EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 23 March 2022

Notification: 25 May 2022

Publicity: 26 September 2022

***Confédération Générale du Travail Force Ouvrière* (CGT-FO) v. France**

Complaint No. 160/2018

and

***Confédération générale du travail* (CGT) v. France**

Complaint No. 171/2018

The European Committee of Social Rights, committee of independent experts ("the Committee") established under Article 25 of the European Social Charter, during its 326th session in the following composition:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
Jozsef HAJDU
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Tatiana PUIU
Paul RIETJENS
George N. THEODOSIS
Mario VINKOVIĆ
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 26 January and 23 March 2022,

On the basis of the report presented by Barbara KRESAL,

Delivers the following decision, adopted on this date:

PROCEDURE

1. The complaint lodged by *Confédération Générale du Travail Force Ouvrière* (CGT-FO) was registered on 12 March 2018.

2. CGT-FO alleges that Order No. 2017-1387 of 22 September 2017 which introduced a ceiling on the amount of compensation that may be awarded to an unlawfully dismissed employee, is contrary to Article 24 of the revised European Social Charter ("the Charter").

3. On 11 September 2018, referring to Article 6 of the 1995 Protocol providing for a system of collective complaints (“the Protocol”) the Committee declared the complaint admissible.

4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 15 November 2018.

5. Pursuant 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 15 November 2018.

6. The Government’s submissions on the merits were registered on 15 November 2018.

7. Observations by the European Trade Union Confederation (ETUC) and the International Organisation of Employers (IOE) were registered on 15 November 2018.

8. Pursuant to Rule 28§2 of the Rules, the Government and CGT-FO were invited to submit, if they so wished, a response to the observations by ETUC and IOE. The Government's response to the ETUC's observations was registered on 7 January 2019.

9. Pursuant to Rule 31§2 of the Rules, CGT-FO was invited to submit a response to the Government’s submissions on the merits by 20 January 2019. CGT-FO’s response was registered on 7 January 2019.

10. Pursuant to Rule 32A§1 of the Rules, the President of the Committee invited *Syndicat des Avocats de France* (SAF) to submit written observations on the complaint

by 15 February 2019. These observations were registered on 13 February 2019.

11. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to CGT-FO's response by 28 February 2020. The Government's reply was registered on 28 February 2019.

12. Pursuant to Article 32A§1 of the Rules, on 26 February 2019, *Confédération générale du travail* (CGT) indicated that it wished to submit observations on the complaint; these observations were registered on 7 March 2019.

13. Pursuant to Rule 28§2 of the Rules, the Government and CGT-FO were invited to submit, if they so wished, a response to the observations by SAF. The Government's response to SAF's observations was registered on 22 March 2019.

14. Pursuant to Rule 28§2 of the Rules, the Government and CGT-FO were invited to submit, if they so wished, a response to the observations by CGT. The Government's response to CGT's observations was registered on 11 June 2019.

15. The complaint lodged by *Confédération générale du travail* (CGT) was registered on 7 September 2018.

16. CGT alleges that the new provisions of the French Labour Code on dismissal without real or serious cause, particularly Article L.1235-3 of the Labour Code, fail to comply with Article 24 of the Charter.

17. On 3 July 2019, referring to Article 6 of the Protocol the Committee declared the complaint admissible.

18. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 6 September 2019.

19. In application of Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol and the States that had made a declaration in accordance with Article D§2 of the Charter, to submit any observations they might wish to make on the merits of the complaint by 6 September 2019.

20. In application of Article 7§2 of the Protocol, the Committee invited the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 6 September 2019.

21. The Government's submissions on the merits were registered on 6 September 2019.

22. On 25 September 2019, the International Organisation of Employers (IOE) asked for an extension to the deadline for submitting its observations on the complaint.

The President of the Committee extended this deadline until 11 October 2019. OIE's observations were registered on 11 October 2019.

23. The deadline set for CGT's response to the Government's submissions on the merits was 15 November 2019. CGT's response was registered on 14 November 2019.

24. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to CGT's response by 8 January 2020. The Government's reply was registered on 8 January 2020.

25. Pursuant to Rule 26A§1 of the Rules, the Committee decided to join the aforementioned complaints lodged by CGT-FO and CGT on 20 October 2021.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

26. The complainant organisations, CGT-FO and CGT, ask the Committee to find that the reforms made to the French Labour Code (*code du travail*), introduced by Order No. 2017-1387 of 22 September 2017, violate Article 24 of the Charter (the right to protection in cases of termination of employment) on the ground that they lay down an upper limit on the amount of compensation paid to the worker in the event of dismissal without valid reasons. The complainant organisations assert that this means that victims of unjustified dismissals are unable to obtain through the domestic courts compensation that is adequate in relation to the damage incurred and dissuasive for the employers, and that the reform fails to guarantee a right to an effective remedy against the unlawful dismissal.

B – The respondent Government

27. The Government considers that domestic legislation on compensation for workers for dismissal without real and serious cause is in conformity with Article 24 of the Charter and asks the Committee to find that the complaints are unfounded in all aspects.

OBSERVATIONS OF THE THIRD PARTIES

A – European Trade Union Confederation (ETUC) (submitted in respect of Complaint No. 160/2018)

28. The ETUC submits that the upper limit placed on compensation in the event of unlawful dismissal is not in conformity with Article 24 of the Charter, and also in the light of other relevant international law materials.

29. It maintains that the measures challenged are part of a process of labour law reform in response to the financial crisis and points out that the Committee has already had the opportunity to assess the impact of this situation on social rights, including as regards dismissals, in other complaints *(Fellesforbundet for Sjøfolk* (FFFS) v. Norway,

Complaint No. 74/2011, decision on the merits of 2 July 2013; Finnish Society of Social Rights v. Finland, Complaint No. 106/2014 and 107/2014, decisions on admissibility and the merits of 8 and 6 September 2016).

30. The ETUC refers to the relevant international texts, namely Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as commented upon by the Committee on Economic, Social and Cultural Rights (CESCR), ILO Convention No. 158 and ILO Recommendation No. 166 on the termination of employment, as interpreted by its Committee of Experts on the Application of Conventions and Recommendations (CEACR), as well as other less specific but nonetheless relevant instruments, such as the general policy instrument adopted in 2009 *"Overcoming the crisis: a Global Jobs Pact"*.

31. The ETUC also cites the case-law of the ICESCR and ILO monitoring bodies relating specifically to France. It refers to the CESCR's final observations regarding the 4th periodic report of France (2016) in which the CESCR expressed its concern about the derogations from acquired rights regarding working conditions proposed in the Labour Bill and called on France to ensure that any retrogressive measures relating to working conditions were unavoidable and justified, necessary and proportionate, and non-discriminatory. It also pointed out that the ILO Governing Body, at its 329th Session (March 2017), declared admissible a complaint alleging non-observance of ILO Convention No. 158 by France, submitted by the CGT-FO and the CGT. This complaint is currently pending.

32. In this regard, the ETUC also refers to the relevant EU texts (such as Article 153 of the Treaty on European Union, Article 30 of the EU Charter of Fundamental Rights which was directly influenced by the European Social Charter and principle No. 7 of the European Pillar of Social Rights).

33. Citing the case law of the European Court of Human Rights, the ETUC also notes that a dismissal can constitute interference with the right to private life *(Özpinar v. Turkey*, application No. 20999/04, judgment of 19 October 2010, final on 19 January 2011; *Oleksandr Volkov v. Ukraine*, application No. 21722/11, judgment of 9 January 2013, final on 27 May 2013).

34. Lastly, it refers to the relevant observations, decisions and conclusions of the European Committee of Social Rights on austerity measures and compensation in the event of unlawful termination of employment.

35. In the light of the above remarks, the ETUC concludes that the upper limit placed compensation in the event of unjustified termination of employment in France is contrary to Article 24 of the Charter, especially since length of service is the only factor taken into account, with no consideration given to other important variables.

B – International Organisation of Employers (IOE) (submitted in respect of both Complaint No. 160/2018 and Complaint No. 171/2018)

36. The IOE argues that the French legislation resulting from Order No. 2017-1387 of 22 September 2017 on the predictability and increased security of employment relationships is fully consistent with Article 24 of the Charter.

37. The IOE points out that the introduction of an upper limit on compensation for unjustified dismissal is not automatically contrary to Article 24 of the Charter.

38. The upper limit on compensation for unjustified dismissal is in keeping with the requirement of "adequate compensation" or "other appropriate relief" provided for in the Charter. In particular, the lower and upper limits laid down for this compensation by French law are consistent with the two objectives of the Charter, namely to compensate the employee for the damage suffered and to act as a deterrent to the employer. With regard to the deterrent function of the compensation, the OIE considers that the predictable nature of the amount likely to be awarded by the courts does not in any way diminish its deterrent effect. In the OIE's view, this deterrent effect does not arise from the unknown and unpredictable nature of the amount, but from the sum itself.

39. With regard to the allegation that the new French legislation would not make it possible to ensure the reimbursement of financial losses incurred between the date of dismissal and the date of the appeal body's decision, the IOE considers that this criterion does not need to be fulfilled in order to comply with the "adequate compensation" requirement imposed by the Committee.

40. With regard to the grouping together of compensation amounts complained of by the CGT-FO, the IOE maintains that this is merely an option open to the courts, which may very well decide not to group together compensation amounts.

41. The IOE also takes the view that the compensation scale does not prevent the courts from taking into consideration, within the limits of the scale laid down, all the factors determining the damage suffered by the employee (in particular, age, difficulties in finding another job, etc.). In this connection, it cites a decision of the Le Mans *Conseil de Prud'hommes* dated 26 September 2018 which found the French scale to be in line with ILO Convention No. 158. The IOE maintains that the ILO has been more flexible than the European Committee of Social Rights with regard to the adequacy of compensation. It argues that making provision, in law and in practice, for very large compensation payments may entail a significant risk for companies.

42. In addition, it claims that French legislation enabled workers dismissed without real and serious cause to seek "other appropriate measures" such as reinstatement or additional compensation, including through civil liability remedies.

43. The IOE adds that dismissals declared to be invalid are not subject to the scale set out in Order No. 2017-1387 of 22 September 2017.

44. Lastly, the OIE asserts that the compensation scale was established on the basis of the average compensation awarded by the French appeal courts, thereby helping to reduce disparities in case law throughout the country.

C – *Syndicat des Avocats de France* (SAF) (submitted in respect of Complaint No. 160/2018)

45. The *Syndicat des Avocats de France* (SAF) supports the merits of the CGT-FO's claims that the mandatory compensation scale system introduced by Order No. 2017-1387 is contrary to the requirements of the Charter.

46. The SAF argues that the mandatory compensation scale system provided for by the French Labour Code since 2017 is contrary to Article 24 of the Charter insofar as it does not allow for sufficient compensation in terms of adequate redress for the damage sustained and constituting a deterrent for the employer. Furthermore, it maintains that there is no alternative legal remedy to obtain additional compensation in the event of unjustified dismissal.

47. The SAF draws the Committee's attention to the fact that the former French legislation on compensation for unjustified dismissal, which was in force between 1973 and 2017, was in compliance with Article 24 of the Charter. It points out that the Committee itself, in its Conclusions of 2003, acknowledged the conformity of the French legislation with the Charter.

48. The SAF states that in practice, the possibility for an employee who has been unjustly dismissed to be reinstated, as provided for by law, is almost never used and is therefore not effective. It adds that the compensation awarded to the employee for unjustified dismissal is the only means of providing full compensation for the damage suffered. The limitation of this compensation by French law therefore prevents the awarding of adequate compensation for the damage suffered.

49. The SAF criticises the use of a single criterion, namely the employee's length of service, to set the upper limit of compensation for unjustified dismissal, as this means that it would not be possible to take into account the employee's entire personal and professional situation in order to determine adequate compensation.

