EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 12 September 2023

Notification: 13 October 2023

Publicity: 14 February 2024

***Union Syndicale Solidaires SDIS* v. France**

Complaint No. 176/2019

and

***Union Syndicale Solidaires SDIS* v. France**

Complaint No. 193/2020

The European Committee of Social Rights, committee of independent experts ("the Committee") established under Article 25 of the European Social Charter, during its 336th session in the following composition:

Aoife NOLAN, President
Eliane CHEMLA, Vice-President
Tatiana PUIU, Vice-President
Kristine DUPATE, General Rapporteur
József HAJDU
Karin Møhl LARSEN
Yusuf BALCI
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 24 May, 5 July and 12 September 2023,

On the basis of the report presented by József HAJDU,

Delivers the following decision, adopted on the latter date:

PROCEDURE

1. The complaint No. 176/2019 lodged by *Union Syndicale Solidaires* SDIS (hereafter “SUD SDIS”) was registered on 5 February 2019.

2. In its complaint, SUD SDIS alleges that the legal situation of volunteer firefighters (VFFs) as defined by Articles L723-5 and L723-8 of the Code of Internal Security does not meet the requirements of Articles 2, 3, 4, 11 and 24 read alone as well as of Article E in conjunction with Articles 2, 3, 4, 11 and 24 of the revised European Social Charter ("the Charter") in that France does not consider VFFs as workers except on very rare occasions, to the detriment of their rights related to protection of health, to safe and healthy working conditions and to just conditions of work.

3. On 6 December 2019, the Committee declared the complaint admissible.

4. Referring to Article 7§1 of the 1995 Additional Protocol providing for a system of collective complaints (“the Protocol”), the Committee invited the Government to make written submissions on the merits of the complaint by 14 February 2020.

5. Referring to Article 7§§1, 2 of the Protocol and Rule 32§§1, 2 of its Rules (“the Rules”), the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter, and the international organisations of employers or workers referred to in Article 27§2 of the Charter, to submit observations, if they so wished, on the merits of the complaint by 14 February 2020.

6. On 7 February 2020, the Government asked for an extension to the deadline for submitting its submission on the merits of the complaint. The President of the Committee extended this deadline until 28 February 2020. The Government’s submissions on the merits were registered on 28 February 2020.

7. Observations by the European Trade Union Confederation (ETUC) were registered on 14 February 2020.

8. Pursuant to Rule 28§2 of the Rules, the Government and SUD SDIS were invited to submit, if they so wished, a response to the observations by ETUC by 31 March 2020, postponed to 22 May 2020. On 20 March 2020, SUD SDIS informed the Committee that it did not intend to submit a response to ETUC's observations. The Government did not submit any response.

9. Pursuant to Rule 31§2 of the Rules, SUD SDIS was invited to submit a response to the Government's submissions on the merits by 30 April 2020. SUD SDIS's response was registered on 20 March 2020.

10. On 25 March 2020, the Government and SUD SDIS were informed of the decision of the President of the Committee to suspend, due to the health crisis, all deadlines for States and complainant organisations in the ongoing collective complaints procedures until 15 May 2020.

11. Pursuant to Rule 31§3 of the Rules and following the suspension of all deadlines, the Government was invited to submit a reply to SUD SDIS's response by 15 July 2020. The Government's reply was registered on 15 July 2020.

12. The complaint No. 193/2020 lodged by SUD SDIS was registered on 13 March 2020.

13. In its complaint, SUD SDIS alleges that, despite the fact that the dangerous nature of the occupation of firefighter is acknowledged pursuant to Article L723-1 of the Internal Security Code, France allows VFFs under the age of 18 to participate in field operations to the detriment of their rights related to Articles 7§2 and 7§§4 to 10 of the Charter.

14. On 27 January 2021, the Committee declared the complaint admissible and decided that it was not necessary to indicate to the Government any immediate measures which should be adopted.

15. Referring to Article 7§1 of the Protocol, the Committee invited the Government to make written submissions on the merits of the complaint by 2 April 2021.

16. Pursuant to Article 7§§1, 2 of the Protocol and Rule 32§§1, 2 of the Rules, the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter, and the international organisations of employers or workers referred to in Article 27§2 of the Charter, to submit observations, if they so wished, on the merits of the complaint by 2 April 2021.

17. On 15 February 2021, the Government asked for an extension to the deadline for submitting its submission on the merits of the complaint. The President of the Committee extended this deadline until 30 April 2021. The Government's submissions on the merits were registered on 30 April 2021.

18. Pursuant to Rule 31§2 of the Rules, SUD SDIS was invited to submit a response to the Government's submissions on the merits by 2 July 2021. SUD SDIS did not submit any reply.

19. Pursuant to Rule 26A§1 of the Rules, the Committee decided to join the aforementioned complaints lodged by SUD SDIS on 17 May 2022.

20. Pursuant to Rule 28§3 of the Rules, the President of the Committee invited the Government and SUD SDIS to submit, if they so wished, additional observations under Article 1§2 of the Charter by 30 June 2023. Additional observations by the Government were registered on 30 June 2023.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

21. SUD SDIS states that VFFs are not considered workers owing to the operation of the law, as provided for by Articles L723-5 and L723-8 of the Code of Internal Security, and alleges that therefore they are not able to enjoy their rights related to just conditions of work, to safe and healthy working conditions and to protection of health, among others. SUD SDIS alleges that young VFFs are similarly affected by these provisions.

22. SUD SDIS further states that, pursuant to Articles R723-6 and R723-10 of the Code of Internal Security, young VFFs are permitted to participate in field operations, although, in accordance with Article L723-1 of the same law, the occupation of firefighter is acknowledged as being dangerous.

23. In view of this, SUD SDIS asks the Committee to find that the situation in France is in breach of Articles 2, 3, 4, 7, 11 and 24 read alone, as well as of Article E in conjunction with Articles 2, 3, 4, 11 and 24 of the Charter.

B – The respondent Government

24. The Government states that the situation of VFFs is fundamentally different from that of professional firefighters (PFFs) in that their engagement is based on a personal decision freely taken to set aside a portion of their time to work for the public good, which justifies their differential treatment under the law. The Government accordingly takes the view that there is no violation of the Charter and requests the Committee to find the complaint unfounded in all respects.

THIRD PARTY OBSERVATIONS

European Trade Union Confederation (ETUC)

25. The ETUC sets out the international standards pertaining to the concept of worker. Against that background, it argues that the concept of worker within the meaning of the Charter should be interpreted broadly. This would enable VFFs, who perform the same work as PFFs, to be classified as workers and enjoy the guarantees associated with that status. While acknowledging the altruistic impulse behind volunteer work, the ETUC draws attention to the risk that budgetary savings are prioritised to the detriment of fair working conditions for VFFs. The ETUC further submits that the definition of the concept of worker under the Charter should not be predicated on the payment of remuneration to those concerned.

RELEVANT DOMESTIC LAW AND PRACTICE

26. In their submissions, the parties refer to the following provisions of domestic law, practice, and other documents:

A – Legislation

Code of Internal Security

27. Article L112-1 provides that "the purpose of civil protection […] is to prevent risks of all kinds, to inform and alert the population and to protect people, animals, property and the environment against accidents, disasters and catastrophes". Article L112-2 provides that “the State is the guarantor of the coherence of civil security at national level” and “it defines the doctrine and coordinates its resources.”

28. Book VII (Legislative Part) provides the general legal framework for the activities of PFFs and VFFs, among other categories of citizens called to contribute to civil protection. Article L721-2 provides that “civil protection missions are mainly carried out by professional and volunteer firefighters of the fire and rescue services,” among others. Article L723-1 acknowledges “the dangerous nature of the profession and missions carried out by firefighters”. Article L723-2 lays down the status of PFFs as “local civil servants”.

29. Section 3 refers to the activity of VFFs as follows:

> “Article L723-3 Any person, whether or not he or she is in active service and regardless of his or her professional activity, may become a volunteer firefighter, provided he or she meets the conditions of engagement.
>
> Article L723-4 Through his commitment, the volunteer firefighter participates, throughout the territory, in civil protection missions of all kinds, mainly entrusted to the fire and rescue services, and may also carry out specific missions or functions within the framework of the organisation of the services.
>
> Article L723-5 The activity of a volunteer firefighter, which is based on voluntary work and volunteerism, is not carried out in a professional capacity but under its own conditions.
>
> Article L723-6 The volunteer firefighter freely undertakes to place himself at the service of the community. They carry out the same activities as professional firefighters. They thus contribute directly, depending on their availability, to civil protection missions of all kinds entrusted to the fire and rescue services or to the State services that are permanently entrusted with them mentioned in the first paragraph of I of Article L. 721-2. […]
>
> Article L723-7 The Nation's recognition of the commitment of volunteer firefighters is expressed in particular in the form of awards and distinctions.
>
> Article L723-8 […] Neither the labour code nor the civil service statute are applicable to [VFFs], unless there are legislative provisions to the contrary […]. Volunteer firefighters are subject to the same health and safety rules as professional firefighters.
>
> Article L723-9 The activity of a volunteer firefighter is not for profit. It entitles the volunteer firefighter to hourly allowances as well as social and end-of-service benefits.
>
> Article L723-10 A national charter for volunteer firefighters, drawn up in consultation with representatives of the National Federation of French Firefighters, shall be approved by

regulation. It recalls the values of voluntary service and determines the rights and duties of volunteer firefighters. […] It is signed by the volunteer firefighter at the time of his first engagement.

[...]

Article L723-13 Volunteer firefighters benefit from training adapted to the missions they are entrusted with […].

Article L723-15 The activities of volunteer firefighters, members of civil defence associations and members of civil defence reserves are not subject to the legislative and regulatory provisions relating to working time.

30. Book VII (Regulatory Part) contains more detailed provisions regarding VFFs, including with respect to recruitment, probation, training, disciplinary proceedings, contract renewal, suspension or termination.

