January 2015

European Social Charter

European Committee of Social Rights

Conclusions XX-3 (2014)

(SPAIN)

Articles 2, 4, 5 and 6 of the 1961 Charter

and Articles 2 and 3 of the 1988 Additional Protocol

This text may be subject to editorial revision.

The role of the European Committee of Social Rights (the Committee) is to rule on the conformity of the situation in States Parties with the 1961 European Social Charter (the 1961 Charter) and the 1988 Additional Protocol (the Additional Protocol). The Committee adopts conclusions through the framework of the reporting procedure and decisions under the collective complaints procedure.

Information on the 1961 Charter, statements of interpretation, and general questions from the Committee, are reflected in the General Introduction to all Conclusions.

The following chapter concerns Spain, which ratified the 1961 Charter on 6 June 1980. The deadline for submitting the 26th report was 31 October 2013 and Spain submitted it on 19 September 2013. On 28 March 2014, a request for additional information regarding Articles 2§2, 4§3 and 4§5 was sent to the Government, which submitted its reply on 9 June 2014. Comments on the report by the Confederation of spanish trade unions CCOO and UGT were registered on 4 August 2014.

The report concerns the following provisions of the thematic group "Labour rights":

- the right to just conditions of work (Article 2),
- the right to a fair remuneration (Article 4),
- the right to organise (Article 5),
- the right to bargain collectively (Article 6),
- the right to information and consultation (Article 2 of the Additional Protocol),
- the right to take part in the determination and improvement of the working conditions and working environment (Article 3 of the Additional Protocol).

Spain has accepted all Articles from this group.

The reference period was from 1 January 2009 to 31 December 2012.

The conclusions on Spain concern 17 situations and are as follows:

- 9 conclusions of conformity: Articles 2§2, 2§3, 2§5, 4§3, 5, 6§1, 6§3, and Articles 2 and 3 of the Additional Protocol.
- 7 conclusions of non-conformity: Articles 2§1, 2§4, 4§1, 4§2, 4§4, 6§2, 6§4.

In respect of one other situation related to Article 4§5, the Committee needs further information in order to examine the situation. The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Spain under the 1961 Charter. The Committee requests the Government to remedy that situation by providing this information in the next report.

The upcoming report will deal with the following provisions of the thematic group "Children, families and migrants":

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection (Article 8),
- the right of the family to social, legal and economic protection (Article 16),
- the right of mothers and children to social and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19).

The deadline for submitting that report was 31 October 2014.

Conclusions and reports are available at www.coe.int/socialcharter.

Article 2 - Right to just conditions of work

Paragraph 1 - Reasonable working time

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information containted in the comments made by *Confederación Sindical de Comisiones Obreras* (CCOO) and *Unión General de Trabajadores* (UGT) of 23 July 2014 and in the Government's reply to these comments of 14 October 2014.

Flexible working time arrangement and the reference period

In its previous conclusion (Conclusions XIX-3 (2010)) the Committee found that the situation was not in conformity with the Charter, as the Workers' Statute sets out a reference period of one year as a general rule for the calculation of the average working hours, without laying down any objective or technical requirements or limiting this to certain types of companies or sectors.

The Committee notes from the report that there have been amendments to the legislation in connection to this. Article 34(2) of the Workers' Statute has been amended by Royal Decree-Law 3/2012. An irregular distribution of working hours over the year may now be established by collective bargaining agreement, or in the absence of it, through agreement between the company and workers' representatives. If there is no agreement, the company may distribute 10% of the working day flexibly over the year. This distribution must at all times respect minimum legal daily and weekly rest periods.

The Committee takes note of the comments of the Trade Union Confederations Comisiones Obreras and the Union General de Trabajadores on the national report as well as the response of the Government to these comments.

According to the Trade Union Confederations, with the Royal Decree Law 3/2012 of 10 February and Law 3/2012 of July 2012 the employer has been allowed to introduce irregular distribution of the working day throughout the year if there is no agreed regulation or collective agreement, whereas before this reform, irregular distribution was only possible if there was agreement between the company and the workers' representatives. Consequently, the decision to carry out irregular distribution of 10% of the working day – unilaterally and with no requirement to justify it with any cause or reason –falls to the employer, provided there is no agreement in this regard. The only requirement in the regulation is to respect the minimum daily and weekly rest periods (which may be accumulated) and a minimum of five days' notice to the worker when informing him/her of the day and time he/she is required to work.

