



March 2023

## **EUROPEAN SOCIAL CHARTER (REVISED)**

European Committee of Social Rights

Conclusions 2022

**FRANCE**

*This text may be subject to editorial revision.*

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

Information on the Charter, statements of interpretation, and general questions from the Committee, are contained in the General Introduction to all Conclusions.

The following chapter concerns France, which ratified the Revised European Social Charter on 7 May 1999. The deadline for submitting the 21<sup>st</sup> report was 31 December 2021 and France submitted it on 12 January 2022.

The Committee recalls that France was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions 2014).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions 2014) found the situation to be in conformity, there was no examination of the situation in 2022.

Comments on the 21<sup>st</sup> report by the International Prisons Observatory were registered on 27 June 2022. The reply from the Government to International Prisons Observatory comments was registered on 16 September 2022.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group III "Labour Rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 21),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 22),
- the right to dignity at work (Article 26),
- the right of workers' representatives to protection in the undertaking and facilities to be accorded to them (Article 28),
- the right to information and consultation in collective redundancy procedures (Article 29).

France has accepted all provisions from the above-mentioned group.

The reference period was from 1 January 2017 to 31 December 2020.

The conclusions relating to France concern 23 situations and are as follows:

– 9 conclusions of conformity: Articles 2§3, 2§6, 2§7, 4§3, 6§1, 26§1, 26§2, 28 and 29,

– 9 conclusions of non-conformity: Articles 2§1, 2§2, 2§4, 2§5, 4§2, 5, 6§2, 6§4 and 21.

In respect of the other 5 situations related to Articles 4§1, 4§4, 4§5, 6§3 and 22, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by France under the Revised Charter.

The next report from France will deal with the following provisions of the thematic group IV "Children, families, migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection (Article 16),

- the right of children and young persons to social, legal and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 December 2022.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## **Article 2 - Right to just conditions of work**

### *Paragraph 1 - Reasonable working time*

The Committee takes note of the information contained in the report submitted by France and in the comments of the International Prisons Observatory, French section.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 2§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in France was not in conformity with Article 2§1 of the Charter on the ground on-call periods during which no effective work was undertaken were assimilated to rest periods (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

### **Measures to ensure reasonable working hours**

in its previous conclusion, the Committee wished to be informed, in law and in practice, about the daily and weekly working hours of doctors in training. It also asked whether the new limits to daily and weekly working hours, established for workers who come under the annual working days system will be the same as provided for by the Labour Code (Conclusions 2014).

The report provides no information in reply to these questions; therefore, the Committee reiterates its request for information.

In its targeted question, the Committee asked for updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). It also asked for detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

The Committee recalls that teleworking or remote working may lead to excessive working hours. It also reiterates that it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours or while on holiday or on other forms of leave (sometimes referred to as the ‘right to disconnect’). States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform. In some cases, arrangements may be necessary to ensure the digital disconnect in order to guarantee the enjoyment of rest periods (Statement on digital disconnect and electronic monitoring of workers).

The report states the rules on working time, which appear not to have changed since the last report (Conclusions 2014). The Committee notes that it has already held that in the absence of statutory limitations to the maximum permissible weekly working hours in the annual working day system and irrespective of the statutory obligation of the employer to monitor the workload, a control a posteriori by a judge of a defaulting package agreement on annual working days was not sufficient to guarantee reasonable working time (*Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Complaint No. 149/2017, decision on the merits of 19 May 2021, §143). It also held that the flexible working time arrangements such as the annual working days system, did not operated within a precise legal framework providing adequate safeguards to guarantee reasonable working time (*Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, op. cit., §153). In the absence of any legislative changes, the Committee considers that the situation in France is not in conformity

with Article 2§1 of the Charter on the ground that working time for employees under the annual working days system is unreasonable.

The report provides information on the legal framework on part-time work and states that Law No. 2013-504 simplified the rules and secured the terms of application of the rules on part-time work. Under this law, a minimum weekly working time for part-time workers has been set at 24 hours. Shorter hours are possible by contractual derogation, by extended branch agreement and by individual derogation for personal reasons. The following are excluded from the scope of this measure: contracts lasting less than seven days, replacement contracts and workers under 26 years of age who are still studying. The level of remuneration has been improved through a 10% increase in overtime from the first hour. The grouping of working hours has been encouraged in the event of derogation from the minimum weekly working time or the provisions relating to interruptions in business activity.

The Committee takes note of the comments by the International Prisons Observatory, French section, and asks what safeguards ensure that prisoners don't work excessive hours and how it is guaranteed in practice.

### ***Authorities' actions to ensure the respect of reasonable working hours and remedial action taken in respect of specific sectors of activity***

In the targeted question, the Committee asked for specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases brought before the courts) to ensure the respect of reasonable working hours; as well as for information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.

In reply, the report states that the Court of Cassation provided certain clarifications in order to guarantee the reasonableness of the working time of employees subject to the fixed day rate. Thus, in the event of a dispute, the employer has to prove that he/she has complied with the conditions in the collective agreement intended to ensure the protection of the health and safety of workers subject to the fixed day rate (decisions of 19 December 2018, 17 February 2021). The Court of Cassation also held that it is important to regularly monitor the working time of the workers on fixed-term work contracts, making it possible to compensate for unreasonable working hours (decisions of 6 November 2019, 24 March 2021).

The report also states that the area of reasonable working hours was the most sanctioned area by the Labour Inspection services in 2020, when 553 decisions were issued. In 2018 there were 391 decisions, and 392 decisions in 2019. According to the report, it is the employer's obligation to count and monitor working hours, and a failure to draw up a record of working hours may result in an administrative fine of up to €2,000 per worker concerned, and €4,000 in the event of repeated failure to comply with the obligation.

### ***Law and practice regarding on-call periods***

In its previous conclusion, the Committee found the situation in France not to be in conformity with Article 2§1 of the Charter on the ground that on-call periods during which no effective work was undertaken were assimilated to rest periods. It asked for information on the rules that apply to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions 2014).

The Committee takes note of the information provided in the report and observes that the rules regarding on-call periods do not appear to have changed much. In the circumstances, the Committee considers that the situation in France is not in conformity with Article 2§1 of the

Charter on the ground that on-call periods during which no effective work is undertaken are considered as rest periods.

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service, including as regards zero-hour contracts.

The report states that there are no zero-hour contracts in France.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that Ordinance No. 2020-323 on emergency measures related to paid leave, working hours and rest days provided for a system of derogation from maximum working hours with the allocation of compensatory rest. Thus on a temporary and exceptional basis until 31 December 2020, it was planned that companies in sectors deemed essential to the continuity of economic life and national security could derogate from the limits set by the Labour Code in terms of working hours, namely: the maximum daily working time, up to 12 hours (instead of 10 hours); the maximum daily working time for a night worker, up to 12 hours (instead of 8 hours); the maximum daily rest period, up to 9 hours (instead of 11 hours); the absolute and average maximum weekly working time, within the limits of 60 hours (instead of 48 hours) and 48 hours over 12 consecutive weeks (instead of 44 hours); the weekly working time for a night worker, up to 44 hours over 12 consecutive weeks (instead of 40 hours). The report notes that the implementing decrees have not been adopted since it was found that the sectors concerned were able to operate under the ordinary rules.

The report states that the legal basis of the use of telework is Article L. 1222-11 of the Labour Code. The teleworker remains subject to the working hours set by his/her employment contract and the applicable regime. In practice, during the Covid-19 pandemic, telework was introduced for activities where applicable. In companies, the health protocol was later modified to make telework more flexible (from 100% to at least 2 days a week as of 9 June). From 1 September, the protocol no longer recommended a minimum duration of telework, but the employers were invited to establish the conditions for the use of telework.

With regard to childcare, workers having children under the age of 16 who could no longer work were able, depending on their professional status, to work part-time or to take sick leave when it was not possible to work remotely. Thus, private sector workers could benefit from the ad hoc partial activity scheme in accordance with Law No. 2020-473; this measure was extended by Order No. 2020-1639. It was deactivated during the school holidays in 2020 and 2021 and again reactivated in April 2021. Workers who benefited from this scheme received an allowance equivalent to 70% of their previous gross salary (the limit being 70% of 4.5 minimum salaries). This scheme was partially changed in connection with the changing health and vaccination context in September 2021.

### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 2§1 of the Charter on the grounds that:

- working time for employees under annual working days system is unreasonable;
- certain on-call periods outside the workplace during which no effective work is undertaken are considered as rest periods.

See dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter.

## **Article 2 - Right to just conditions of work**

### *Paragraph 2 - Public holidays with pay*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no targeted questions were asked for Article 2§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion (Conclusions 2014), the Committee noted that Article L. 3133-1 of the Labour Code provides for 11 public holidays per year and that the only compulsory public holiday is 1 May (work carried out on this date in establishments and services which, because of the nature of their activity, cannot interrupt their work is paid at double the normal rate). It also noted that this payment may not be replaced by compensatory time off, even when a collective agreement providing for this possibility has been negotiated. For other public holidays, the Committee notes that the law provides solely that “resting on public holidays may not result in loss of salary for any employee with three months or more of service in a company or establishment. These provisions do not apply to employees working at home, seasonal workers, intermittent employees or temporary workers” (Article L. 3133-3 of the Code, as amended). Consequently, the Committee considered that no compulsory salary increase was granted for work carried out on a public holiday other than 1 May, although the social partners could introduce one. It asked for clarification on the levels of compensation provided for in the form of increased salaries and/or compensatory time off under the various collective agreements in force, in addition to the regular wage paid on a public holiday. The Committee therefore deferred its previous conclusion (Conclusions 2014).