31. Further provisions enumerate the type of field operations that VFFs may take part in and the requirements that they must fulfil:

"Article R723-3 Volunteer firefighters may carry out operational activities in one or more of the following areas:
1° First aid and emergency care for people;
2° Firefighting;
3° Protection of persons, property and the environment.
These operational activities are carried out by volunteer firefighters who, subject to meeting the corresponding training obligations defined in accordance with the provisions of the order mentioned in article R. 1424-54 of the general code of local authorities, have reached the minimum grade.
1° Sapper, for the activities of team member;
2° Corporal, for team leader activities;
3° Sergeant, for the activities of team leader of an engine with a team;
4° Warrant officer, for the activities of a team leader of any equipment;
5° Lieutenant, for the activities of group leader;
6° Captain, for activities as a column leader;
7° Commander, for the activities of site manager."

32. Further provisions concern the conditions of recruitment of young VFFs:

"Article R723-6 The recruitment of a volunteer firefighter is subject to the following conditions:
1° To be at least sixteen years old. If the candidate is a minor, he must have the written consent of his legal representative. Candidates for the position of volunteer firefighter officer must be at least twenty-one years old; […]
[…]
Article R723-10 A volunteer firefighter under the age of eighteen years must, in order to participate in a fire or rescue operation, be placed, for the duration of the operation, under the

supervision of another firefighter with the status of team leader or, failing that, with at least five years of effective service.
[…]
Article R723-35 All volunteer firefighters must obey their superiors."

National Charter for Volunteer Firefighters

33. The National Charter for Volunteer Firefighters is included in the Code of Internal Security as an appendix. According to Article L723-10 of the Code of Internal Security, the Charter recalls the values of voluntary service and enumerates the rights and duties of VFFs. According to Article D723-8 of the Code of Internal Security, VFFs are required to sign the National Charter upon their recruitment.

General Code of Local and Regional Authorities

34. Article R1424-1 provides that "the departmental and territorial fire and rescue services include […] volunteer firefighters who […] cannot carry out this activity on a full-time basis."

Law No. 96-370 of 3 May 1996 on the development of volunteerism among volunteer firefighters

35. This law has provisions on various entitlements, such as the hourly allowance, the veterans' allowance, or the (new) fidelity and acknowledgement allowance. Article 11, concerning hourly allowances, reads as follows:

"Article 11 The volunteer fire fighter is entitled, for the performance of his duties and activities within the fire and rescue services, to allowances, the amount of which is between a minimum and a maximum amount determined by a joint order of the Minister of the Interior and the Minister responsible for the budget.
The number of hourly allowances that can be received annually by a single volunteer fire fighter is determined by the fire and rescue service's board of directors.
[…]
These allowances are not subject to any tax or deductions provided for by social legislation.
They are non-transferable and non-seizable. They may be combined with any income or social benefit."

Decree No. 2012-492 of 16 April 2012 on allowances for volunteer firefighters

36. Decree no. 2012-492 sets out the type of activities giving rise to hourly allowances, their amount and calculation method. Accordingly, active duty is paid with the basic hourly allowance, increased by 50% for operations taking place during weekends and on public holidays, and by 100% for night-time operations. On-duty time is paid starting from the basic hourly allowance, reduced by 35 to 75%. Training time is paid with the basic hourly allowance, within certain limits. On-call time may be paid with up to 9% of the basic hourly allowance.

Order of 28 September 2018 setting the amount of the basic hourly allowance for volunteer firefighters

37. Order of 28 September 2018 lays down the level of the basic hourly allowance, which ranges from €7.74 to 11.63 depending on the rank of those concerned.

Decree No. 2000-815 of 25 August 2000 on the organisation and reduction of working hours in the State civil service and the judiciary

38. This decree regulates the working time of PFFs, among others:

> "Article 1 The actual working time is set at thirty-five hours per week in the State's public administrative services and establishments, as well as in local public teaching establishments.
>
> Working time is calculated on the basis of a maximum annual working time of 1607 hours, without prejudice to any overtime that may be worked."

Ministry of Interior, Action Plan 2019-2021 for Volunteer Firefighters (2018)

39. The Action Plan was developed by the Ministry of Interior, based on the recommendations included in the *Mission Volontariat* report (see §45 below). It includes measures aimed at achieving a substantial increase in the recruitment and retention of VFFs, and at safeguarding the role of VFFs through advocacy at the level of the European Union.

B – Domestic case law

Opinion of the *Conseil d'État* - General Assembly, 7 April 2011

40. This opinion is included in the preparatory file for the adoption of a draft law on the legal status of VFFs, presented before the General Assembly in 2011 (Report of the Commission of the National Assembly on Constitutional Law, Legislation and General Administration of the Republic on the draft law (no. 2977) concerning the engagement of VFFs and their legal status). Regarding the provision that sought to remove VFFs from the scope of the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (WTD), and while emphasizing that they did not perform their activity on a professional, but on a voluntary basis, the *Conseil d'État* noted that a degree of ambiguity subsisted with regard to the application in their regard of the WTD. The *Conseil d'État* considered that although the legislative body was free to define the legal framework governing the activity of VFFs, that could not lead to their exclusion from the enjoyment of certain constitutional rights such as the freedom of association or the protection of health, which benefited all persons regardless of their occupation. The *Conseil d'État* further stated that VFFs "must benefit from health and safety rules, particularly with regard to maximum working hours, under the same conditions as [PFFs]."

Conseil d'État, 3ème - 8ème chambres réunies, 12 May 2017, 390665

41. In proceedings concerning freedom of association, the *Conseil d'État* noted that based on the relevant provisions in the Code of Internal Security, VFFs carried out the

same activity as PFFs under specific conditions which excluded, in principle, the application of the Labour Code and the Law on Public Service. However, these provisions did not have the purpose or effect of denying trade union rights, considering that VFFs had specific interests that were subject to being defended through collective action, such as with respect to working conditions, hourly allowances, or social protection.

Judgment No. 17000145 of the Strasbourg Administrative Court, 2 November 2017

42. The Strasbourg Administrative Court cancelled a decision issued by the Fire and Rescue Service of the *Département du Bas-Rhin*, establishing a maximum annual allowance of 2,850 working hours other than periods of on-call duty for each VFF. In doing so, the Administrative Court held that the impugned decision was in breach of Articles 6 and 7 of the WTD establishing a maximum working time limit of 2,304 hours yearly. The Administrative Court ruled that the WTD was directly applicable to the dispute before it based on two grounds. First, VFFs were specifically excluded from the scope of national working time provisions specifying that public servants, including PFFs, could work a maximum of 1607 hours every year. Second, VFFs qualified as "workers" in the sense of the WTD, as they received allowances for their service that constituted a form of remuneration and were placed in a relationship of subordination to a fire and rescue service.

Judgments Nos. 1807900 and 1807901 of the Lyon Administrative Court, 27 February 2020

43. The two claimants, who were VFFs in the *Département de l'Ain*, asked for compensation representing the difference between the pay that would have been received by a PFF and the allowances received as VFFs for 9,105, and 12,520 hours of work respectively, including on-duty and on-call time, performed between 2014 and 2017. The claimants relied on the equal treatment provisions under national law and on the WTD. The Administrative Court rejected the motion on both grounds. On the first ground, the Administrative Court held that the difference in treatment between VFFs and PFFs was justified in the interest of ensuring continuity in the firefighting service. On the second ground, the Administrative Court held that Article 22§1 of the WTD applied, which provided for an exception to the working time rules where additional work was based on the worker's consent.

C – Reports

Court of Auditors report, "The personnel of departmental fire and rescue and civil protection services (SDIS) - Challenges to be met, perspectives to be redefined", Public thematic report, March 2019

44. This report ("the Court of Auditors report") concerning the management of financial and human resources in the fire and rescue services has relevant statistical

data and analysis regarding the status of VFFs. Notably, the report found that the *Matzak* judgment of the Court of Justice of the European Union (CJEU) (see §52 below) should prompt an in-depth review of the organisation of working time for different categories of staff including VFFs, aimed at ensuring compliance with the WTD and securing increased efficiency. The Court of Auditors emphasized that the French civil protection model, depending to a large extent on the work of VFFs, has reached its limits. Static levels of staff are faced with increasing operational demands due to the rising number of person rescue operations, shouldered mainly by VFFs. The Court of Auditors attributed this phenomenon to the fact that, in a context of medical desertification, firefighters are increasingly called upon to carry out interventions of a social nature.

***Mission volontariat sapeurs-pompiers*, 23 May 2018**

45. This report ("the *Mission Volontariat* report"), produced at the initiative of the Ministry of Interior, includes an analysis of the challenges facing the civil protection system, including as a result of potential conflict with the WTD in the aftermath of the *Matzak* judgment of the CJEU (see §53 below). The report considered and rejected a scenario involving the professionalisation on a part-time basis of VFFs and called for interventions at the highest level to secure the basic tenets of the current system, with its emphasis on volunteer engagement. The recommendations from this report formed the basis of the Ministry of Interior' Action Plan 2019-2021 for Volunteer Firefighters (see §39 above).

RELEVANT INTERNATIONAL MATERIAL

A – Council of Europe

European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People (ETS No. 175) 11 May 2000

46. The European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People, which has not yet entered into force, is aimed at 18–25-year-olds wishing to perform voluntary service abroad for periods of three to twelve months. This text prepares the ground for providing young volunteers in Europe with a proper legal status. The Convention provides, as relevant:

> "Article 1 – Object and purposes of the voluntary service
>
> 1 Voluntary service shall pursue an educational aim and contain elements of intercultural learning; it shall be carried out by volunteers under the responsibility of organisations as defined in Article 2, paragraph 2, of this Convention.
> 2 Voluntary service must be based on a non remunerated activity and a free personal decision of the volunteer.
> 3 Transnational long-term voluntary service […] cannot replace remunerated employment."