50. The SAF submits that in certain cases (in particular those of employees with short lengths of service), the upper and lower limits of the compensation scale leave the courts with very little room for manoeuvre, as they are unable to tailor the damage sustained to the individual and determine appropriate compensation.

51. The SAF argues that grouping together compensation under Article L.1235-3 leads to other amounts being taken into account in the calculation of compensation for unjustified dismissal, which would in fact reduce the amount of compensation awarded by the courts.

52. In the view of the SAF, pursuant to the Order of 22 September 2017, the compensation scale imposed provides for such a low amount of compensation for employees with short lengths of service that it discourages them from taking legal action.

53. The SAF notes that the Italian Constitutional Court found an Italian compensation scale for unjustified dismissal insufficiently dissuasive, even though this scale was more advantageous than the current French scale (an unjustly dismissed Italian employee could receive compensation of between 6 and 36 months' salary, whereas the French scale grants between 0 and 20 months' salary).

54. The SAF finally states that under French law, there is no alternative legal remedy for obtaining compensation. In particular, what is provided for in the legislation with regard to dismissal declared invalid is not intended to apply to cases of dismissal without real and serious cause.

D – *Confédération Générale du Travail* (CGT) (submitted in respect of Complaint No. 160/2018)

55. The *Confédération Générale du Travail* (CGT) submitted some elements as third party under Complaint No. 160/2018. However, its views are reproduced under the submissions of the parties, since the CGT lodged Complaint No. 171/2018 challenging the same provisions of the French Labour Code.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Overview of the legislative framework concerning unjustified dismissal before the Order No. 2017-1387 of 22 September 2017

56. The previous legal framework on the termination of employment contracts and the provisions relating to dismissal without real and serious cause did not establish any upper limit, only lower limits, which had to be no less than the last six months' wages (up to the Order of 22 September 2017). There were several attempts to introduce a compensation scale in 2015 and 2016 which were not successful (Constitutional Court's decisions No. 2015-715 DC of 5 August 2015 and No. 2016-582 QPC of 13 October 2016).

B – Domestic law currently in force (since the Order of 22 September 2017)

57. Article 2 of Order No. 2017-1387 of 22 September 2017 on the predictability and increased security of employment relationships, amended the provisions of Article L. 1235-3 of the Labour Code relating to compensation for unlawful dismissal or dismissal without real and serious cause and introduced the compensation scale. These provisions were additionally amended by the Law No. 2018-217 of 29 March 2018.

> **Article L.1235-3 (and its subparagraphs) of the Labour Code as amended by Article 2 of Order No. 2017-1387 and Article 11 of the Law No 2018-217:**
>
> **Article L.1235-3:**
>
> "If an employee is dismissed for a reason that is not real and serious, the court may propose that he or she be reinstated, with the retention of all of his/her accrued benefits.

If either of the parties objects to such reinstatement, the court shall award the employee compensation, to be covered by the employer, and whose amounts shall lie between the lower and upper limits set in the table below.

Employee's length of service with the company (in full years)	Minimum compensation (in months of gross salary)	Maximum compensation (in months of gross salary)
0	N/A	1
1	1	2
2	3	3.5
3	3	4
4	3	5
5	3	6
6	3	7
7	3	8
8	3	8
9	3	9
10	3	10
11	3	10.5
12	3	11
13	3	11.5
14	3	12
15	3	13
16	3	13.5
17	3	14
18	3	14.5
19	3	15
20	3	15.5

21	**3**	**16**
22	**3**	**16.5**
23	**3**	**17**
24	**3**	**17.5**
25	**3**	**18**
26	**3**	**18.5**
27	**3**	**19**
28	**3**	**19.5**
29	**3**	**20**
30 and over	**3**	**20**

In the event of a dismissal from a company ordinarily employing fewer than eleven employees, the minimum amounts below shall be applicable, by derogation from those set above:

Employee's length of service with the company (in full years)	Minimum compensation (in months of gross salary)
0	**N/A**
1	**0.5**
2	**0.5**
3	**1**
4	**1**
5	**1.5**
6	**1.5**
7	**2**
8	**2**
9	**2.5**
10	**2.5**

When determining the amount of compensation, the court may take account of any compensation awarded other than that referred to in Article L.1234-9.

This compensation shall be combined, where they apply, with the amounts provided for in Articles L.1235-12, L.1235-13 and L.1235-15, within the limits of the maximum amounts provided for in this article."

Article L.1235-3-1

"Article L.1235-3 shall not be applicable where the courts find that a dismissal is rendered null and void for one of the grounds set out in the second paragraph of this article. In such cases, where employees do not ask for their employment contract to continue or their reinstatement is impossible, the courts shall grant them compensation, payable by the employer, which must be no less than the last six months' wages.

The grounds referred to in the first paragraph above are as follows:

1° the breach of a fundamental freedom;
2° psychological or sexual harassment in the circumstances described in Articles L.1152-3 and L.1153-4;
3° discriminatory dismissal of the type described in Articles L.1132-4 and L.1134-4;
4° dismissal following the initiation of legal proceedings in relation to gender equality at work in the circumstances described in Article L.1144-3, or following the denunciation of crimes or offences;
5° dismissal of a protected employee, as described in Articles L.2411-1 and L.2412-1, as a result of the exercise of his or her office;
6° dismissal of an employee in breach of the protections referred to in Articles L.1225-71 and L.1226-13.

Compensation shall be payable without prejudice to the payment of the salary which would have been received during the period of invalidity, where it is owed pursuant to the provisions of Article L. 1225-71 and to the protected status granted to certain employees pursuant to Chapter I of Part I of Book IV of the second part of the Labour Code, and without prejudice to any compensation provided for by statute, collective agreement or contract."

Article L.1235-3-2

"When the termination of the employment contract is found by the court to be the fault of the employer or is further to a request submitted by the employee under the procedure set out in Article L.1451-1, the amount of compensation granted shall be determined in accordance with the rules laid down in Article L.1235-3, except where this termination produces the effects of an invalid dismissal corresponding to one of the cases referred to in points 1 to 6 of Article L.1235-3-1, for which the first sub-paragraph of the same Article L.1235-3-1 shall be applied."

C – National case law

1) Case law favourable to the applicability of Article L. 1235-3 of the Labour Code

a) *Conseil d'Etat*

58. The *Conseil d'État*, in its interim order, No. 415243, of 7 December 2017 states:

"Article 2:

4. Article 2 of the contested order amends Article L.1235-3 of the Labour Code to provide that in the event of dismissal without real and serious cause, the court shall award the employee

compensation, to be covered by the employer, and whose amounts shall lie between lower and upper limits set out in number of months' salary in accordance with the employee's length of service. With regard to the minimum amounts and up to ten years of service, the article also makes a distinction between undertakings according to whether they ordinarily employ fewer than eleven employees or at least eleven employees.

5. Firstly, the Confédération Générale du Travail maintains that these provisions are in breach of Article 10 of Convention No. 158 of the International Labour Organisation (ILO) and of Article 24 of the European Social Charter in that they deprive employees dismissed without real and serious cause of adequate compensation and appropriate relief for the loss suffered. It also states that these provisions disproportionately infringe the rights of victims of wrongful acts protected by Article 4 of the 1789 Declaration of the Rights of Man and of the Citizen, in that they provide that the courts may, in order to determine the amount of compensation due in the event of dismissal without real and serious cause, take account of the compensation payments awarded on termination of the contract.

6. On the one hand, it does not follow from the provisions relied on or, in any event, from the interpretation given to them by the European Committee of Social Rights in its decision of 8 September 2016, which the complainant relies on, that they prohibit the signatory States from laying down upper limits on compensation of less than 24 months' salary in the event of dismissal without real and serious cause. Furthermore, the scale set out in Article 2 of the contested order is not, as specified in Article L.1235-3-1 of the Labour Code, applicable where the courts find that a dismissal is rendered null and void on account of a violation of a fundamental freedom, acts of psychological or sexual harassment in the circumstances referred to in Articles L.1152-3 and L.1153-4, discriminatory dismissal within the meaning of Articles L.1134-4 and L.1132-4, following the initiation of legal proceedings in relation to gender equality at work as referred to in Article L.1144-3, in relation to the reporting of crimes and offences, the exercise of an elected office by a protected employee as referred to in Chapter I of Part I of Book IV of the second part of the Labour Code, and the protection afforded to certain employees pursuant to Articles L.1225-71 and L.1226-13".

7. On the other hand, although the new provisions of Article L.1235-3 of the Labour Code stipulate that the courts, when determining the amount of compensation, may "take into account" any compensation awarded on termination of the employment contract, this option does not in any way require them to deduct the amount of such pay from the amount finally awarded to the employee dismissed without real and serious cause, which cannot be lower than the minimum laid down. As is clear from the wording of the text itself, this option available to the courts concerns only compensation awarded on termination of the employment contract, which excludes other payments made in compensation for other rights.

8. Lastly, by laying down upper and lower limits for compensation for dismissal without real and serious cause based solely on the criteria of the employee's length of service in the undertaking and the number of employees working there, the authors of the order did not intend to prevent the court from determining, within these limits, the amount of compensation paid to each employee by taking into account other criteria linked to the employee's particular situation.

9. Second, the Confédération Générale du Travail argues that the new provisions of Article L.1235-3 of the Labour Code violate the principle of equality, since the only differentiation criteria used in the compensation scale are length of service in the undertaking and the number of employees working there, which means that no account can be taken of the age, qualifications, family situation and any disability of employees dismissed without real and serious cause. However, the principle of equality does not mean that the regulatory authority should treat people in different situations differently.

10. It follows from the above, and without the need to rule on the condition of urgency, that as the investigation stands, no evidence has been provided that could create serious doubt as to the lawfulness of the provisions of Article 2 of the contested order."

b) Constitutional Council (*Conseil constitutionnel*)

59. The Constitutional Council, in its decision No. 2018-761 of 21 March 2018 ruled that the new Article L.1235-3 in the Labour Code establishing the compensation scale contested by the CGT-FO was compatible with the Constitution:

> **"With regard to certain provisions of Article L.1235-3 of the Labour Code as amended by the 7th subparagraph of paragraph I of Article 11 of the law under consideration:**
> 83. Article L.1235-3 of the Labour Code provides that, in the event of dismissal without real and serious cause and where the employee has not been reinstated in the undertaking, the court shall award the latter compensation payable by the employer, the amount of which shall be within the lower and upper limits set by the same article. These minimum and maximum amounts will vary depending on the employee's length of service. Furthermore, the lower limits will vary depending on whether the undertaking employs eleven or more employees or fewer than eleven employees. In an undertaking with at least eleven employees the minimum compensation ranges from zero to three months' gross pay; in an undertaking with fewer than eleven employees it ranges from zero to two and a half months' gross pay. The maximum amount of compensation ranges from one to twenty months' gross pay. These compensation amounts may be combined with the compensation provided for in the event of procedural irregularities in the way the dismissal was effected or in the event of failure to honour the priority principle of reinstatement, within the limits of the above-mentioned maximum amounts.
> 84. The members of the National Assembly argue that points 2 to 7 of Article L.1235-3 of the Labour Code, which lay down a compensation scale in the event of dismissal without real and serious cause, are contrary to the Constitution. They consider first of all that these provisions contravene the guarantee of rights insofar as the lower compensation limits provided for are insufficiently dissuasive and that, as a result, they enable an employer to dismiss an employee unjustifiably. They then argue that the principle of equality before the law has also been violated insofar as the scale set by the legislature takes into account, as far as the employee is concerned, solely the latter's length of service, to the exclusion of any other criteria such as age, sex or qualifications, which is therefore prejudicial to the employee. Lastly, it is claimed that these provisions disproportionately infringe the right to be compensated for damage, guaranteed by Article 4 of the 1789 Declaration. On the one hand, the upper limits laid down could, when the employee has only a short length of service, lead to derisory compensation in relation to the damage he or she has actually sustained. On the other, they are such that it is not possible to provide fair compensation for the damage suffered, since the compensation payable by the employer in the event of a procedural irregularity in the dismissal or in the event of failure to honour the priority principle of reinstatement can be combined, within the limits of these maximum amounts, with the compensation for dismissal without real and serious cause.
> 85. Firstly, under Article 4 of the 1789 Declaration: "Freedom consists in being able to do anything that does not harm others". It follows from these provisions that, in principle, if a person carries out an act which causes damage to others, he or she is obliged to make reparation. The right to sue for damages gives effect to this constitutional requirement. However, the latter does not prevent the legislature from adjusting, on the grounds of public interest, the conditions under which liability may be incurred. For such grounds of public interest, the legislature may make exclusions or limitations to this principle, provided that this does not disproportionately infringe the rights of victims of wrongful acts.
> 86. By laying down a mandatory reference table for damages awarded by the courts in the event of dismissal without real or serious cause, the legislature sought to increase the predictability of the consequences of the termination of employment contracts. Accordingly, it pursued a public interest goal.
> 87. The purpose of the compensation regulated in this way was to make good the damage caused by dismissal without real and serious cause and, where applicable, the damage caused by the failure to honour the priority principle of reinstatement, disregard for the procedures for consulting staff representatives or notifying the administrative authority, or the obligation to set up a social and economic committee. The maximum amounts of this compensation laid down by the law vary, depending on the employee's length of service, between one and twenty months' gross salary. The preparatory documents show that these amounts were determined on the basis of "recorded average sums" of compensation awarded by the courts. Moreover, in accordance with the provisions of Article L.1235-1 of the Labour Code, these maximum amounts are not applicable when the dismissal is ruled to be invalid as a result of the violation of a

