INTERNATIONAL LABOUR OFFICE

Governing Body

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Institutional Section

INS

FIFTEENTH ITEM ON THE AGENDA

Report of the Director-General

Eighth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by France of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), made under article 24 of the ILO Constitution by the Federation of Salaried Employees and Managerial Staff of the General Confederation of Labour–Force Ouvrière

I. Introduction

1. By communications dated 24 July and 19 September 2014, the Federation of Salaried Employees and Managerial Staff of the General Confederation of Labour–Force Ouvrière (CGT–FO) made a representation to the International Labour Office, under article 24 of the ILO Constitution, alleging non-observance by France of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106). Convention No. 106 was ratified by France in 1971 and is in force in the country.

2. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24
Representations of non-observance of Conventions

> In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25
Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

3. In accordance with articles 1 and 2(1) of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organisation, as revised by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation, informed the Government of France and brought the matter before the Officers of the Governing Body.

4. At its 322nd Session (October–November 2014), the Governing Body decided that the representation was receivable and set up a committee to examine it. The Committee is composed of Mr Cano Soler (Government member, Spain), Ms Hornung-Draus (Employer member, Germany) and Mr Guiro (Worker member, Senegal).

5. On 24 March 2015, the Government of France communicated its written observations concerning the representation.

6. On 15 October 2015, the General Confederation of Labour (CGT) sent a communication to the ILO for the purposes of "updating the information" held by the Office and submitting "additional allegations relating to the representation of the CGT–FO".

7. In communications dated 27 October and 3 November 2015, the CGT–FO submitted additional information relating to its representation and requested that the CGT's communication of 15 October 2015 be formally incorporated into the procedure.

8. On 13 January 2016, the Government of France communicated its written observations concerning the additional information and submissions of the CGT–FO and the CGT.

9. The Committee met on 3 June and 10 November 2015, and on 22 March 2016 to examine the representation and adopt its report.

II. Examination of the representation

A. The complainant's allegations

10. The Federation of Salaried Employees and Managerial Staff of the General Confederation of Labour–Force Ouvrière (CGT–FO) alleges that France violated the provisions of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106). The complainant claims that, despite repeated reassertions of the principle of Sunday rest by the national courts, successive amendments to legislation have gradually whittled away at the substance of this principle. The complainant makes specific reference to Act No. 2008-3 of 3 January 2008, Act No. 2009-974 of 10 August 2009 and Decree No. 2014-302, referred to as the "DIY (do-it-yourself) Decree", of 7 March 2014. According to the complainant organization's allegations, exemptions were granted in a very liberal manner to entire sectors (such as furniture shops and, more recently, DIY shops), to geographical areas such as tourist areas (despite certain establishments having no links whatsoever to tourists), and, without the slightest regard for the nature of the commercial activity in question, to those enterprises that

could provide proof of having introduced Sunday trading, sometimes in violation of the law. The complainant states that France has disregarded the comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in respect of the gradual extension, since 2008, of special schemes allowing for exemptions from the principles of the Convention and fears that, in view of the latest indications related to the upcoming restructuring of the entire system, the scope of application of these special schemes will extend even further. The CGT–FO puts forward four arguments in support of its representation.

11. Firstly, it considers that France, by adopting the Act of 3 January 2008, the Act of 10 August 2009 and the "DIY Decree" of 7 March 2014, did not abide by the provisions of Convention No. 106 by implementing special schemes that go beyond what is permitted by the Convention.

12. Article 11 of Act No. 2008-3 of 3 January 2008, on the development of competition in the interest of consumers, amended the provisions of article L.221-9 of the Labour Code by adding "furniture retail outlets" to the list of types of business which enjoy a permanent exemption allowing them to employ salaried employees on Sundays and to compensate for this by granting them weekly rest on another day. The complainant organization notes that article 11 was the result of a parliamentary amendment to a piece of draft legislation that dealt with an entirely different subject, meaning that the mandatory consultation with trade unions provided for by the Labour Code did not need to be held, as consultation is only required in relation to draft legislation proposed by the Government, and not legislative proposals or amendments submitted by members of Parliament. Essentially, the complainant argues that, according to Article 7 of Convention No. 106 and the criteria that it establishes, the furniture retail sector should not be considered eligible to benefit from a special scheme exempting it from the principle of weekly rest. Moreover, it criticizes the current confusion regarding the distinction between the satisfaction of consumers' wishes and of their actual needs.

13. Act No. 2009-974 of 10 August 2009, which reaffirmed the principle of Sunday rest and aimed to adjust the exemptions from this principle for tourist and spa towns and areas as well as for certain major conurbations, for salaried employees on a voluntary basis, introduced two new categories of exemption. By increasing the scope of the exemptions in this manner, it rendered the principle of Sunday rest meaningless, according to the complainant organization. In practice, this Act established a system of ipso jure general exemption in tourist towns and areas throughout the year, thereby making exemptions cease to be contingent on businesses serving the actual needs of the public, and permitting all businesses in these areas to open on Sundays even if they did not cater to tourists. The complainant recalls that the Committee of Experts, in an observation adopted in 2010, highlighted that under the old scheme the businesses that were authorized to open on Sundays to deal with tourists were only those that sold items that were strictly necessary to welcome tourists and facilitate their stay. The new Act also established a new category of exemption for certain commercial areas in large urban areas by creating "areas of exceptional consumption" (PUCEs) in which, regardless of the nature of their commercial activity, businesses may waive the weekly Sunday rest regulations provided that they can prove that they have already opened on Sundays and, thereby, accustomed consumers to shopping on Sundays. The CGT–FO points out that the Act of 10 August 2009 is all the more shocking because it is the unlawful acts of certain businesses, which changed consumer behaviour, that are now being used to justify the classification of certain areas as PUCEs to the detriment of their competitors, which abided by the law.

14. By Decree No. 2014-302 of 7 March 2014, the Prime Minister added DIY stores to the list of categories of establishment that may benefit from exemptions from the Sunday rest law. According to the complainant organization, this is yet another extension of the exemption

by the legislative authority that goes beyond the scope of the special schemes permitted by Convention No. 106. This demonstrates France's failings, both passive, in that by not taking legal action as provided for in the law it has not enforced the principle of weekly Sunday rest, and active, in that it has itself contributed to the violation of this principle.

15. Secondly, the CGT–FO alleges that the provisions of the Convention are rendered ineffective by the absence of penalties and the unsatisfactory nature of the internal regulations concerning infringement of the principle of Sunday rest provided for in article L.3132-3 of the Labour Code. It notes that France, by committing to the principle of a day of rest given to workers on Sundays, established a regulatory system which appears to conform to the spirit of the Convention; however, it regrets that the authorities responsible for enforcing the rule do not bring any genuine prosecutions for existing infringements and are unwilling to take legal action, particularly in certain departments where the tolerance of the authorities is such that common practice runs counter to the rule. Consequently, [the operators of] businesses that have breached the rule now consider that their unlawful recourse to Sunday working and the resultant changes in consumption patterns have created new rights. These unlawful acts enable establishments to obtain exemptions because, under the terms of the Act of 10 August 2009, in order to do so they must prove a history of exceptional Sunday consumption, which they are considered to have if they have been opening on Sundays for a long time. The Council of State has thus refused, according to the complainant, to distinguish between an authorized and a prohibited practice. The complainant organization cites various cases and states that infringements continue to take place, particularly in the Ile-de-France region. Citing various rulings handed down by different French courts, it asserts that the risk of incurring criminal penalties has been shown to be an insufficient deterrent, owing to the lack of genuine prosecutions and the inadequacy of the relevant penalties. While recognizing the work done by the labour inspection services, it highlights the insufficiency of the resources dedicated to enforcement and the disparities in the application of the law, which betray an underlying lack of political will. Lastly, it calls attention to the challenges to successfully pursuing legal action, which are the result of previous court decisions making it more difficult for cases brought by trade unions to be considered admissible. As a case in point, it cites the decision of an administrative court, which held that the exemptions issued by the prefect had local scope and that the Federation of Salaried Employees and Managerial Staff of the CGT–FO, which has national purview, could not secure their revocation as it did not have the legal capacity to do so. Furthermore, a recent legal reversal by the Constitutional Court has rendered unconstitutional the mechanism for the ipso jure suspension of the effects of exemptions that consists in filing an application for the revocation of administrative authorizations. This means that by the time a case is decided – which is longer than the period of time for which an exemption is granted – the revocation of the exemption is without effect. Hence there is no real penalty for breaching the regulations.