Parliamentary Assembly, Recommendation 1948 (2010) "Promoting volunteering in Europe"

47. The Recommendation provides, as relevant:

> "[…] 2. The Assembly recalls that volunteering is not a means of making up for social and economic shortcomings which are the responsibility of the state and the government, and should not be regarded as a cheap way for society to delegate public responsibilities to the non-governmental organisations handling voluntary service.
> 3. The Assembly recognises the democratic, humanitarian, social, educational, formative and economic value of voluntary activity. It wishes to emphasise, in particular, the real influence of voluntary service on democratic life, the active citizenship of Europeans, sustainable development and personal fulfilment, and its benefits for the physical and mental health of volunteers, formal and informal training and education, acquisition of skills, production of wealth, intra-European mobility, intercultural and interfaith dialogue, and social cohesion.
> 4. The Assembly therefore recommends that the Committee of Ministers:
> 4.1. invite member states to adopt and promote an energetic policy on behalf of voluntary service; […]"

B – European Union

Charter of Fundamental Rights of the European Union

48. The Charter provides, as relevant:

> "Article 31 Fair and just working conditions
>
> 1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
> 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave."

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time ("the Working Time Directive", "WTD")

49. The Working Time Directive lays down minimum safety and health requirements for the organisation of working time in respect of periods of daily rest, breaks, weekly rest, maximum weekly working time, annual leave and aspects of night work, shift work and patterns of work.

Court of Justice of the European Union (CJEU)

a) Case law on the concept of "worker"

50. The CJEU has held that the notion of "worker" should be interpreted as meaning "any person who pursues real, genuine, activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary". Furthermore, "the essential feature of an employment relationship […] is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration" (see for example *Gérard Fenoll v Centre d'aide par*

le travail 'La Jouvene', Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon, C-316/13, 6 March 2015, §27).

51. In *Union syndicale Solidaires Isère v. Premier ministre and Others*, Case C-428/09, 14 October 2010, the CJEU stated that, for the purposes of the WTD, the concept of "worker" has an autonomous meaning specific to European Union law, which must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned (*ibid*., §28). National courts must apply the concept of worker based "on objective criteria and make an overall assessment of all the circumstances of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved" (*ibid*., §29). On the facts of the case, the CJEU determined that persons employed under contracts such as the educational commitment contracts at issue in the main proceedings, carrying out casual and seasonal activities in holiday and leisure centres, and completing a maximum of 80 working days per annum, qualified as 'workers' and thus came within the scope of the WTD. That the persons concerned were not subject to certain provisions of the Labour Code was immaterial, as "the sui generis legal nature of the employment relationship under national law cannot have any consequence in regard to whether or not the person is a worker for the purposes of European Union law" (*ibid*., §30).

52. In *Ville de Nivelles v. Rudy Matzak*, C-518/15, 21 February 2018, ("the *Matzak* judgment"), the CJEU examined questions regarding the qualification of time spent on stand-by duty by Rudy Matzak, a VFF, for the purposes of the WTD. As a preliminary point, the CJEU considered whether Mr Matzak could be qualified as a "worker" within the meaning of the WTD. Echoing its approach in the *Union syndicale Solidaires Isère* judgment, the CJEU dismissed the fact that under national law Mr Matzak did not have the status of a PFF, but that of a VFF, as irrelevant for his classification as "worker" within the meaning of the WTD. The CJUE concluded that a person in Mr Matzak's circumstances must be classified as a 'worker', in so far as it appeared that he was integrated into the Nivelles fire service where he pursued real, genuine activities under the direction of another person for which he received remuneration. However, it was for the national court to verify that all relevant requirements were met to define that person's professional status for the purposes of the WTD.

b) Case law on the issue of concurrent contracts

53. In *Academia de Studii Economice din Bucureşti v Organismul Intermediar pentru Programul Operaţional Capital Uman – Ministerul Educaţiei Naţionale*, C-585/19, 17 March 2021, the CJEU held that when an employee concluded several contracts of employment with the same employer, the minimum daily rest period applies to those contracts taken as a whole and not to each of them taken separately. In doing so, the CJEU noted that on the one hand, working time rules were designed to guarantee better protection of the health and safety of employees by ensuring that they benefitted of minimum rest periods and of adequate breaks and by setting a

maximum limit on the weekly working time and, on the other hand, the employee was seen as the weaker party in the employment relationship, so this protection prevented the employer from imposing on him a restriction of his rights, for example, by pressuring the employee to split his working time into a number of contracts to avoid overtime payments.

Council Decision of 27 November 2009 on the European Year of Voluntary Activities Promoting Active Citizenship (2011) (2010/37/EC)

54. The Decision provides, as relevant:

> "(5) Having due regard to the particularities of the situation in each Member State and all forms of volunteering, the term 'voluntary activities' refers to all types of voluntary activity, whether formal, non-formal or informal which are undertaken of a person's own free will, choice and motivation, and is without concern for financial gain. They benefit the individual volunteer, communities and society as a whole. They are also a vehicle for individuals and associations to address human, social, intergenerational or environmental needs and concerns, and are often carried out in support of a non-profit organisation or community-based initiative. Voluntary activities do not replace professional, paid employment opportunities but add value to society."

C – United Nations

Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)

55. The General Comment provides, as relevant:

> "47. The right to just and favourable conditions of work relates to specific workers: […] (j) Unpaid workers: […] Unpaid workers, such as workers in the home or in family enterprises, volunteer workers and unpaid interns, have remained beyond the coverage of ILO conventions and national legislation. They have a right to just and favourable conditions of work and should be protected by laws and policies on occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security."

International Federation of Red Cross and Red Crescent Societies, the Inter-Parliamentary Union and United Nations Volunteers, Volunteerism and Legislation: A Guidance Note (2004)

56. The Guidance Note provides, as relevant:

> "Despite the wide variety of understandings, it is possible to identify some core characteristics of what constitutes voluntary activity. First, voluntary activity is not undertaken primarily for financial reward, although reimbursement of expenses and some token payment may be allowed and even recommendable to facilitate access of individuals from all economic backgrounds. Second, it is undertaken voluntarily, according to an individual's own free will.

> Third, voluntary activity brings benefits to people other than the volunteer, although it is recognised that volunteering brings significant benefit to volunteers as well."

D – International Labour Organisation (ILO)

Guidelines on decent work in public emergency services (2019)

57. These guidelines refer to the situation of volunteers working in public emergency services (PES), among other issues, as follows:

> "23. Volunteer work may be used in PES. It is defined as "non-compulsory work performed for others without pay", and is one of the five distinct forms of work recognized by the International Conference of Labour Statisticians. By definition, PES volunteers are not employees of PES. Nonetheless, they are workers, and therefore the fundamental principles and rights at work should be observed in respect to volunteer workers, to the greatest possible extent.
> […]
> 25. The use of volunteers should not impair the coordination of PES, substitute PES workers, or undermine the wages or working conditions of other PES workers, or be used to justify the understaffing or underfunding of PES."

THE LAW

PRELIMINARY CONSIDERATIONS

As to whether VFFs fall under the concept of "worker"

58. Having regard to the parties' observations, the Committee must determine as a preliminary matter whether VFFs may be qualified as workers within the meaning of the Charter. Indeed, the answer to this question is decisive in establishing whether the Committee has competence to deal with the merits of the case.

59. According to SUD SDIS, firefighters ("*sapeurs-pompiers*") are entrusted with protecting persons, property and the environment. The fire and rescue services ("*service d'incendie et de secours*"), organised primarily at regional level ("*département*"), are composed of mixed teams of PFFs and VFFs. SUD SDIS refers to domestic legal provisions that categorically exclude VFFs from the notion of "worker" and certain rights associated with that status, particularly Articles L723-5, L723-8, and L723-15 of the Code of Internal Security (see §27 et seq. above). SUD SDIS asserts that as the situation of VFFs is comparable to that of PFFs, based on factors such as task allocation, working time and workload, extent of autonomy, entry requirements, training requirements, uniforms and other insignia, or the system of ranks in place, they should accordingly also be classified as workers.

60. SUD SDIS alleges that VFFs perform all the activities of a firefighter, including a combination of shifts on duty at the fire station ("*gardes postées*") and on on-call away from the fire station ("*périodes d'astreinte"*), as well as being involved in field operations. VFF often have substantial workloads, as illustrated by individual examples

or local regulations that authorise allegedly unreasonable working hours (see §§107-108 below). SUD SDIS submits that some VFFs work even more than PFFs, whether considering their activity as firefighters alone, or in combination with their regular employment. SUD SDIS strongly challenges the Government's assertion that VFFs are free to define the level of their engagement by submitting examples of local regulations and correspondence with individual VFFs suggesting that minimal working time requirements are in place. Nonetheless, SUD SDIS submits that even if no rules on availability applied, VFFs would still have to be classified as "workers," as they perform the same activities as PFFs. SUD SDIS further submits that VFFs are recruited based on similar physical fitness tests as PFFs and that both categories of firefighters are required to complete similar mandatory training at the beginning of their engagement and regularly thereafter. There are likewise no distinctions with respect to the system of ranks, uniforms, insignia, and other identifying signs used by VFFs and PFFs respectively. SUD SDIS points out that while VFFs are not formally classified as workers, they are covered by the same regulations as PFFs in several areas, such as with respect to the right to join a trade union or health and safety, which it considers to be a further indicator as to their *de facto* status as workers.

61. The Government submits that VFFs do not come within the personal scope of the Charter. While recalling that the Committee has not developed a comprehensive definition of the notion of "worker", the Government asserts that the relevant provisions of the Charter concern individuals in a typical employment relationship or having the status of public servants. Either of those categories have fixed working hours, personal attendance requirements, and individual assignments. In contrast, VFFs have a special status under national law which cannot be assimilated to either that of a worker, or of a public servant. The fundamental difference between VFFs and PFFs is that the former's engagement is voluntary and free from any imposition, as stated for example in Article L723-6 of the Code of Internal Security (see §27 et seq. above). Therefore, the standard protections from the Labour Code available to workers do not apply to VFFs, whose activity is regulated separately.

62. The Government explains that, while the engagement of VFF is subject to the inherent constraints of the service they are embedded in, measures are taken to ensure that a balance is kept between fire and rescue activities and family life. Furthermore, the Government notes that VFFs have the freedom to decide the duration, the date, the place, and the modalities of their commitment and submits two timesheets to illustrate that the level of individual engagement can be very variable. In turn, the management authorities are entitled to supervise the activity of VFFs by establishing upper limits for the volume of work they are called to perform. As the activity of VFFs presents certain risks, a protective legal regime is in place, including rules on health and safety, recruitment, social protection or occupational medicine.