The report does not contain any information on this subject. Consequently, the Committee finds that it has not been established that work performed on a public holiday is adequately compensated.

### ***Covid-19***

In reply to the question regarding special arrangements related to the pandemic, the report indicates that no changes have been introduced regarding the right to public holidays with pay.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 2§2 of the Charter on the ground that it has not been established that work performed on a public holiday is adequately compensated.



## **Article 2 - Right to just conditions of work**

### *Paragraph 3 - Annual holiday with pay*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no targeted questions were asked for Article 2§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in France was in conformity with Article 2§3, pending receipt of information requested (Conclusions 2014).

The Committee notes that the report does not provide the requested information but points out that French law allows five weeks’ paid leave per full reference year. The Committee therefore asks for confirmation that in the event of illness or injury during the annual leave, the worker is entitled to take the days lost at another time.

### **Covid-19**

In response to the question concerning special arrangements in relation to the pandemic, the report states that Order no. 2020-323 of 25 March 2020 on emergency measures in relation to paid leave, working time and rest days made provision for the use of days of paid leave under Article 11 of Law 2020-290 of 23 March 2020. This order enabled employers – provided that a company or sectoral agreement allowed them to do so – to require employees to take days of paid leave without having to comply with the rules of public policy that normally govern the taking of leave. In particular, the one-month period for giving advance notice to employees was reduced to one clear day (as compared with one month under general law), and it became possible to split periods of leave without the employee’s consent. Employers became able to change, within the same time frames, the dates of days of paid leave that had already been requested. They were not obliged to give simultaneous leave to spouses or civil partners working within their company. Initially, no more than six working days of leave could be required to be taken or changed, but because of the continuation of the health crisis, the Law of 31 May 2021 on the managed exit from the health crisis (outside the reference period) increased this limit to eight days in order to give employers more room for manoeuvre and extended this measure to 30 September 2021.

According to the report, the measures taken were temporary and specific to the context of Covid-19; the last of them ended on 30 September 2021.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

### *Conclusion*

The Committee concludes that the situation in France is in conformity with Article 2§3 of the Charter.

## **Article 2 - Right to just conditions of work**

### *Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations*

The Committee takes note of the information contained in the report submitted by France.

The Committee notes that no targeted questions were asked in relation to Article 2§4 of the Charter. For this reason, only those states for which the previous conclusion had been one of non-compliance, deferral or compliance pending information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter as regards the provisions relating to the "Labour Rights" thematic group).

In its previous conclusion (Conclusions 2014), the Committee considered that the situation in France was in conformity with Article 2§4 of the Charter pending receipt of the information requested, mainly on the compensatory measures for adjusting the workload taken to prevent workers from being unduly exposed to the residual risks inherent in dangerous or unhealthy activities.

### ***Elimination or reduction of risks***

As regards the progressive elimination of the risks inherent in dangerous or unhealthy occupations, the Committee considered the situation to be in conformity with Article 2§4 of the Charter and therefore reiterates its conclusion of conformity on this point.

### ***Measures to address residual risks***

The Committee recalls that where risks have not yet been eliminated or sufficiently reduced despite the application of preventive measures, or where they have not been applied, the second part of Article 2§4 requires States to ensure that workers exposed to such risks are granted some form of compensation. The aim of these measures must be to provide the persons concerned with sufficient and regular rest periods to recover from the stress and fatigue caused by their activity and thus maintain their alertness or limit exposure to the risk.

The Committee had requested updated information on dangerous or unhealthy occupations in which the risks have not been eliminated and for which a reduction in working hours is therefore planned. The previous report had indicated that the employees concerned could be given the opportunity to reduce their workload by working part-time or taking on a mentoring role, or to compensate for their workload by means of a bonus or additional days of rest or leave. The Committee had considered that while the reduction of working hours or the granting of compensatory rest or leave were relevant measures under Article 2§4, this was not the case for the payment of a bonus, and had expressly asked what measures to reduce or compensate for the workload had actually been chosen, failing which it could not consider that the situation was in conformity with Article 2§4 of the Charter.

In view of the lack of any information on this issue in the new report, the Committee considers that it is not established that these measures comply with Article 2§4 of the Charter.

### ***Measures related to Covid-19***

No information was provided on measures taken during the Covid-19 pandemic in this field.

### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 2§4 of the Charter on the ground that it has not been established that all workers exposed to residual risks are entitled to adequate compensatory measures (reduced working hours, additional leave or similar measures).

**Article 2 - Right to just conditions of work**  
*Paragraph 5 - Weekly rest period*

The Committee takes note of the information contained in the report submitted by France.

The Committee points out that no targeted questions were asked in relation to Article 2§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee noted previously that the right to a weekly rest period is guaranteed by the legislation, which provides that all employees are entitled to a weekly rest period of 24 hours, in principle on Sunday. However, it considered that the situation in France was not in conformity with Article 2§5 of the Charter on the ground that on-call periods, occurring on Sunday, are wrongly regarded as rest periods (Conclusions 2014). It referred to Collective Complaint No. 55/2009, decision on the merits of 23 June 2010, according to which there had been a violation of Articles 2§1 and 2§5, on the grounds that on-call periods had been equated to rest periods and because of the impact that this could have on weekly rest periods. The Committee also requested information on whether, and under what circumstances, in the event that the weekly rest day is deferred, an employee may be required to work more than twelve consecutive days before being granted a compensatory rest period. It pointed out that in the absence of this information, it could not be established that the situation was in conformity with the Charter.

The report does not provide any information on any of the questions asked. It informed on the specific measures adopted during the COVID-19 pandemic, according to which the weekly rest period could be temporarily derogated for certain workers during the state of emergency due to the health epidemical situation (Decree No. 2020-573 of 15 May 2020 and Law No. 2020-546 of 11 May 2020).

The Committee recalls that in the Collective Complaint *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France* (Complaint No. 149/2017, decision on the merits of 19 May 2021), it noted that there had been no change in the legislation which it previously considered to be in breach of the Charter (Articles L.3121-5 and L.3121-6 of the Labour Code, laying down the rules on on-call periods). It therefore considered that the situation remained essentially unchanged, and it therefore held that there was a violation of Article 2§5 of the Charter on the ground that on-call periods that are assimilated to rest periods can occur on Sundays.

In view of this finding and the lack of information on the postponement of weekly rest period, the Committee considers that the situation is not in conformity with the Charter.

*Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 2§5 of the Charter on the grounds that:

- on-call periods occurring on Sunday are wrongly regarded as rest periods;
- it has not been established that the right to a weekly rest period is sufficiently guaranteed.

## **Article 2 - Right to just conditions of work**

### *Paragraph 6 - Information on the employment contract*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no targeted questions were asked for Article 2§6 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in France to be in conformity with the Charter, there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

### **Covid-19**

In reply to the question regarding special arrangements related to the pandemic, the report notes that no special arrangements were made.

### *Conclusion*

The Committee concludes that the situation in France is in conformity with Article 2§6 of the Charter.

## **Article 2 - Right to just conditions of work**

### *Paragraph 7 - Night work*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no targeted questions were asked for Article 2§7 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in France to be in conformity with the Charter, there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

### ***Covid-19***

In reply to the question regarding special arrangements related to the pandemic, the report notes that certain exceptional measures that would have extended the maximum duration of night work were envisaged in 2020, but have not so far been applied, as the economic sectors concerned were able to cope based on existing regulations.

### *Conclusion*

The Committee concludes that the situation in France is in conformity with Article 2§7 of the Charter.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 1 - Decent remuneration*

The Committee takes note of the information contained in the report submitted by France and the International Observatory of Prisons (IOP).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion (Conclusions 2014) the Committee deferred its position pending receipt of information that would establish that the minimum wage makes it possible to ensure a decent standard of living.

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of deferral and to the targeted questions.

### ***Fair remuneration***

As part of its targeted questions the Committee asks for information on gross and net minimum and average wages and their evolution over the reference period. It also asks what proportion of workers is concerned by minimum or below minimum wage.

According to the report, the purpose of the minimum interprofessional growth wage (SMIC) is the guarantee of the purchasing power and participation in the economic development for the employees, whose salaries are the lowest. Several revaluation mechanisms make it possible to meet this objective, among which is the mandatory annual revaluation that occurs every year on January 1, by decree in the Council of Ministers, on the basis the opinion of the National Commission for Collective Bargaining, Employment and Vocational Training (CNNCEFP) and the report of the committee of experts. In addition, the minimum contractual remunerations of branches are defined, within the framework of the obligatory annual negotiations, for each level of classification within the various professional categories (workers, employees, intermediate professions and executives). These are the minimum wage references which bind companies in their wage policy, and which allow the valuation of professional qualifications.

As regards the levels of minimum and average wages in the reference period, the Committee notes from the report that in 2018 the minimum wage was set at €9.88 per hour gross and € 7.74 net. In 2020 the gross minimum wage rose to € 10.48 and to € 8.30 net. The monthly minimum wage in 2020 stood at € 1589 gross and € 1258 net. The Committee also notes from Eurostat that the annual gross average earnings in 2020 stood at € 37,921 and at € 27,616 net or € 2,301 per month. The Committee thus notes that the net minimum monthly wage amounted to 53% of the net average wage.