fundamental freedom, psychological or sexual harassment, discriminatory dismissal or dismissal following legal proceedings, infringement of gender equality at work, the reporting of crimes and offences, the exercise of an elected office by a protected employee or the protected status afforded to certain employees.
88. It follows from the foregoing that the derogation from the ordinary law of liability for fault, resulting from the maximum amounts provided for in the provisions at issue, does not entail restrictions that are disproportionate to the public interest objective pursued.
89. Second, the legislature may, without violating the principle of equality, adjust the maximum compensation amount that is due to an employee who has been dismissed without real and serious cause, provided that for the purposes of such adjustment it uses criteria that are closely related to the damage suffered. This is the case for the criterion of length of service in the undertaking. Moreover, as the principle of equality does not oblige the legislature to treat people in different situations differently, it was not required to set out a scale taking into account all the criteria determining the prejudice suffered by the dismissed employee. By contrast, it is up to the courts, within the limits set out in the scale, to take account of all the factors determining the damage suffered by the dismissed employee when deciding on the amount of compensation due from the employer.
90. Consequently, the difference in treatment brought about by the provisions at issue does not infringe the principle of equality before the law.
91. It follows from all of the above that points two to seven of Article L.1235-3 of the Labour Code, which do not violate the guarantee of rights or any other constitutional requirement, comply with the Constitution."

c) Court of Cassation (*Cour de Cassation*)

60. The Court of Cassation issued two advisory opinions (Opinions No. 15012 and No. 15013 of 17 July 2019 (Request for opinion No. R 19-70.010) on the compatibility with international and European standards of the compensation scale for dismissal without real and serious cause:

Opinion No. 15012
"II – On the merits:

Pursuant to Article L.1235-3 of the Labour Code, as amended by Order No. 2017-1387 of 22 September 2017, the provisions of which are applicable to dismissals made subsequent to the publication of said Order, if an employee is dismissed for a reason that is not real and serious, the court shall award the employee compensation, to be covered by the employer, and whose amounts shall lie between specified lower and upper limits.
As a result, for an employee with a full year's service in an undertaking employing at least 11 employees, this compensation ranges from a minimum of one month's gross salary to a maximum of two months' gross salary.
1.- With regard to the compliance of this text with Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, it is clear from the case-law of the European Court of Human Rights that a distinction must be made between what is procedural and what is substantive. This distinction will determine the applicability and, as appropriate, the scope of the guarantees of Article 6 of the Convention, which can, in principle, have no application to substantive limitations on a right existing under domestic law (ECtHR, 29 November 2016, *Lupeni Greek Catholic Parish and Others v. Romania*, No. 76943/11).
Accordingly, the provisions of Article L.1235-3 of the Labour Code, which limit the employees' substantive right to the amount of compensation that may be awarded to them in the event of dismissal without real and serious cause, do not constitute a procedural obstacle hindering their access to justice, with the result that they do not therefore fall within the scope of Article 6.1, cited above.
2.- With regard to the compatibility of Article L.1235-3 of the Labour Code with Article 24 of the revised European Social Charter, under Part II of that text:
"The Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs.
[...]

Article 24 – The right to protection in cases of termination of employment
With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:
a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.
To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."
In view of the importance of the margin of appreciation left to the contracting parties by the above-mentioned terms of the revised European Social Charter, read in conjunction with the provisions of Parts I and III of the same text, the provisions of Article 24 of the Charter do not have direct effect in domestic law in a dispute between individuals.
3.- Under Article 10 of the International Labour Organisation (ILO) Convention No. 158 on Termination of Employment, which is directly applicable in domestic law:
"If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate."
The term "adequate" is to be understood as reserving a margin of appreciation to States Parties.
In French law, if an employee has been dismissed without real and serious cause, the court may propose that he or she be reinstated. Where reinstatement is refused by either party, the court shall award the employee compensation, to be covered by the employer, within the lower and upper limits laid down.
The scale provided for in Article L.1235-3 of the Labour Code is not applied in cases where the dismissal is deemed invalid, pursuant to the provisions of Article L.1235-3-1 of said Code.
It follows that the provisions of Article L.1235-3 of the Labour Code, which provide that an employee with a full year of service in an undertaking employing at least eleven employees shall be entitled to compensation for dismissal without real and serious cause, ranging from a minimum of one month's gross salary to a maximum of two months' gross salary, are compatible with the provisions of Article 10 of ILO Convention No. 158.

Consequently,

THE COURT IS OF THE OPINION THAT:

The provisions of Article L.1235-3 of the Labour Code, as worded pursuant to Order No. 2017-1387 of 22 September 2017, which provide that an employee with a full year of service in an undertaking employing at least eleven employees shall be entitled to compensation for dismissal without real and serious cause, ranging from a minimum of one month's gross salary to a maximum of two months' gross salary, do not fall within the scope of Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
The provisions of Article 24 of the revised European Social Charter do not have direct effect in domestic law in a dispute between individuals.
The aforementioned provisions of Article L.1235-3 of the Labour Code are compatible with Article 10 of International Labour Organisation Convention No. 158."

Opinion No. 15013

"II – On the merits:
Pursuant to Article L.1235-3 of the Labour Code, as in force following the adoption of Law No. 2018-217 of 29 March 2018, if an employee is dismissed for a reason that is not real and serious,

the court shall award the employee compensation, to be covered by the employer, and whose amounts shall lie between specified lower and upper limits.
1. With regard to the compatibility of Article L.1235-3 of the Labour Code with Article 24 of the revised European Social Charter, under Part II of that text:
In view of the importance of the margin of appreciation left to the contracting parties by the above-mentioned terms of the revised European Social Charter, read in conjunction with the provisions of Parts I and III of the same text, the provisions of Article 24 of the Charter do not have direct effect in domestic law in a dispute between individuals.
2. Under Article 10 of the International Labour Organisation (ILO) Convention No. 158 on Termination of Employment, which is directly applicable in domestic law:
The term "adequate" is to be understood as reserving a margin of appreciation to States Parties.
In French law, if an employee has been dismissed without real and serious cause, the court may propose that he or she be reinstated. Where reinstatement is refused by either party, the court shall award the employee compensation, to be covered by the employer, within the lower and upper limits laid down.
The scale provided for in Article L.1235-3 of the Labour Code is not applied in cases where the dismissal is deemed invalid, pursuant to the provisions of Article L.1235-3-1 of said Code.
It follows that the provisions of Article L.1235-3 of the Labour Code, which set a scale to be applied by the court in determining the amount of compensation to be awarded for dismissal without real and serious cause, are compatible with the provisions of Article 10 of ILO Convention No. 158.

Consequently,

THE COURT IS OF THE OPINION THAT:

The provisions of Article 24 of the revised European Social Charter do not have direct effect in domestic law in a dispute between individuals."

2) Case law refusing to apply the compensation scale set out in Article L. 1235-3 of the Labour Code

a) *Conseil de Prud'hommes*

61. Troyes Conseil *de Prud'hommes*, decision No. 18/00418 of 13 December 2018:

"Insofar as Article L.1235-3 of the Labour Code introduces a capped upper limit on industrial tribunal awards, it means that tribunals are unable to assess the entirety of the individual situations of employees who have been unfairly dismissed and compensate them fairly for the damage they have suffered.
Moreover, these scales do not serve as a deterrent for employers who wish to dismiss an employee without real and serious cause. These scales give greater security to wrongdoers than to victims and are therefore unfair.
Consequently, the Tribunal considers that this scale violates the European Social Charter and ILO Convention No. 158.
The scales laid down by Article L.1235-3 of the Labour Code are in breach of the above instruments."

62. Amiens Conseil *de Prud'hommes*, decision No. 18/00040 of 19 December 2018:

"Whereas the provisions of Article L.1235-3 of the Labour Code grant Mr [...] compensation of half a month's salary. [...]
Whereas this indemnity cannot be considered to be appropriate and to provide redress for dismissal without real and serious cause, in accordance with ILO Convention 158, and also with French legislation and the applicable case-law in this area.
Whereas, as a result, it is necessary for the Tribunal to restore the provision of appropriate compensation for dismissal without real and serious cause […]."

63. Lyon *Conseil de Prud'hommes*, decision No. 18/01238 of 21 December 2018 (refusal to apply the scale, justified as follows):

> "Whereas the employee's compensation is assessed in line with the damage incurred.
> Whereas under the terms of Article 24 of the European Social Charter of 3 May 1996, ratified by France on 7 May 1999, the following principle is stipulated: "*With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise (…) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.*"

64. Lyon *Conseil de Prud'hommes*, decision No. 15/01398 of 7 January 2019:

> "Having regard to Article 10 of International Labour Organisation Convention No. 158 on Termination of Employment [...];
> Having regard to Article 24 of the European Social Charter of 3 May 1996 [...];
> Whereas the compensation awarded must be commensurate with the damage suffered and sufficiently dissuasive to comply with the European Social Charter of 3 May 1996;
> Whereas the European Social Charter is a treaty of the Council of Europe adopted in Turin in 1961 which guarantees fundamental social and economic rights and must therefore be considered as the social Constitution of Europe;
> Whereas the binding nature of the said Social Charter is no longer in doubt and the principles it contains are directly applicable before the French courts;
> Whereas the Court of Cassation recognised its direct applicability in a judgment of 14 May 2010 (No. 09-6 426) with particular reference to Articles 5 and 6;
> Whereas, as a result, the European Social Charter of 3 May 1996 and its interpretation by the European Committee of Social Rights are directly applicable in French domestic law and must lead the Tribunal to assert the need for full compensation of the damages suffered by the employee;
> Whereas a short length of service does not preclude the need to compensate the employee based on:
> - his/her personal situation following the loss of employment (age, family situation, disability, etc.)
> - and/or a work situation making it more difficult to find a new job (geographical distance, rare specialisations, etc.).
> - and/or genuine occupational damage, having a greater impact than mere length of service."