16. Thirdly, according to the CGT–FO, by granting inappropriate exemptions and failing to establish appropriate and sufficiently dissuasive penalties for infringement, the French Administration is not complying with the provisions of the Convention. It reproaches the prefects, who represent the State at the local level, for not always referring unlawful municipal decisions to the administrative courts although they have the power to do so when such decisions concern prefectures. In addition, the prefects themselves overstep the powers conferred on them to grant exemptions from the principle of Sunday rest by choosing to interpret the criteria for exemptions contrary to the extensive body of case law, which has been recalled in circulars. The complainant organization condemns the tolerance shown to businesses that do not obey the law by the administrative authorities, which: fail to revoke decisions which are declared unlawful by the courts; do not publish decisions in which exemptions are granted, to preclude appeals being made against them; receive representatives of businesses which are in violation of the law; and take decisions that are favourable to these businesses. Moreover, when penalties are imposed they do not constitute

a sufficient deterrent. The total of the damages and interest payable as compensation amounts to a few thousand euros at most, such that the tax revenues collected by the State and the profits made by the enterprises concerned as a result of working illegally on Sundays – which bear no relation to the aforementioned amounts – provide a clear incentive to both the State and the stores concerned to violate the principle of Sunday rest established by the law. The complainant reiterates that the length of the revocation procedures exceeds the period of validity of the exemptions granted, and that the Constitutional Court's recent legal rulings render useless the only remedy that was ever effective.

17. Fourthly, the CGT–FO alleges that the case law of the French courts is compounding the failures to comply with the principles established by the Convention by further extending the scope of the special schemes in the name of equality, permitting both new business sectors and new geographical areas to benefit from these exemptions. Legal decisions have extended the exemption granted to the furniture sector to the home improvement and household electrical goods sectors, on the grounds that not doing so would entail a risk that some businesses would have an unfair competitive advantage, as furniture retailers also sell household electrical goods – despite the fact that, in parliamentary debates, the legislature had removed the household electrical goods sector from the list of sectors eligible for exemptions. According to the CGT–FO, the same logic was applied in extending the exemption to the DIY sector. Similarly, legal decisions authorize stores located outside tourist areas and PUCEs to open on Sundays on the grounds that they are in competition with stores located within these areas, and that, therefore, their operation would be threatened were they not also granted exemptions. This goes directly against the observations made by the Committee of Experts which, in a direct request adopted in 2005 and addressed to France, expressed surprise that the large outlets and smaller businesses that opened on Sundays without authorization had been accorded equal treatment by the establishment of a permanent exemption favouring all these establishments, rather than ensuring compliance with the applicable provisions. The complainant organization asserts that the current legislation, and its interpretation in case law, drives businesses to take advantage of loopholes in the system in order to obtain exemptions to which they are not entitled.

B. The Government's reply

18. In its reply, the Government states that Convention No. 106 seeks to protect weekly rest and not Sunday rest, which is one specific form of weekly rest.

19. Firstly, with regard to the allegation concerning the implementation of special schemes that go beyond the scope defined in the Convention, through the Act of 3 January 2008, the Act of 10 August 2009 and the Decree of 7 March 2014, the Government points out that French regulations on weekly rest provide greater protection than that envisaged by the Convention. In fact, article L.3132-2 of the Labour Code guarantees salaried employees a weekly rest period of 24 hours, in addition to a mandatory 11 hours of daily rest, making a total of 35 hours. Moreover, article L.3132-3 of the Labour Code specifies that, in the interest of salaried employees, weekly rest is given on Sundays. French legislation is thus in conformity with the provisions of Article 6(3) of Convention No. 106, which provides that rest shall, wherever possible, coincide with the day of the week established as a day of rest by the traditions or customs of the country or district. The Government considers, moreover, that the legislation relating to permanent or temporary exemptions from the principle of Sunday rest is in conformity with both the spirit and the letter of the Convention.

20. The Government explains that Act No. 2008-3 of 3 January 2008 – which exempts the furniture sector from the Sunday rest principle on a permanent basis – was designed to respond to changing lifestyles in France, particularly in major conurbations where demand

for retail furniture shopping is strong, especially at weekends when people shop with members of their families. The provisions granting this exemption meet the requirements of Article 7 of Convention No. 106, as they: (a) apply to a specified type of establishment; (b) are justified by the nature of the services offered by furniture retailers, in view of changing consumption patterns; and (c) are based on relevant social and economic considerations, inasmuch as they constitute a response to a public need.

21. In response to the complainant organization's arguments concerning Act No. 2009-974 of 10 August 2009, the Government points out that, while the Committee of Experts noted that exemptions from the Sunday rest principle had been expanded as a result of the Act of 3 January 2008 (furniture retailers) and Act of 10 August 2009 (tourist areas and PUCEs), and while it emphasized that all relevant economic and social considerations must be taken into account, it did not rule against France. All of the updates that it requested were duly submitted, including a report by the parliamentary committee charged with ensuring compliance with the Sunday rest principle, which was published in November 2011. This report indicated that there had not been a significant increase in the number of municipalities designated as special tourist areas, that the number of salaried employees potentially affected (approximately 250,000) remained relatively low, that only some 30 PUCEs had been designated at the end of 2011 and that prefects had verified that all of the criteria established by the Act had been met. The Government adds that the number of PUCEs, which is now relatively stable, increased to 41 in early 2015. Therefore, there has not been an acceleration in the number of municipalities or areas classified as special tourist areas as defined by the Labour Code, nor has the number of PUCEs particularly increased. Additionally, the Government notes that the bill on growth and activity currently before Parliament proposes an overhaul of the legal framework pertaining to Sunday work.

22. In addition, the Government argues that Decree No. 2014-302 of 7 March 2014 (referred to as the "DIY Decree") meets the requirements of Article 7 of Convention No. 106, as: (a) it applies to a specified type of establishment; (b) intervention by the regulatory authority was justified by the nature of the services offered by DIY establishments, in view of changes in consumption patterns; and (c) it is based on relevant social and economic considerations, inasmuch as it responds to a public need (the Government cites surveys which show that 52 per cent of French citizens and 74 per cent of Ile-de-France residents are in favour of DIY stores opening on Sundays). It adds that a majority agreement defining relevant compensation and guarantees for employees was concluded on 23 January 2014 with a number of large trade unions and rolled out by a decree issued by the Minister of Labour on 3 June 2014. Furthermore, the Council of State, by a decision dated 24 February 2015, rejected appeals from various trade unions which sought to have the decree annulled.

23. Secondly, with regard to the allegation that the absence of effective penalties and the unsatisfactory nature of internal regulations in the event of an infringement of the principle of Sunday rest render Convention No. 106 ineffective, in violation of Article 10 thereof, the Government maintains that France has established a legal framework that ensures respect for the Convention by means of a system of penalties and the legal powers conferred on labour inspectors. Under the terms of article R.3132-2 of the Labour Code, failure to abide by the provisions of articles L.3132-1–L.3132-14 and L.3132-16–L.3132-31, on weekly rest, and the relevant implementing decrees, incurs a penalty of €1,500 for every salaried employee employed illegally. Repeat offences are also punished. Moreover, the assertion that the labour inspection services do not ensure that the rules on weekly rest are correctly applied is incorrect. In 2013 and 2014, 146 infringement reports were issued and 73 referral proceedings initiated, with a view to obtaining injunctions that would oblige businesses to close. The Government explains that, according to the Constitutional Court, the fact that employers have no means of appeal against the suspensive effects of revocation applications and that there are no legal provisions guaranteeing that decisions are handed down within the period for which the authorizations granted to them are valid violates the principle of due

process of law, which is guaranteed by the French Constitution. It recalls, however, that individual decisions granting exemptions to the Sunday rest principle may always be contested before an administrative judge.