The Committee recalls that in order to ensure a decent standard of living within the meaning of Article 4§1 of the Charter, wages must be no lower than the minimum threshold, which is set at 50% of the net average wage. This is the case when the net minimum wage is more than 60% of the net average wage. When the net minimum wage is between 50 and 60% of the net average wage, it is for the state to establish whether this wage is sufficient to ensure a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1).

In its previous conclusion (Conclusions 2014) the Committee observed that the minimum wage amounted to 53% of the average wage and asked the next report to provide information establishing that the SMIC made it possible to ensure a decent standard of living.

The Committee notes that the report does not provide information to establish that the minimum wage permits a decent standard of living, such as transfers and benefits for which workers in receipt of the SMIC are eligible. Therefore, it considers that it has not been established that the minimum wage is fair.

As regards the proportion of workers paid the minimum or below the minimum wage, according to the report, between 1995 and 2015, approximately 11% of employees were paid each year close to the minimum wage (i.e. with an hourly wage less than 1.1 times the minimum wage in force). The youngest employees, as well as women, are more often affected. The majority of employees who experienced an episode of minimum wage over the period, however, remained in it only temporarily: two-thirds of the periods spent at the minimum wage lasted only a single year at most. The longest SMIC episodes mostly concerned the minority of employees.

### ***Workers in atypical employment***

As part of its targeted question the Committee asked for information on measures taken to ensure fair remuneration sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. It also asked about enforcement activities (e.g. by labour inspectorates or other relevant bodies) as regards circumvention of minimum wage requirements (e.g. through schemes such as subcontracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

The Committee notes from the report that there are no “zero hour” contracts in France. With regard to platform workers, an ordinance was adopted on 21 April 2021 (outside the reference period) relating to methods of representation of self-employed workers using platforms for their activity and the conditions for exercising this representation. According to the report this ordinance is being ratified and will lay the foundations for social dialogue in this sector, a necessary prerequisite for the creation of a pillar of social rights, in particular for fair remuneration. The Committee wishes to be kept informed about these developments.

The Committee considers that the requirement that workers be remunerated fairly to ensure a decent standard of living for themselves and their families applies equally to atypical jobs, such as part-time work, temporary work, fixed-term work, casual and seasonal work. In some cases, prevailing wages or contractual arrangements lead to a significant number of so-called working poor, including persons working two or more jobs or full-time workers living in substandard conditions.

The Committee refers in particular to workers employed in emerging arrangements, such as the gig economy or platform economy, who are incorrectly classified as self-employed and therefore, do not have access to the applicable labour and social protection rights. As a result of the misclassification, such persons cannot enjoy the rights and protection to which they are entitled as workers. These rights include the right to a minimum wage.

The Committee asks what measures are being taken to ensure fair remuneration of workers in atypical jobs as well as misclassified self-employed persons in the platform economy.

### ***Covid-19***

As part of its targeted questions, the Committee also asked for specific information about furlough schemes during the pandemic.

The Committee recalls that in the context of the Covid-19 pandemic, States Parties must devote necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay. The right to fair remuneration includes the right to an increased pay for workers most exposed to Covid-19-related risks. More generally, income

losses during lockdowns or additional costs incurred by teleworking and work from home practices due to Covid-19 should be adequately compensated

The Committee notes from the report in this respect that in 2020, in an economic context greatly deteriorated by the health crisis, branch wage negotiations were affected in several ways. During the lockdown periods, the branches were unable to meet face-to-face to negotiate. A period of adaptation was necessary for employers' organisations and trade unions to agree on the new meeting methods (videoconferences, etc.). However, the branches showed their ability to adapt and these difficulties were overcome during the year. The possibility of salary increases has, in some cases, been limited by economic difficulties linked to the health crisis. Branch negotiations were sometimes polarised by issues related to the crisis such as paid leave or long-term partial activity.

According to the report, at the end of 2020, there are 37 branches (i.e. 22% of the panel monitored by the Ministry of Labour) for which the grid resulting from the concluded agreements includes at least one coefficient lower than the SMIC. However, there was an increase in conventional minimum wages during the year 2020, even if it is less substantial than in previous years. The average salary increases were between 1.5% and 1.6% (compared with 1.9% in 2019). The median value of salary increases was between 1.3% and 1.4% (compared with 1.8% in 2019).

With regard to the remuneration of leave during the Covid 19 pandemic, paid leave was compensated under the conditions of common law, including those imposed by the employer on the basis of ordinance No. 2020-323 of 25 March 2020 on emergency measures for paid leave. In addition, the choice was made from the start of the 2020 health crisis to massively support companies and employees through the partial activity scheme.

In partial activity and long-term partial activity, all the hours not worked are taken into account for the calculation of the acquisition of rights to paid leave, pursuant to Article R. 5122-11 of the Labour Code. The report states that this provision is of constant application and has not been modified during the health crisis. In addition, in order to support the companies most heavily impacted by the health crisis, the Government has set up specific assistance for employers to cover paid leave accumulated by employees during periods of partial activity. Pursuant to Decrees No. 2020-1787 of 30 December, 2020 and No. 2021-44 of 20 January, 2021, 70% of the leave allowance has been granted to companies which justify having placed one or several employees in partial activity, in respect of paid leave taken by their employees between 1 January and 7 March, 2021.

The Committee asks whether the financial support provided for workers throughout furlough schemes was ensured throughout the period of partial or full suspension of activities due to the pandemic. It also asks what proportion of workers concerned were covered under such schemes.

### ***Prison work***

The Committee notes that the International Observatory of Prisons (IOP) has provided observations on the national report of France concerning prison labour. In its observations the IOP states that the French legislation establishes minimum levels of hourly wage in prison, which are indexed on SMIC, depending on qualifications required to fulfil the work in question. However, in practice, these levels are not respected, mostly due to remuneration by piecework. According to this practice, working hours are counted on the basis of the number of pieces produced whereas in reality, effective working time of the prisoner may be much longer and therefore, not fully remunerated.

The French tribunals have condemned this practice in various decisions and confirmed that prisoners in question have in practice been remunerated at a rate inferior to that established by Article D. 432-1 of the Penal Procedure Code.



Moreover, according to the annual reports of the Legal Affairs Directorate of the Ministry of Justice, the majority of prisoners' complaints relate to unfair remuneration.

The reports of the monitoring visits to penitentiary institutions also reveal that hourly remuneration of prisoners is well below the established level, mainly due to the practice of remuneration by piecework.

According to the IPO, living in prison has a significant cost. Work is one of the sources of income for prisoners, more than 20% of whom were 'destitute' in 2020. Remuneration is a central element of the working relationship, both inside and outside prison. The IPO states that the lack of will to reform the remuneration system of detained workers shows that the French authorities have no intention to achieve fair remuneration in prison.

The Committee notes from the reply of the Government to the observations of the IPO that as regards the remuneration of prisoners, France exceeds the European average with an average wage in prisons of € 4.62 per hour. According to the Government, the practice of remuneration on the basis of productivity is not prohibited, insofar as it respects the minimum thresholds of remuneration. Employment contract is an additional guarantee for compliance with the minimum wage thresholds. According to the Government, in 2023 new pay information system will be introduced for prisoners which will also be a monitoring tool.

The Committee recalls that Article 4§1 guarantees fair wage to all workers, including workers under special regimes or statuses and therefore, covers the right to a fair remuneration of prisoners. To guarantee a fair remuneration in prisons, the States Parties must take measures to monitor whether prisoners are remunerated on the basis of effective working time and whether the hourly wage established for prisons is respected.

#### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 4§1 of the Charter on the ground that it has not been established that the minimum wage is fair.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 2 - Increased remuneration for overtime work*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in France was not in conformity with Article 4§2 of the Charter on the grounds that the flat rate for overtime work performed by the ordinary members of the supervision and enforcement corps of the police did not guarantee an increased rate of remuneration and that the increase in the command bonus for senior managers could only compensate a very small number of overtime hours and compensatory time off provided to senior police officers working overtime when performing certain duties was equivalent in length to overtime worked (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

### **Rules on increased remuneration for overtime work**

Previously, the Committee found that the situation in France was not in conformity with Article 4§2 of the Charter because the flat rate for overtime work performed by the ordinary members of the supervision and enforcement corps of the police did not guarantee an increased rate of remuneration and that the increase in the command bonus for senior managers could only compensate a very small number of overtime hours and compensatory time off provided to senior police officers working overtime when performing certain duties was equivalent in length to overtime worked (Conclusions 2014).

The report provides no information with regard to the previous conclusion of non-conformity. In these circumstances, the Committee reiterates that the situation in France is not in conformity with Article 4§2 of the Charter on the grounds that the flat rate for overtime work performed by the ordinary members of the supervision and enforcement corps of the police does not guarantee an increased rate of remuneration (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010) and that the increase in the command bonus for senior managers does not compensate more than a very small number of overtime hours and compensatory time off provided to senior police officers working overtime when performing certain duties is equivalent in length to overtime worked (European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, decision on the merits of 23 October 2012).

### **Covid-19**

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. The Committee asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, increased compensation).

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that labour law related to overtime is strictly regulated and that there were no derogations during the Covid-19 pandemic from the rules applicable to overtime pay.

Overtime therefore gives rise either to payment with a salary increase or to equivalent compensatory rest for all the overtime hours worked or the combination of both.

The report further states that there are no specific provisions applicable to medical staff during the pandemic. Moreover, the legal regime of ordinary working hours applied to people teleworking. It is the employer's obligation to control and monitor the working time of workers who are teleworking.

#### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 4§2 of the Charter on the grounds that:

- overtime work performed by the ordinary members of the supervision and enforcement corps of the police does not guarantee an increased rate of remuneration;
- the increase in the command bonus for senior managers only compensates a very small number of overtime hours and compensatory time off provided to senior police officers working overtime when performing certain duties is equivalent in length to overtime worked.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 3 - Non-discrimination between women and men with respect to remuneration*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§3 of the Charter, as well as, where applicable, previous conclusions of nonconformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

With respect to Article 4§3, the States were asked to provide information on the impact of Covid-19 pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

The Committee recalls that it examines the right to equal pay under Article 20 and Article 4§3 of the Charter and does so every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”).

In its previous conclusion, the Committee found that the situation in France was in conformity with Article 4§3 of the Charter (Conclusions 2014).

### ***Statistics and measures to promote the right to equal pay***

For information, the Committee takes note of the Eurostat data on the gender pay gap in France during the reference period, which was 16.3% in 2017, 16.7% in 2018, 16.2% in 2019 and 15.8%(p) in 2020 (compared with 15.7% in 2011). It notes that the gender pay gap was higher than the EU 27 average of 13%(p) in 2020 (data from 4 March 2022).

As France has accepted Article 20.c, the Committee examines policies and other measures to reduce the gender pay gap under Article 20 of the Charter.

### ***The impact of Covid-19 on the right of men and women workers to equal pay for work of equal value***

In reply to the question regarding the impact of Covid-19, the report states that thus far no study has been conducted which makes it possible to assess the precise impact of the health crisis on the right of male and female workers to equal pay for work of equal value. However, it refers to the opinion entitled “*Crise sanitaire et inégalités de genre*” (The health crisis and gender inequalities) of the Economic, Social and Environmental Committee (CESE) published in March 2021 (outside the reference period) in which it was stated that the health crisis brought to light occupational inequalities between women and men. According to the report, women were more affected than men by the economic and material consequences of the pandemic. Even though the proportion of women and men whose financial situation worsened appears to be roughly the same (28.3% for women, 29.4% for men), women start off with a less favourable financial situation in terms of income in view of the gender pay gap.

In addition, the report refers to an assessment by the Directorate of Research, Studies and Statistics (DARES) on the working conditions of workers “behind the frontline”, published in May 2021 (outside the reference period). This assessment likewise highlighted the very high degree of gender segregation that exists in most occupations behind the frontline.

As regards the application of furlough schemes to women workers, the report states that parents who had to stay at home to look after a child under the age of 16 or a person with disabilities who was isolating or being cared for at home, or who had been sent home from an institution could, depending on their occupational status, be placed on part-time work or on work stoppage if they were unable to telework.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

*Conclusion*

The Committee concludes that the situation in France is in conformity with Article 4§3 of the Charter.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 4 - Reasonable notice of termination of employment*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§4 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in France was not in conformity with Article 4§4 of the Charter (Conclusions 2014).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

The Committee refers to its statement of interpretation on Article 4§4 (2018), where the Committee recalled that a reasonable notice period on termination of employment is regarded as one of the components of fair remuneration. The Committee further recalls that a reasonable notice period is one during which workers are entitled to their regular remuneration and that takes account of the workers’ length of service, the need not to deprive workers abruptly of their means of subsistence, as well as the need to inform workers of the termination in good time so as to enable them to seek a new job. The Committee points out that it is for governments to prove that these elements have been considered when devising and applying the basic rules on notice periods.

Following on from its statement of interpretation on Article 4§4 (2018), the Committee recalls that the question of the reasonableness of the notice periods will no longer be addressed, except where the notice periods are manifestly unreasonable. The Committee will assess this question on the basis of:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
  - according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;
  - during any probationary periods, including those in the public service;
  - with regard to the treatment of workers in insecure jobs;
  - in the event of termination of employment for reasons outside the parties’ control;
  - including any circumstances in which workers can be dismissed without notice or compensation.
2. Acknowledgment, by law, collective agreement or individual contract of length of service, whether with the same employer or where a worker has been successively employed in precarious forms of employment relations.

### ***Reasonable period of notice: legal framework and length of service***

The Committee asked in its targeted question about information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the Covid-19 crisis and the pandemic.

In reply to the targeted question, the report states that Article L. 1234-1 of the Labour Code provides that a notice period is due to the employee when he or she is dismissed, except in the case of serious misconduct. The length of the notice period varies in this case depending on the employee’s seniority: (i) the length of notice for an employee with less than six months’ seniority in the company is set by law, collective agreements or professional practice; (ii) the length of notice for an employee with between six months and two years’ seniority in the

company is set at one month; (iii) the length of notice for an employee with more than two years' seniority is set at two months. The last paragraph of Article L. 1234-1 specifies that more favourable provisions of collective agreements may derogate from these two periods.

The Committee previously found the situation not to be in conformity with Article 4§4 of the Charter on the ground that the statutory notice periods were not reasonable for workers with seven to ten years of service (Conclusions 2014). As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. In the light of the information provided in the report, the Committee considers that the notice periods set out in national law in France are not manifestly unreasonable, as they take into account the length of service and can be derogated by more favourable provisions of collective agreements. The Committee therefore considers that the situation in France is in conformity with Article 4§4 of the Charter in this respect.

The report also states that during the Covid-19 pandemic, no specific provision was made as regards the period of notice.

The Committee previously requested that the next report indicate the notice period and/or compensation for early termination of fixed-term contracts. In addition, it requested that the next report provide information on the notice periods and/or compensation that apply to assisted employment contracts (such as single integration contracts or professionalisation contracts) and to childcare workers, home workers, seamen and farmers (Conclusion 2014).

The Committee notes that the report does not provide the information requested. The Committee therefore reiterates its request and considers that, should such information not be included in the next report, there will be nothing to establish that the situation in France is in conformity with Article 4§4 of the Charter.

#### ***Notice periods during probationary periods***

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2014).

#### ***Notice periods with regard to workers in insecure jobs***

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2014).

#### ***Notice periods in the event of termination of employment for reasons outside the parties' control***

The Committee previously requested that the next report should indicate the notice periods and/or compensation applicable to other causes of termination of employment than dismissal (transfer; disability; retirement) and in particular to contractual termination (Conclusion 2014).

The Committee notes that the report does not provide the information requested. The Committee therefore asks for updated information on the notice periods in the event of termination of employment for reasons outside the parties' control and considers that, should the requested information not be included in the next report, there will be nothing to establish that the situation in France is in conformity with Article 4§4 of the Charter.

#### ***Circumstances in which workers can be dismissed without notice or compensation***

The Committee previously found that the situation was in conformity with Article 4§4 of the Charter in this respect (Conclusions 2014).

#### ***Conclusion***

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 4 - Right to a fair remuneration**

### *Paragraph 5 - Limits to deduction from wages*

The Committee notes that France does not provide any information concerning Article 4§5 of the Charter. The Committee has previously (2014) deferred its conclusion.

The Committee recalls that no targeted questions were asked for Article 4§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information, were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee recalls that the deductions envisaged in Article 4§5 can only be authorised in certain circumstances which must be well-defined in a legal instrument (for instance, a law, regulation, collective agreement or arbitration award (Conclusions V (1977), Statement of Interpretation on Article 4§5). The Committee further recalls that deductions from wages must be subject to reasonable limits and should not *per se* result in depriving workers and their dependents of their means of subsistence (Conclusions 2014, Estonia). With a view to making an in-depth assessment of national situations the Committee has considered it necessary to change its approach. Therefore, the Committee asks States Parties to provide the following information in their next reports:

- a description of the legal framework regarding wage deductions, including the information on the amount of protected (unattachable) wage;
- Information on the national subsistence level, how it is calculated, and how the calculation of that minimum subsistence level ensures that workers can provide for the subsistence needs of themselves and their dependents.
- Information establishing that the disposable income of a worker earning the minimum wage after all deductions (including for child maintenance) is enough to guarantee the means of subsistence (i.e., to ensure that workers can provide for the subsistence needs of themselves and their dependents).
- a description of safeguards that prevent workers from waiving their right to the restriction on deductions from wage.

### ***Legal framework concerning deductions from wages and the protected wage***

In its previous conclusions (Conclusions 2014 and 2010) the Committee took note of the legal framework governing deductions from wages. The Committee noted that irrespective of the procedure used and the amount of outstanding debts, employees had to be left with an amount equal to the lump sum referred to in the second paragraph of Article L. 262-2 of the Social Welfare and Family Code. This non-deductible portion of the employee’s income was the same as the active solidarity income. The Committee asks next report to provide for updated information to demonstrate that the protected wage, i.e. the portion of wage left after all authorised deductions, including for child maintenance, in the case of a worker earning the minimum wage, will never fall below the subsistence level established by the Government.

### ***Waiving the right to the restriction on deductions from wage***

The Committee reiterates its request as to whether the workers may be authorised to waive the conditions and limitations on deductions from wages imposed by law. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.



## **Article 5 - Right to organise**

The Committee takes note of the information contained in the report submitted by France as well as the information provided by the *Observatoire international des prisons*.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to the targeted question(s) for Article 5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee deferred its conclusion pending receipt of the information requested (Conclusions 2014).

The Committee also recalls that in the General Introduction of Conclusions 2018, it posed a general question under Article 5 and asked States to provide, in the next report, information on the right to organise for members of the armed forces.

The assessment of the Committee will therefore concern the information provided by the Government in response to the deferral, the targeted question and general question.

### ***Prevalence/Trade union density***

In its targeted questions the Committee asked that the report provide information on the density of trade union membership in the country and across sectors of activity.