63. Regarding the Government's central assertion that VFFs have a sui generis status under national law, which is not the same as that of a worker or public servant,

the Committee recalls from the outset that the concept of “worker” within the meaning of the Charter cannot be defined solely by reference to the legislation of the member States. Otherwise, the implementation of different guarantees provided for “workers” would be within the State discretion and it would be possible for the States to alter the scope of those guarantees which would deprive them of any efficiency (European Youth Forum (YFJ) v. Belgium, Complaint No.150/2017, decision on the merits of 8 September 2021, §119). It follows that the classification under national law of VFFs as “volunteers,” resulting in their exclusion from the enjoyment of (certain) rights associated with the status of a “worker”, cannot have any consequences for assessing the substantive contents of the guarantees provided in the Charter. To determine whether VFFs may be classified as “workers” within the meaning of the Charter, the Committee must make a comprehensive assessment of all relevant elements of the professional relationship concerned based on objective criteria.

64. Whilst the Committee has not developed a comprehensive definition of the concept of “worker” within the meaning of the Charter, certain elements thereof may be derived from its previous case law. In European Youth Forum (YFJ) v. Belgium, the Committee considered whether unpaid interns qualified as “workers” for the purposes of Article 4§1 (European Youth Forum (YFJ) v. Belgium, Complaint No.150/2017, *op. cit.*, §§125-128). The Committee held that Article 4§1 applied in the case of so-called “bogus internships”, which lacked a substantial learning and training component, were allegedly used to replace regular employment, and entailed the performance of real and genuine work. The Committee also found that the existence of an employment contract or of remuneration was not determinative of the issue, as in any event they were lacking in the case of the internships in question.

65. In *Unione sindacale di base (USB)* v. Italy, the Committee examined the situation of a category of public administration employees designated as “socially useful workers” under national law (*Unione sindacale di base (USB) v. Italy*, *op. cit.*, §§48-57). The Committee held that they qualified as “workers” for the purposes of the Charter, to the extent that they were deployed for extended periods of time and became part of the organisations concerned. Furthermore, they carried out similar or even the same tasks as “regular workers”, which moreover implied the existence of a subordinate relationship. The fact that the individuals in question received benefits for their services drawn from specially designated funds, as opposed to salaries, was not determinative of their status as “workers” (*ibid.*, §87). Conversely, those “socially useful workers” who carried out short-term, usually project-based work and who did not become part of the service, had a status that was closer to that of a jobseeker, than to that of a worker in the regular labour market. As the aim of the system concerned was to provide such persons with social security in the form of benefits while promoting their reintegration into the labour market they could not be qualified as “workers” for the purposes of the Charter (*ibid*., §§48-57).

66. The Committee further notes that international organisations have adopted various documents aimed at promoting altruistic citizen engagement in voluntary work,

which States are urged to facilitate by adopting an enabling legislative and policy framework (see §46 *et seq.* above). For instance, at the level of the Council of Europe, the Parliamentary Assembly Recommendation 1948 (2010) "Promoting volunteering in Europe" emphasized the democratic, humanitarian, social, educational, formative and economic value of voluntary activity, and the real influence of voluntary service on democratic life, the active citizenship of Europeans, sustainable development and personal fulfilment, and its benefits for the physical and mental health of volunteers, formal and informal training and education, acquisition of skills, production of wealth, intra-European mobility, intercultural and interfaith dialogue, and social cohesion. In this context, the Committee considers that it must carefully distinguish the concept of "volunteer" from that of "worker" in order to ensure that its decision in the present case is not counterproductive to those efforts that promote voluntary work across Europe.

67. Although the Committee has not had the opportunity to articulate a definition of "voluntary work" in its case law, other sources in international law, such as the European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People or the Guidance Note by the International Federation of Red Cross and Red Crescent Societies et Ors. (see §46 *et seq.* above), generally refer to a limited set of criteria. First, voluntary activity is not undertaken primarily for financial reward, although the reimbursement of expenses incurred by the volunteer or even token payments is possible. Second, voluntary activity must be undertaken based on an individual's free will. Third, voluntary activity primarily brings benefits to people other than the volunteer.

68. Turning to the case at hand, the Committee considers that no issues arise regarding the voluntary character of the activity in question, or the extent to which it brings benefits primarily to people other than the volunteer. Thus, VFFs are unquestionably free to join and leave the activity concerned whenever they desire, without fear of any sanctions or other negative repercussions, whilst also they incontestably work primarily in the public interest. The remaining element, namely remuneration, raises more complex questions that require separate examination. The Committee further considers that, in accordance with the aforementioned international standards, voluntary work should not replace remunerated employment in public services. However, the Committee considers it more appropriate to include this further factor within the scope of its proportionality analysis in terms of Article 1§2 of the Charter (see §§98-100 below),

69. In view of the above, the Committee considers that a range of factors are relevant for determining the nature of the activity carried out by VFFs and hence whether they may be regarded as workers. This will include, in particular, the performance of real and genuine work; the existence of a relationship of subordination; and, in the specific context of the present complaint, the absence of remuneration, as an element that would confirm that the engagement in question is performed on a voluntary basis.

70. As to the existence of real and genuine work, regard should be had to the wording of the relevant statutory provisions, which state explicitly that VFFs and PFFs work in close cooperation and perform the same activities. Thus, according to Article L723-6 of the Internal Security Code, a VFF "carries out the same activities as PFFs" and "[they] contribute directly […] to civil protection missions of all kinds entrusted to the fire and rescue services" (see §27 et seq. above). The *Conseil d'État* similarly acknowledged that "[VFFs] carry out the same activity as [PFFs]" (see §41 above). The National Charter of Volunteer Firefighters provides that "the VFF plays an integral part in the fire and rescue services, in the same manner as PFFs and the administrative, technical and specialised personnel, who act in a collaborative and complementary manner with [them]" (see §33 above).

71. VFFs are routinely assigned to perform 12- or 24-hour shifts, on-duty or on on-call, at or away from the fire station, based on a rota system, and take part in all field operations, subject to having completed the appropriate training modules. According to the Court of Auditors report, out of the total number of 248,012 firefighters in France, 194,975, or 78.6%, were VFFs (*op. cit.*, p. 14). They completed 34% of all day shifts assigned in fire and rescue services and 42% of all night shifts. They were responsible for 66% of the total working time spent on fire and rescue operations. As of 2016, a VFF worked on average for 11 years and 8 months for fire and rescue services, an increase of 9 months in 2011. The Committee considers that to the extent that PFFs perform real and genuine work, an uncontested fact, that must necessarily also be the case for VFFs.

72. As to the existence of subordination, the Committee notes that the activity of VFFs is covered by regulations that establish conditions of eligibility, recruitment procedures, training requirements, hourly allowances, uniform and other insignia, ranks, professional duties and grounds for renewal, suspension and termination of service. VFFs, along with PFFs, are expected to participate in the whole range of fire and rescue activities, based on a rota system that takes into account operational needs and self-determined levels of availability. They are clearly expected to work under the directions of, and follow orders from, their superiors. In that sense, the Committee refers to Article R723-35 of the Code of Internal Security, which provides that "all volunteer firefighters must obey their superiors," a provision also found in the guidelines applying in the *Département des Yvelines*, which provide that "[VFFs] operate in a hierarchical structure, which they are required to recognise and respect".

73. As to the existence of remuneration, the Committee recalls that the central feature of employment contracts is the performance of work for remuneration (European Youth Forum (YFJ) v. Belgium, Complaint No.150/2017, *op. cit.*, §121). The notion of remuneration has been defined in the context of Article 4§1 of the Charter as compensation – either monetary or in kind – paid by an employer to an employee for

time worked or work done (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1). Remuneration is also an element that sets employment apart from voluntary activity. The Government refers to legal provisions emphasising that "the activity of a VFF is based on voluntary service" (for example under Article L723-5 of the Code of Internal Security). However, VFFs receive certain benefits in return for their services, with the National Charter of Volunteer Firefighters, among other regulations, stipulating that they have "a right to hourly allowances, social protection and benefits, and an end-of-service benefit." In this context, the Committee considers that it must assess the nature of the hourly allowances received by VFFs, as a primary indicator as to the existence of remuneration.

74. Most activities of a VFF potentially give rise to an entitlement to receive hourly allowances (see §§36-37 above). These are calculated in relation to hours of work effectively performed, as a fraction of the standard pay of PFFs for the same work, with further increases paid for work carried out at night-time, during weekends or public holidays, and depending on the rank of the person in question. The Committee further notes that individual *départements* have a degree of discretion in determining the exact amount of an hourly allowance. The remuneration thus calculated varies greatly depending on the extent of personal engagement and the rules of each *département*. According to the Court of Auditors report, a VFF receives €2,581 per year on average, compared to wages ranging from €22,000 to €53,000 for a PFF, depending on their rank (*op. cit.*, p. 47).

75. The Court of Auditors report further notes that the remuneration for some VFFs may be substantial, a fact that is attributed to the dearth of regulations on the working time for VFFs (*op. cit.*, p. 72). In this regard, reference is made to the *Département des Landes*, where 21% VFFs received half of the entire amount paid in hourly allowances to VFFs. In the *Département de l'Yonne*, 12 VFFs received more than €10,000 each in allowances every year. In view of such developments, the Court of Auditors concluded that there has been a gradual slide of some VFFs towards "a form of professionalization."

76. The *Mission Volontariat* report similarly notes that there has been "a gradual professionalisation of a part of the VFFs," as signalled by several factors (*op. cit.*, p. 25). First, fire and rescue operations have an increased degree of technical complexity, with correspondingly stricter demands during initial and subsequent training. Second, longer distances between home, regular work premises, and fire stations, meant that the practice of assigning VFFs to 12- and 24-hour shifts, which had previously been reserved to PFFs, has become prevalent in one out of seven fire and rescue centres. Third, the frequency of operations and the number of hourly allowances accumulated have rendered the position of some VFFs more akin to a proper job, providing a non-negligible supplementary source of income. In that regard, certain VFFs with substantial commitment to fire and rescue work are regarded as de facto "part-time PFFs."