65. In addition to these decisions cited by the CGT-FO, the following decisions have been provided by the Syndicat des Avocats de France (SAF):

> Lyon *Conseil de Prud'hommes*, decision No. 18/00458 of 22 January 2019
> Angers *Conseil de Prud'hommes*, decision No. 18/00046 of 17 January 2019
> Grenoble *Conseil de Prud'hommes*, decision No. 18/00989 of 18 January 2019
> Agen *Conseil de Prud'hommes*, decision No. 18/00049 of 5 February 2019 (this was an "arbitration" decision, under the authority of a professional judge)

66. The decisions cited above are to be found in the CGT-FO's response to the Government's submissions on the merits, and from the observations of the SAF. All of these decisions were delivered prior to the advisory opinions of the Court of Cassation, dated 17 July 2019. However, there are other more recent examples of decisions delivered by the *Conseil de Prud'hommes* in several towns and cities, objecting to the scale and awarding higher levels of compensation than the upper limit laid down in Article L.1235-3 of the Labour Code. By way of illustration, the following is a list of some of these recent decisions:

> Grenoble *Conseil de Prud'hommes*, decision No. 18/00267 of 22 July 2019 : the compensation table laid down in Article L.1235-3 of the Labour Code did not allow for adequate compensation

to be awarded in view of the damage suffered by the employee in the case at issue; the Tribunal awarded an amount higher than the maximum sum laid down in Article L.1235-3.
Nevers *Conseil de Prud'hommes*, decision No. 18/00050 of 26 July 2019 : similar decision to the case above when the Tribunal found that the minimum and maximum amounts laid down in Article L.1235-3 did not allow for adequate compensation to be awarded in view of the damage suffered.
Pau *Conseil de Prud'hommes*, decision No. 18/00160 of 26 July 2019.
Troyes *Conseil de Prud'hommes*, decision No. 18/00169 of 29 July 2019.
Le Havre *Conseil de Prud'hommes*, decision No. 18/00413 of 10 September 2019.
Boulogne Billancourt *Conseil de Prud'hommes*, decision No. 18/00444 of 18 September 2019.
Limoges *Conseil de Prud'hommes* in three decisions, dated 1 October 2019, Nos. 19/00113, 19/00114 and 19/00115.
Saint Germain en Laye *Conseil de Prud'hommes*, decision No. 18/00290 of 8 June 2020.

b) Courts of Appeal

67. Reims Court of Appeal, decision No. 19/00003 of 25 September 2019. First, it confirmed the *in abstracto* conformity of the compensation scale laid down in Article L.1235-3 with ILO Convention No. 158 and the European Social Charter (which it accepted had direct effect, contrary to the position of the Court of Cassation in its advisory opinion of July 2019). It therefore stated that the French scale complied, in an objective and abstract manner, with international and European standards. It made the point that adequate compensation or appropriate relief did not in itself entail full compensation for the damage suffered by wrongful dismissal and could therefore be consistent with a maximum limit on compensation. Nevertheless, the Court of Appeal held that it was also necessary to carry out a review of compliance in practice in order to verify the application of the legal norm to the circumstances of the case. It added that this *in concreto* review could entail disregarding the rule of law deemed to be compliant *in abstracto* if it disproportionately affected the employee's rights. This line of reasoning opened the way for other appeal courts to disregard the application of the scale. However, the Reims Court of Appeal decided in this case not to disregard the stipulated scale, on the ground that the employee had not explicitly requested an *in concreto* compliance review; the Court of Appeal was therefore able only to carry out an *in abstracto* review leading to a finding of compliance.

68. Bourges Court of Appeal, judgment No. 19/00585 of 6 November 2020 (first appeal court to award a compensation amount higher than the maximum amount laid down in order to compensate entirely for the damage suffered by the employee):

The compensation due for dismissal

The provisions of Article L.1235-3 of the Labour Code stipulate that in the event of dismissal without real and serious cause and if the employee is not reinstated, the court shall award the employee compensation payable by the employer, the amount of which shall range from three to six months' gross salary for employees with five years' length of service and employed in an undertaking that usually employs more than eleven employees.

In awarding Mr B €30 000 in damages, the lower court implicitly disregarded the application of these legal provisions.

On appeal, Mr B raised the issue of the non-conformity of these provisions in that they were contrary to Articles 4 and 10 of ILO Convention No. 158 and Article 24 of the revised European Social Charter of 3 May 1996, in addition to the fact that they infringed the right to a fair trial enshrined in Article 6.1 of the Convention for the Protection of Human Rights and Fundamental

Freedoms. He concluded that the application of the national provisions disproportionately infringed his rights and deprived him of the possibility of receiving full compensation for the damage he had suffered.

It will be recalled, however, that the above-mentioned provisions of Article L.1235-3, which limit the employees' substantive right to the amount of compensation that may be awarded to them in the event of dismissal without real and serious cause, do not constitute a procedural obstacle hindering their access to justice, with the result that they do not fall within the scope of the above-mentioned Article 6.1.

Moreover, insofar as the provisions of Article 24 of the revised European Social Charter leave too much room for discretion to the contracting parties to enable private individuals to rely on them in a dispute brought before the domestic courts, they are not directly applicable in domestic law.

This is not the case, however, with Article 10 of ILO Convention 158 on termination of employment.

This states that where the courts "find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate."

Compensation is deemed to be "adequate" if its amount is sufficiently dissuasive to prevent wrongful dismissal. It must be of a reasonable level so as to achieve the aim of compensating for the unjustified loss of employment.

In French law, Article L.1235-3 of the Labour Code authorises compensation for damage suffered as a result of an employee's dismissal without real and serious cause to be adjusted according to length of service, which is an objective criterion of the damage suffered, and to be tailored, within the legal limits, to the situation of each employee according to criteria that are specific to that employee. In addition, the possibility of alternative means of redress is available in cases where a dismissal is ruled to be invalid or to enable the employee to claim compensation for damage other than the loss of employment.

The upper limit laid down in the aforementioned provisions of Article L.1235-3 provides sufficient guarantees that, in the light of the objective pursued, the breach of fundamental rights that has been deemed to be necessary does not, in itself, appear disproportionate.

The compliance review, carried out objectively and abstractly on all the provisions, taken as a whole, therefore leads to the conclusion, regardless of Mr B's situation, that they are compliant.

However, when a dismissal is unjustified, the review of compliance does not obviate the need, where a provision has been deemed compliant, to assess whether or not it disproportionately affects the rights of the employee concerned by imposing on him or her obligations that are disproportionate to the result sought, in this case full compensation for the damage he or she has suffered.

In this case, Mr B was 59 years old on the day he was made redundant and had been with the company for five years. He had submitted applications for an impressive number of jobs, all of which had been unsuccessful, and he could not be accused of looking only in his own field of expertise, logistics. Given his age and the French employment market, it was in his interest to extend his search far beyond his main area of expertise. Nor can he be accused of having left his search to the last minute since, over the period between October 2019 and July 2020, he had applied for at least 177 positions.

In view of his age, 59, and the resulting difficulty he has had in finding a job in a tight labour market, the application of the above-mentioned provisions of Article L.1235-3 of the Labour Code in this case disproportionately affected his rights in that it did not allow for full

compensation for his loss. For this reason, it contravened the aforementioned provisions of Article 10 of ILO Convention 158.

It is therefore justified that the lower court disregarded the application of the provisions of Article L.1235-3 in this case."

69. Paris Appeal Court, judgment No. 19-08.721 of 16 March 2021 in which the Paris Appeal Court disregarded the scale laid down by Article L.1235-3 basing this approach on Article 10 of ILO Convention No. 158 and taking into account the "specific and particular" situation of the unjustly dismissed employee; it held that the scale laid down by the Labour Code in this case represented "barely half of the damage suffered in terms of reduced financial resources since the dismissal". In this judgment of 16 March 2021, the Paris Appeal Court carried out a so-called *"in concreto"* compliance review which resulted in the scale being disregarded: it should be noted, however, that in two previous judgments (judgment No. 17/06676 of 18 September 2019 and judgment No. 16/05602 of 30 October 2019), the Appeal Court had acted in line with the advisory opinion of the Court of Cassation and had ruled that the scales were in conformity with the relevant treaties.

3) Domestic case law on alternative legal remedies

70. According to the established case law of the Court of Cassation, it is possible for unfairly dismissed employees to obtain additional compensation but only for specific types of damage sustained.

71. **Judgment of the Court of Cassation, Social Division, of 26 October 2017 No. 15-25976**

The rules of civil liability are effective only to provide redress for damage sustained that is distinct from the damage incurred as a result of the loss of employment:

"SECOND GROUND OF APPEAL

The judgment under appeal is complained of for having ordered the company TTR GUY FRANCOIS to pay Mr X... the sum of €5 000 as compensation for the non-pecuniary damage suffered as a result of the vexatious circumstances of his dismissal;

WHEREAS "Mr. X..., who joined the company at the age of 18, was abruptly dismissed at an age at which it will be difficult for him to find a position as a deliveryman in another company; he has therefore suffered non-pecuniary damage which should be compensated for by ordering the employing company to pay him the sum of €5 000 in damages in view of the vexatious nature of his dismissal";

WHEREAS the court may award the employee damages distinct from those for dismissal without real and serious cause only on condition that it establishes a fault on the part of the employer in the circumstances of the dismissal and identifies the damage sustained that is distinct from that caused by his loss of employment; whereas by merely stating that Mr X... who, given his age, will have difficulty finding a position as a deliveryman in another company, is entitled to seek compensation for the separate non-pecuniary loss he suffered as a result of the vexatious nature of his dismissal, without showing how his dismissal was vexatious or abrupt, or identifying damage distinct from that resulting from the loss of his job, the Court of Appeal failed to provide a legal basis for its decision in the light of Article 1147 of the Civil Code."

72. **Judgment of the Court of Cassation, Social Division, 14 September 2017, No. 16-11563**

The Court of Cassation overturned the judgment handed down by a Court of Appeal which had ordered the employer to pay the employees damages for the loss resulting from a failure to implement the measures of an employment safeguard plan, whereas it had already ordered the employer to pay each employee compensation for the lack of real and serious cause, which must be the only compensation awarded for the unlawful nature of the dismissal:

> "But on the second ground of the employer's main appeal:
>
> Having regard to Articles L.1235-10 and L.1235-1 of the Labour Code as they apply to the case at hand, together with the principle of full compensation for the damage sustained;
>
> Whereas, to order the employer to pay the employees damages for the loss resulting from the failure to implement the measures of the employment protection plan, the judgment maintains that the advantages linked to the adoption of this plan are not negligible, since they include steps to redeploy employees internally, new jobs created by the undertaking, measures to promote redeployment outside the undertaking, initiatives to support the creation of new activities or the resumption of existing activities by employees, training initiatives, validation of experience or retraining to facilitate the internal or external redeployment of employees in equivalent jobs, along with measures to reduce or adjust working hours and that the failure by the employer to implement these advantages justifies the award of specific compensation;
>
> Whereas in so ruling, when it had already ordered the employer to pay to each employee compensation as redress for the full damage suffered resulting from the unlawful nature of the dismissal, the Court of Appeal violated the above-mentioned texts and principle;"

73. **Judgment of the Court of Cassation, Social Division, 2 March 2011, No. 08-44977**

In cases of dismissal on the ground of the employee's unsuitability, an employer may be sentenced both to pay compensation for dismissal without real or serious cause and to remedy the damage arising from a deterioration in the employee's health if it can be attributed to the employer:

> "On the third ground of appeal:
>
> Whereas the company complains that the judgment ordered it to pay Mr X... a sum of money by way of damages for a separate loss, while, on the basis of the ground of appeal:
>
> 1°/ the setting aside of the judgment on the basis of the first ground of appeal or, in any event, of the second ground of appeal, will have the effect, in application of the provisions of Article 624 of the Code of Civil Procedure, of censuring the section of the operative part of the judgment that is being challenged here;
>
> 2°/ whereas the Court of Appeal ordered the company to pay Mr X... compensation for dismissal without real and serious cause, taking the view that it had been responsible for the employee's unsuitability, the reason for his dismissal, due to his refusal to accept the offers of redeployment made by the plaintiff; consequently, the Court of Appeal does not legally justify its decision in the light of Article 1147 of the Civil Code when it considers that the employee has suffered a distinct prejudice resulting from the behaviour of the employer who, in the view of the Court, clearly wished, on the one hand, to proceed by force, and on the other, impose unfair changes on the employee. This led to a deterioration in the employee's state of health and ultimately to his unsuitability, without specifying how this damage was distinct from the compensation for the loss of employment considered to be unjustified, even though this allegedly distinct damage resulted from the same fault and from the employee's unsuitability, on the basis of which the compensation for dismissal without real and serious cause was awarded;
>
> But whereas, having noted that the employer's wrongful conduct was the cause of the deterioration in the employee's state of health and physical unsuitability, the Court of Appeal,

which concluded from this that the employee had suffered a prejudice distinct from the damage for which compensation was paid in respect of dismissal without real and serious cause, has, on these grounds alone, legally justified its decision;"

74. **Judgment of Court of Cassation, Social Affairs Division, 25 February 2003, No. 00-42031**

It is possible to make good non-pecuniary damage to the employee if it is not the sole result of the unjustified nature of the dismissal. In this case, it was the undermining of the employee's dignity that was at issue.