In response to the targeted question, the report states that the unionisation rate in France in 2016 was 11%. Employees in the public sector are twice as likely to be unionised as those in the market and voluntary sectors (19.1% compared with 8.4%). In the market and voluntary sector, men are on average more unionised than women (9.9% compared with 6.8%). The unionisation rate also increases with age. Indeed, the age group most heavily unionised is that of those aged 50 or over (11.5%) and the least unionised is that of the under-30s (3.3%). Finally, among the types of employment, the highest unionisation is found among intermediate occupations (10.3%), followed by blue-collar workers (8.8%), white-collar workers (7.9%) and managers (6.3%). In the market and voluntary sector, transport has the highest membership rate (18%), followed by financial and insurance activities (12.9%), industry (12.2%) and education, health and social work (9.6%).

### ***Personal scope***

In its previous conclusion, the Committee requested that all States to provide information on the right of members of the armed forces to organise (Conclusions 2018 – General Question).

The Committee notes that the right of military personnel to create and join national professional associations of military personnel (APNM) is granted by Law No. 2015-917 of 28 July 2015 and governed by articles R4126-1 to R4126-17 of the Defence Code (legal capacity; representativeness; exercise of the right of professional association).

In this respect, the Committee recalls that in its 3<sup>rd</sup> follow-up on collective complaint No. 101/2013, *Conseil Européen des Syndicats de Police (CESP) v. France*, it considered that the APNM, while enjoying the freedom to form associations, is not in practice able to sit on the CSFM, the representative body at the heart of military consultation. It is therefore unable to ensure the preservation and promotion of the interests of the military personnel. The Committee considered that the situation has not been brought into conformity on this point and that the Charter rights at stake were not guaranteed in a concrete and effective manner (Findings 2021). The Committee considers that the situation is not in conformity with Article 5.

The Committee recalls that Article 5 of the Charter allows States Parties to impose restrictions on the right of members of the armed forces to organise and grants them a wide margin of

appreciation in this regard, subject to the terms set out in Article G of the Charter (European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §80). The Committee also recalls that these restrictions may not go as far as to suppress entirely the right to organise, such as the blanket prohibition of professional associations of a trade union nature and of the affiliation of such associations to national federations/confederations (European Council of Trade Unions (CESP) v. France, Complaint No.101/2013, Decision on the merits of 27 January 2016, §84). The Committee further recalls that the complete suppression of the right to organise is not a measure which is necessary in a democratic society for the protection of, *inter alia*, national security (*Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §92).

### ***Restrictions on the right to organize***

In its targeted question, the Committee asked for information on public or private sector activities in which workers are denied the right to form organisations for the protection of their economic and social interests or to join such organisations. In this respect, the report refers to the military (see above), but also states that *préfets* and *sous-préfets* are not allowed to form and join trade unions.

The Committee takes note of the observations submitted by the *Observatoire International des Prisons* concerning work in prison and the right of inmates to unionise and the response provided by the Government. The *Observatoire International des Prisons* states that inmates do not enjoy the right to organise in France. The Committee will not address the issue during this reporting cycle.

### ***Freedom to join or not to join a trade union***

The Committee requested in its targeted questions that the report provide information on the measures taken to promote unionisation and membership. The Committee takes note of the information on the measures adopted to promote unionisation and membership provided in the report.

In its previous conclusion, the Committee asked that the next report describe the impact of the general agreement reached in 2009 on the gradual cessation of a situation in which employers in the print and online media sector have recourse to the employment agency run exclusively by the *Syndicat général du Livre et de la Communication écrite*-CGT (Conclusion 2014). The report does not contain any information on this point. The Committee reiterates its request. It considers that, should the information not be included in the next report, there will be nothing to establish that the situation in France is in conformity with Article 5 of the Charter on this point.

### ***Conclusion***

The Committee concludes that the situation in France is not in conformity with Article 5 of the Charter on the ground that the right of members of the armed forces to organise is not guaranteed in practice.

**Article 6 - Right to bargain collectively**  
*Paragraph 1 - Joint consultation*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no targeted questions were asked for Article 6§1 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in France to be in conformity with the Charter, there was no examination of the situation in 2022. Therefore, the Committee reiterates its previous conclusion.

*Conclusion*

The Committee concludes that the situation in France is in conformity with Article 6§1 of the Charter.

**Article 6 - Right to bargain collectively**  
*Paragraph 2 - Negotiation procedures*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no targeted questions were asked for Article 6§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§2 of the Charter and asked States to provide, in the next report, information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

In its previous conclusion, the Committee found that the situation in France was in conformity with Article 6§2 of the Charter, pending receipt of the information requested (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion and to the general question.

The Committee refers to Eurofound estimates to the effect that collective bargaining coverage in France remains very high, and that almost all employees are covered by sectoral national wage agreements.

However, the Committee also recalls that in *Conseil Européen des Syndicats de Police (CESP) v. France*, Complaint No. 101/2013, decision on the merits of 27 January 2016, it held that there was a violation of Article 6§2 of the Charter on account of the fact that national professional associations of military personnel (NPMs) were not equipped to effectively defend the moral and material interests of their members in all respects. In the third follow-up on that collective complaint, the Committee considered that the situation has not been fully brought into conformity with Article 6§2 of the Charter and that the Charter rights at stake were not guaranteed in a concrete and effective manner (Findings 2021). The Committee, therefore, concludes that there continues to be a non-conformity with Article 6§2 of the Charter on this point and requests that the next report provides information on the measures taken by the Government for the implementation of the Committee’s decision.

As the report does not provide any relevant information in relation to the above-mentioned general question, the Committee reiterates its request for information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

**Covid-19**

In reply to the question regarding the special arrangements related to the pandemic, the report describes several measures aimed at facilitating collective bargaining during the pandemic. First, the report presents the steps taken to digitise collective bargaining procedures, including with regard to their negotiation, signing and recording. Second, the process for adopting or extending collective agreements has been amended by reducing certain deadlines, justified by the need to respond to new challenges in the context of the pandemic. As a result of these measures a slightly smaller but considerable number of collective agreements have been concluded during 2020: 950 at the sectoral level (as opposed to 1 227 in 2019) and 76 650 at the company level (as opposed to 80 780 in 2019). Of these agreements, 117 sectoral agreements, and 18200 company-level agreements dealt specifically with the consequences of the pandemic, such as paid annual leave, vocational training, long-term part-time work,

teleworking or working time adjustments. Two collective agreements concerning teleworking, and health and safety at work respectively, have been concluded in 2020.

### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 6§2 of the Charter on the ground that national professional associations of military personnel are not equipped to effectively defend the moral and material interests of their members in all respects.

**Article 6 - Right to bargain collectively**  
*Paragraph 3 - Conciliation and arbitration*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no questions were asked for Article 6§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee found that the situation in France was in conformity with Article 6§3 of the Charter pending receipt of the information requested. It requested that the next report provide a full description of the legal framework and its implementation, and stated that this description should include data on the number of disputes that went through a conciliation or arbitration process during the reference period in the private sector and in the public sector (Conclusions 2014).

The Committee notes that the Government has not provided the information requested. It therefore reiterates its request that the next report include a full description of the legal framework and its implementation in relation to conciliation and arbitration for the settlement of collective labour disputes in the private sector and the public sector. The Committee points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§3 of the Charter.

*Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 6 - Right to bargain collectively**

### *Paragraph 4 - Collective action*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that no targeted questions were asked for Article 6§4 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions 2018, it posed a general question under Article 6§4 and asked States to provide, in the next report, information on the right of members of the police to strike and any restrictions.

In its previous conclusion, the Committee considered that the situation in France was not in conformity with Article 6§4 of the Charter; it also requested that the next report provide various information (Conclusions 2014). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, to the requests for information and to the general question.

### ***Right to collective action***

#### ***Entitlement to call a collective action***

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the Charter on the ground that only representative trade unions had the right to call a strike in the public sector.

The Government’s report does not provide any information on the groups entitled to call a strike in the public sector. In this respect, the Committee notes that Article L.2512-2 of the Labour Code has not been amended and still provides that in public services, “advance notice shall be given by a representative trade union organisation at national level, in the professional category or in the company, body or service in question [...]”. The Committee recalls that, in the public and private sectors, limiting the right to call a strike to the representative or most representative trade unions is a restriction which is not in conformity with Article 6§4 of the Charter. Since the situation has not changed, the Committee reiterates its conclusion of non-conformity on this point.

#### ***Restrictions to the right to strike, procedural requirements***

In its previous conclusion, the Committee reiterated its request for information in the next report on the implementation of the obligation imposed on the parties (a) in state kindergartens and primary schools to engage in conciliation proceedings prior to giving notice of a strike, and (b) in the public transport sector, to negotiate before giving notice of a strike, to ensure a guaranteed minimum service to “satisfy the essential needs of users” and to inform the public about the proposed strike; in particular, it asked who decides what level of service is needed. The Committee underlined that if this information was not provided, there would be nothing to show that the situation was in conformity with Article 6§4 of the Charter.

The Government’s report does not provide the information requested. In the absence of any further information, the Committee concludes that it has not been established that the restrictions on the right to strike of employees working in state kindergartens and primary schools and in the public transport sector fall within the limits set by Article G of the Charter.

### ***Consequences of strikes***

In its previous conclusion, the Committee asked for information about the consequences of the implementation of the statutory deduction of one thirtieth of the monthly wage from the wages of state civil servants and other national public servants for strikes of less than one day. In the meantime, it deferred its decision on this point.