24. Thirdly, with regard to the alleged granting of unjustified exemptions by the administration and the lack of appropriate penalties, the Government reiterates that the right to appeal is a general principle of French law and that the complainant organization is free to bring the matter before the court if it believes that authorizations are being granted in violation of Convention No. 106 and the law, and had the opportunity to do so. The amount of damages awarded is determined by the judge in view of the harm suffered as a result of the intrusion on the employee's private life by unlawful Sunday work. According to the Government, the average amount allocated by judges was €2,500 per violation. Moreover, it cites a judgment issued by the Court of Appeal of Versailles, which fined a DIY chain €500,000 for failure to implement a court decision ordering it not to have employees work on Sunday. In the Government's opinion, this proves that the argument that the penalties imposed by the courts are insufficient and merely symbolic is untenable.

25. Fourthly, with regard to the sectoral and geographical expansion of exemptions authorized by the courts in the name of the principle of equality, the Government maintains that no administrative judge has ever granted a legal exemption – in other words, a permanent and blanket exemption – to shops in the household appliance sector. Indeed, unfair competition between economic sectors is assessed by the courts on a case-by-case basis. Judicial recognition that harm has been caused is neither widespread nor systematic. With regard to the geographical expansion of the scope of application of the special schemes, the Government emphasizes that the criteria applied by the court in determining whether there has been unfair competition are strictly defined and do not lend themselves to generalizations. Aside from geographical proximity to the rival shop, the loss of customers to an extent that would hinder the normal operations of a store claiming to be the victim of unfair competition must be established on a case-by-case basis.

C. Additional allegations submitted by the General Confederation of Labour

26. In additional allegations relating to the representation made by the CGT–FO, the General Confederation of Labour (CGT) claims that the Growth, Activity and Equality of Economic Opportunities Act of 6 August 2015 represents a further failure to meet the obligations arising from Convention No. 106 and constitutes a violation of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

27. The CGT explains that the Act of 6 August 2015:

– replaces the PUCEs created by the Act of 10 August 2009 with "commercial areas" (articles L.3132-25-1 and R.3132-20-1 of the Labour Code). Whereas PUCEs could only be established in conurbations of more than a million inhabitants, under the new law commercial areas may be created in urban areas of 100,000 or more inhabitants, the sole criteria being the stores' surface area and customer volume; [1] according to the

[1] Decree No. 2015-1173 of 20 September 2015 sets out these criteria as follows (see article R.3132-20-1 of the Labour Code): to qualify as a commercial area within the meaning of article L.3132-25-1, an area must: (1) comprise a commercial complex with a total sales area larger than 20,000 m^2; (2) have more than 2 million customers annually or be located in an urban area of more than 100,000 inhabitants; and (3) have appropriate infrastructure and be accessible by private and public transport. If the area is located less than 30 kilometres from a competing area or outlet situated in the territory of an adjacent State, the figures that apply to size of sales area and annual customer volume are 2,000 m^2 and 200,000 customers, respectively.

CGT, however, exemptions from a principle should only be granted under strictly limited circumstances. Furthermore, all retail establishments selling goods or services and located within commercial areas are now exempt from the Sunday rest principle, regardless of whether there is a valid case for these stores being open on Sundays. This is an instance, according to the CGT, of confusing the satisfaction of customers' wishes with catering for their real needs, which alone should justify an exemption scheme;

– replaces the "tourist and spa towns and areas, and areas receiving exceptionally high tourist numbers or areas of permanent cultural activity" established by the Act of 10 August 2009 with "tourist areas" (article L.3132-25 of the Labour Code) – but, again, does not consider whether the establishments benefiting from the exemption in fact cater for tourists' Sunday consumption needs, thereby contravening Convention No. 106;

– establishes "international tourist areas" (article L.3132-24 of the Labour Code), within which all retail establishments selling goods and services benefit from the special scheme, and are authorized to make their employees work not only on Sundays but also at night, from 9 p.m. to midnight (article L.3122-29 of the Labour Code). This is an ipso jure authorization to which establishments are entitled by the mere fact of being located within such an area, regardless of the goods or services they or their employees provide. It therefore constitutes an unjustified extension of the scope of exemptions from the Sunday rest principle, thereby contravening Convention No. 106;

– establishes a new exemption for "station precincts" (article L.3132-25-6 of the Labour Code). According to the CGT, no link has been established between beneficiary outlets and the specific needs of station users;

– further broadens the scope of the special schemes by authorizing "food retail stores" located within international tourist areas and stations to make their employees work all of Sunday, whereas before they could only require them to work until 1 p.m.;

– increases the number of "Sunday exemptions which may be authorized by the mayor" ["mayor's Sundays"](articles L.3132-26 ff. of the Labour Code) from five to 12 per year. The power to grant such exemptions does not lie solely with the mayor or head of the inter-municipal establishment: the municipal council and employers' and workers' organizations may be consulted for their views, but this is not mandatory. Moreover, according to the CGT, this "simple consultation" is far removed from the principles of collective bargaining as set out in Convention No. 98 and violates Article 8(2) of Convention No. 106. It considers these exemptions to be unjustified as mayors may grant them arbitrarily to any type of retail store without specifying any conditions or grounds;

– lastly, the CGT claims that, other than for the exemptions granted by mayors, the Act of 6 August 2015 does not establish a minimum amount of compensation for Sunday work, in terms of either rest or remuneration.

28. The CGT goes on to allege that the Act of 6 August 2015 not only significantly enlarges the scope of exemptions from the principle of weekly rest but also introduces measures which facilitate the implementation of special schemes. Although article L.3132-21 of the Labour Code establishes a new consultation mechanism for exemptions granted by prefects, its wording allows this mechanism to be bypassed in "justified emergencies, when the number of Sundays for which exemptions are planned … does not exceed three". Moreover, article L.3132-25-3 of the new Act retains the principle according to which, if a business does not have a collective agreement in place, exemptions are granted on the basis of "a unilateral decision by the employer, following a vote by the workers", which permits employers themselves to determine the compensation granted to the employees concerned.

According to the CGT, this amounts to a denial of the principle of compensatory rest, a failure to adhere to the basic rules of collective bargaining and a way of bypassing the representative trade union organizations, in violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Conventions Nos 98 and 106. Lastly, the CGT claims that the provisions of Convention No. 106 remain ineffectual, because it is very rare that failures to abide by the weekly rest principle are effectively penalized. According to the CGT, the labour inspectorate is under-resourced and it falls on trade unions to initiate legal action, which only very occasionally bears fruit. Yet the Act of 6 August 2015 has not resolved this issue, and the systemic failings described by the CGT–FO in its initial representation persist.

D. Additional information submitted by the CGT–FO

29. In the additional submission relating to its representation, the CGT–FO alleges that the Council of State chose to define the concept of "need" in very broad terms, within the meaning of Article 7 of Convention No. 106, for establishing permanent exemptions. It goes on to denounce the extension of the scope of special schemes under the Growth, Activity and Equality of Economic Opportunities Act of 6 August 2015. Furthermore, it considers that the decree governing the Act's implementation expanded its scope, enabling special schemes to become widespread. Lastly, it criticizes the ministers concerned for having established the official list of international tourist areas in an opaque manner and without any consultation.