"But on the second ground of appeal:

Having regard to Articles 9 and 1147 of the Civil Code and L. 120-2 of the Labour Code;

Whereas in order to dismiss the employee's claim for damages as compensation for the harm caused to her by the dissemination, during departmental meetings, of the reasons for which the employer was initiating disciplinary proceedings against her, the Court of Appeal held that since the acts committed by the employee were not unrelated to her professional activity, it was not inappropriate for the employer to make them known;

Whereas in so ruling, bearing in mind that informing the staff, without a legitimate reason, of the actions of a named employee constitutes an infringement of the latter's dignity such as to cause her a prejudice distinct from that resulting from the loss of her job, the Court of Appeal was in breach of the aforementioned texts;"

75. **Judgment of Court of Cassation, Social Chamber, 31 May 2011, No. 09-71350**

The employee may obtain compensation outside the scale on the ground of loss of opportunity. In this case, it was loss of the opportunity to be given the retirement benefits available within the company:

"FIRST GROUND OF APPEAL
[…]
WHEREAS, FINALLY and AS A SUBSIDIARY ARGUMENT, an employee who cannot, as a result of his or her termination of employment without real and serious cause, benefit from the retirement scheme applicable in the company, necessarily suffers a prejudice which must be compensated; in rejecting the request of Mr X... for payment of damages for loss of the opportunity to benefit from the retirement scheme on the unjustified grounds that "the employee must still be working for the company at the time of his retirement and that, having less than two years' length of service, (he) cannot claim to have lost, as a result of his termination of employment, the opportunity to benefit from this deferred advantage", when it had explicitly held that "the dismissal of Mr X.. ... was without real and serious cause", which meant that this loss of opportunity was sufficiently serious to give rise to compensation, the Paris Court of Appeal, which did not draw the legal consequences from its own findings, violated Articles 1134 and 1147 of the Civil Code in addition to Article L.1235-3 of the Labour Code. "

RELEVANT INTERNATIONAL MATERIALS

A – United Nations

76. International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976

Article 6

"1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

77. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Article 6 of the ICESCR), adopted on 24 November 2005

"4. The right to work, as guaranteed in the ICESCR, affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. (…)

"11. ILO Convention No. 158 concerning Termination of Employment (1982) defines the lawfulness of dismissal in its article 4 and in particular imposes the requirement to provide valid grounds for dismissal as well as the right to legal and other redress in the case of unjustified dismissal."

Violations of the obligation to protect

"35. Violations of the obligation to protect follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties. They include omissions such as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others; or the failure to protect workers against unlawful dismissal."

78. UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the fourth periodic report of France, adopted on 24 June 2016

The right to just and favourable working conditions

24. The Committee is concerned by the fact that derogations from acquired rights regarding working conditions, including derogations intended to increase the flexibility of the labour market, are being proposed in the current labour bill (draft legislation aimed at introducing new freedoms and new safeguards for businesses and workers) without it having been demonstrated that the State party has considered all other possible solutions (arts. 6 and 7).

25. The Committee urges the State party to make certain that the mechanisms for increasing the flexibility of the labour market that it is proposing do not have the effect of rendering employment less stable or reducing the social protection available to workers. It calls upon the Committee to ensure that any and all retrogressive measures relating to working conditions:
(a) Are unavoidable and fully justified in relation to the totality of the rights under the Covenant in the light of the State party's obligation to pursue the full realization of those rights to the maximum of its available resources;
(b) Are necessary and proportionate to the situation, i.e., that the adoption of any other measure, or the failure to adopt any measures, would have an even more adverse impact on Covenant rights;
(c) Are not discriminatory and do not have a disproportionate impact on disadvantaged or marginalized groups.

26. The Committee draws the State party's attention to its general comment No. 23 (2016) on the right to just and favourable conditions of work.

B – International Labour Organisation (ILO)

79. Convention No. 158 on Termination of Employment, 1982, entry into force 24 November 1985

"Part II. Standards of general application

Division A. Justification for termination

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

…

Division C. Procedure of Appeal Against Termination:

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate."

80. Committee of Experts on the Application of Convention and Recommendations (CEACR General Survey on the Termination of Employment Convention (No. 158) and Recommendation (No. 166), 1982, International Labour Conference, 82nd session 1995, Report III (Part 4B), Geneva 1995

"218. Under Article 10 of the Convention, "if the bodies referred to in Article 8 ... find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate".

219. The wording of Article 10 gives preference to declaring the termination invalid and reinstating the worker as remedies in the case of unjustified termination of employment. However, it is flexible in that it offers other possible remedies, depending on the powers of the impartial body and the practicability of a decision to nullify the termination and reinstate the worker. "The text specifies, moreover, that when compensation is paid it should be "adequate". (…)

232. In the light of the above, the Committee considers that compensation, in the case of termination of employment impairing a basic right, should be aimed at compensating fully, both in financial and in occupational terms, the prejudice suffered by the worker, the best solution generally being reinstatement of the worker in his job with payment of unpaid wages and maintenance of acquired rights. In order to do this, the impartial bodies should have all the necessary powers to decide quickly, completely and in full independence, and in particular to decide on the most appropriate form of redress in the light of the circumstances, including the

possibility of reinstatement. When reinstatement is not provided as a form of redress, when it is not possible or not desired by the worker, it would be desirable for the compensation awarded for termination of employment for a reason which impairs a fundamental human right to be commensurate with the prejudice suffered, and higher than for other kinds of termination. (…)"

C – European Union

1. Primary Law

81. Charter of Fundamental Rights of the European Union, proclaimed on 7 December 2000 :

Article 30 Protection in the event of unjustified dismissal

"Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices."

2. European Pillar of Social Rights

82. The European Pillar of Social Rights was proclaimed and signed on 17 November 2017 by the Council of the European Union, the European Parliament and the European Commission during the Göteborg Social Summit for fair jobs and growth.

83. Principle No. 7 of the Pillar:

7. Information about employment conditions and protection in case of dismissals
(…)
"b. Prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation."

THE LAW

ALLEGED VIOLATION OF ARTICLE 24 OF THE CHARTER

84. Article 24 of the Charter reads:

Article 24 – The right to protection in cases of termination of employment

Part I: "All workers have the right to protection in cases of termination of employment".

Part II: "With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

A – Arguments of the parties

1. The complainant organisations

85. The two complainant organisations, CGT-FO and CGT, consider that "adequate compensation" guaranteed by the Charter must be understood to mean the full reparation of the damage suffered by the employee as a result of his/her dismissal without real and serious cause. If any upper limit is placed on the amount of compensation with the result that it is not possible to guarantee full reparation for the damage suffered, it must be ascertained whether or not there are, in practice, any alternative legal remedies whereby supplementary compensation could be obtained. The CGT-FO further refers to the Committee's line of reasoning in its decision on admissibility and the merits of 8 September 2016, in Finnish Society of Social Rights v. Finland, Complaint No. 106/2014.

i) The lack of adequate compensation or other appropriate relief in French law

86. The CGT-FO and CGT maintain that the new French compensation scale for dismissal without real and serious cause, which has been in force since 2017, does not provide for adequate or appropriate compensation in the event of unjustified dismissal as it does not meet the criteria of adequate compensation or other appropriate relief as provided for in Article 24 of the Charter, for four reasons.

a) <u>No reimbursement of financial losses incurred between the date of dismissal and the date of the appeal body's decision</u>

87. The CGT-FO and CGT argue that the French system of compensation for unjustified dismissal does not properly ensure reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body. The CGT further draws a comparison with Article L.1235-3-1 of the Labour Code which introduces special treatment for the most serious cases of unlawful dismissal, where the dismissal is rendered null and void. Article L.235-3-1 expressly provides for the reimbursement of financial losses incurred between the date of dismissal and the decision of the relevant body. Yet Article L.1235-3 on dismissals without real and serious cause makes no specific mention of reimbursement of financial losses stemming from unfair dismissal.

88. In response to the Government's contention that unemployment benefit is a form of reimbursement of the financial losses incurred by the employee following dismissal, the CGT makes several observations. Firstly, unemployment benefit is limited in that it is equivalent, on average, to, 60% of the employee's former salary, which, in the CGT's view, is not enough to reimburse the financial losses. Secondly, the duration of compensation is time-limited and depends on the length of time for which the person contributed: it may therefore be shorter than the period between dismissal and the decision of the appeal body. The CGT further points out that the French Government recently reformed the unemployment benefit system, making it more difficult to access and less protective. In addition, and most importantly, the CGT wishes to draw the

Committee's attention to the fact that this unemployment benefit is not intended to compensate for unjustified loss of employment: all employees who have been dismissed, fairly or unfairly, can claim it. It also notes that, in its decision on admissibility and the merits of 8 September 2016 concerning Finland (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, op. cit.), the Committee did not rely at all on the mechanism for deducting unemployment benefit from compensation for unfair dismissal when it found Finland to be in breach of the Charter. France, therefore, cannot rely on the existence of unemployment benefit to support its contention that the scale is compatible with Article 24 of the Charter.

89. The CGT-FO further maintains that proceedings before *Conseil de Prud'hommes* are particularly lengthy. It refers to the Ministry of Justice's official statistics for 2016, which show that on average such proceedings take 15 to 17 months, not counting any appeal or cassation proceedings. Some cases can take up to 30 months if there is a need to involve a judge from the law courts to settle the matter. This situation has been the subject of several rulings by French courts, which have deemed the length of proceedings before *Conseil de Prud'hommes* to be excessive in the light of Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

90. The CGT-FO argues that the length of proceedings together with the upper limit on compensation will inevitably lead unjustly dismissed employees to forego taking legal action. The complainant also alleges that employees are already taking less legal action than previously, following various reforms of the *Conseils de Prud'hommes* system and the rise in the number of mutually agreed terminations of contract. For example, between 2016 and 2017, it claims that the number of referrals to the *Conseils de Prud'hommes* fell significantly: a drop of between 40 and 50% was recorded in the first quarter in Roubaix and a 41% drop in Paris. The honorary senior member of the Social Affairs Division of the Court of Cassation predicts that this drop in the number of cases will continue, and perhaps gather apace, as a result of the capping of compensation for unjustified dismissal, adding that the setting of an upper limit will discourage employees with a short length of service from bringing cases before the *Conseils de Prud'hommes* .

91. The CGT-FO acknowledges, in response to the Government's claim, that the fall in the number of cases referred to *Conseils de Prud'hommes* is the result of previous reforms and not exclusively based on the introduction of the compensation scale. Indeed, it accepts that the fall is part of a trend that predates the introduction of the scale. However, this does not mean that the drop in the number of referrals cannot also be attributed to the introduction of the compensation scale: the Minister of Labour herself is said to have attributed the decrease in the number of cases brought before the *Conseils de Prud'hommes* to the initial effects of the labour affairs Orders that had been issued.

b) <u>The lack of compensation of a sufficiently high level to compensate for the damage suffered by the victim</u>

92. The CGT-FO and CGT consider that the amount of compensation provided for in the scale is not sufficiently high to fully compensate for the damage suffered by employees who have been dismissed without real and serious cause.