In reply, the Committee notes from the comments of the Government that flexible distribution of annual working hours should be considered as a general principle aimed at avoiding overtime or temporary hiring. In this respect, collective agreements should make it easier for employers to distribute 10% of the annual applicable working hours flexibly; this may affect the maximum weekly or monthly working hours, although not the annual maximum. It may equally affect the hours in the working day, without prejudice to respect for the limits established for this purpose by the Workers' Statute.

The Government further argues that the flexible distribution of annual working hours is considered as a general principle in the Agreement on Employment and Collective Bargaining 2012, 2013, and 2014 signed by the Spanish Confederation of Employers' Organisations and the Spanish Confederation of SWE's and by the trade unions Comisiones Obreras and Union General de Trabajadores. This legal modification improves the internal flexibility in a company in terms of working hours, which will undoubtedly allow for improved organisation without the need for the use of instruments such as overtime or temporary hiring of staff.

According to the Government, although these new rules provide greater margin for decision-making by a business with respect to the flexible distribution of working hours, they do not lead to the elimination of bargaining between the parties in order to reach an agreement on this matter. Although the company is allowed some margin of flexibility if there is no agreement with the workers' representatives, its margin for unilateral decision-making is limited with respect to the flexible distribution of working hours, which is established as a maximum of 10% of working hours.

The Committee recalls in this respect that The Committee considers that flexibility measures regarding working time are not as such in breach of the Charter. It recalls (*Confédération Française de l'Encadrement CFE-CGC v. France*, Complaint No. 9/2000, Decision on the merits of 16 November 2001, §§29-38) that in order to be found in conformity with the Charter, national laws or regulations must fulfil three criteria:

1. they must prevent unreasonable daily and weekly working time. The maximum daily and weekly working hours referred to above must not be exceeded in any case.
2. they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.
3. they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may be extended to a maximum of one year in exceptional circumstances.

As regards reasonable daily and weekly working time, the Committee refers to the section *weekly working time,* below.

As regards the precise legal framework under which flexible working time arrangements operate, the Committee asks how often has the employer, in the absence of a collective agreement, taken a unilateral decision to redistribute 10% of the working hours.

As regards the reference period, the Committee understands that the Workers' Statute still provides for one year reference periods, as a general rule. The Committee asks for more evidence that in practice, the workers on flexible working time arrangements with long reference periods do not work unreasonable hours or an excessive number of long working weeks.

Weekly working time

In its previous conclusions (Conclusions XIX-3, XVIII-2, XVI-1) the Committee found that the Workers' Statute permitted weekly working time in excess of 60 hours in the context of flexible working time arrangement, as well as for certain categories of workers (for example personnel in sanitary and health services).

The Committee notes from the submissions of the Government in response to the trade union comments that the possibility of working days of up to 12 hours and weekly hours of over 60 hours is more theoretical than real, and is certainly not observed in practice during inspections.

The Government acknowledges that it would be hypothetically possible (though highly improbable) to have a maximum working day of 11 hours and 45 minutes for 11 consecutive days, with the following three days off.

The Committee thus understands that there have been no amendments to the Workers' Statute which establishes 12 hours of obligatory rest between two consecutive working days and one and a half days of uninterrupted weekly rest which can be accumulated over 14 days, therefore

leading to a working week in excess of 60 hours. The Committee reiterates its previous finding of non-conformity.

The report states that the Royal Decree Law 20/2011 introduced a change with respect to working hours for the whole of the public sector, and set the weekly working hours at no less than 37 hours and 30 minutes on average.

The report indicates that the Labour and Social Security Inspectorate carries out supervision of working hours, rest period and overtime on an ordinary basis. Breaches of the working time regulations represent a serious infringement of labour law defined in Article 7(5) of the Royal Legislative Decree 5/2000. Infringements are penalised with a fine, ranging from € 626 to € 6,250. In 2012, 12,305 inspections regarding working time were carried out and 1,380 infringements were identified. Around €1,8 million was imposed in fines.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail (CGT) v. France* (§§ 64-65), Complaint No 55/2009, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined *a posteriori* for a period of time that the employee *a priori* did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home.

The Committee asks what rules apply to on-call service and whether inactive periods of on-call duty are considered as a rest period in their entirety or in part.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 2§1 of the 1961 Charter on the ground that the maximum weekly working time may exceed 60 hours in flexible working time arrangements, and for certain categories of workers.

Article 2 - Right to just conditions of work

Paragraph 2 - Public holidays with pay

The Committee takes note of the information contained in the report submitted by Spain, as well as of the additional information provided in an addendum to the report.

It noted previously (Conclusions XIV-2 (1998)) that Article 37(2) of the Workers' Statute provides for fourteen days of public holiday for all employees (two of which are local holidays). These are paid holidays which employees may not forego. The list of public holidays is published annually in the Official Journal.