30. Firstly, the complainant organization notes that, by a decision of 24 February 2015, the Council of State rejected the appeals of various trade unions against two successive decrees which added the DIY sector to the list of sectors benefiting from permanent exemptions to the right to Sunday rest under article L.3132-12 of the Labour Code. The CGT–FO alleges that, in so doing, the Council of State upheld the principle of a permanent exemption for this sector despite the fact that: the trade unions had shown that DIY, a pursuit which the French regularly engage in on Sundays, was perfectly possible without DIY stores opening on Sundays; the Sunday closure of 31 DIY stores further to a decision by the Court of Appeal of Versailles of October 2012 had not affected the pursuit of DIY; the French administrative judges unanimously considered that DIY stores were not even entitled to temporary exemptions; and a report commissioned by the French Government deemed the sector ineligible for such an exemption. The 13th recital of the Council of State's decision reads:

> Whereas, as has been stated, DIY retail stores are included on the list of establishments authorized to grant weekly rest on a rotating basis in order to respond to the needs of large numbers of people who engage in DIY as a form of leisure, particularly on Sundays (and that the nature of this activity means that it must be possible to buy, on the same day, necessary or missing supplies); whereas catering for this need is a "proper social consideration" within the meaning of the provisions of Article 7 of Convention No. 106; whereas, therefore, the argument based on a lack of understanding of these provisions should be dismissed.

The CGT–FO asserts that it is clear from this decision that the Council of State considers two types of exemption to be permitted by Article 7 of Convention No. 106: those which respond to a need – in accordance with the position of the Committee of Experts of the ILO – and those that enable the pursuit of leisure activities which are commonly practised on Sunday, the traditional day of rest. With this decision, the Council of State sought to extend the scope of the exemption scheme implemented by the administrative authority, whereas, according to the CGT–FO, the publications and work of the ILO encourage the adoption of a much more restrictive position, whereby the use of special schemes depends on proving that it is impossible to cater for the needs expressed by the population while also respecting traditional weekly rest. As far as the CGT–FO is concerned, this deprives the very principle of simultaneous rest of its substance for virtually all commercial sectors, as the same logic

could be applied to the cultural sector or to the sale of clothing or footwear, household electrical items, furniture, automobiles, etc. Thus, in deeming that the practice of a leisure activity entails forcing Sunday work upon employees who work in stores that sell the products required for that practice, without regard for the fact that people are free to obtain these items at other times, the Council of State extends the scope of the special schemes permitted under Convention No. 106 further than what is provided for by Article 7. The concept of "need" no longer means the same as necessity; it has been redefined as the mere wishes of the consumer.

31. Secondly, the complainant organization states that the Act of 6 August 2015 extends the scope of the special schemes – which had already been reformed by the Act of 10 August 2009 – by establishing new exemptions and broadening the scope of those which existed, without rectifying previous irregularities:

– As regards "international tourist areas", the CGT–FO considers that the Act of 6 August 2015 has expanded, without replacing, the exemption which already existed for tourist areas (under the Act of 10 August 2009, this exemption already covered all providers of goods and services – not only those catering for tourists – and was also applicable outside the tourist season). The criteria which determine the classification of international tourist areas under the 2015 Act include their international renown, their exceptional volume of foreign tourists and the substantial value of these tourists' purchases. There is no mention whatsoever of any of the requirements of Article 7 of Convention No. 106. Hence, even if it is perfectly possible to grant workers Sunday rest in a given area, which was the case until now, the fact that the area might be visited by tourists resident outside France who are likely to spend their money is sufficient basis for flouting French workers' rights.

– As regards "tourist areas", exemptions from the principle of Sunday rest are likewise permitted, without considering whether it is possible to meet tourists' needs while respecting this principle.

– PUCEs have been replaced by "commercial areas"; for an area to be designated as such and be granted an exemption it is necessary simply to demonstrate that it has "a very extensive range of consumer products and potential demand", though the law fails to define what is meant by "very extensive". The administrative authority thus has discretionary power to grant these exemptions, which provides no guarantee that the conditions established in Article 7 of Convention No. 106 will be respected.

– The new law establishes a scheme of exemptions for "retail stores offering goods and services located in a station precinct", without specifying what is meant by "station precinct". The complainant organization claims that, as the regulations stand, it is unable to assess the scope of the exemptions concerned, in particular which stores are likely to be affected. It considers that there is no justification for this exemption within the terms of Article 7 of the Convention.

– In addition, article L.3132-25-5 of the Labour Code increases the duration of the permanent ipso jure exemption for the "food sector" in some of the newly created areas. It allows retailers in the food sector to make their employees work until midnight on Sundays in international tourist areas, and until 9 p.m. in stations (under the previous legislation, employees could already be required to work until 1 p.m. on Sundays).

– The Act increases from five to 12 [per year] the number of "Sunday exemptions which may be authorized by the mayor" ["mayor's Sundays"], a provision which is applicable to all commercial sectors. This goes beyond acceptable limits and constitutes an infringement of workers' rights. The CGT–FO also alleges that this mechanism

contravenes the provisions of the Workers with Family Responsibilities Convention, 1981 (No. 156).

Lastly, the complainant organization states that in practice it is difficult to decline an employer's request to work on Sundays, since to do so would entail the risk of losing one's job or being discriminated against at the hiring stage. It adds that nearly two-thirds of employees who work on Sundays say that they do so for financial reasons, as the wages they earn during the week are insufficient to meet their financial obligations.

32. The CGT–FO asserts that, contrary to the French Government's assurances, the sectoral exemptions granted to furniture stores (Act of 3 January 2008) and DIY stores (Decree of 7 March 2014) were not abolished when the legal framework was overhauled. It reiterates that these sectoral exemptions constitute clear violations of Convention No. 106 and, since the existing exemptions have been expanded, that the principle of Sunday rest, which is upheld in the legislation, has been rendered virtually meaningless in practice, thereby resulting in large-scale violations of the provisions of the Convention.

33. The complainant organization reiterates its arguments concerning the extension of the scope of exemptions as a result of rulings which allow the principle of competition to prevail over that of Sunday rest, as illustrated by three decisions handed down by the Administrative Court of Appeal of Versailles on 18 July 2014.

34. The CGT–FO also denounces the disparity in status of workers who are required to work on Sundays, depending on the employing sector or business, the collective agreement concerned, and the type of exemption that applies to them (furniture or DIY sector, commercial area, tourist area or international tourist area). It further asserts that, although article L.3132-25-4 of the Labour Code prohibits discrimination at the hiring stage against workers who are unwilling to work on Sundays, it does not establish any real guarantees in this respect.

35. Thirdly, the complainant organization claims that the decree implementing the Act of 6 August 2015 (Decree No. 2015-1173 of 23 September 2015) has extended its scope, permitting special schemes to become widespread. First of all, none of the criteria set out in article R.3132-21-1 of the Labour Code to define international tourist areas (the international renown of the area concerned, the existence of nationally or internationally significant transport infrastructure, exceptional numbers of tourists residing outside France and substantial purchasing by them) correspond to the criteria established in Article 7 of Convention No. 106. Clearly the objective here is strictly commercial. Furthermore, the criteria for the designation of commercial areas (set out in article R.3132-20-1 of the Labour Code) – in particular the reference to annual customer volume – are not readily verifiable by trade unions and hence the latter are unable to give an informed opinion on these areas when their views are sought. At no point do the regulations state whether the weekly rest entitlement applies or not, nor do they specify the types of business covered, in breach of the conditions set out in Convention No. 106. Lastly, the CGT–FO denounces the existence of implicit prefectural exemptions further to the publication of the Decree of 23 October 2014, which interprets silence on the part of the administration as a tacit acceptance of any requests submitted. This creates two sets of difficulties. Firstly, prefects are no longer formally obliged to submit requests for exemptions to the trade unions for their views. Secondly, it makes it more difficult to file legal appeals because it is no longer possible to verify, by simply consulting the relevant compendium of administrative decisions, whether a store that opens on Sundays has an administrative authorization, since the latter could be implicit in view of the administration's silence. It is therefore no longer possible to systematically check which exemptions have been granted by the administration and thus ensure the effectiveness of the regulations.