General considerations on the adequacy of the compensation for the damage sustained

93. With regard to the amounts of compensation laid down in the scale, the CGT-FO first of all highlights the inadequacy of the lower limits. It points out that, for those with less than 11 years' length of service, lower limits have been set specifically for undertakings with fewer than 11 employees. This would appear to demonstrate the State's commitment to cater first and foremost for the needs of small and medium-sized enterprises. The new lower limits set by the 2017 Order are only half a month's or one month's salary for employees of small undertakings with a short length of service. Furthermore, the CGT-FO argues that the lower limits previously in force had been set at six months' salary as this was the average duration of unemployment at the time: given that this average duration has increased significantly since then, the lower limits for compensation should now be set at nine months to bring them into line with the current average period of unemployment. The CGT also considers that in the case of employees with only a short length of service the maximum compensation awardable is only one month's gross salary and the minimum level is low. The compensation band is very narrow, therefore, for employees who have not been in service long.

94. Secondly, the CGT-FO and CGT refer to the inadequacy of the upper limits of the compensation scale. They note that the maximum amounts set by the scale are between 1 month's salary for employees with less than one year's length of service and 20 months for employees with more than 29 years' service. The maximum amount of compensation for dismissal without real and serious cause cannot therefore be more than 20 months' gross salary. In this respect, the upper limit of the French scale is lower than that of the Finnish scale, which stood at 24 months' salary and which the Committee had considered insufficient to ensure adequate compensation where there were no alternative legal remedies.

95. Moreover, in some cases, the lower and upper limits are almost identical: for example, for employees with 2 years' length of service in an undertaking with 11 or more employees, the amount of compensation is between 3 and 3.5 months. These narrow ranges of compensation, it is claimed, place limits on the court's discretion.

96. There are exceptions to the compensation scale. These are set out in a restrictive list in Article L.1235-3-1. They correspond to the most serious cases of unlawful dismissal which are declared invalid. Once a court has ruled that a dismissal is invalid, the employee can be reinstated, and if he or she does not wish to return to the company or if reinstatement is not feasible, this gives rise to compensation that is not subject to a maximum amount and cannot be less than six months' salary. However, the CGT-FO submits that the government's use of a list of exceptions in Article L.1235-3-1 shows its intent to strictly limit the cases in which use of the scale can be waived.

97. The CGT likewise asserts that the new compensation amounts imposed by the Labour Code are less advantageous than the average amounts of compensation awarded by the courts in practice. It cites a study conducted in 2015 by the Ministry of Justice on compensation awarded by the courts for dismissal without real and serious cause, based on 401 judgments given by French appeal courts in October 2014. Of these judgments, 284 related to employees with at least 2 years' service working for

an undertaking with more than 11 employees. From the table showing compensation awards in terms of monthly salary granted according to length of service, with due regard to the lower limit of 6 months' salary (for these 284 judgments) it can be observed that the new statutory compensation amounts are less advantageous overall than those previously awarded by the French courts and do not therefore cover all of the damage suffered by employees dismissed without real and serious cause.

Grouping together compensation amounts

98. The CGT-FO and CGT argue that sub-paragraph 4 of Article L.1235-3 of the Labour Code provides for the "grouping together" of compensation payments insofar as "courts may take account of the compensations awarded on termination of the contract", resulting in a reduction in the compensation paid.

99. The complainant organisations maintain that initially the Order included severance payment (*indemnité de licenciement*), as provided for in Article L. 1234-9 but the ratifying law from 2018 explicitly excluded it from this grouping together of compensation amounts. However, although the compensation for dismissal provided for in Article L. 1234-9 cannot be taken into account by the court when deciding on the amount of compensation due for unjustified dismissal, the court can nevertheless take into account other types of compensation for dismissal paid on termination of the employment relationship such as the compensation provided for in contractual redundancy payments.

100. The CGT-FO and CGT consider that this grouping together also relates to other indemnity referred to in the last sub-paragraph of Article L.1235-3. Accordingly, payments compensating for irregularities with regard to redundancies for economic reasons and failure to honour the priority principle of reinstatement can be taken into consideration when calculating the amount of compensation for unjustified dismissal. This phenomenon of grouping together the compensation payments subject to the capped scale is an invitation to the courts to adjust downwards the amount of compensation for dismissal without real and serious cause. These new rules encouraging a reduction in compensation would, it is claimed, also have an impact on the most serious unlawful dismissals, which are declared invalid and are not subject to the scale. In practice, this also allegedly leads to a reduction in the amount of compensation awarded in the case of the most serious unlawful dismissals that have been declared invalid.

101. The CGT-FO provides further details on the grouping together of compensation in its response to the Government's observations. Although it concedes that this is an optional mechanism for the courts, in its view it is no less prejudicial to the right to adequate compensation or appropriate relief. The central problem persists: in order to determine the amount of compensation for dismissal without real and serious cause, the court may take into account indemnity of another nature, such as the contractual redundancy payment. However, compensation for dismissal without real and serious cause and severance pay itself do not compensate for the same damage: the purpose of compensation as such is to compensate for the loss of employment, whereas compensation for dismissal without real and serious cause is to compensate for the fact that there was no valid reason for dismissal. Since the damage is not the same, the payments for dismissal made at the time of the termination of the employment

contract cannot be taken into account in determining the amount of compensation for dismissal without real and serious cause without infringing the right to adequate compensation.

No personal and individual assessment of the damage sustained

102. The CGT-FO and CGT argue that the upper limit on compensation for unfair dismissal is set on the basis of a single criterion, namely length of service, and that this prevents the court from taking account of other criteria relating to the employee's personal circumstances, such as age, state of health, qualifications, difficulty in finding another job, etc. The CGT-FO and CGT state that this is particularly problematic for older employees: from 29 years of service onwards, the maximum compensation levels off at 20 months' gross salary, yet the fact is that for employees over the age of 50 the average period of unemployment is 683 days, rising to 721 days in the case of women over 50, while the average unemployment period in France is 418 days and just 229 days for under-25s according to the November 2017 figures from the French employment office. Generally speaking, argues the CGT, the upper limits on compensation are not sufficiently high to enable the court to take account of criteria connected with the damage incurred other than length of service: for instance, in the case of employees with less than 4 years' service and who have worked for an undertaking with more than eleven employees, the court has only one month's margin between the ceiling and the floor. The relief offered by the court cannot be adequate, therefore, as it does not reflect the individual damage suffered.

Drawing up the scale

103. In response to the Government's submissions, the CGT-FO and CGT refer to the latter's justifications for drawing up the compensation scale. First, the complainant organisations consider that the objective of ensuring predictability, presented by the Government as the purpose of establishing an upper limit, is questionable in itself. the CGT-FO and CGT believe that the aim of compensation for unjustified dismissal should be to ensure adequate compensation; compensation should therefore be geared towards employees and not just towards employers. Second, the CGT-FO and CGT maintain that the statistical study allegedly used by the Government to determine the minimum and maximum amounts of the scale has not been made public. the complainant organisations add that such a statistical study establishing the average amounts of compensation for unjustified dismissal awarded by the domestic courts should have been enough to provide employers with a degree of predictability without the need to establish a mandatory compensation scale.

Reinstatement

104. The CGT-FO and CGT also respond to the Government's argument that French law provides for another method of redress for dismissal without real and serious cause, namely reinstatement. The CGT-FO and CGT's view is that although the law does provide for the possibility of reinstatement in the event of dismissal without real and serious cause, this is optional on two counts and is very rarely implemented in practice. This two-fold optional nature is due to (i) the fact that both parties can oppose reinstatement and (ii) the fact that the courts can also refuse reinstatement even when both parties are in agreement. In practice, neither employers nor employees are keen

to make use of this reinstatement option. This means that, in practice, dismissal without real and serious cause is remedied solely by means of compensation.

c) Lack of compensation of a sufficiently high level to deter employers

105. The CGT-FO and CGT consider that the amount of compensation for dismissal without real and serious cause is not only insufficient to compensate the victim for the damage suffered, but also insufficient to deter employers.

106. The CGT-FO and CGT maintain that the drawing up of a scale creates predictability, making it possible to calculate the cost of unlawful action, i.e. unjustified dismissal, and therefore provides an incentive to do so, if, on the basis of a cost-benefit calculation, the cost of unjustified dismissal was lower than the cost of complying with the law. In this way, it is claimed that the scale authorises “efficient law-breaking”.

107. In this connection, in November 2017 the government introduced an unjustified dismissal compensation simulator which enabled employers to calculate exactly the risk they would incur in the event of unlawful dismissal. This means that the punitive function of reparation and the deterrent aspect of compensation for unjustified dismissal is tending to disappear.

108. The CGT responds to the Government’s remark that under Article L.1235-4, the courts can order employers to reimburse the *Pôle Emploi* (employment office) for all or part of the sums paid, up to a maximum of six months' salary. Firstly, the CGT points out that in practice, the labour courts never order – and the employment office never asks for – the sums to be repaid. And secondly, the CGT considers that this issue of reimbursement of sums paid by the employment office is of no relevance to the question of compensation for damage suffered by an employee who has been unfairly dismissed.

d) The lack of any alternative means of redress

109. Lastly, the CGT-FO and CGT state that there are no alternative legal remedies for additional compensation for the damage suffered by employees who have been unfairly dismissed.

110. The complainant organisations point out that, since the enactment of the 1973 law, the system of compensation for unjustified dismissal has been a *lex specialis* which accordingly is an exception to the general law, in this case ordinary civil liability law.

111. Ordinary civil liability law therefore applies only in marginal cases to compensate for a separate loss (cases of harassment, discrimination, breaches of fundamental freedoms, dismissal of an employee who holds an elected office or has special maternity-related protection, or who has been the victim of an employment injury or occupational disease). However, these cases are rare and, in practice, the domestic courts only very rarely grant such compensation for a separate loss on top of the compensation for unjustified dismissal.

112. Apart from this list of exceptions, only damage that is entirely distinct from that resulting from the unfair dismissal is not covered by the upper limit and may give rise to separate relief. According to a well-established body of case law at the level of the Court of Cassation, for example, additional relief may be granted only for separate forms of damage. These are not, therefore, alternative legal avenues that would make it possible to complement compensation for dismissal without a valid reason as they are a means of making good other, unconnected damage.

ii) The existence of a right to an effective remedy before an impartial body

113. As well as failing to ensure adequate compensation or other appropriate relief, the CGT also submits that provisions of the Labour Code, as amended by Order No. 2017-1387 of 22 September 2017, allegedly infringe the right to an effective remedy before an impartial body in cases of dismissal without a valid reason.

114. Firstly, the compensation bands imposed on courts by the mandatory scale set in Article L.1235-3 severely reduce courts' discretion. More specifically, the fact that the scale only takes into account two criteria (length of service and company size) allegedly leaves the court little room to make appropriate rulings according to the characteristics of the offender and results in a standardisation of decisions.

115. Secondly, lowering the upper limits on compensation even though the cost of legal proceedings remains the same allegedly has the effect of dissuading victims of unfair dismissal from bringing cases before the labour courts. The CGT submits, for instance, that employees who have been unfairly dismissed are opting not to exercise their right of appeal, and points to a 40 to 50% decrease in the number of appeals in the first quarter of 2017 in Roubaix, and a 41% decrease in Paris.

2. The respondent Government

116. First of all, the Government points out that there are already systems similar to the French compensation scale for unjustified dismissal in several European countries. These systems do not deprive employees of fair compensation, but rather regulate the amount of this compensation. The aim of such a mechanism is to harmonise judicial practices in order to provide greater legal certainty and predictability for the parties to the contract when employment relationships break down.

