



*Confédération Générale du Travail v. France* (No. 22/2003)

Violation of Articles 2§§1 and 5 (right to reasonable working hours and right to a weekly rest period), decision on the merits of 7 December 2004.

*Confédération française de l'Encadrement-CGC v. France* (No. 16/2003)

Violation of Articles 2§1 (right to reasonable working hours) and 4§2 (right to increased rate of remuneration for overtime work), decision on the merits of 12 October 2004.

*Fédération internationale des Ligues des Droits de l'Homme v. France* (No. 14/2003)

Violation of Article 17§1 (children's right to social, economic and legal protection), decision on the merits of 8 September 2004.

*Syndicat occitan de l'Education v. France* (No. 23/2003)

Non-violation of Articles 5 (right to organise) and 6§1 (right to joint consultation), decision on the merits of 7 September 2004.

*Autism-Europe v. France* (No. 13/2002)

Violation of Articles 15 (right of persons with disabilities to education and training), 17§1 (children's right to social, economic and legal protection) and E (non-discrimination), decision on the merits of 4 November 2003.

*Confédération française de l'Encadrement-CGC v. France* (No. 9/2000)

Violation of Articles 2§1 (right to reasonable working hours) and 4§2 (right to increased rate of remuneration for overtime work), decision on the merits of 16 November 2001.

*European Federation of Employees in Public Services v. France* (No. 2/1999)

Non-violation of Articles 5 and 6 (right to organise and to bargain collectively), decision on the merits of 4 November 2000.

*Syndicat national des Professions du Tourisme v. France* (No. 6/1999)

Violation of Article 1§2 (prohibition of discrimination in employment), decision on the merits of 10 October 2000.

### **The Charter in domestic law**

France is a "monist state" under Article 55 of the Constitution: "Treaties or agreements regularly ratified or approved have, from the time of publication, an authority superior to that of laws, provided, in the case of each agreement or treaty, that it is applied by the other party."

As of 1 July 2007, the situation of France with respect to the application of the Charter is as follows:

## **Examples of progress achieved following conclusions or decisions of the ECSR<sup>1</sup>**

### **Children**

- ▶ Extension of the prohibition on employing children under 15 in family businesses in the agricultural sector (Decree No. 97-370 of 14 April 1997) and other sectors (Order No. 2001-174 of 22 February 2001).
- ▶ Measures to assist autistic children – funding of early medico-social action centres (CAMSPs) and special education and home care services (SESSAD) and launch of a long-term action plan on autism.

### **Health**

- ▶ Defrayal of costs of urgent care delivered to foreigners illegally resident in France and non-beneficiaries of State Medical Assistance (circular DHOS/DSS/DGAS No. 2005-141 of 16 March 2005).
- ▶ Ban on the sale of tobacco to young persons aged under 16 (Act No. 2003-715 of 31 July 2003).
- ▶ Incorporation of the recommendations of the International Commission for Radiation Protection (ICRP) on dose limits for workers exposed to ionising radiation (Decree No. 2003-296 of 31 March 2003).

### **Housing**

- ▶ Definition of criteria of decent housing (Decree No. 2002-120 of 30 January 2002)
- ▶ Urgent measures to prevent evictions (circular UHC/DH2 No. 2004-10 of 13 May 2004)

### **Non-discrimination (nationality)**

- ▶ Abolition of the reciprocity condition governing foreign nationals' entitlement to the adult disabled persons allowance and the supplementary allowance of the old-age solidarity fund (Act No. 98-349 of 11 May 1998).
- ▶ Extension of eligibility for social assistance, without reciprocity conditions, to all nationals of states party (circulars of 21 August 1974 and of 10 October 1989).
- ▶ Abolition of discrimination based on nationality for access to public service posts and the management of trade unions (Act No. 82-915 of 28 October 1982).
- ▶ Abolition of the requirement for foreign nationals to produce security before taking legal action (Act No. 75-596 of 9 July 1975).

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<sup>1</sup> “1. The European Committee of Social Rights (ECSR) makes a legal assessment of the conformity of national situations with the European Social Charter, the 1988 Additional Protocol [which adds new rights) and the revised European Social Charter. 2. It adopts conclusions in the framework of the reporting procedure and decisions under the collective complaints procedure”. (Article 2 of the Rules of the ECSR).”

### **Non-discrimination (disability)**

- ▶ General principles governing the rights of persons with disabilities: access to fundamental rights, citizenship, compensation, resources, advice and information, assessment of needs, accessibility, etc. (Act No. 2005-102 of 11 February 2005 on equal rights and opportunities, participation and citizenship of persons with disabilities).

### **Non-discrimination (financial circumstances)**

- ▶ Repeal of articles of the Electoral Code depriving social assistance recipients of the right to be elected to municipal councils (Act No. 75-534 of 30 June 1975).

### **Non-discrimination (birth)**

- ▶ Abolition of discrimination between legitimate and illegitimate children with regard to inheritance rights (revision of the Civil Code by Act No. 2001-1135 of 3 December 2001 on the reform of the inheritance rights of surviving spouses and illegitimate children).