36. Fourthly, the CGT–FO maintains, with regard to the administrative decisions designating the international tourist areas, that the obligation established in Article 7 of Convention No. 106 to consult the trade unions has been directly violated. The files submitted to these organizations for their views were incomplete, and the date by which a response was required was before the publication date of the implementing decree (which established the criteria used to define international tourist areas). No fewer than 12 areas were created in Paris, increasing from 400 to 6,000 the number of outlets that can make their employees work not only on Sundays but also from 9 p.m. to midnight. The CGT–FO asserts that these areas, established so as to include all the existing shopping centres, were clearly chosen to respond to the needs of large corporations, since they have no international clientele or their products are of no interest to foreign customers.

37. Lastly, the CGT–FO recalls that the Constitutional Court had declared unconstitutional the mechanism whereby the filing of an appeal for the revocation of administrative authorizations resulted in the ipso jure suspension of the effects of the exemptions concerned. The Act of 6 August 2015 repealed the provisions in question and, as a result, when the prefectural administration grants a temporary exemption, the trade unions that contest its legality find themselves in the same situation as that which the abovementioned Constitutional Court ruling was designed to remedy, namely of being unable to obtain the revocation of an exemption while it is still in force. Here too, by failing to adopt measures to guarantee its effectiveness, the French Government is not observing Convention No. 106.

E. The Government's reply to the additional information and allegations

38. In its reply, the Government affirms that the Act of 6 August 2015, without extending Sunday work, modified the legal framework to banish the legal uncertainties which existed, with a view to achieving two objectives: to give operators greater latitude to tailor their provision of goods and services on Sundays to local needs; and to give all employees real guarantees and compensation, on the basis of collective labour agreements.

39. Firstly, the Government emphasizes that there have been major changes to consumption patterns and lifestyles in recent years and that 69 per cent of the French population and 82 per cent of Ile-de-France residents are in favour of stores opening on Sundays. It adds that the Act of 6 August 2015 – which does not change the situation of employees working in enterprises or sectors that are "ipso jure exempt" (industries and services which must operate continuously on account of the nature of their activity or public needs, such as electricity suppliers, public transport and hospitals) – establishes a new, geographically-based Sunday rest exemption framework for retail outlets that offer goods and services, when these are located in international tourist areas, tourist areas, commercial areas or station precincts:

– As regards "international tourist areas" – which are areas of international renown with exceptional volumes of foreign tourists and the resultant substantial purchasing – the Government recalls that France is the world's leading tourist destination, with 83 million visitors annually, and that shopping, after visits to museums and monuments and exploring Paris, is the third most popular tourist activity. A total of 12 international tourist areas were established by orders issued on 25 September 2015 by the ministers for labour, tourism and trade, on the basis of the criteria established by Decree No. 2015-1173 of 23 September 2015.

– As regards "tourist areas" – which replace tourist and spa towns and areas, and formerly defined areas of exceptionally high tourist numbers or permanent cultural activity – the Government asserts that their defining criteria have not been changed, and that any

increase in their number will be limited as a high percentage of them are already tourist towns or areas within the meaning of the Labour Code.

– As regards "commercial areas" – which replace PUCEs – the Government explains that the legislators sought to establish more comprehensive criteria than existed under the Act of 2009, which only took into consideration "traditional Sunday consumption", in order to also take into account the potential for commercial development, based on matching supply and demand, in the interests of long-term regional planning. However, this does not, according to the Government, jeopardize the principle of Sunday rest, owing to the highly restrictive nature of the regulatory provisions and criteria. A commercial area must have a total sales area greater than 20,000 m^2 and more than 2 million customers annually; or be located within an urban area of more than 100,000 inhabitants which has appropriate infrastructure and is accessible by private and public transport. The Government points out that the 40 PUCEs become ipso jure commercial areas.

– As regards "heavily-used stations", a survey conducted in 2013 shows that 77 per cent of the French population are in favour of stores located in stations opening on Sundays. Twelve stations in France should be affected.

– As regards "food retail stores" in international tourist areas and stations, these will not be allowed to open after 1 p.m. on Sundays unless they are covered by a collective agreement that provides for compensation, specifically wage compensation. The Government adds, with regard to food retail stores which benefit from an ipso jure exemption until 1 p.m. on Sundays (under article L.3132-13 of the Labour Code), that employees who work in such stores with sales areas larger than 400 m^2 and who are deprived of Sunday rest are entitled to remuneration at least 30 per cent higher than the normal rate.

– The Government specifies, lastly, that the mechanism allowing mayors to authorize Sunday work in retail outlets on 12 Sundays per year (rather than five, as was previously the case) is designed to cater for local needs but its use is not compulsory. It emphasizes that the law establishes new mandatory consultation procedures for mayors: consultations must always be held with the municipal council and, if the number of Sundays concerned exceeds five, the approval of the executive body of the relevant public establishment for inter-municipal cooperation must also be sought.

The Government adds that the Act of 6 August 2015 is designed to give regional dialogue a critical role in the delineation of tourist and commercial areas, in order to find the appropriate balance when establishing them and also ensure that the process is aligned with the development of the commercial fabric, consumer habits, transport, jobs and business. The Act also establishes an annual process involving consultations and impact studies, which is led by the prefect and brings together mayors, heads of public establishments for inter-municipal cooperation that levy their own taxes, traders' associations and representative organizations of retail employees and employers.

40. The Government goes on to state that the Act of 6 August 2015 is intended to grant all employees real guarantees and forms of compensation. Thus, the principle of Sunday work being voluntary now applies across international tourist areas, tourist areas, commercial areas, stations and to "mayor's Sundays", whereas previously a legal obligation to ensure the voluntary nature of Sunday work only existed in relation to temporary exemptions granted by prefects (in particular, for PUCEs). The voluntary nature of Sunday work is now also guaranteed in an explicit written agreement and by the incorporation into the law of a clause providing that refusal to work on Sundays does not constitute misconduct or grounds for dismissal, and that discriminatory measures may not be taken against an employee as a result of such a refusal. In order for employees to work on Sundays there must also be a

collective agreement in place providing for Sunday work, at the level of the branch, corporate group or establishment, or at the regional level. Only in firms employing fewer than 11 staff, in the absence of such an agreement, may employers take a unilateral decision to open on Sundays, and only after consultation with the employees concerned and if the majority of them approve. The Government adds that these collective agreements or, in the absence of an agreement, these unilateral decisions must provide for compensation for employees, particularly in the form of wages. Under these agreements or decisions, employers must also make specific commitments relating to employment, or in favour of disadvantaged groups or individuals with disabilities, and must take steps to help employees deprived of Sunday rest to establish a work–life balance. Lastly, on "mayor's Sundays", as was previously the case, every employee deprived of Sunday rest will receive at least double the remuneration normally due for an equivalent period, as well as compensatory rest of an equivalent length. The Government asserts, therefore, that these measures, which guarantee the fair treatment of employees who work on Sundays, comply with the requirements of Convention No. 106.

41. With regard to the alleged violation by France of the principles of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Government states that, under whichever regulations exemptions from Sunday rest are granted, the law provides for a process of mandatory consultation with employers' organizations and affected employees, under the following articles of the Labour Code: L.3132-20 (prefectural exemption to prevent prejudice to the public or to establishments' operation), L.3132-24 (international tourist areas), L.3132-25 (tourist areas), L.3132-25-1 (commercial areas), L.3132-25-6 (stations) and R.3132-21 ("mayor's Sundays"). The Government explains that the only exception applies to emergencies (in the context of exemptions governed by article L.3132-20): the unforeseeable nature of certain situations makes it impossible for requests for exemptions to be made in the standard manner and for the mandatory consultations to be held. This exemption is, however, strictly limited inasmuch as such authorization may be granted for a maximum of three Sundays. The Government states that it decided to make Sunday work conditional upon the existence of a collective agreement in order to ensure that the social partners could agree on the forms of compensation to be adopted. Moreover, with regard to establishments employing fewer than 11 workers (in which, in the absence of a collective or regional agreement, the employer may unilaterally determine the forms of compensation for employees deprived of Sunday rest as a result of an individual exemption granted by the prefect), the Government clarifies that the legislative body has defined the extent of these forms of compensation: according to article L.3132-25-3 of the Labour Code, every employee deprived of Sunday rest shall enjoy compensatory rest and receive, for this day of work, at least double the remuneration normally payable for an equivalent period. As regards international tourist areas, tourist areas, commercial areas and stations, the regulations are the same, irrespective of whether Sunday opening is the result of a collective agreement or a unilateral decision: the scheme must provide for compensation – particularly in terms of wages but also possibly in the form of compensatory rest – employers must make commitments relating to employment or in favour of certain disadvantaged groups, and measures must be taken to facilitate a work–life balance. According to the Government, all of this demonstrates that the French legal and regulatory framework relating to Sunday rest does not contravene the provisions of Conventions Nos 98 and 106.