117. The Government refers to the decision of the Committee in Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on admissibility and the merits of 8 September 2016. In its view, this decision showed that the very principle of placing an upper limit on compensation for unjustified dismissal was not per se contrary to the Charter. In assessing the adequacy of compensation, the Committee should take account of all the existing legal rules in the State concerned with regard to sanctions for unjustified dismissal (compensation, reinstatement, alternative remedies) and entitlements for persons laid off.

i) Adequacy and appropriateness of compensation

118. The Government rejects all the grounds put forward by the CGT-FO and CGT challenging the adequacy and appropriateness of the compensation for unjustified dismissal. In contrast, it argues that the new French compensation scale fulfils the conditions for compensation to be deemed adequate laid down by the Committee in Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, op. cit.

a) Reimbursement of financial losses between the date of dismissal and the date of the appeal body's decision

119. First, the Government refers to the CGT-FO's assertion that the French compensation system does not properly ensure reimbursement of financial losses between the date of dismissal and the decision of the appeal body because of procedural delays before C*onseils de Prud'hommes* of 15 to 17 months, which deter employees from bringing proceedings.

120. With regard to the fact that employees who have been dismissed without real and serious cause may decide not to bring their case before the tribunal, the Government points out that the reduction in the number of cases brought before these tribunals, as stated by the CGT-FO in its observations, predates the reform at issue. This reduction in the number of new cases brought before *conseils de prud'hommes* is part of a longer-term trend and one of the reasons for this is the introduction in 2008 of termination by mutual consent (a form of amicable settlement) and the reforms implemented in relation to the functioning of C*onseils de Prud'hommes*.

121. The Government also points out that one of the objectives of the legislation is to make the cost of legal proceedings against unlawful dismissal more predictable and for it no longer to vary according to the overall length of the proceedings. It claims that the aim of the scale is to cover the damage incurred by the employee both before the judicial decision and after.

122. In response to CGT's allegations concerning the cases where the dismissal is null and void and covered by Article L.1235-3-1, the Government states that French law has always made, and still makes, specific provision for the reimbursement of financial losses incurred between the dismissal and the decision of the appeal body. There is a well-established body of case law here at the level of the Court of Cassation, which systematically orders the reimbursement of these financial losses when dismissals are null and void. The Government adds that this practice has always been reserved solely for dismissals that are null and void, so the Order of 22 September 2017 has not introduced any changes in this respect.

123. Furthermore, in the case of all unjustified dismissals, dismissed employees may be entitled to unemployment benefit, which guarantees them some level of income after the termination of the employment contract, until they find a new job. This unemployment benefit and the way it is calculated are set out in Articles L. 5421-1 et

seq. of the Labour Code. The Government states that the maximum amount that an employee can receive is 75% of his or her baseline salary. On average, an employee receives about 60% of his or her former salary in unemployment benefit. The entitlement period is proportional to the length of affiliation, up to a maximum of 24 months if the employee is under 53 years of age. The Government points out that in contrast with Finnish law, French law does not provide for unemployment benefit or any other remuneration received by former employees since their dismissal to be deducted from the compensation awarded by the courts on the basis of the scale.

b) A sufficiently high level of compensation as reparation for the damage suffered by the employee

General considerations on the adequacy of the compensation for the damage suffered

124. According to the Government, the Charter, as such, makes no provision for a right to “full compensation” in the event of unfair dismissal but rather recognises that employees are entitled to “adequate compensation” or “other appropriate relief”. The Charter must therefore be construed as allowing states a certain margin of appreciation.

125. The Government wishes to draw particular attention to the fact that, unlike Finnish law, French legislation gives the court the possibility of deciding to reinstate employees in their jobs or an equivalent job if they so request. Compensation is paid only if the employee does not wish to be reinstated or the employer objects to reinstatement. Moreover, in particularly serious cases of unjustified or invalid dismissal, if the court orders reinstatement at the employee’s request, employers may not object, except where reinstatement is not feasible in practice. Reinstatement therefore is one of the means of reparation available to French domestic courts even if, in practice, it is very rarely implemented because often it is not something that employees want. In its further response as to the merits, it states that it cannot be inferred from the infrequent use of this right by employees that the legislative provisions in force are insufficient to protect them or to enable them to assert their rights. In addition, it states, for the benefit of the SAF, which maintains that reinstatement is not effective because it is optional, that the Charter does not contain any obligation to reinstate: States must simply ensure that it is a possibility available to the domestic courts.

126. At national level, the Constitutional Council has subjected the compensation scale for unjustified dismissal to a proportionality review. In its decision No. 2018-761 DC of 21 March 2018, it concluded that the upper limit placed on compensation “did not establish disproportionate restrictions” on the rights of victims of wrongful acts in relation to the public interest objective of increasing the predictability of the consequences arising from the termination of the employment contract. Furthermore, it also held that the conditions under which this right had been established were not such as to disproportionately affect it since, on the one hand, the amounts corresponded to the average amounts of compensation awarded by the courts prior to the reform and, on the other, the scale was not applicable in a number of scenarios corresponding to the most serious situations, in which the penalty is for the dismissal to be declared invalid (this derogation arrangement is provided for by Article L.1235-3-1 of the Labour Code).

127. The Government submits that the most serious cases of unlawful dismissal are declared null and void and are therefore exempt from the compensation scale. For these invalid dismissals, there is therefore no upper limit placed on the compensation awarded by the courts. In reply to the CGT-FO, it points out that the list of exceptions to the scale includes not only a violation of a fundamental freedom but also situations of discrimination, psychological or sexual harassment, infringement of gender equality at work, the reporting of crimes or offences, if the dismissal relates to employees who are protected because they are performing a representative function, is because of pregnancy, maternity or paternity status or concerns employees who have been victims of an employment injury or occupational disease. It therefore concludes that, contrary to what the CGT-FO maintains, these exceptions do not equate to rare or marginal situations.

128. With regard to the manner in which the contested compensation scale was devised, the Government makes various points. Firstly, it asserts that the upper limits of the compensation scale were determined on the basis of the average amounts of compensation awarded by courts in cases of dismissal without real and serious cause. To this end, the Government refers to a study carried out by the Ministry of Justice in 2015, listing the rulings handed down by the French courts of appeal in October 2014 on compensation for dismissals without real and serious cause.

129. Secondly, with regard to the lower limits set by the scale, the Government states that, prior to the entry into force of the 2017 Order, employees with less than two years' service and employees working for undertakings with fewer than eleven employees were excluded from the mandatory lower limits: it is only since the 2017 Order, therefore, that there have been minimum compensation amounts for employees in these groups as well.

On the grouping together of compensation

130. As regards the grouping together of compensation, the Government states that under French law the court may take account of compensation received on termination of the contract in calculating compensation for unjustified dismissal, but it is not obliged to do so.

131. The types of severance pay which may be included in the calculation of the amount of compensation for unfair dismissal are actually few in number, moreover. The Government notes, for example, that the Labour Code expressly prohibits the inclusion of the statutory severance pay referred to in Article L.1234-9 in the calculation of the compensation for unfair dismissal. It adds that the CGT has misinterpreted French law in claiming that compensation in lieu of notice, compensation for outstanding paid leave and non-competition payments are among the payments which may be taken into account when determining the overall amount of compensation. The fact is that, while the above-mentioned types of compensation are indeed severance payments, made on termination of the employment relationship, they do not have the same purpose as the compensation for dismissal payments referred to in Article L.1235-3 paragraph 4 and cannot therefore be taken into account when calculating compensation for dismissal without real and serious cause.

132. This was confirmed by the *Conseil d'Etat* in its order dated 7 December 2017.

The possibility of an individual and personal assessment of the damage suffered

133. With regard to the alleged lack of a personal, individual assessment of the damage suffered as a result of unjustified loss of employment, the Government wishes to clarify several points.

134. The Government states that the CGT argued, in an urgent application for suspension filed with the *Conseil d'Etat*'s urgent applications judge, that the new provisions of the Labour Code contravened the principle of equality, by retaining as the only criteria for differential treatment under the compensation scale length of service and company size, thereby preventing consideration being given to the age, qualifications and family circumstances of employees dismissed without real and serious cause, and to any disability they might have. In its order of 7 December 2017, the *Conseil d'Etat* held that "the principle of equality does not mean that the authority invested with regulatory power should treat persons in different situations differently".

135. It points out that, in contrast with Italian law, French legislation sets lower and upper limits for compensation and not fixed amounts, thereby leaving the courts sufficient discretion to take account of other criteria connected with the employee's particular circumstances.

136. It further notes that length of service in the company, which is the criterion adopted to determine the minimum and maximum amounts in the scale, was found by the Constitutional Council to be in keeping with the purpose of the measure as this criterion was linked directly with the employee (Decision n° 2018-761 DC).

c) Compensation at a level high enough to dissuade employers

137. Thirdly, the Government refutes the CGT-FO and CGT's claim that compensation for unfair dismissal now provides little deterrent for employers because it is not of a sufficiently high level.

138. According to the Government, contrary to what the CGT-FO and CGT maintain, the deterrent effect of compensation does not arise from the unknown and unpredictable nature of the amount, but from the sum itself, in the light of the company's situation and the economic context.

139. It points out that the compensation scale introduced by Article L.1235-3 does not apply to dismissals deemed to be null and void, which are the most serious cases of dismissal without a valid reason. There is no cap, therefore, on compensation paid in the case of dismissals that are null and void. Such scenarios are hardly peripheral, however, insofar as they cover a number of situations: breaches of fundamental freedoms, psychological or sexual harassment, discriminatory dismissal or dismissal following the initiation of legal proceedings in relation to gender equality at work or

following the reporting of crimes or offences, dismissal of an employee who is protected because they hold an elected office or because of pregnancy, maternity or paternity status, or who has been the victim of an employment injury or occupational disease.

140. In addition, in cases where the employee has at least two years' service in a company with 11 or more employees, the court may order the employer to reimburse the *Pôle Emploi* in respect of all or part of the unemployment benefit paid to the employee who has been dismissed, up to a limit of six months. For employers, such reimbursements are a substantial extra cost, to be added to the sum awarded to employees to compensate for a dismissal without real and serious cause.

d) The existence of alternative legal remedies

141. Fourthly, the Government maintains that there are in fact alternative legal remedies that would make it possible to obtain relief in addition to compensation for unfair dismissal, despite what the CGT-FO and CGT argue.

142. The Government again points out that reinstatement is one of the means of reparation available under French law. It acknowledges that, in practice, it is rarely implemented, but submits that that is because employees very seldom ask to be reinstated. Also, in particularly serious cases of unlawful dismissal where the dismissal is null and void, if the court orders reinstatement at the employee's request, employers may not object.

143. The Government points out that the French scale covers only compensation for dismissal without real and serious cause, in other words, it concerns only the damage arising from the failure to justify terminating the employment contract. This means that, if employees can prove the existence of damage separate from the absence of real or serious cause, they can claim additional compensation, e.g. compensation for the damage arising from the vexatious circumstances surrounding the termination of the employment contract, the damage arising from a deterioration in the employee's health if it can be attributed to the employer, damage arising from the loss of opportunity to benefit from the retirement benefits available within the company, etc.

144. As to the CGT-FO and CGT's argument that the possibility of obtaining compensation for items of damage separate from damage related to unfair dismissal does not constitute an alternative means of compensation, the Government counters that, on the contrary, consideration of these further potential forms of relief is relevant because they are a means to make good damage stemming from the unfair dismissal. They are not unconnected with the damage suffered by the employee as a result of being unfairly dismissed.

ii) The existence of a right to an effective remedy before an impartial body

145. The Government responds to the various arguments put forward by the complainant organisations and by the ETUC, maintaining that the compensation scale infringes the right to an "effective" remedy before an impartial body.