### **Employment**

- ▶ Repeal of the provisions of the Criminal and Merchant Marine Disciplinary Codes authorising penal sanctions for disciplinary offences committed by seafarers where neither the safety of the vessel nor the life and health of those on board were endangered (Social Modernisation Act, No. 2002-73 of 17 January 2002).
- ▶ Right of a female employee who is pregnant or on maternity leave and who is dismissed in contravention of Article L.122.25.2 of the Labour Code to apply to be reinstated in her former post (Court of Cassation, judgment of 9 October 2001, Mrs Hille v. société SVP Service).

### **Movement of persons**

- ▶ Extension of categories of foreign nationals whose length of residence makes them ineligible for deportation (Act No. 89-548 of 2 August 1989).
- ▶ Retention of 21 as the age limit for family reunion for the children of nationals of states party other than EU members or EEA parties (Cyprus, Malta, Turkey), so long as they are genuine dependents of the applicant (circular of 1 March 2000 on family reunion of foreign nationals).

## Cases of non-compliance

### Health

- ▶ *Article 3§2 – right to health and safety at work (regulations)*

Self-employed workers are not covered by occupational health and safety regulations other than in the case of co-ordination on jointly worked building and civil engineering sites and protection against radiation.

### Housing

- ▶ *Article 31§3 – right to affordable housing*

The supply of social housing is manifestly inadequate.

### Non-discrimination

- ▶ *Article 1§2 – prohibition of discrimination in employment*

Interpreter guides and national lecturers with a state diploma suffer discrimination as regards the freedom to conduct guided tours in some of the principal tourist sites.

### Non-discrimination (nationality)

- ▶ *Article 12§4 – right to equal treatment with regard to social security*

1. Under the social security agreement between France and Turkey, the age below which a child is considered to have “dependent” status is not the same for French and Turkish nationals.

2. Insurance or employment periods can be aggregated only if provided for in a bilateral agreement and not directly under the Charter.

- ▶ *Article 13§1 – right to adequate assistance for anyone in need*

Non-EU nationals are only entitled to *revenu minimum d’insertion (RMI)* (income support) if they have a residence permit, for which they are required to have resided in France for five years.

- ▶ *Article 10§5 – right of access to vocational training and to higher technical and university education, based solely on individual aptitude (measures to facilitate access)*

Foreign, but not French, nationals are subject to a length of residence or employment requirement to be eligible for the award of financial assistance for training and for scholarships granted on the basis of social criteria.

### Non-discrimination (age)

- ▶ *Article 13§1 – right to adequate assistance for anyone in need*

Young persons aged under 25 are not entitled to adequate social assistance.

### Children

- ▶ *Article 7§2 – prohibition of employment in dangerous occupations for persons aged under 18*

There is no absolute ban on persons under 18 performing dangerous activities outside the context of vocational training.

▶ *Article 7§7 – Children's right to suitable work conditions (annual leave)*

Young employees incapacitated by accident or illness during all or part of their annual holiday are not entitled to extended or additional leave.

▶ *Article 17§1 – young persons' rights to legal and social protection*

1. There is no complete ban on all forms of corporal punishment of children.
2. The maximum periods of pre-trial detention are too long

### **Social protection**

▶ *Article 8§1 – right to maternity benefits*

Periods of unemployment are not taken into account when calculating the working time needed to qualify for maternity benefit.

### **Employment**

▶ *Articles 2§§1 and 5 – right to reasonable working hours – right to a weekly rest period*

Under the on-call arrangements applicable to employees, on-call periods not actually worked are treated retroactively as rest time and deducted from rest periods.

▶ *Article 2§1 – right to reasonable working hours*

Managers covered by the flexible working time system may be required to work up to 78 hours in a week; the safeguards afforded by collective bargaining are not sufficient because the law does not require collective agreements to provide for a maximum daily or weekly limit and authorises enterprise level collective agreements.

▶ *Article 4§2 – increased rate of remuneration for overtime work*

The length of working time of managers covered by the flexible working time system, who do not receive any increased remuneration, is manifestly excessive.

▶ *Article 4§4 – right to reasonable notice of termination of employment*

The maximum statutory notice period of two months is inadequate in the case of employees with service periods of 15 years or more with the same employer.

▶ *Article 5 – right to organise*

Membership of the Confédération Générale de Travail (a trade union confederation) may in practice be a necessary pre-condition for recruitment in the printing industry.

▶ *Article 6§4 – right to collective action (strikes and lock-outs)*

1. Only the most representative trade unions have the right to call strikes in the public sector.
2. Deductions from the wages of striking state employees are not always proportional to the duration of the strike.

**The ECSR has been unable to assess compliance with the following right:**

- ▶ *Article 13§1 – right to adequate assistance for anyone in need*
- ▶ *Article 18§1 – applying existing regulations in a spirit of liberality*