III. The Committee's conclusions

42. The conclusions are based on the Committee's examination of the allegations and additional information submitted by the CGT–FO, the additional allegations submitted by the CGT and the replies sent by the Government during the present procedure.

43. In its representation, the complainant organization (CGT–FO) alleges that France has violated the provisions of Convention No. 106. The complainant organization claims that, despite repeated reassertions of the principle of Sunday rest by the national courts, successive amendments to legislation have gradually whittled away at the substance of this principle by granting exemptions that go beyond what is permitted by Convention No. 106. [2] The Committee notes that the initial allegations of the complainant organization relate to: (a) the violation of the provisions of Convention No. 106 through the implementation of the Act of 3 January 2008, which was allegedly not the subject of consultations, the Act of 10 August 2009, and the Decree of 7 March 2014; (b) the granting of unjustified exemptions, the unsatisfactory nature of internal regulations in the event of an infringement of the principle of Sunday rest, and the absence or non-dissuasive nature of the penalties; and (c) the extension by sector or geographical area of the scope of exemptions by the French courts.

44. Furthermore, the Committee notes that the Growth, Activity and Equality of Economic Opportunities Act of 6 August 2015 amended the legal provisions pertaining to Sunday rest, in particular the articles of the Labour Code that were introduced or amended by the Act of 10 August 2009. It notes that both the CGT–FO and the CGT sent additional allegations regarding this new Act and that the Government sent its observations in response to these allegations.

45. Articles 6, 7, 8 and 10 of Convention No. 106 are relevant to the examination of this representation. They read as follows:

Article 6

1. All persons to whom this Convention applies shall, except as otherwise provided by the following Articles, be entitled to an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.

[2] The Committee notes that the following legislative and regulatory provisions were relevant to this case at the time the representation was made: articles L.3132-1–L.3132-3 of the Labour Code establish the principle that weekly rest of a minimum of 24 consecutive hours is to be granted to employees on Sundays. The Labour Code defines three categories of exemptions from this Sunday rest rule. Firstly, certain industrial and commercial establishments which must operate or open because of constraints on production or activity or the needs of the public can by law be exempt from the Sunday rest rule by granting rest days on a rotational basis (article L.3132-12). Article R.3132-5 of the Labour Code lists the 182 sectors that are allowed to assign rest days according to a rota. Act No. 2008-3 of 3 January 2008 added furniture retail outlets to the list, and Decree No. 2014-302 of 7 March 2014 added DIY stores. Secondly, there is an exemption scheme governed by collective agreement in industries or industrial enterprises which relates to non-stop operations and shift work (articles L.3132-14–L.3132-19). Thirdly, temporary exemptions can be granted by the prefect or the mayor. Depending on the legislation in force when a representation is made, prefectural exemptions may be granted at the request of the establishment concerned if it is determined that simultaneous Sunday rest for all employees would be detrimental to the public or would jeopardize the normal operation of the establishment (articles L.3132-20–L.3132-23). Prefectural exemptions can also be granted to retail establishments in municipalities or areas highly frequented for their tourist attractions, cultural significance or spa facilities (article L.3132-25 as amended by Act No. 2009-974 of 10 August 2009). Furthermore, the Act of 10 August 2009 introduced a new exemption scheme in cities of over a million inhabitants, with “areas of exceptional consumption” (PUCEs) characterized by customary Sunday consumption, a large volume of customers and their distance from the said area (articles L.3132-25-1–L.3132-25-6 of the Labour Code). Lastly, articles L.3132-26 and L.3132-27 provide that exemptions granted by the mayor (or, in Paris, by the prefect) allow Sunday rest to be abolished by order for retail stores. A maximum of five exemptions per year were granted collectively to all stores in a particular category, until the adoption of the Growth, Activity and Equality of Economic Opportunities Act of 6 August 2015.

2. The weekly rest period shall, wherever possible, be granted simultaneously to all the persons concerned in each establishment.

3. The weekly rest period shall, wherever possible, coincide with the day of the week established as a day of rest by the traditions or customs of the country or district.

4. The traditions and customs of religious minorities shall, as far as possible, be respected.

Article 7

1. Where the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed is such that the provisions of Article 6 cannot be applied, measures may be taken by the competent authority or through the appropriate machinery in each country to apply special weekly rest schemes, where appropriate, to specified categories of persons or specified types of establishments covered by this Convention, regard being paid to all proper social and economic considerations.

2. All persons to whom such special schemes apply shall be entitled, in respect of each period of seven days, to rest of a total duration at least equivalent to the period provided for in Article 6.

3. Persons working in branches of establishments subject to special schemes, which branches would, if independent, be subject to the provisions of Article 6, shall be subject to the provisions of that Article.

4. Any measures regarding the application of the provisions of paragraphs 1, 2 and 3 of this Article shall be taken in consultation with the representative employers' and workers' organisations concerned, where such exist.

Article 8

1. Temporary exemptions, total or partial (including the suspension or reduction of the rest period), from the provisions of Articles 6 and 7 may be granted in each country by the competent authority or in any other manner approved by the competent authority which is consistent with national law and practice:

(a) in case of accident, actual or threatened, force majeure or urgent work to premises and equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment;

(b) in the event of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures;

(c) in order to prevent the loss of perishable goods.

2. In determining the circumstances in which temporary exemptions may be granted in accordance with the provisions of subparagraphs (b) and (c) of the preceding paragraph, the representative employers' and workers' organisations concerned, where such exist, shall be consulted.

3. Where temporary exemptions are made in accordance with the provisions of this Article, the persons concerned shall be granted compensatory rest of a total duration at least equivalent to the period provided for under Article 6.

…

Article 10

1. Appropriate measures shall be taken to ensure the proper administration of regulations or provisions concerning the weekly rest, by means of adequate inspection or otherwise.

2. Where it is appropriate to the manner in which effect is given to the provisions of this Convention, the necessary measures in the form of penalties shall be taken to ensure the enforcement of its provisions.

Contested legislative and regulatory provisions

Act of 3 January 2008 and Decree of 7 March 2014

46. With regard to the allegation by the complainant organization that the implementation of special schemes by the Act of 3 January 2008 – which added furniture retail outlets to the sectors exempt from the Sunday rest rule that can grant rest days on the basis of a rota – and by the Decree of 7 March 2014 ("DIY Decree") – which applied the same exemption to DIY shops – goes beyond the scope defined in Convention No. 106, the Committee notes the Government's reply that: (1) the French regulations on weekly rest provide greater protection to employees than the Convention, granting both a weekly rest period of 24 hours and a total of 11 hours of daily rest, making 35 hours in all; (2) the amended legislation adopted in 2008 and 2014 was a response to changing lifestyles in France, particularly in the major conurbations, and to public need; and (3) the contested provisions meet the requirements of Article 7 of the Convention in that they: (a) apply to a specified type of establishment; (b) are justified by the nature of the services provided by retail furniture and DIY stores, in view of changing consumption patterns; and (c) are based on relevant economic and social considerations, inasmuch as they constitute a response to a public need.