In reply to questions raised previously by the Committee (Conclusions XIV-2 (1998), XVI-2 (2004), XVIII-2 (2007), XIX-2(2010)), the report states that under Article 47 of Royal Decree 2001/1983, when work is carried out during public holidays or the weekly rest period, under exceptional circumstances or for technical or organisational reasons, employers are required to offset the hours worked with a salary increased by at least 75%, in addition to the basic wage, or with compensatory time off. The addendum to the report indicates that the compensatory time off shall be equivalent to at least the time spent working during the public holiday. These rules apply both to the public and to the private sector.

Provided that they comply with these basic standards, collective agreements may lay down specific rules on the subject. The report presents examples of such rules applying to public officials and state employees without civil-servant status.

The Committee recalls that work performed on a public holiday entails a constraint on the part of the worker, who should be compensated. Considering the different approaches adopted in different countries in relation to the forms and levels of such compensation and the lack of convergence between states in this regard, the Committee considers that States enjoy a margin of appreciation on this issue, subject to the requirement that all employees are entitled to an adequate compensation when they work on a public holiday. In this respect, in light of the information available, the Committee considers that the situation in Spain is in conformity with Article 2§2 of the Charter.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 2§2 of the 1961 Charter.

Article 2 - Right to just conditions of work

Paragraph 3 - Annual holiday with pay

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

Since 2004 (Conclusions XVI-2 (2004)), the Committee has concluded that the situation was not in conformity with the Charter because when workers fell ill or were injured during their holiday they were generally not entitled to take the corresponding days as holiday at another time.

In its previous conclusion (Conclusions XIX-2 (2010)) the Committee noted an amendment of 2007 enabling leave which is not used because of pregnancy, childbirth or nursing to be taken at a later date. It notes that Article 38(3) of the Workers' Statute was amended again in 2012 (by Law No. 3/2012) and now provides for the possibility of taking unused leave at a later date in non-maternity-related cases of temporary incapacity. This must be done within 18 months of the end of the year in which the right to the holiday was acquired. The Committee asks for information in the next report on any restrictions or exceptions to this. Pending examination of this information, it considers that the situation is now in conformity with the Charter in this respect.

The Committee notes from the examples provided in the report that, for at least some categories of workers, annual leave must be taken in instalments of at least five uninterrupted working days. It points out in this respect that, under Article 2§3 of the Charter, employees are required to take at least two uninterrupted weeks of annual holiday during the year the holidays were due. It accordingly asks the next report to indicate whether this requirement is respected in all cases. It reserves its position on this point in the meantime.

Conclusion

Pending receipt of the requested information, the Committee concludes that the situation in Spain is in conformity with Article 2§3 of the 1961 Charter.

Article 2 - Right to just conditions of work

Paragraph 4 - Elimination of risks in dangerous or unhealthy occupations

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

The Committee points out that the States party to the Charter are required to eliminate risks in inherently dangerous or unhealthy occupations. In view of the changing practices of States in this regard, placing emphasis on the prevention and elimination of occupational hazards, it takes account of these developments in its assessment of conformity with Article 2§4 of the 1961 Charter (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006). Accordingly, it examines firstly what measures have been taken to progressively eliminate the inherent risks in dangerous or unhealthy occupations. Secondly, it examines what compensatory measures are applied to workers who are exposed to risks that cannot be or have not yet been eliminated or sufficiently reduced, either in spite of the effective application of the preventive measures referred to above or because they have not yet been applied.

Elimination or reduction of risks

The Committee takes note of the information contained in the report submitted by Spain and refers to its finding of conformity in the conclusion under Article 3§1 of the 1961 Charter (Conclusions XX-2 (2013)) for a description of dangerous activities and the preventive measures taken in their respect. In particular, Law No. 31/1995 on the prevention of occupational risks requires employers to ensure that employees' health and safety are adequately protected in the workplace.

Measures in response to residual risks

With regard to compensation for workers exposed to risks, despite the implementation of prevention measures and the reduction of the aforementioned risks, the Committee noted previously that under Article 25 of Law No. 31/95, occupations are considered dangerous if they expose employees to physical, chemical or biological substances which may have mutagenic or toxic effects on procreation. As a result, it advocates the adoption of any appropriate measure – particularly the reduction of exposure times to risk factors, the reduction of working hours or the assignment of employees to other posts – to ensure that posts are suited to workers and vice-versa. Bearing in mind that this law refers to particular arrangements negotiated in the context of collective agreements or company agreements, the Committee has asked repeatedly in what sectors or activities reduced working hours have been introduced by these means (or by decision of the relevant authorities as the case may be).