146. The Government submits that the courts retain their discretionary powers within the limits of the minimum and maximum amounts set by the compensation scale. They may then also use this discretion to compensate for damage other than unjustified loss of employment. They also check whether or not the unjustified dismissal in question falls within the scope of the exceptions to the scale, which would then enable them to compensate the loss in full. This shows that the courts are fully exercising their role.

147. In its advisory opinion no. 15012, the Court of Cassation reviewed the compensation scale to determine whether it was compliant with Article 6 of the European Convention on Human Rights (ECHR) guaranteeing the right to a fair trial. It explains that Article 6 ECHR cannot have any application to substantive limitations on a right enshrined in domestic law: the scope of Article 6 ECHR is solely procedural. Accordingly, the compensation scale for dismissal without real and serious cause cannot be considered as restricting the ability of the litigant to apply to the courts.

148. With regard to the possible decision by employees dismissed without valid reason to forego bringing their case before C*onseils de Prud'hommes*, the Government reiterates that the decrease in the number of appeals to these tribunals predates the introduction of the scale and that one of the reasons for this decrease is the introduction in 2008 of termination by mutual consent (a form of amicable settlement) and the reforms implemented in relation to the functioning of *Conseils de Prud'hommes*. In its further response on the merits, it adds that the 2018 figures on the number of referrals have been analysed by the Committee for the evaluation of Orders on social dialogue and labour relations. The latter confirmed that the significant fall in the number of referrals began in 2009: the number of new cases brought before tribunals was almost halved between 2009 and 2018. While this downward trend continued between 2017 and 2018, the number of referrals was, it is claimed, at a broadly similar level. Consequently, no link can be established between the introduction of the scale and the activity of the courts at this time, as there is as yet insufficient data.

149. In response to the ETUC's comments, the Government accepts that the introduction of the compensation scale can certainly help to make it easier to resolve disputes by means other than litigation, especially by settlement or conciliation. It nevertheless stresses that these alternatives to litigation may be preferable for the parties because of the length of the litigation proceedings.

B – Assessment of the Committee

150. In their submissions, the parties state that the reform introduced by Order No. 2017-1387 of 22 September 2017 to Article L.1235-3 of the Labour Code, as well as its implementation, violate Article 24 of the Charter and more precisely, the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

151. The Committee recalls that under Article 24.b of the Charter the States Parties must recognise the right to of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

152. The Committee observes that the complainants also raise the issue of the right to an effective remedy. They claim that the new scale capping compensation for unjustified dismissal also infringes on the right to an effective remedy before an impartial body. In particular, they assert that it diminishes the discretionary power of a judge, as the amount does not depend on the specific individual assessment. Moreover, the relatively low amounts of compensation may discourage employees from taking legal action, in addition to the fact that procedural deadlines can be very long. The Committee considers that this aspect is part of the overall assessment on whether the scales and the regulations ensure adequate compensation in the sense of Article 24 of the Charter. It therefore does not consider that there is a need to address this point separately.

153. Compensation systems are considered to comply with the Charter when they meet the following conditions:

a. Provide for reimbursement of financial losses incurred between the date of dismissal and the decision of the appeal body;

b. Provide for the possibility of reinstatement of the worker; and/or

c. Provide for the compensation of a high enough level to dissuade the employer and make good the damage suffered by the victim (Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on admissibility and the merits of 8 September 2016, §45; *Confederazione Generale Italiana del Lavoro* CGIL v, Italy, Complaint No. 158/2017, decision on the merits of 11 September 2019, §87). Compensation for unlawful dismissal must be both proportionate to the loss suffered by the victim and sufficiently dissuasive for employers (see Conclusions 2016, North Macedonia, Article 24). Any ceiling on compensation that may preclude damages from being commensurate with the loss suffered and sufficiently dissuasive are in breach with Article 24 the Charter (Finnish Society of Social Rights v. Finland, *op.cit.)*. If there is such a ceiling on compensation for pecuniary damage, the victim must be able to seek compensation for non-pecuniary damage through other legal avenues , and the courts competent for awarding compensation for pecuniary and non-pecuniary damage must decide within a reasonable time (Conclusions 2012, Slovenia; Conclusions 2012, Finland).

154. In its assessment of the present complaints, the Committee will focus on ascertaining whether Article L.1235-3 of the Labour Code satisfies the requirement of adequate compensation as laid out in point (c) above. As regards point (a), the Committee considers that this aspect is not directly relevant to the assessment in the present complaints, since the issue of length of proceedings to which the complainant organisations refer is taken into account and is part of the overall assessment on whether the scales and the regulations in French law ensure adequate compensation as laid down in point (c).

155. As regards the issue of reinstatement (point (b) above), the Committee observes that in French law reinstatement is optional for dismissals without real and serious

cause; according to Article L.1235-3 of the Labour Code, if an employee is dismissed for a reason that is not real and serious, the court may propose that he or she be reinstated, with the retention of all of his/her accrued benefits, and if either of the parties objects to such reinstatement, the court shall award the employee compensation. With respect to reinstatement in cases of the most serious unlawful dismissals, which are null and void, Article L.1235-3-1 of the Labour Code stipulates that in such cases, where employees do not ask for their employment contract to continue or their reinstatement is impossible, the court shall grant them compensation.

156. In this connection, the Committee refers to its decision in Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, op. cit., §55: "…while Article 24 does not explicitly refer to reinstatement, it refers to compensation or *other appropriate relief.* The Committee considers that *other appropriate relief* should include reinstatement as one of the remedies available to nationals courts or tribunals. […] Whether reinstatement is appropriate in a particular case is a matter for the domestic courts to decide." The Committee also emphasised that "it has consistently held that reinstatement should be available as a remedy under many other provisions of the Charter as interpreted by the Committee, for example under Article 8§2 and 27§3". The Committee therefore considers that as long as reinstatement is available as a possible remedy in cases of unlawful dismissal, the situation is compatible with Article 24 of the Charter.

157. Turning back to point (c) above applicable to the instant complaints, the Committee notes that the complainant organisations argue that both lower and upper limits introduced by the 2017 reform are inadequate. The Government argues that ceilings are not per se contrary to the Charter and that they should not be the only legal aspect taken into account when considering whether compensation is adequate. In its arguments in favour of the compensation scales, the Government relies on the decision of the Constitutional Council No. 2018-761, where on the basis of a proportionality review, the Council decided that the upper limit did not establish disproportionate restrictions on the rights of victims in relation to the objective to increase the predictability of the consequences arising from the termination of the employment contract. The Government asserts that the scale was established taking into account the average amounts of compensation paid in practice and therefore, provides for adequate compensation that is consistent with the damage suffered and is sufficiently dissuasive.

158. The Committee recalls that in Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, op. cit., a ceiling of 24 months provided for by Finnish legislation was considered insufficient by the Committee, as it did not allow for adequate compensation within the sense of Article 24 of the Charter.

159. The Committee notes that in French legislation the maximum ceiling does not exceed 20 months and only applies for 29 years of seniority. The scale is lower for workers with low seniority and working for companies with fewer than 11 workers. For these workers both minimum and maximum amounts of compensation that they can get are low and sometimes close together, which makes the compensation range not wide enough.

160. The Committee considers that, contrary to what the Government asserts – that the aim of the system introducing compensation ceilings was to provide greater legal certainty for the parties and thus greater predictability of the costs of legal proceedings - the 'predictability' resulting from the scale might rather serve as an incentive for the employer to unlawfully dismiss workers. Indeed, the established compensation ceilings could prompt employers to make a pragmatic estimation of the financial burden of an unjustified dismissal on the basis of cost -benefit analysis. In some situations, this could encourage unlawful dismissals.

161. Moreover, the Committee notes that the upper limit of the compensation scale does not allow the award of higher compensation on the basis of the personal and individual situation of the worker, as the courts can only order compensation for unjustified dismissal within the lower and upper limits of the scale, unless the application of Article L. 1235-3 of the Labour Code is discarded.

162. The Committee further recalls that in its decision on the merits adopted in CGIL v. Italy, Complaint No. 158/2017, op.cit, it considered that even though it was also established on the basis of the sole criterion of seniority, unlike the French scale, the Italian scale was flat-rate. Moreover, the Italian Constitutional Court invalidated the automatic calculation of the scale on the basis of seniority alone. In its judgment No. 194 of 26 September - 8 November 2018 (Official Journal, 1st special series, No. 45 of 14 November 2018), referring to Article 24 of the Charter, as interpreted by the Committee, it considered that as regards the minimum and maximum compensation to be paid to employees in cases of unlawful dismissal, the courts must take into account length of service and also other factors (number of employees, scale of the undertaking and the conduct and circumstances of the parties).

163. The Committee takes note of the decision the Bourges Court of Appeal, Judgment No. 19/00585 of 6 November 2020 (first appeal court to award a compensation amount higher than the maximum amount laid down in order to compensate entirely for the damage suffered by the employee), where the Court held that the application of the provisions of Article L.1235-3 of the Labour Code in this concrete case disproportionately affected worker's rights in that it did not allow for full compensation for the loss of the worker concerned. The Court therefore found it justified that the lower court disregarded the application of the provisions of Article L1235-3 in this case.

164. In a subsequent case, Paris Appeal Court, Judgment No. 19-08.721 of 16 March 2021 in which the Paris Appeal Court disregarded the scale laid down by Article L.1235-3 basing this approach on Article 10 of ILO Convention No. 158 and taking into account the "specific and particular" situation of the unjustly dismissed employee; it held that the scale laid down by the Labour Code in this case represented "barely half of the damage suffered in terms of reduced financial resources since the dismissal". In this judgment of 16 March 2021, the Paris Appeal Court carried out a so-called *"in concreto"* compliance review which resulted in the scale being disregarded.

165. Finally, as regards the possibility to seek compensation for non-pecuniary damages through other legal avenues, the Committee notes that Article L.1235-3 of the Labour Code concerning compensation for dismissals without real and serious cause is a *lex specialis* that applies instead of the general law of civil liability. The

general law of civil liability therefore applies only to obtain additional compensation for damages distinct from the damage related to the unjustified loss of employment.

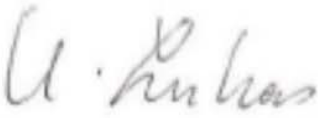
166. The Committee considers that since compensation for the moral prejudice linked to the dismissal without real and serious cause is already included in the capped compensation, the possibility for workers who have been unlawfully dismissed to claim, in addition to the capped compensation, unemployment benefit or an indemnity for damages linked to, for example, procedural violations in case of economic dismissals, does not represent a fully-fledged alternative legal remedy.

167. According to the claimants, the damages that can be compensated do not relate to the unjustified dismissal and correspond only to marginal cases. In the Government's view, the damages that can be compensated are distinct, but are still sufficiently related to unjustified job loss that the Government believes should be taken into account by the Committee. The Government claims that it has given a series of examples of distinct losses for which employees can obtain additional compensation, citing several decisions of the *Cour de Cassation* as support. The Committee observes that, according to the legislation and practice of domestic courts, including the Court of Cassation, some other legal avenues are possible in certain limited cases, but however they do not apply in all cases of unjustified dismissals.

168. The Committee considers that the ceilings set by Article L.1235-3 of the Labour Code are not sufficiently high to make good the damage suffered by the victim and be dissuasive for the employer. Moreover, the courts have a narrow margin of manoever in deciding the case on its merits by considering individual circumstances of unjustified dismissals. For this reason, the real damage suffered by the worker in question linked to the individual characteristics of the case may be neglected and therefore, not be made good. In addition, other legal avenues are limited to certain cases. The Committee considers therefore in light of all of the above elements, that the right to adequate compensation or other appropriate relief within the meaning of Article 24.b of the Charter is not guaranteed. Therefore, there is a violation of Article 24.b of the Charter.

CONCLUSION

For these reasons, the Committee concludes unanimously that there is a violation of Article 24.b of the Charter.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