47. The Committee notes that, within the framework of the regular supervisory mechanism for the application of Convention No. 106 by France, the Committee of Experts, after undertaking a comprehensive and detailed analysis of the legislation and the various documents provided (reports from the Government and observations by the social partners, including the CGT–FO), did not consider that the provisions in question were contrary to the provisions of Convention No. 106. In its latest comment, [3] the Committee of Experts requested the Government "to continue to provide up-to-date information on the public debate concerning Sunday work, including the views of the social partners, the conclusions and recommendations of the panel group appointed by the Government to report on this matter, and any legislative change undertaken or envisaged as a result". Under these circumstances, the Committee recalls that the permanent exemptions provided for under Article 7 of Convention No. 106 must be justified by "the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed" and that they must apply to "specified categories of persons or specified types of establishments", "regard being paid to all proper social and economic considerations". ***The Committee considers that the categories of persons or establishments covered by Convention No. 106 to whom a special scheme of weekly rest applies, as provided for by Article 7 of the Convention, must be determined within the context of the country concerned on the basis of the criteria established by the Convention. Emphasizing the importance of effective consultation with the social partners, the Committee invites the parties to examine the scope of the definition of exemptions from the principle of weekly rest, regard being paid to all proper social and economic considerations.***

[3] See the direct request of the Committee of Experts on the Application of Conventions and Recommendations published in 2014 and available at: http://www.ilo.org/dyn/normlex/fr/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3141929,102632,France,2013.

Act of 10 August 2009

48. As regards the allegations relating to tourist or cultural areas and PUCEs, the Committee notes that these allegations are concerned with the provisions introduced or amended by the Act of 10 August 2009, which were not the subject of criticism by the Committee of Experts. It further notes that these provisions were, in turn, amended by the Growth, Activity and Equality of Economic Opportunities Act of 6 August 2015. ***This being the case, the Committee will not examine these initial allegations.***

Act of 6 August 2015

49. The Committee notes the allegations denouncing the extension of the scope of the special schemes through the Act of 6 August 2015, the implementing decree of which has allegedly extended the schemes' scope and effect, amounting to renewed failure to meet the obligations arising from Convention No. 106. The Committee notes the Government's general reply that the Act of 6 August 2015, without extending Sunday working, has amended the legal framework to dispel any existing legal uncertainty, with two objectives: to give businesses greater leeway to adjust the provision of goods and services on Sundays to local needs; and to grant substantive guarantees and compensation to all employees, on the basis of collective labour agreements. The Committee notes that, according to the Government, the principle of Sunday work being voluntary is thus universally applied and, regardless of the type of exemption from Sunday rest, the Act henceforth provides for a process of mandatory consultation with the employers' and workers' organizations concerned.

50. The Committee notes that the workers' organizations refer to the exemptions granted by the Act of 6 August 2015 in respect of the following contexts:

– "International tourist areas": according to the CGT–FO and the CGT, these constitute a further extension of the scope of the exemptions as they allow for workers to be made to work not only on Sundays but also from 9 p.m. to midnight. According to these organizations, these areas contravene the terms of Convention No. 106 because the criteria by which they are established do not refer to any of the conditions laid out in Article 7 of the Convention and there is no monitoring of the types of activities carried out. The Committee notes the Government's assertion that the international tourist areas have been created to meet a real need, France being the world's leading tourist destination and shopping being one of the most popular activities with tourists. The Committee notes the Government's explanation that 12 international tourist areas have been designated according to the criteria set forth in Decree No. 2015-1173 of 23 September 2015, specifically their international renown, transport links, exceptional volume of foreign tourists and substantial purchasing by the latter.

– "Tourist areas": according to the workers' organizations, the businesses located in such areas qualify for exemption from the principle of Sunday rest without having to ascertain whether tourists' needs could be met while respecting that principle because there is no requirement to check whether these establishments actually meet tourists' Sunday consumption needs. The Committee notes the Government's reply that the criteria for the designation of these tourist areas have not been changed and that any increase in their number should be limited because many of them are already classed as tourist towns or areas under the Labour Code.

– "Commercial areas": according to the CGT–FO and the CGT, these areas can claim exemption from the principle of Sunday rest regardless of whether there is a valid case for the shops to open on Sundays, the administrative authority having discretionary power to grant such exemptions, which results in a situation where compliance with the

conditions established in Article 7 of Convention No. 106 cannot be guaranteed. The Committee notes the Government's reply that it is not only Sunday consumption patterns but also the potential for commercial development that is taken into account in establishing these areas, and that the principle of Sunday rest is not being undermined because a number of highly restrictive regulatory provisions and criteria have been put in place.

– "Stations": the CGT–FO and the CGT state that no link between beneficiary businesses and user needs has been established, with the CGT–FO adding that, as things stand, it is not in a position to assess the scope of the exemption. According to these organizations, the exemption granted is not justified from the point of view of Convention No. 106. The Committee notes the Government's statement that a large majority of the French population are in favour of Sunday opening for businesses located in stations and that this exemption should affect 12 stations in France.

– "Food retail stores" located in international tourist areas and in stations can now, according to the CGT–FO, make their employees work on Sundays until midnight in international tourist areas and until 9 p.m. in stations. The Committee notes the Government's emphasis that such practices are only allowed if they are covered by a collective agreement that provides for compensation, particularly in the form of wages.

– The number of Sundays for which mayors can grant an exemption is now 12 rather than five and, according to the CGT, an exemption of this type involves "simple consultation" of a non-obligatory nature. This situation is far removed from the principles of collective bargaining laid down in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and contravenes Article 8(2) of Convention No. 106. The Committee notes that the CGT–FO, for its part, states that this situation constitutes a violation of workers' rights and an infringement of the provisions of the Workers with Family Responsibilities Convention, 1981 (No. 156). The Committee notes the Government's emphasis that use of this type of exemption constitutes an option rather than an obligation, and that the Act introduces new mandatory consultation procedures for mayors.

51. In general, the Committee observes that the new exemptions established under the Act of 6 August 2015 are considered not to be in conformity with Convention No. 106 by the workers' organizations, whereas the Government claims that they are justified by the numbers of customers to be served (in tourist, international and commercial areas) and the wishes of the target clientele. Under these circumstances, the Committee recalls that the permanent exemptions provided for under Article 7 of Convention No. 106 must be justified by "the nature of the work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed" and that they must apply to "specified categories of persons or specified types of establishments", "regard being paid to all proper social and economic considerations". ***The Committee considers that the categories of persons or establishments covered by Convention No. 106 to whom special weekly rest schemes can be applied, as provided for by Article 7 of the Convention, must be determined in the context of the country concerned on the basis of the criteria established by the Convention, regard being paid in particular to all proper social and economic considerations.***

Consultation with the social partners as part of the exemption procedure

52. Regarding the allegation concerning the lack of the mandatory consultation provided for in the Labour Code in relation to the provision introduced by a parliamentary amendment to

Act No. 2008-3 of 3 January 2008 which added furniture retail outlets to the list of businesses benefiting from a permanent exemption allowing workers to be employed on Sundays, the Committee notes that the Government did not provide any information on this matter.

53. The Committee notes the allegations of the workers' organizations relating to the lack of consultation and the possibility of circumventing the provisions establishing the obligation to hold consultations. It further notes that, according to the CGT, this situation is tantamount to failing to respect the elementary rules of collective bargaining and bypassing the representative trade union organizations, in violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Conventions Nos 98 and 106. The Committee notes the Government's reply that the Act of 6 August 2015 provides for a process of mandatory consultation with the employers' and employees' organizations concerned, irrespective of the regulations under which the exemption to Sunday rest is granted (the only exception, for exemptions granted by prefects, being emergency situations where it is impossible to hold such consultations, though very strict conditions apply in such cases).