77. The Committee further notes the position taken by the CJEU and the Court of Auditors regarding the status of VFFs. Thus, in the *Matzak* judgment (see §52 above), the CJEU decided that a Belgian VFF had to be classified as a 'worker' within the meaning of the WTD, "in so far as it appeared that he was integrated into the [fire service] where he pursued real, genuine activities under the direction of another person for which he received remuneration." For its part, the Court of Auditors report indicated that, pursuant to the *Matzak* judgment, French VFFs should be classified as "workers" within the meaning of the WTD, considering that they signed a contract, the average length of their service was eleven years and seven months, they received direct instructions from their supervisors, they had attendance duties based on a pre-agreed rota system, and they received an hourly allowance that may be characterised as a form of remuneration (*op. cit*., p. 109). Consequently, the Court of Auditors recommended that the authorities give effect to this finding by elaborating a plan to ensure that the working time of VFFs was compliant with EU law.

78. It follows that VFFs perform real and genuine work, that they are fully embedded in the fire and rescue sector and that a clear relationship of subordination exists in the institutional setting concerned. Furthermore, in view of their size and the manner of calculation based on effective working time, the payments received in hourly allowances by some VFFs cannot be regarded as mere "token payments" or "reimbursement of expenses", and that therefore they should be considered as a form of remuneration.

79. The Committee considers that where VFFs perform their activity on a de facto professional basis, for which they receive remuneration, they must be regarded as "workers" for the purposes of the Charter.

As to the alleged violation of European Union law

80. The Committee notes that some of the claims submitted by SUD SDIS are based to a large extent on alleged violations of EU law and decisions of the CJEU. The law of the Charter and EU law are two different legal systems and the principles, rules and obligations constituting EU law do not necessarily coincide with the system of values, principles and rights embodied in the Charter (USB v. Italy, Complaint No. 170/2018, *op. cit.*, §§ 44-46). In particular, the Committee has previously concluded that it is competent neither to assess the conformity of national situations with a directive of the European Union nor to assess compliance of a directive with the Charter (*Confédération Générale du Travail* (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§32 and 33; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§72-74; Irish Congress of Trade Unions v. Ireland, Complaint No. 123/2016, decision on the merits of 12 September 2018, §114). The Committee's mandate is to assess whether national legislation and practice is compatible with the standards of the Charter (*Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL–CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF)

v. Italy, Complaint No. 143/2017, decision on the merits of 3 July 2019, §99).

As to the provisions of the Charter at stake

81. SUD SDIS asserts that by denying VFFs, including young VFFs, the status of workers, France has violated the following provisions of the Charter:

- Article 2§§1 to 7, with respect to various aspects of the right to just conditions of work;
- Articles 3 and 11, as there are no regulations enabling VFFs to benefit from rules related to health, safety, or hygiene at work;
- Article 4§§1 to 4, as VFFs do not receive equal pay for the same work when compared with PFFs;
- Article 7§§4 to 10, as there are no regulations enabling young VFFs to benefit from rules related to the organisation of working time, fair wages, and health and safety at work.
- Article 24, as VFFs are not sufficiently protected in case of dismissal;
- Article E taken together with each of the above-mentioned provisions, as the difference in treatment between VFFs and PFFs is not reasonably justified.

82. SUD SDIS also alleges a violation of Article 7§2 of the Charter, as young VFFs are allowed to participate in field operations in an occupation that is acknowledged as dangerous under the law.

83. As regards the allegations concerning Article 2§§2 to 7 of the Charter, the Committee notes that they are not sufficiently substantiated to allow a distinct assessment under each of these provisions.

84. As regards the allegation concerning Article 2§1 of the Charter, the Committee notes that it includes a claim that the periods of on-call time performed by VFFs should be considered working time, based on the similarity of arrangements for VFFs in Belgium and France and pursuant to the *Matzak* judgment of the CJEU (see §52 above). However, other than referring to the judgment in question, SUD SDIS does not adduce any evidence enabling an independent assessment of on-call time within the meaning of the Charter, having regard to the nature of the activities concerned and the relationship of the parties involved. While reiterating that it is not competent to apply EU law, the Committee rejects the complaint under Article 2§1 of the Charter insofar as it is concerned with the periods of on-call time that VFFs are assigned to perform. This conclusion does not obviate the fact that according to the Committee's case law under Article 2§1 of the Charter, an on-call period during which no effective work is undertaken cannot be regarded as a period of rest (see CGT v. France, Complaint No. 55/2009, *op. cit.* , §§ 64-65).

85. As regards the allegations concerning Articles 3 and 11 of the Charter, the Committee refers to the Government's submission that VFFs are covered by the same health and safety rules as PFFs, which SUD SDIS accepted as fact. The Committee therefore rejects these allegations as ill-founded.

86. As regards the allegations concerning Article 4§§1 to 4 of the Charter, the Committee notes that in substance they are concerned with the alleged disparity in the level of pay received by VFFs and PFFs respectively for equal work. Relying primarily on Article 4§1 alone and in conjunction with Article E of the Charter, SUD SDIS alleges that the ensuing difference in treatment between VFFs and PFFs constitutes unlawful discrimination. The Committee recalls that Article 4§1 of the Charter guarantees the right of workers to a fair remuneration such as to ensure a decent standard of living, ordinarily assessed in relation to the minimum wage available in the State concerned. In that regard, the Committee notes that no issues related to a decent standard of living ordinarily arise in the case of VFFs, who, in their vast majority, perform their duties in addition to another occupation for which they receive remuneration. Whilst the same complaint may be seen from different vantage points, the Committee considers that allegations of discrimination such as those raised in the present complaint are more appropriately assessed under Article 1§2 of the Charter, which entails, inter alia, the elimination of all forms of discrimination in employment, including with respect to remuneration (see for example USB v. Italy, *op. cit.*, §§82 et seq.). The Committee considers that it has the power to define and interpret the law to be applied to the facts of a complaint, including by examining it under provisions of the Charter that are different from those expressly relied upon by the complainant organisation. Therefore, the Committee will examine the allegations in question under Article 1§2 of the Charter, while dismissing the allegations made under Article 4§§1 to 4 of the Charter as insufficiently substantiated.

87. As regards the allegations under Article 7§§4 to 10 of the Charter, SUD SDIS does not put forward arguments and information substantiating its allegations, including for example with regard to the prevalence and extent of the alleged infringements across the national territory. Furthermore, SUD SDIS has not submitted a response to the Government's submissions on these points. The Committee therefore considers that the complaint is not sufficiently substantiated to allow a distinct assessment under these provisions.

88. As regards the allegations concerning Article 24, as well as those concerning Article E of the Charter, taken together with all other provisions invoked by SUD SDIS, the Committee finds that they do not require distinct examination, bearing in mind the nature and substance of its conclusions with respect to Articles 1§2 and 2§1 of the Charter (see, mutatis mutandis, International Commission of Jurists (ICJ) v. Czech Republic, Complaint No.148/2017, decision on the merits of 20 October 2020, §§50-51).

89. In light of these considerations, the Committee decides to examine the merits of the complaint concerning Articles 1§2, 2§1 and 7§2 of the Charter.

I ALLEGED VIOLATION OF ARTICLE 1§2 OF THE CHARTER

90. Article 1§2 of the Charter reads as follows:

> **Article 1 – The right to work**
>
> Part I: "Everyone shall have the opportunity to earn his living in an occupation freely entered upon."
>
> Part II: "With a view to ensuring the effective exercise of the right to work, the Parties undertake:
>
> (…)
>
> 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
> (…)"

A – Arguments of the parties

1. The complainant organisation

91. SUD SDIS submits that although VFFs perform the same activities as PFFs and often have substantial workloads, their pay is set at a fraction of that received by PFFs. SUD SDIS explains that VFFs are entitled to hourly allowances for their work and proceeds to describe their method of calculation, as laid down in Decree No. 2012-492 of 16 April 2012 on allowances for volunteer firefighters and Order of 28 September 2018 setting the amount of the basic hourly allowance for volunteer firefighters (see §37 above). Each *département* enjoys a degree of discretion in establishing the exact amount of an hourly allowance and the maximum number of allowances available to individual VFFs, within the limits set out in the aforementioned regulations.

2. The respondent Government

92. The Government states that the Committee has not developed a comprehensive definition of the notion of "worker" under the Charter. Furthermore, VFFs and PFFs are not in a comparable situation, considering that the former freely chose to set aside a portion of their time for these activities on a voluntary basis. The Government explains that the "allowances" received by VFFs cannot be assimilated to salaries in an employment relationship, as on the contrary they are provided as compensation for the expenses incurred by VFFs while discharging their duties. These allowances have a special fiscal regime, as they are not subject to tax or social security deductions. Furthermore, PFFs receive more professional training overall than VFFs, whose training needs depend on individual levels of engagement. The Government further notes that the battery of tests that must be passed by VFFs at recruitment is not fixed and varies between individual *départements*. In contrast, PFFs have a fixed recruitment procedure pertaining to their status as public servants.

B – Assessment of the Committee

93. The Committee recalls that Article 1§2 of the Charter requires States Parties to protect effectively the right of workers to earn their living in an occupation freely entered upon. This obligation entails, inter alia, the elimination of all forms of discrimination in employment regardless of the legal nature of the professional relationship (*Syndicat national des professions du tourisme* v. France, Complaint No. 6/1999, decision on the merits of 10 October 2000, §24; Quaker Council for European Affairs (QCEA) v. Greece, Complaint No. 8/2000, decision on the merits of 25 April 2001, §20; *Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on the merits of 5 July 2013, §104; *Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 91/2013, decision on admissibility and the merits of 12 October 2015, §235). The discriminatory acts that are prohibited by Article 1§2 are those that can occur in connection with conditions of employment in general (including with regard to remuneration, training, promotion, transfer and dismissal or other detrimental action) (Conclusions XVI-1 (2002), Austria).