The Government's report does not provide the information requested. The Committee refers to its decision of 14 September 2022 on the merits of Complaint No. 155/2017, *Confédération générale du travail (CGT) v. France* in which it held that the indivisible thirtieth rule applicable to strikes by staff of the state and state bodies of an administrative nature constitutes a violation of Article 6§4 of the Charter.

### ***Right of the police to strike***

The Committee notes that the Government has not answered the general question asked in the General Introduction to Conclusions 2018. It therefore reiterates its question and requests that the next report provide information on the right of members of the police to strike and any restrictions.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked all States to provide information on:

- specific measures taken during the pandemic to ensure the right to strike;
- as regards minimum or essential services, any measures introduced in connection with the Covid-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

In its report, the Government states that it amended the legal provisions on requisitions for health purposes in response to the Covid-19 pandemic. This amendment was not intended to prohibit exercising the right to strike during the health emergency, but was likely to affect the way in which it was exercised. In particular, Law No. 2020-290 of 23 March 2020 on the emergency response to the Covid-19 epidemic, amended by Law No. 2020-546 of 11 May 2020 extending the health emergency and supplementing its provisions, established rules to govern the health emergency codified in Articles L.3131-12 et seq. of the Public Health Code (CSP). This set of rules may be put in place in all or part of metropolitan France "in the event of a health emergency that, by its nature and severity, endangers public health" (Article L.3131-12 of the CSP). It is introduced by a decree, stating the reasons, in the Council of Ministers, for a maximum duration of one month; beyond that, its extension can only be authorised by law, after consulting a scientific committee whose composition and tasks have been laid down by the law (Article L.3131-13 of the CSP).

Under the Law of 23 March 2020, when a state of emergency was declared, the Prime Minister could, by regulatory decree adopted on the basis of a report by the Minister for Health and "for the sole purpose of protecting public health", "order the requisitioning of any goods and services necessary for combating the public health emergency and of any individual required for the functioning of those services or the use of those goods". The Law of 11 May 2020 extended the scope of the provisions on the requisitioning of people by allowing the Prime Minister to "order the requisitioning of any individual and any goods and services required for combating the public health emergency" (Article L.3131-15 of the CSP).

Requisitions must be strictly proportionate to the health risks faced and appropriate to the context of time and place; they must be discontinued without delay when they are no longer necessary (Article L.3131-15 of the CSP). They may be challenged in the administrative courts (Article L.3131-18 of the CSP). Compensation is paid in accordance with Article L.2234-7 of the Defence Code.

Various decrees have authorised the requisitioning of, among other things:



- any individual required for the functioning of health and social care institutions, in particular health professionals, if the influx of patients or victims or the health situation so warrants;
- civil aircraft and the individuals required for their operation, to the extent necessary to transport health products and personal protective equipment needed to deal with the health crisis;
- laboratories licensed to carry out PCR tests to detect the SARS-CoV-2 genome, as well as the equipment and personnel necessary for their functioning, when medical biology laboratories were not able to carry out this test or to do so in a large enough number to cope with the health crisis;
- any goods, services or individuals required for transporting people to suitable quarantine accommodation or for placing and keeping them in isolation;
- any provider of funeral and undertaking services and any goods, services and individuals required by such providers to carry out their work.

The new requisitions procedure was introduced twice in 2020: once by the Law of 23 March 2020 (for two months, then extended until 10 July 2020), and a second time by Decree No. 2020-1257 of 14 October 2020 (from October to November 2020, then extended until February 2021 and then until 1 June 2021 – outside the reference period).

### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 6§4 of the Charter on the grounds that:

- only representative trade unions have the right to call strikes in the public sector;
- it has not been established that the restrictions on the right to strike of employees working in state kindergartens and primary schools and in the public transport sector fall within the limits set by Article G of the Charter;
- the indivisible thirtieth rule applicable to strikes by staff of the state and state bodies of an administrative nature goes beyond the limits set by Article G of the Charter.

## **Article 21 - Right of workers to be informed and consulted**

The Committee takes note of the information contained in the report submitted by France. It also takes note of comments submitted by the l'Observatoire international des prisons.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 21 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Labour rights").

The Committee recalls that Article 21 secures the right of workers to information and consultation within the undertaking, so that they are enabled to influence the company decisions which substantially affect them and that their views are considered when such decisions are taken, such as changes in the work organisation and in the working conditions.

In its previous conclusion, the Committee found the situation not to be in conformity with the Charter on the ground that some employees were excluded from the calculation of staff numbers which was carried out to determine the minimum thresholds beyond which staff representative bodies must be set up to ensure the information and consultation of workers (see Conclusions 2018). The assessment of the Committee will therefore concern the information provided by the Government in response to the conclusion of non-conformity and the targeted questions.

The report does not provide any information in reply to the conclusion of non-conformity. The Committee therefore reiterates its conclusion.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to information and consultation. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis, whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report states that social partners encountered difficulties in organizing elections leading to the setting up of the Social and Economic Committee (CSE) during the first phase of the pandemic in 2020 and electoral processes were suspended. However, the operating rules of the CSEs were adjusted in order to allow them to continue to carry out their mission of promoting health, safety and improving working conditions in a company, within consultation deadlines adapted to a rapid resumption of economic activity. These provisions have been applied in all sectors of activity, in particular those most directly affected by the health crisis. The terms of outgoing staff representatives have also been extended until the completion of the electoral process in order to maintain staff representation. In addition, the CSE's remote consultations have been reinforced, with the possibility of using videoconferencing to hold committee meetings. All measures have been adapted, allowing elected officials for an effective information-consultation on sensitive subjects relating to collective redundancy, recourse to short-time working or the adoption of a collective performance agreement or collective conventional termination.

### *Conclusion*

The Committee concludes that the situation in France is not in conformity with Article 21 of the Charter on the ground that some employees are excluded from the calculation of staff numbers which is carried out to determine the minimum thresholds beyond which staff representative bodies must be set up to ensure the information and consultation of workers.

## **Article 22 - Right of workers to take part in the determination and improvement of working conditions and working environment**

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 22 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions 2014) pending receipt of information requested. The assessment of the Committee will therefore concern the information provided by the Government in response to the questions raised in its previous conclusion, and to the targeted questions.

The Committee recalls that Article 22 secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

In its previous conclusion, the Committee asked what measures had been taken to enable workers or their representatives to contribute directly to the supervision of compliance with the regulations on the subjects covered by Article 22 is carried out by the Labour Inspectorate. The Committee also asked for information on the existence of means of appealing where the right of workers to take part in the determination and improvement of working conditions and the working environment has been breached and on the penalties which can be imposed on employers if they have failed to respect this right. It further asked if workers or their representatives are entitled to compensation in the event of violations of the right to information and consultation. The report does not provide the requested information. The Committee thus reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

For this examination cycle, the Committee requested information on specific measures taken during the pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The report states that during the pandemic, the social partners who are members of the Working Conditions Orientation Council were regularly informed about the national measures to ensure the health and safety at work. The social partners were consulted beforehand, in particular when the Ministry of Labor applied wide-ranging measures, i.e. recommending 100% teleworking. Social partners were also consulted on all the regulatory texts adopted during the different waves. To allow the workers’ representatives to maintain their activity and thus promote social dialogue despite the difficulties linked to the health context, the use of videoconferencing, telephone conferencing and instant messaging has been facilitated and the consultation times for the proceedings have been adjusted. Overall, workers’ representatives and trade unions could exercise their prerogatives during the crisis. The Inspectorate was regularly contacted, participated in meetings and issued formal notices, where appropriate, in particular on subjects related to teleworking and other measures and reorganization of the working conditions.

### *Conclusion*

Pending receipt of the information requested, the Committee defers its conclusion.

## **Article 26 - Right to dignity in the workplace**

### *Paragraph 1 - Sexual harassment*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§1 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in France was in conformity with Article 26§1 of the Charter (Conclusions 2014).

The assessment of the Committee will therefore concern the information provided in the report in response to the targeted questions.

### **Prevention**

For this monitoring cycle, the Committee welcomed information on awareness-raising and prevention campaigns as well as on action taken to ensure that the right to dignity at work is fully respected in practice.

The Committee previously noted the legal provisions and measures taken in terms of prevention (Conclusions 2014). It asks for information to be provided in the next report regarding more recent awareness-raising and prevention campaigns (during the reference period).

The Committee also asks whether, and to what extent, employers’ and workers’ organisations are consulted on awareness-raising, knowledge and prevention measures concerning sexual harassment in the workplace or in relation to work, including in the context of online/remote work.

### **Liability of employers and remedies**

In its targeted question, the Committee requested information on the regulatory framework and any recent changes made in order to combat sexual harassment and abuse in the framework of work or employment relations.

The report states that the definition of sexual harassment was amended by Law No. 2021-1018 of 2 August 2021 (outside the reference period) to strengthen occupational health prevention based on the provisions of the Criminal Code. The Labour Code definition now criminalises so-called group harassment (mobbing). In addition, while the definition in the Criminal Code implies that the perpetrator must have committed the offence with intent, the wording of the Labour Code does not require this and protects victims even if it has not been recognised under criminal law that the perpetrator knowingly committed harassment. The Committee notes that under Law No. 2021-1018 of 2 August 2021 (outside the reference period), sexism now falls within the scope of sexual harassment.

### **Damages**

In its targeted question, the Committee asked whether any limits applied to the compensation that might be awarded to victims of sexual harassment for moral and material damage.