54. The Committee notes that the representation does not refer to the way in which France meets its obligations under Conventions Nos 87 and 98 and that, consequently, it is unable to comment on these allegations. However, the Committee recalls that Convention No. 106 contains provisions on the obligation to consult the social partners. Article 7(4) of the Convention requires that any measures applying special weekly rest schemes shall be taken in consultation with the representative employers' and workers' organizations concerned. Article 8(2) provides that, in determining the circumstances in which temporary exemptions may be granted in the event of abnormal pressure of work or in order to prevent the loss of perishable goods, the representative employers' and workers' organizations concerned shall be consulted. The Committee observes that the French Labour Code, as amended by the Act of 6 August 2015, contains several provisions implementing social dialogue and providing for consultation, and even agreement, with the employees or their representatives with respect to the implementation of exemptions from the principle of Sunday rest. As regards the exemptions granted on the basis of geographical considerations – for international tourist areas, tourist areas, commercial areas and stations – establishments that wish their employees to work on Sundays must be covered by a collective agreement at the level of the branch, group, enterprise or establishment, or at the regional level (point II of article L.3132-25-3 of the Labour Code). However, establishments with fewer than 11 employees may, in the absence of a collective agreement or an agreement at the regional level, grant weekly rest according to a rota to some or all of their staff after the employer has consulted the employees concerned – and if a majority of the employees agree – regarding the various forms of compensation granted. Furthermore, as regards the exemptions granted by prefects where it has been established that simultaneous Sunday rest for all the employees of a single establishment would adversely affect the public or hinder the normal operations of the establishment (article L.3132-20 of the Labour Code), exemptions are granted on the basis of a collective agreement or, where no such agreement exists, of a unilateral decision taken by the employer after a vote by the workers (point I of article L.3132-25-3). Moreover, with regard to "mayor's Sundays", the corresponding order is issued after the opinions of the employers' and employees' organizations concerned have been sought (article R.3132-21). However, such an obligation does not exist with regard to the exemptions granted, firstly, to establishments the operation or opening of which is rendered necessary by constraints on production or activity or the needs of the public (article L.3132-12) and, secondly, food retail stores (article L.3132-13). ***In these circumstances, taking into account all the information submitted by the workers' organizations and by the Government, the Committee stresses the importance of effective consultation with the social partners and recalls that any measures relating to exemptions from the principle of weekly rest must be taken in consultation with the social partners, as prescribed by Articles 7(4) and 8(2) of Convention No. 106.***

Extension of the scope of special schemes through case law

55. The Committee notes the allegations that the case law of the French courts is exacerbating the failure to observe the principles set forth in the Convention by even further extending the scope of application of the special schemes, on grounds of equality, with respect to the eligible sectors of activity and geographical areas. According to the CGT–FO, court decisions have extended the scope of the exemption obtained by the furniture sector to the home improvement and household appliance sector on the grounds of avoiding unfair competition, and the DIY sector has been included in the scope of the exemptions through the same mechanism. The Committee notes the Government's statement that these decisions were not handed down for the purpose of granting a permanent and blanket exemption to establishments outside the sectors listed as eligible for exemptions (article R.3132-5 of the Labour Code) and that the courts assess the risks of unfair competition on the basis of criteria that do not lend themselves to generalizations. In their additional allegations, the CGT and the CGT–FO argue that there is confusion between satisfying the customers' wants and meeting their real needs, the CGT–FO adding that the Council of State has defined the concept of "need" in extremely broad terms in order to enable exemptions to be implemented. ***Taking note of the information provided by the parties, the Committee recalls that it is important that all exemptions from the principle of weekly rest, including those where the scope of application has been extended through case law, should meet the criteria of the Convention.***

Non-dissuasive nature of penalties and granting of unjustified exemptions

56. The Committee examined all the allegations relating, firstly, to the absence of effective penalties and the unsatisfactory nature of internal regulations in the event of an infringement of the principle of Sunday rest and, secondly, to the granting of unjustified exemptions by the administration and the lack of appropriate penalties.

57. In this regard, the Committee notes that the complainant organization deplores the fact that genuine prosecutions for existing infringements have not been brought by the authorities responsible for enforcing the rules and bringing such prosecutions, particularly in certain departments where the tolerance of the authorities is such that common practice runs counter to the regulations. The complainant states that the risk of incurring criminal penalties is insufficient and does not act as a deterrent, owing to the lack of genuine prosecutions and of adequate penalties. While acknowledging the work done by the labour inspection services, the complainant highlights the lack of resources and the disparities in enforcement of the law, which reflect a lack of political will. Lastly, it emphasizes the difficulties involved in bringing prosecutions to a successful conclusion, since there is a visible trend in case law which is making it more difficult for trade union organizations to bring cases that are admissible.

58. The Committee also notes that the CGT–FO criticizes prefects, as the local representatives of the State, for not always referring unlawful municipal decisions to the administrative courts despite having the opportunity to do so when those decisions are communicated to the prefectures. Furthermore, the prefects themselves are alleged to overstep the powers conferred on them in relation to exemptions from the Sunday rest principle by interpreting the criteria for granting exemptions in a way that diverges from previous case law, despite the voluminous nature of the latter and reminders of it via circulars. The complainant organization denounces the administrative authorities' tolerance towards businesses that do not abide by the law, particularly by not revoking decisions deemed unlawful by the courts, by not publishing decisions granting exemptions in order to avoid any appeal against them,

or by receiving representatives of offending enterprises and taking decisions in their favour. In addition, where penalties have been imposed, they are not a sufficient deterrent. In support of its arguments set out above, the CGT–FO cites a large number of legal decisions handed down by various French courts.

59. The Committee takes note of the information provided by the Government in response to these allegations, particularly the fact that France has established a legal framework that enables observance of the principles set out in the Convention through a system of penalties and legal remedies available to the labour inspectorate. The Government states that, under the terms of article R.3132-2 of the Labour Code, any violation of articles L.3132-1–L.3132-14 and L.3132-16–L.3132-31 relating to weekly rest or of the related implementing decrees incurs a fine of €1,500 for every illegally employed worker. Repeat offences are also punished. Moreover, the Government indicates that it is incorrect to assert that compliance with weekly rest regulations is not monitored by the labour inspection services. In 2013 and 2014, 146 infringement reports were drawn up and 73 referral proceedings were initiated, with a view to obtaining injunctions that would oblige businesses to close. The Government points out that the right to appeal is a general principle of French law and that the complainant organization is free to take court action – as it actually did – if it believes that authorizations have been granted in violation of Convention No. 106 and the law. The amount of damages awarded is determined by the judge on the basis of the harm suffered in terms of the intrusion on the employee's private life caused by unlawful Sunday work. According to the Government, the average amount awarded by judges was €2,500 per reported violation. Moreover, it cites a judgment issued by the Court of Appeal of Versailles, which fined a DIY chain €500,000 for failure to implement a court decision ordering it not to make employees work on Sundays. In the Government's opinion, this proves that the argument that the penalties imposed by the courts are insufficient and merely symbolic is untenable.

60. The Committee takes note of the information provided by the parties. Further to its examination of the numerous court rulings that were sent, it observes that there are a number of rulings which overturn decisions issued by prefects or mayors authorizing shops to open on Sundays. Furthermore, many of the rulings cited by the parties impose penalties on stores that had opened illegally on Sundays. These penalties range from €22,000 to €2,410,000 and mostly represent payments of fines imposed by the courts ranging from €10,000 to €100,000 for each Sunday of illegal opening. ***In the light of the available information, the Committee considers that the mechanisms in place in France to ensure the proper administration of the regulations concerning weekly rest are in conformity with the criteria set out in Article 10(1) of Convention No. 106 and that the penalties imposed by the judiciary appear to demonstrate that an adequate system of penalties is in place, as required by Article 10(2).***

IV. The Committee's recommendations

61. ***In the light of the conclusions contained in paragraphs 42–60 above, the Committee recommends the Governing Body to:***

(a) approve the present report;

(b) request the Government to take account of the observations made in paragraphs 47, 48, 51, 54, 55 and 60;

(c) request the Government to submit a report to the Committee of Experts on the Application of Conventions and Recommendations for examination within the regular reporting cycle; and

(d) publish the present report and declare the representation procedure closed.

Geneva, 22 March 2016 *(Signed)* Diego Cano Soler

Renate Hornung-Draus

Mody Guiro

Point for decision: Paragraph 61