94. The Committee refers to the aforementioned conclusion that VFFs perform real and genuine work; that they carry out services under the direction of another person; and that many VFFs receive payments that may be characterised as a form of remuneration (see §78 above). The Committee considers that insofar as VFFs carry out their activity primarily for financial reward, as evidenced by the extent of their paid engagement and the sums received in hourly allowances, they should be considered "workers" with the right to earn their living in an occupation freely entered upon within the meaning of Article 1§2 of the Charter (see mutatis mutandis European Youth Forum (YFJ) v. Belgium, Complaint No.150/2017, *op. cit.*, §127).

95. The Committee recalls that the present complaint relates to the disparities in the pay received by the VFFs and PFFs respectively for equal work. The situation in France therefore involves a question of differential treatment which may give rise to discrimination within the meaning of Article 1§2 of the Charter. In this respect, discrimination is defined as a difference in treatment between persons in comparable situations where it does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued (*Syndicat national des professions du tourisme* v. France, *op. cit*., §§24-25).

96. Firstly, as regards the notion of comparability, the Government submits that VFFs and PFFs are not in a comparable situation owing to the fact that the former's engagement is voluntary, whereas the latter are party to an ordinary employment relationship. In this regard, the Committee refers to its aforementioned conclusion to the effect that the situation of VFFs is entirely comparable to that of PFFs (see §78 above). This is not altered by the other differentiating factors identified by the Government, namely that the PFFs undergo comparatively more training than VFFs (8.7 days for PFFs as opposed to 3 days for VFFs on average per person) and that PFFs and VFFs respectively have different recruitment tracks (see §92 above). The

Committee further notes that while the categories of workers concerned are in a comparable situation, they are treated differently in that their remuneration is calculated based on different methods, resulting in substantial pay differentials. The difference of treatment stems from the status respectively as volunteers and professionals of the two categories of workers under domestic law.

97. Secondly, a difference in treatment must have a legitimate aim. In this respect, the Committee is prepared to accept that the current arrangements involving VFFs are aimed at ensuring the viability of the civil protection system, as pointed out by the Government.

98. Thirdly, a difference in treatment must be based on objective and reasonable grounds. While the Government does not make any submissions in this respect, the public debate taking place in France in response to the *Matzak* judgment, which has been referenced extensively by SUD SDIS and which is reflected in official documents such as the Court of Auditors report or the *Mission Volontariat* report, turns mainly on the costs involved in transforming the fire and rescue service into a fully professional body. The Committee further notes that both the complainant organisation and the third-party intervener (ETUC) argued that the prevalence of VFFs in the civil protection system in France is motivated primarily by economic considerations. In this regard, the Committee reiterates that while 78.6% of the firefighters in France are VFFs, who are responsible for 34% to 66% of standard fire and rescue activities at the national level (see §71 above), the total amount in hourly allowances paid countrywide in 2017 reached €577.90 million, or just under a quarter of the entire wage bill in the civil protection system.

99. The Committee points out that as a matter of principle the objectives of the Charter as an instrument for the protection of social rights cannot be subordinated to purely economic considerations. In this connection, the Committee observes that the international documents concerned with promoting voluntary work consistently emphasise that voluntary work must be additional to, as opposed to substituting, remunerated employment in public services (see, among others, the Parliamentary Assembly Recommendation on Promoting volunteering in Europe, the European Parliament Resolution on the role of volunteering in contributing to economic and social cohesion, or the ILO Guidelines on decent work in public emergency services, included in the survey of relevant international law at §46 *et seq.* above). The Committee further recalls that the risk of having recourse to unpaid labour in order to replace regular employment has also informed its analysis under Article 4§1 of the Charter as regards the so-called “bogus internships” in Belgium (*European Youth Forum (YFJ) v. Belgium*, *op. cit*., §§147-148, also see §64 above). Those considerations apply mutatis mutandis to the present case.

100. The Committee notes that the National Charter of Volunteer Firefighters refers to VFFs as “a leading actor in the fire and rescue community”, while the *Mission Volontariat* report designates them as the “backbone of the French civil protection system” (*op. cit*., p. 15). This role is expected to be bolstered even further, in light of the authorities’ sustained efforts to strengthen the recruitment and retention of VFFs,

as reflected in the Ministry of Interior's Action Plan 2019-2021 for Volunteer Firefighters (see §39 above), among other official documents. The increased reliance on VFFs correlates with another phenomenon, namely that in recent years there has been a significant increase in the overall workload of fire and rescue services as well as in the number of person rescue operations as a share of that workload as indicated by official sources referred to by SUD SDIS, such as the Court of Auditors or the *Mission Volontariat* reports. For instance, the Court of Auditors report notes that the number of person rescue operations increased from 54% of the total number of operations carried out in 1988, to 84% in 2017 (in comparison, firefighting operations formed 7% of all operations) (*op. cit*., p. 112). Simultaneously, person rescue operations have increased in technical complexity and have become more time consuming. This trend relates to a phenomenon referred to as "medical desertification", consisting in a reduced coverage of healthcare services throughout the national territory and their concentration in large urban centres (*op. cit*., p. 29). According to the Court of Auditors report these changes generated increased pressure on VFFs in particular, who were called to shoulder much of the resulting burden.

101. In view of the prevalence of VFFs in the civil protection system and the ongoing pressure applied on VFFs as a result of the restructuring of healthcare services, the Committee concludes that, far from playing a marginal or complementary role, VFFs may be said to make a vital contribution to the delivery of a public service, to the extent that they have become indispensable to its overall functioning. The Committee therefore considers that the difference in treatment between VFFs and PFFs is not based on objective and reasonable grounds and therefore that it is not proportionate to the aim pursued.

102. Having regard to the discriminatory difference in treatment with regard to remuneration between certain VFFs and PFFs, the Committee holds that there is a violation of Article 1§2 of the Charter.

II ALLEGED VIOLATION OF ARTICLE 2§1 OF THE CHARTER

103. Article 2§1 of the Charter reads as follows:

> **Article 2 – The right to just conditions of work**
>
> Part I: "All workers have the right to just conditions of work."
>
> Part II: "With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:
>
> 1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduces to the extent that the increase of productivity and other relevant factors permit ; (…)"

A – Arguments of the parties

1. The complainant organisation

104. SUD SDIS submits that, although VFFs carry out the same tasks as PFFs and have substantial workloads, they are not covered by standard statutory protections against unreasonable working hours available to "workers" in general, including PFFs. For these purposes, reference is made to the totality of activities performed by VFFs, including on-duty and on-call periods, time spent in training and on field operations, all of which should count as working time for the purposes of Article 2§1 of the Charter.

105. SUD SDIS alleges that the working time of VFFs is almost completely unregulated at the national level. While Article R1424-1 of the General Code of Local and Regional Authorities provides the VFFs "may not perform [their] activity full time", there is no definition of what counts of "full time" (see §34 above). In these circumstances, individual *départements* have a large margin of discretion in fixing maximal and minimal levels of engagement for VFFs. The regulatory gap with respect to working time of VFFs means that local authorities can impose excessively long working hours, in response to ever-present and increasing operational imperatives.

106. SUD SDIS submits that, for the purposes of Article 2§1 of the Charter, the time spent by VFFs on fire and rescue activities must be added to normal working time in their regular employment. In that sense, SUD SDIS argues that the regulations in place render plausible the hypothetical case of a VFF whose main occupation is that of a lorry driver. After completing a working day in their main occupational activity, the individual in question may be required immediately to start a night shift on duty at the fire station, which may involve driving vehicles as part of a fire and rescue operation. Once the night shift is over, they may even be required to resume their main job as a lorry driver the following morning. SUD SDIS further submits that the national law does not take into account the health and safety implications of added working time in the case of VFFs.

107. To illustrate its assertions, SUD SDIS refers to the regulations from several *départements*, which authorise allegedly unreasonable working hours for VFFs:

- The *Département du Bas Rhin* had maximum yearly allowances of 2,850 hours of on-duty time and of 50 weeks of on-call time – this decision was ultimately revoked by the Strasbourg Administrative Court (see §42 above).
- In the *Département du Nord*, VFFs were required to perform between 1,000 and 4,032 hours of on-call time every year.
- The *Département de la Drôme* had maximum yearly allowances of 1,600 hours of on-duty time and 350 days of on-call time.

108. SUD SDIS further presents individual timesheets allegedly revealing similarly high or excessive workloads:

- A VFF in the service of the *Département du Rhône* worked an average of 2,757 hours yearly from 2014 until 2017, including on-duty and on-call time, but excluding training time.
- A VFF in the service of the *Département de la Drôme* performed three consecutive 24-hour on-duty shifts or 72 hours of continuous work in May 2019. During the whole year (2019), he worked 1,591 hours in total including on-duty and on-call time.
- A VFF in the service of the *Département de la Drôme* had 16 on-duty shifts, including three 24-hour shifts, for 224 hours in total, as well as an additional 57 hours of on-call time in one month (December 2019). During the whole year (2019), he worked 2,181.5 hours in total including on-duty and on-call time.

109. SUD SDIS systematically compares such workloads with the maximum working time allowed in the case of PFFs, namely 35 hours weekly or 1,607 hours yearly (see §38 above). In this sense, individual *départements* routinely authorise working time in excess of 1,607 hours yearly for VFFs, as illustrated by the examples provided above.

2. The respondent Government

110. The Government reiterates that as VFFs are contributing their time in the civil protection service on a voluntary basis, it should not be counted as working time for the purposes of Article 2§1 of the Charter. In response to the examples of heavy VFF workloads provided by SUD SDIS (see §108 above), the Government recalls that civil protection is largely decentralised at the level of the *département*. While the law may be misapplied at the local level, any such abuses are subject to being rectified before courts. In this sense, the Government notes that legislation is being prepared that would regulate the working time of VFFs more strictly, to prevent practices such as continuous work for more than 24 hours or excessive annual workloads.