The report states that there are no limits to the compensation awarded to victims of harassment. The report points out that, under Article L.1235-3-1 of the Labour Code, industrial tribunals may not award compensation that amounts to less than the last six months’ salary when dismissals are ruled to be null and void on account of acts of moral (psychological) or sexual harassment. According to the report, no maximum amount is provided for. Perpetrators

may also be ordered to pay damages for the entirety of the harm inflicted, with the courts setting the amount to be paid.

### ***Covid-19***

In its targeted question, the Committee requested information on any specific measures taken during the pandemic to protect the right to dignity in the workplace, particularly with regard to sexual and moral harassment. It asked for specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff and other frontline workers.

The report also states that both psychological and sexual cyberbullying are covered by Articles 222-33 and 222-33-2-2 of the French Criminal Code. Under Article 222-33-2-2, cyberbullying is also constituted when the acts “have been committed via the use of an online public communication service or via a digital or electronic medium”. The report specifies that each occupational sector is required to hold negotiations every four years on providing “companies with tools to prevent and tackle sexual harassment and sexist behaviour”. The report adds that the provisions of the Labour Code relating to discrimination and psychological and sexual harassment apply to all domestic workers.

### *Conclusion*

The Committee concludes that the situation in France is in conformity with Article 26§1 of the Charter.

## **Article 26 - Right to dignity in the workplace**

### *Paragraph 2 - Moral harassment*

The Committee takes note of the information contained in the report submitted by France.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 26§2 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee considered that the situation in France was in conformity with Article 26§2 of the Charter pending receipt of the information requested (Conclusions 2014).

The assessment of the Committee will therefore concern the information provided in the report in response to the questions raised in its previous conclusion, and to the targeted questions.

### **Prevention**

For this monitoring cycle, the Committee welcomed information on awareness-raising and prevention campaigns as well as on action taken to ensure that the right to dignity at work is fully respected in practice.

In its previous conclusion, the Committee noted the legal provisions and measures taken in terms of prevention, including campaigns and initiatives carried out in practice (Conclusions 2014). It asks for information in the next report on more recent awareness-raising and prevention campaigns (during the reference period).

The Committee also asks whether, and to what extent, social partners are consulted on awareness-raising, knowledge and prevention measures concerning moral harassment in the workplace or in relation to work, including when working online/remotely.

### **Liability of employers and remedies**

In its targeted question, the Committee requested information on the regulatory framework and any recent changes made in order to combat harassment in the framework of work or employment relations.

The report does not indicate any changes in the regulatory framework with regard to moral (psychological) harassment during the reference period.

### **Damages**

In its targeted question, the Committee asked whether any limits applied to the compensation that might be awarded to victims of moral (or psychological) harassment for material and non-material damage.

The report states that there are no limits to the compensation awarded to victims of harassment. The report points out that under Article L.1235-3-1 of the Labour Code, industrial tribunals may not award compensation that amounts to less than the last six months' salary when dismissals are ruled to be null and void on account of acts of moral (psychological) or sexual harassment. According to the report, no maximum amount is provided for. Perpetrators may also be ordered to pay damages for all the harm inflicted, with the courts setting the amount to be paid.

The report also states that in the case of psychological harassment at work, in addition to compensation, victims may be entitled to employment injury benefits if the abuse they suffered from is deemed to have caused such injury. According to the report, the courts consider that the non-material damage caused by bullying at work is distinct from that caused by the ensuing

occupational injury, and specific damages must be awarded in each case. The possibility of making both claims together was recognised in a decision of the Court of Cassation of 4 September 2019 (Cass. soc., 4 September 2019, No. 18-17.329).

In its previous conclusion, the Committee requested all relevant information (statistics, case-law examples, investigations) concerning the effectiveness of the available remedies, including any amounts of compensation awarded (Conclusions 2014).

The report provides no information in response to this request.

The Committee repeats its request for relevant information concerning the effectiveness of available remedies (statistics, examples from case law and investigations), including any amounts awarded as damages.

### ***Covid -19***

In its targeted question, the Committee requested information on any specific measures taken during the pandemic to protect the right to dignity in the workplace, particularly with regard to sexual and moral (psychological) harassment. It asked for specific information about categories of workers in a situation of enhanced risk, such as night workers, home and domestic workers, store workers, medical staff and other frontline workers.

The report states that both psychological and sexual cyberbullying are covered by Articles 222-33 and 222-33-2-2 of the French Criminal Code. Under Article 222-33-2-2, cyberbullying is also constituted when the acts “have been committed via the use of an online public communication service or via a digital or electronic medium”. The report adds that the provisions of the Labour Code relating to discrimination and moral psychological and sexual harassment apply to all domestic workers.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in France is in conformity with Article 26§2 of the Charter.

## **Article 28 - Right of workers' representatives to protection in the undertaking and facilities to be accorded to them**

The Committee takes note of the information contained in the report submitted by France.

The Committee points out that no targeted questions were asked in relation to Article 28 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

In previous conclusions (Conclusions 2014), the Committee concluded that pending receipt of the information requested, the situation in France was in conformity with Article 28 of the Charter. In the present conclusion, the assessment of the Committee will therefore concern the information provided by the Government in response to the questions asked in the previous conclusion of conformity.

### ***Protection granted to workers' representatives***

In previous conclusions, the Committee noted that for the whole period of their term of office and beyond (between 3 months and 5 years depending on the type of mandate), staff representatives may not be laid off as part of an individual or collective dismissal procedure without the authorisation of the Labour Inspectorate. It also took note that the Labour Inspectorate must carry an investigation involving both parties to verify that the decision to terminate the employee's contract is not a discriminatory measure linked to their role as staff representative.

The Committee further took note that in 2011, the Labour Inspectorate received 25,000 applications for authorisation for dismissal and 80% of these applications resulted in authorisation for dismissal and that the proportion of such decision which are contested either before the competent ministry or the administrative courts was around 7%. The Committee also noted that in 2011, 1,172 applications were lodged with the ministry, which led to the dismissal being rejected in 55% of cases.

The Committee therefore asked, in Conclusions 2014, for confirmation that, for every application for authorisation for dismissal, the labour inspectors check that the termination of contract does not amount to a discriminatory measure or a reprisal linked to the employee's functions as a representative. The Committee also asked to be provided with examples relating to specific cases and information on any changes in this sphere (in law and in practice), including details of circulars issued by ministerial bodies regarding the supervisory framework and the obligations of labour inspectors in this field.

In reply, the report indicates that staff representatives benefit from special protection requiring employers wishing to dismiss them to seek prior authorisation from the Labour Inspectorate. The latter takes its decision after conducting an in-depth investigation to verify the regularity of the internal procedure followed by the employer, the reality of the ground for dismissal invoked, and in particular the absence of discrimination.

### ***Covid-19***

The report further provides that during the health crisis, this protection continued to apply in full, with practical adaptations concerning the first period from March to July 2020, including the possibility of suspending administrative decision-making during the health emergency period from 12 March to 23 June 2020 (as part of the general measures provided for by Ordinance No. 2020-306 relating to the extension of time limits due during the period of health emergency and the adaptation of procedures during this same period) and the temporary adjustment of the contradictory investigation until July 10, 2020 to avoid face-to-face contacts (written, videoconference, etc.).



*Conclusion*

The Committee concludes that the situation in France is in conformity with Article 28 of the Charter.

## **Article 29 - Right to information and consultation in procedures of collective redundancy**

The Committee takes note of the information contained in the report submitted by France.

The Committee points out that no targeted questions were asked in relation to Article 29 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In the previous conclusions (Conclusions 2018), the Committee concluded that the situation in France was in conformity with Article 29 of the Charter. It stated that it wished to be kept informed about the implementation of the legal framework on the right to information and consultation in procedures of collective redundancy.

The report indicates that in order to allow the continuation of the processes in the context of the health situation, certain legislative adjustments have been made concerning the deadlines for administrative decisions in the context of collective redundancies (suspension during the state of emergency); procedures for consulting staff representative institutions: possibilities of remote meetings (video, audio, etc.); adaptation of the deadlines for notification of dismissal when the company is placed in compulsory liquidation (extension).

In addition, the Government has deployed a protective device precisely to prevent the pandemic from leading to layoffs. The Partial long-term activity (APLD) (provided by Decree n°2020-325 of 25 March 2020) was adopted to support economic activity under the France Relance Plan and offers the possibility for a company – faced with a lasting reduction in its activity – to reduce the working hours of its employees, and for the employees to receive an allowance for the hours not worked in return for commitments, particularly in terms of job retention. In 2020, companies made massive use of the partial activity scheme. This massive recourse to partial activity has made it possible to quickly and fully cover employees unable to work, and thus to avoid their dismissal. According to the report, since the establishment of the APLD in the summer of 2020, sixty-eight professional branch agreements have been concluded, of which sixty-three have been extended. More than 6.9 million employees are covered by these branch agreements.

### *Conclusion*

The Committee concludes that the situation in France is in conformity with Article 29 of the Charter.

### ***Dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter***

Article 2§1 of the 1961 European Social Charter, and the Revised European Social Charter provides that the Contracting Parties, with a view to ensuring the effective exercise of the right to just conditions of work, undertake "to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit".

The European Committee of Social Rights has ruled in the past on this provision and in particular on the guarantees provided for on-call duty, those periods during which the employee, without being at his place of work and without being at the permanent and immediate disposal of the employer, must be contactable and able to intervene in order to carry out work for the company.

