this text applies (and other health professionals affected by similar texts) now find themselves in the same situation as before – which the Social Charter Committee previously considered – both in terms of the incompatibility of the text with Articles 5 and 23 of the Charter and of Article E read in conjunction with Article 5.

3° They are once again deprived of individual remedies in due time, since the law may only be contested by an application for a priority ruling on constitutionality. The remedies available are incompatible with health professionals having the capacity to defend their effective right to appeal within a reasonable time against legislation that causes them prejudice.



4° The harm consists of being discriminated against in comparison with other members of the same profession.

Law No. 2019-774 of 24 July 2019, passed without any debate on the text, does not lay out the grounds for it, even though the Government had already acknowledged that the previous draft was incompatible with the enabling law and was neither necessary, reasonable or proportionate to the aims pursued.

The rapporteur to the Conseil d'Etat had indicated that introducing parity would enable the associations' bodies to be renewed without any need to bring age into the equation.

In the FIAPA's view, it is also the responsibility of voters to gauge the merits of any given candidate.

The government, with no reference to any grounds of proportionality, public interest or public safety, has therefore reintroduced a text that had been found to be:

- incompatible with its enabling law, by the Conseil d'Etat;
- incompatible with Article 23 of the Social Charter.

FIAPA is therefore fully entitled to reopen collective complaint No. 162/2018 of 4 April 2018, registered on 13 April 2018. **Doc. 12 Signed complaint**

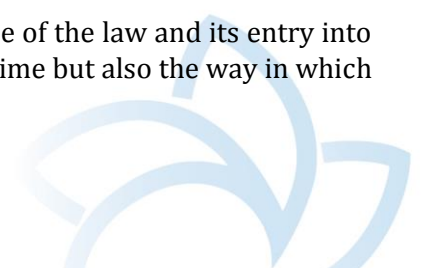
IV- On the urgency:

FIAPA requests that the Charter Committee consider this complaint under an urgent procedure on the grounds that the Government has failed to comply with the requirements of Article 5 read in conjunction with Article E and Article 23 of the Charter and that it take into account the observations and findings already set out with regard to the previous complaint.

In its most recent submissions of 19 September 2019, the Government continued to claim France was complying with the Social Charter on the grounds of the Conseil d'Etat's decisions, even though it had just recently passed the Law of 24 July 2019 ratifying Ordinance No. 2017-192 of 5 February 2017 without any debate, after National Assembly members and senators discussed the text at the Joint Committee meeting of 20 June 2019 and Parliament was convened for an extraordinary session.

FIAPA asks for an urgent review of the decision on the merits, which should consider the fact that the text of Article L1425-8 of the Public Health Code actually continues to apply, given the untruthfulness of the arguments the Government put forward in its submissions of 19 September 2019.

FIAPA is compelled to refer to the Charter Committee not only the substance of the law and its entry into force depriving the professionals concerned of any possible remedy in due time but also the way in which the law was passed.



ON THESE GROUNDS AND SUBJECT TO ANY THAT MIGHT BE RAISED IN ADDITIONAL MEMORIALS OR
MENTIONED AT A HEARING

With reference to the decision of 10 December 2020;

The European Committee of Social Rights is asked to:

- ✓ confirm the admissibility of this new collective complaint and the competence of FIAPA to lodge it following its last complaint registered on 13 April 2018, which was the subject of a decision on admissibility on 16 October 2018 and on the merits on 10 December 2020;
- ✓ confirm that the complaint is well-founded in the light of the new text of Article L1425-8 of the Public Health Code established by Law No. 2019-774 of 24 July 2019;
- ✓ hold that the French legislation laid down by the text is incompatible with Articles 5 and 23 of the European Social Charter as well as with Article E read in conjunction with Article 5 of the Charter;
- ✓ in view of the urgency of the matter, confirm that the adoption of the same text of Article L1425-8 of the Public Health Code, without debate under an urgent procedure, contrary to the decisions of the Conseil d'Etat and against the recommendations of the Social Charter Committee, as recognised by the decision of 10 December 2020, is a new violation of the Social Charter provisions;
- ✓ accordingly, review the decision of 10 December 2020, concluding with a finding of the complaint being well-founded for the period subsequent to the entry into force of Law No. 2019-774 of 24 July 2019.



14 April 2022

Ms Marie-Hélène Isern-Real
Barrister

Mr Alain Koskas
President of FIAPA