B – Assessment of the Committee

The scope of Article 2§1 of the Charter

111. The Committee recalls that Article 2§1 guarantees the right of workers to reasonable limits on daily and weekly working hours, including overtime (Conclusions XIV-2 (1998), Statement of Interpretation on Article 2§1), and that its aim is to protect the health and safety of workers and provide a fair balance between work and private life (Iceland, Conclusions XIV-2). The provisions of the Charter concerning working time are intended to protect workers' safety and health in an effective manner and accordingly every worker must receive rest periods adequate for recovering from the fatigue of work and of preventive value in reducing risks of health impairment which

could result from accumulation of periods of work without the necessary rest (*Confédération générale du travail* (CGT) v. France, Complaint No. 22/2003, 8 December 2004, §34). This is consistent with the approach adopted at the EU level, where the harmonisation of the organisation of working time, as reflected in the WTD, is designed to guarantee better protection of the safety and health of workers by ensuring that they are entitled to minimum rest periods and to adequate breaks and by setting a maximum limit on the weekly working time (*Federación de Servicios de Comisiones Obreras (CCOO) v. Deutsche Bank SAE*, C-55/18, 14 May 2019, §37).

112. The Committee has previously stated that the working time provisions in the Charter should apply to all categories of workers and can only be exceeded under exceptional circumstances, such as natural disasters or force majeure (Conclusions 2016, Malta). According to other sources in international law, working time provisions should apply to volunteers in the civil protection sector. For example, in the *Matzak* judgment, the CJEU considered that the WTD was applicable to circumstances that were similar to those in the case at hand (see §52 above). The Committee on Economic, Social and Cultural Rights noted that unpaid workers, including volunteer workers, must benefit from the right to just and favourable conditions of work and should be protected by laws and policies on occupational safety and health, rest and leisure, and reasonable limitations on working hours, as well as social security (see §55 above). Moreover, the ILO Guidelines on decent work in public emergency services emphasise that volunteers in public emergency services "are workers, and therefore the fundamental principles and rights at work should be observed in respect to volunteer workers, to the greatest possible extent" (see §57 above).

113. At the national level, the *Conseil d'État* has stated that, regardless of their sui generis status under national law, VFFs "must benefit from health and safety rules, particularly with regard to maximum working hours, under the same conditions as [PFFs]" (see §40 above) The Court of Auditors likewise expressed the view that VFFs should be classified as workers and accordingly that working time provisions should apply (*op. cit*., p. 118) . The Committee further refers to the Government's express submission that VFFs benefit from the same health and safety rules as PFFs, with the exception of working time regulations. The Committee considers this to be an implicit recognition that VFFs encounter health and safety risks in their activity for which they must receive protection, irrespective of their formal status under national law.

114. The Committee refers to its finding above to the effect that VFFs perform real and genuine work and that they perform services under the direction of another person (see §78 above). Considering that, in view of its purpose, Article 2§1 should be given

the broadest possible application that covers all workers, it follows that it must necessarily also apply to all VFFs.

The calculation of working time under concurrent contracts

115. The Committee considers that it is necessary to assess the exact nature and scope of the working arrangements of VFFs. According to the *Mission Volontariat* report, a large survey conducted in 2016 concluded among others that 21% of the VFFs were manual workers, 8.5% private sector employees, 10.3% public sector employees, 1.9% company managers or executives in the private sector, 3.7% civil service executives, and 6.5% unemployed or otherwise inactive (*op. cit*., p. 24) . The current arrangements in the civil protection system are predicated on the assumption that VFFs perform their duties in addition to being regularly employed (see for example Article L723-3 of the Code of Internal Security, which references the VFF's "professional occupation"). In that respect, the Code of Internal Security and other regulations provide for a system of incentives for employers willing to authorise and accommodate the recruitment of their employees as VFFs, and accommodations enabling VFFs to combine their regular employment with their engagement in the civil protection system.

116. The Committee notes that it has not previously had the opportunity to interpret Article 2§1 insofar as workers performing work under contracts concluded with two different employers are concerned, as is de facto the situation for many VFFs whose rights are at issue in the present case. The Committee has however found that the exclusion of certain categories of workers from the statutory protection against unreasonable working hours was in violation of Article 2§1 of the Charter (see for example Conclusions 2018, Netherlands, with regard to sports professionals, scientists, performing artists, military personnel and the police). The Committee further notes that the CJEU has held that when an employee concluded several contracts of employment with the same employer, the minimum daily rest period applies to those contracts taken as a whole and not to each of them taken separately, based on considerations of effective application of the protections available under the WTD (see §53 above).

117. Based on the above, the Committee considers it established that VFFs de facto commonly perform work under two contracts, namely in their main occupation and in their secondary occupation as VFFs, respectively. The Committee considers that in these circumstances the guarantees afforded under Article 2§1 apply to those contracts taken together, and not to each of them taken separately. Any other solution would imply that States Parties could circumvent the protection afforded under Article 2§1, by imposing additional obligations under a different contract for workers who already have a full-time occupation, with that contract being subject to an extraordinary regulatory regime that excludes the application of working time regulations.

The national working time protections for VFFs and their application in practice

118. The Government submits that while VFFs are explicitly excluded from the scope of the statutory protections against unreasonable working hours benefiting PFFs, they are covered by other health and safety protections specifically tailored to their situation. In this context, the Committee recalls that Article 2§1 requires that a reasonable period of work must be guaranteed through legislation, regulations, collective agreements or any other binding means (Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1).

119. The parties to the present case cite different provisions in this context. VFFs are required to commit to ”a level of availability that is adapted to the demands of the service, while making sure at the same time to preserve a balance between [their] work, family and social life” (National Charter of Volunteer Firefighters). Article R1424-1 of the General Code of Local and Regional Authorities provides that VFFs “may not perform [their] activity full time”. Article 11 of Law No. 96-370 of 3 May 1996 on the development of volunteerism among volunteer firefighters provides that the number of hourly allowances that may be received annually by a single VFF is determined at the level of each *département*.

120. Regarding the above-mentioned provision from the National Charter of Volunteer Firefighters, the Committee notes that, in the absence of specific working time restrictions, the burden of striking a balance between work and private life is placed on the VFFs themselves. In that respect, the Committee notes that it has previously found regulations authorising unreasonably long overtime based on the worker’s consent to be in breach of Article 2§1 of the Charter (Conclusions 2016, Malta). The Committee stressed that working overtime must not simply be left to the discretion of the employer or the worker in view of the overriding aim of Article 2§1 which is to protect the health and safety of workers (Conclusions XIV-2 (1998), Statement of interpretation on Article 2§1). This applies *a fortiori* to the present situation.

121. Regarding the reference to “full time” in Article R1424-1 of the General Code of Local and Regional Authorities, the Committee refers to provisions such as Article L723-15 of the Code of Internal Security which specifically exclude VFFs from the scope of legislative and regulatory provisions relating to working time. In the absence of any other guidance as to its contents, the notion of “full time” as regards VFFs is therefore rendered inapplicable in practice and lacking the degree of certainty required under Article 2§1 of the Charter.

122. Regarding the submission that individual *départements* are tasked with establishing working time ceilings for VFFs, the Committee refers to findings included in the Court of Auditors report, to the effect that the vast majority of *départements* do not comply with this obligation, resulting in individual VFFs working relatively long hours (*op. cit*., p. 71) . Where such ceilings are in place, the Committee notes that they are substantial, particularly when compared with the standard working time of 1,607 hours yearly in the case of PFFs. Thus, SUD SDIS provides examples of *département*

allowances of 2,850 hours of on-duty time and 50 weeks of on-call time, between 1,000 and 4,032 hours of on-call time, or 1600 hours of on-duty time and 350 days of on-call time respectively (see §107 above). The Committee further refers to the individual cases presented by SUD SDIS, which involve extremely long daily (24-hour working days), weekly (consecutive on-duty shifts totalling 62 hours) or yearly hours (2,757 hours on average yearly from 2014 until 2017) (see §108 above). Further examples involving young VFFs similarly feature excessive working hours (see §130 below).

123. While the Government acknowledges the existence of working time infringements among VFFs, they are said to be exceptional and subject to being rectified in court. However, the Government does not provide any evidence to substantiate its assertions. The Committee also notes that relevant national case-law is limited and inconsistent on the fundamental points of the application of the either the WTD or of the relevant provisions under national law in connection with the working time of VFFs (see §§42-43 above). The Government further states its intention to adopt working time regulations preventing such abuses, which may be interpreted as an implicit admission of the shortcomings of the existing legislative framework governing working time as related to VFFs. In any event, the regulations and practices highlighted above reveal a degree of discretion that in itself is incompatible with Article 2§1 of the Charter.

124. Having regard to the failure to take into account the totality of working time performed by VFFs, as well as the regulatory vacuum related to the working time of VFFs, the Committee holds that there is a violation of Article 2§1 of the Charter.

III ALLEGED VIOLATION OF ARTICLE 7§2 OF THE CHARTER

125. Article 7§2 of the Charter reads as follows:

> **Article 7 – The right of children and young persons to protection**
>
> Part I: “Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed.”
>
> Part II: “With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:
>
> (…)
>
> 2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy; (…)”

A – Arguments of the parties

1. The complainant organisation

126. SUD SDIS submits that firefighters are engaged in a dangerous occupation, as formally acknowledged by Article L723-1 of the Code of Internal Security (i.e.: "the dangerous nature of the profession and missions carried out by firefighters shall be acknowledged."). As proof of the inherent risks of firefighting, SUD SDIS cites the case of a 16-year-old VFF who died in 2012 during an operation aimed at putting out a fire caused by a wood-burning stove, and that of a 17-year-old who died in 2020 after getting stuck behind some bails of straw during an operation aimed at suppressing a vegetation fire. Further reference is made to evidence from an official inquiry conducted by the Senate Law Commission to the effect that the number of attacks on firefighters increased steadily from 2008 until 2017 and became an entrenched phenomenon.