The Committee examined their legal regime through the two systems for monitoring the compliance with the European Social Charter. On the one hand, four decisions on the merits, under the collective complaints procedure have been adopted: decision on the merits of 12 October 2004, *Confédération française de l'Encadrement CFE-CGC v. France*, Collective Complaint No. 16/2003; decision on the merits of 8 December 2004, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No. 22/2003; decision on the merits of 23 June 2020, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No 55/2009; decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No 149/2017.

On the other hand, directly or indirectly, 68 conclusions on the reporting system, of which 35 were of non-conformity, have been adopted (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3, Conclusions 2013, Conclusions 2011, Conclusions 2010, Conclusions XVIII-2, Conclusions 2007, Conclusions XVII-1, Conclusions XVI-2, Conclusions XVI-1).

As a result of this consolidated case law, the Committee has focused its attention on on-call periods, in order to decide whether or not article 2§1 of the European Social Charter has been complied with, or violated, on two specific points that it has clearly identified in this respect:

1°. On one hand, on the payment to the on-call employee of a compensation, either in financial form (bonus) or in the form of rest, in order to compensate for the impact on his/her ability to organise his private life and manage his personal time in the same way as if he/she was not on call.

2°. On the other hand, on the minimum duration of the compulsory daily and/or weekly rest period which all States must respect and which all workers must enjoy. It is common for employees to start their on-call period, totally or partially, at the end of their working day and end it at the beginning of the next working day. Even if the employee is not required to carry out actual work, the consequence is that he/she will not have had his/her rest time at his/her disposal in full freedom or without any difficulty, i.e. the conditions and purpose of the minimum rest period are difficult to achieve *stricto sensu*.

In this perspective, I would like to emphasise the two effects mentioned which impact on two different elements of the employment relationship (salary and minimum rest period). States often integrate them together into one, so that the payment of a bonus is the most usual (only) remedy (compensation for the first effect) and the legal assimilation of the on-call period without carrying out actual work to rest time (i.e. it has no consideration for the second effect).

The case law that the ECSR has adopted in recent years has considered both effects separately. Both must be valued and respected at the same time. On one hand, the availability of the employee to intervene must be compensated. On the other hand, the consequences for the minimum period of compulsory rest must be considered. For this reason, in the four

decisions on the merits mentioned above, France was condemned for the violation of article 2§1 of the revised European Social Charter. As far as France is concerned, even though Article L3121-9 of the Labour Code provides that "the period of on-call duty shall be compensated for, either financially or in the form of rest", it should be noted that considering on-call duty without intervention for the calculation of the minimum daily rest period undermines the second condition. Indeed, it is necessary to point out that the ECSR specified in the last decision on the merits that this considering will involve a violation of the provision if it is "in its entirety" (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017).

In the 2022 conclusions, on-call duty was specifically examined. The Committee requested information on the legislation and practice regarding working time, on-call duty and how inactive periods of on-call duty were treated in terms of working time and rest and their remuneration.

It should be noted that most responses did not answer in the affirmative. In other words, the State reports did not inform the Committee simply that "on-call time is working time or rest time". However, the answers had a negative meaning, i.e., the responses stated verbatim that on-call duty "is not considered as working time".

The majority of the Committee felt that this information did not answer the question asked and decided to defer most of the conclusions.

I regret that I am unable to agree with these conclusions. I will explain my reasons below. Firstly, I consider that the negative responses from the Member States provide sufficient information on the legislative frameworks in place regarding the inclusion of on-call duty in daily or weekly rest periods. In my opinion, it is meaningless not to examine or value the replies, because the sentence "on-call duty is rest time" is not transcribed positively, but "on-call duty is not working time" is transcribed negatively. I believe that the Committee has sufficient information to assess conformity or non-conformity.

In my view, the consequences of not assessing this information are remarkable. Firstly, it encourages States not to provide the information within the time limits set by the Committee and to take advantage of an attitude that, in addition, does not comply with an obligation that they know perfectly well and that they have become accustomed to not fulfilling.

Secondly, it should be remembered that the legal interpretation of the European Social Charter goes beyond a textual interpretation. It is a legal instrument for the protection of human rights which has binding force. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art. 31 Vienna Convention on the Law of Treaties). In the light of the Charter, it means protecting rights that are not theoretical but effective (*European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). As such, the Committee has long interpreted the rights and freedoms set out in the Charter in the light of current reality, international instruments and new issues and situations, since the Charter is a living instrument (*Marangopoulos Foundation for Human Rights v. Greece*, Collective Complaint No. 30/2005, decision on the merits of 6 December 2006, §194; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §64 and *ILGA v. Czech Republic*, Collective Complaint No. 117/2015, decision on the merits of 15 May 2018, §75).

Finally, in the event that the Committee does not have all the relevant information, in my view it should take the most favourable meaning for the social rights of the Charter. In other words, States must provide all the information, which becomes a more qualified obligation when this information has been repeatedly requested. Furthermore, I would like to point out that this

information was requested in previous Conclusions (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3). Therefore, the States were obliged to provide all the information that the Committee has repeatedly requested.

In view of the above arguments, my separate dissenting opinion concerns, firstly, those deferred conclusions by the majority of the Committee members regarding the States which, on one hand, replied that on-call duty "is not working time", and then that they take it into account in the minimum rest period which every employee must enjoy. These include Belgium, Bosnia and Herzegovina, Finland, Germany, Italy, Lithuania, North Macedonia, Malta, Montenegro, Slovak Republic and Spain. Similarly, on the other hand, it concerns States that did not respond or did so in a confused or incomplete manner. These are Albania, Estonia, Georgia, Hungary, Ireland, Latvia and the Republic of Moldova. It follows from all the above considerations that the conclusions in relation to all these States should be of non-conformity.

Secondly, my separate dissenting opinion also concerns the "general" findings of conformity with Article 2§1 of the Charter reached by the majority of the Committee in respect of four States. More specifically, with regard to Andorra, the report informs about the on-call time. It "is not considered as actual working time for the purposes of calculating the number of hours of the legal working day, since it does not generate overtime. Nevertheless, it is not considered as rest time either, it being understood that in order to comply with the obligation to benefit from at least one full day of weekly rest, the worker must be released from work at least one day in the week - of course from actual work, but also from the situation of being available outside of his working day-". The document expressly states that one day of weekly rest is respected in relation to on-call duty, but it does not communicate anything about the respect of daily rest (except for a mention of the general minimum duration of 12 hours). In relation to Greece, the report informs that the provisions of labour law do not apply to on-call duty without intervention since, even if the worker has to remain in a given place for a certain period of time, he/she does not have to be physically and mentally ready to work. As regards Luxembourg, the document informs that on-call duty is not working time. Finally, as regards Romania, the report informs, first of all, that Article 111 of the Labour Code, considers the period of availability of the worker as working time. However, immediately, on the organisation and on-call services in the public units of the health sector, informs that on-call duty is carried out on the basis of an individual part-time work contract. On-call hours as well as calls received from home "must be recorded on an on-call attendance sheet, and 'only' the hours actually worked in the health facility where the call is received from home will be considered as on-call hours". Consequently, on the basis of this information, if there are no hours worked or calls, this time is not work. It follows from all the above considerations that the conclusions in relation to these four states should also be of non-conformity.

Thirdly, in coherence, my separate dissenting opinion also concerns the finding of non-conformity with regard to Armenia. This State has informed that the time at home without intervention should be considered as at least half of the working time (Art. 149 of the Labour Code). This legal regulation is in line with the latest case law of the Committee (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017). In my view, a positive finding on this point should be adopted expressly, independently of the finding of non-conformity on the daily working time of certain categories of workers.

Finally, I would like to raise two important questions following some of the answers contained in the reports. The first question relates to the governmental reports that have justified the national legal regime of on-call duty or non-compliance with previous findings of non-conformity on the basis of the judgments of the Court of Justice of the European Union, including some responses that challenge the Committee's ruling on "misinterpretation" of the Charter. These are Bosnia and Herzegovina, Spain, Italy, Ireland and Luxembourg. It is necessary to recall that the European Committee of Social Rights has affirmed that "the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and from the supervision of the Committee" (*Confédération française de*

*l'Encadrement (CFE-CGC) v. France*, Collective Complaint No. 16/2003, decision on the merits of 12 October 2004, §30). Furthermore, it stressed that, even if the European Court of Human Rights considered that "there could be, in certain cases, a presumption of conformity of European Union law with the Convention, such a presumption - even if it could be rebutted - is not intended to apply in relation to the European Social Charter". On the relationship between the Charter and European Union law, it pointed out that "(...) they are two different legal systems, and the principles, rules and obligations which form the latter do not necessarily coincide with the system of values, principles and rights enshrined in the former; (...) whenever it is confronted with the latter, the European Union will have to take account of the latter.) whenever it is confronted with the situation where States take account of or are constrained by European Union law, the Committee will examine on a case-by-case basis the implementation by States Parties of the rights guaranteed by the Charter in domestic law (*General Confederation of Labour of Sweden (LO) and General Confederation of Executives, Civil Servants and Clerks (TCO) v. Sweden*, Collective Complaint No. 85/2013, decision on admissibility and merits of 3 July 2013, §§72-74).

The second issue is that the Charter sets out obligations under international law which are legally binding on the States Parties and that the Committee, as a treaty body, has "exclusive" responsibility for legally assessing whether the provisions of the Charter have been satisfactorily implemented (*Syndicat CFDT de la métallurgie de la Meuse v. France*, Collective Complaint No. 175/2019, decision on the merits of 5 July 2022, §91).

These are the reasons for my different approach to the conclusions of Article 2§1 of the European Social Charter in relation to on-call duty.