127. Despite the risks involved, minors from the age of 16 are expressly authorised to be recruited as VFFs and participate in routine fire and rescue operations along with adult firefighters. In that sense, SUD SDIS refers to Article R723-6 of the Code of Internal Security, which makes the recruitment of minors conditional on the written consent of their legal representative. Article R723-10 further provides that young VFFs may participate in a fire and rescue operation subject to being placed under the supervision of senior firefighter for the entire duration thereof.

128. SUD SDIS submits that the level of engagement of young VFFs with regular fire and rescue activities varies across different *départements* and provides examples to illustrate the following practices:

- some *départements* prohibit young VFFs from taking part in any fire and rescue operations altogether (such as the *Département d'Ille-et-Vilaine*).
- some prohibit them from taking part in firefighting operations specifically.
- some specifically authorise them to take part in all or most fire and rescue operations.
- some use young VFFs on a full-time basis.

129. In that sense, SUD SDIS refers to the regulations applied in the Fire and Rescue Service [SDIS] of the *Département de la Drôme*, which specify that young VFFs may take part in all operations except for forest fires and road safety operations, but including for example residential fires or industrial fires, subject to the requirement that they "do not take any action with a direct impact on the operation" (also subject to the generic requirements mentioned above and having completed the necessary training modules).

130. SUD SDIS further provides the timesheets of two young VFF in the Fire and Rescue service of the *Département du Rhône*, revealing the following details:

- A 17-year-old VFF worked 22 twelve-hour on-duty shifts, or 564 hours in total, including at weekends, during two months of 2018.
- A 16-year-old VFF was assigned to an on duty shift at the fire station during one particularly busy night in 2019.

2. The respondent Government

131. The Government's main submission is that young VFFs do not come within the material scope of the Charter. The Government reiterates that the Committee has not developed a comprehensive definition of the notion of "worker" within the meaning of the Charter. Furthermore, Article 7 concerns young workers in a standard employment relationship or having the status of public servants. Young VFFs do not belong to either category, but have a specific status defined by their voluntary engagement in the service of the community. In that sense, the standard protections laid down by the Labour Code available to workers and including pay do not apply to young VFF, whose activity is regulated separately. The Government submits that, as with adult VFFs, the extent of a young VFF's involvement in fire and rescue activities is entirely self-defined, subject to the demands of the activity in question. The sole attribute of management authorities is to define the maximum amount of on-duty and on-call time that may be performed by VFFs (minors and adults alike).

132. The Government's subsidiary submission is that the status of young VFFs as defined under national legislation is not in breach of Article 7§2 of the Charter. In that sense, the Government considers that the work of VFFs is permitted, as it is part of vocational training, and it is performed under strict supervision and in agreement with specific health and safety rules. The Government refers to the rules applying to VFFs in general which make any operational engagement dependant on the person in question completing the necessary training modules within a period of at least one year and not longer than three years. However, VFFs, whether minor or adult, can participate in the whole range of fire and rescue operations as part of their initial training, but their engagement is limited and gradual, depending on choices made at the local level and by the person themselves. The Government refers to regulations stating that trainee VFFs do not count as full members of an operational team and that as such they may not be involved directly in carrying out an operation. Their role is more akin to that of bystanders, performing work such as carrying stretchers, or handling the fire hose and other materials. The chief of the operational team has an obligation to ensure that trainees are pulled out from the scene of an operation as soon as their safety is endangered.

B – Assessment of the Committee

133. The Committee notes that the Government submits that young VFFs are not covered by Article 7 of the Charter, as they do not qualify as "workers" within the meaning of that provision. The Committee recalls that the various provisions of Article 7 should be interpreted broadly, as applying to all work carried out by children, whether in formal employment or not. For instance, in relation to Article 7§1, the Committee has stated that the minimum age requirement for admission to employment applied to all economic sectors, including agriculture, all places of work, including work within private households, and that it also extended to all forms of economic activity, irrespective of the status of child (employee, self-employed, work in the family enterprise, etc.). The

Committee has similarly adopted a broad view of Article 7§2, as applying to all children under 18 years of age potentially exposed to hazardous and dangerous work, including those working in the informal economy, seasonal agricultural work, outside a labour relationship, or out of the reach of labour controls (Conclusions 2019, Turkey, Azerbaijan). Having regard to its observations regarding the status of VFFs, which apply *mutatis mutandis* to young VFFs, and the objective of the provision concerned, which is to ensure the effective exercise of the right of children and young persons to protection in employment, the Committee considers that Article 7§2 of the Charter applies to the situation of young VFFs.

134. Pursuant to Article 7§2, domestic law must set 18 as the minimum age of admission to occupations regarded as dangerous or unhealthy. There must be an adequate statutory framework to identify potentially hazardous work, which either lists such forms of work or defines the types of risk (physical, chemical, biological) which may arise in the course of work (Conclusions 2006, France). Nonetheless, Article 7§2 does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons (Appendix). Article 7§2 further requires that labour inspectorates must monitor the implementation of the prohibition in practice, including with respect to any work carried out for the purposes of vocational training, as indicated by the number of violations detected and sanctions applied (Conclusions 2015, Bosnia and Herzegovina). The Committee will examine each of these requirements in turn, as applied in the present case.

135. As to the nature of the occupation concerned, firefighters are called to perform activities ranging from administrative tasks at the fire station to involvement in field operations (see §71 above). In this respect, the Committee reiterates that only 7% of field operations performed on average by a fire-fighter involve fire suppression (see §100 above). According to SUD SDIS, the practice on the use of young VFFs across France is inconsistent, with some *départements* prohibiting young VFFs from any type of operational engagement. The Committee further notes that minors may be recruited to act as VFFs from the age of sixteen (Article R723-6 of the Code of Internal Security), but that they may only be involved in field operations once they complete training taking at least one year. It therefore follows that the present complaint is concerned with an unspecified number of young VFFs in *départements* permitting their involvement in fire suppression and who are aged from 17 to 18 years. Taking into account the examples of young VFFs who died in the course of firefighting operations provided by the SUD SDIS, the express wording of Article L723-1 of the Code of Internal Security as to “the dangerous nature of the profession and missions carried out by firefighters”, as well as the fact that some *départements* specifically ban young VFFs from taking part in firefighting operations, the Committee considers that the occupation of a fire-fighter involves potentially dangerous or unhealthy work within the meaning of Article 7§2 of the Charter.

136. As to the requisite statutory framework, the Committee has previously found the rules on prohibited and regulated work of young workers under the age of 18 in France in 2019 to be in conformity with Article 7§2 of the Charter (Conclusions 2019, France, with reference to Articles D.4153-15 to D.4153-37 of the Labour Code). The regulations in question identify the work that is restricted for minors based on the type of risks involved, some of which are potentially relevant in the context of fire and rescue activities (i.e., work which exposes the young persons to group 3 or 4 biological agents, demolition or trench work involving a risk of collapse or burying, operations which may lead to exposure to level 1 asbestos fibres, or work assembling or dismantling scaffolding).

137. As to the permitted exception to the rule prescribed in Article 7§2 of the Charter, the Committee notes the Government's submission that the work performed by young VFFs is part of their vocational training, and that their involvement in fire and rescue operations is subject to a range of safeguards. Indeed, while Article R723-10 of the Code of Internal Security expressly permits the involvement of a young VFF in field activities, it makes it subject to them being placed, for the duration of the operation, under the supervision of a senior firefighter. The Committee also notes the Government's submission that the involvement of VFFs in firefighting operations is subject to rigorous training requirements, that it is limited and gradual, and that team leaders have the obligation to pull them out from the scene of operations as soon as their safety is endangered.

138. The Committee reiterates that Article 7§2 authorises the performance of work that is regarded as dangerous or unhealthy by workers under the age of 18 only insofar as it is absolutely necessary for their vocational training and where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons (see §134 above). As regards the latter criteria, the Committee is prepared to accept that safeguards are in place to protect young VFFs involved in fire suppression. As regards the former criteria, the Committee recalls that vocational training is one of the means put forward in Article 1§4 of the Charter to ensure the effective exercise of the right to work and that the purpose of vocational training is to prepare young people for working life (Conclusions VI, p. xii).

139. Turning to the present case, the Committee refers to the *Mission Volontariat* report, produced at the initiative of the Ministry of Interior, which noted that promoting firefighting among young people is a means for securing the broad voluntary engagement of adults as VFFs, and that, in 2015, 69.3% of certified young VFFs continued their engagement as VFFs during adulthood (*op. cit*., p. 54). The Committee further notes that the Ministry of Interior Action Plan 2019-2021 envisages strengthening the recruitment and retention of VFFs, by, among others, an increased emphasis on the recruitment of young people as VFFs (see §39 above). Thus, it cannot be said that the engagement of young people as VFFs prepares them for working life. Rather, it prepares them for continued voluntary engagement during their adulthood. The Committee therefore concludes that the employment of young workers as VFF cannot be regarded as vocational training.

140. Furthermore, the Government's subsidiary submission is predicated on an admission that fire suppression is a high-risk operation, which is also evidenced by the examples of fatalities cited by SUD SDIS. In line with the standards outlined above at §134, the Government would therefore have been required to present evidence that the activity concerned is subject to monitoring by labour inspectorates, including information about the number of violations detected and sanctions applied in practice. The Committee notes that such evidence has not been adduced.

141. Considering that involvement of young VFFs in fire suppression operations is not absolutely necessary for their vocational training, and that the measures taken to protect the health and safety of these young persons are insufficient, the Committee holds that there is a violation of Article 7§2 of the Charter.

CONCLUSION

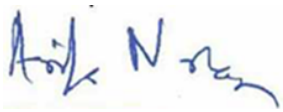
For these reasons, the Committee concludes:

- unanimously that there is a violation of Article 1§2 of the Charter on the ground of the discriminatory difference in treatment with regard to remuneration between certain volunteer firefighters and professional firefighters;

- unanimously that there is a violation of Article 2§1 of the Charter on the ground of the failure to take into account the totality of working time performed by volunteer firefighters, as well as the regulatory vacuum as related to the working time of volunteer firefighters;

- unanimously that there is a violation of Article 7§2 of the Charter.

József HAJDU
Rapporteur



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President

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