The report mentions certain legislative amendments, particularly the changes to driving times in road transport (Royal Decree No. 1635/2011), and gives detailed information on prevention measures during pregnancy and nursing, but does not answer the Committee's question.

The Committee points out that under Article 2§4, states are required both to eliminate and prevent occupational risks and to enable workers who are still exposed to such risks to preserve their vigilance by giving them adequate and regular time to recover from stress or fatigue. This should be achieved particularly through reduced working hours or exposure times, or through the award of additional paid leave. In the absence of the information requested, the Committee considers that it has not been established that the situation in Spain is in conformity with Article 2§4 of the Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 2§4 of the 1961 Charter on the ground that it has not been established that all workers exposed to residual risks for health and safety are entitled to appropriate compensatory measures, such as reduction in working hours, exposure time or additional paid leave.

Article 2 - Right to just conditions of work

Paragraph 5 - Weekly rest period

The Committee takes note of the information contained in the report submitted by Spain and notes that there has been no substantive change in the situation which it previously considered to be in conformity with Article 2§5 (Conclusions XIX-2 (2010)).

In particular, it notes that Article 34(2) of the Workers' Statute, as amended in 2012 (Royal Decree 3/2012 of 10 February 2012 and Law No. 3/2012 of 6 July 2012) authorises, to some extent, flexibility in working hours to be negotiated by means of collective or company agreements, provided that the right of workers to minimum daily and weekly rest times is guaranteed.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 2§5 of the 1961 Charter.

Article 4 - Right to a fair remuneration

Paragraph 1 - Decent remuneration

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information containted in the comments made by *Confederación Sindical de Comisiones Obreras* (CCOO) and *Unión General de Trabajadores* (UGT) of 23 July 2014 and in the Government's reply to these comments of 14 October 2014.

It has concluded from Conclusions XIV-2 (1991) onwards that the situation was not in conformity with Article 4§1 of the 1961 Charter, on the ground that the minimum wage was manifestly unfair. It previously requested detailed information on the net values of both minimum and average wages.

The report states that Law No. 35/2010 of 17 September 2010 on urgent measures to reform the labour market amended Article 26, paragraph 1 of the Workers' Statute (TRLET) with a view to extending the payment of wages in kind, provided that they do not exceed 30% of the remuneration, and that the amount paid in cash is equal to the minimum interprofessional wage (SMI). Moreover, Royal Decree No. 1888/2011 of 30 December 2011, setting the SMI for 2012, kept the gross SMI at €641.40 per month (€8 979.60 over 14 months).

The report also indicates that the minimum gross annual remuneration for 2012 was €16 451.96 (€1 371.00 per month over 12 months) for civil servants in the Ministry of Defence. The figure was €12 719.59 (€1 059.97 per month over 12 months) for contractual staff in the above Ministry, whose remuneration, in accordance with section 27 of the Basic Status of Public-sector Employees Act of 12 April 2007 (No. 7/2007) (EBEP), is governed by labour legislation, collective agreements and employment contracts.

According to EUROSTAT data for 2012 (table "earn_nt_net"), the average annual earnings (100% of average single workers without children) were €25 894.23 (€2 157.85 per month over 12 months) gross and €19 975.06 (€1 664.59 per month over 12 months) net of social contributions and tax deductions, and the SMI as a proportion of average earnings (table "earn_mw_avgr2") was 34.70%.

The Committee notes the UN Committee on Economic, Social and Cultural Rights' concern (Concluding Observations of 6 June 2012, §§16 and 18) about the SMI being frozen at a level that does not allow for a decent standard of living, 21.80% of the population living below the poverty line, and the percentage of those at risk of falling into poverty having increased considerably due to the economic and financial crisis.

According to the comments made by CCOO and UGT, the standard of living ensured by the SMI is close to the poverty line, and even below that line for households with two persons. Data published by the National Statistic Institute (INE) shows an increase of the proportion of workers paid the SMI to 12.25% in 2012, whilst this salary also gains importance due to the non-prolongation of collective agreements in force and to the priority given to agreements signed at enterprise level. According to the Government's reply, the economic and financial crisis must be taken into account in determining the SMI, since this factor has impact on job creation. Moreover, because most collective agreements set out minimum wages, pay at SMI level only has impact on unqualified workers who are not covered by such agreements. After adjustment to full time, the data published by INE (table "proportion of workers paid the SMI by type of working time and sex") sets the proportion of workers paid the SMI at 1.52% in 2012.

The Committee notes that in spite of repeated requests, the report fails to provide information on net values of both minimum and average wages for the reference period. It recalls that the report must provide full and up to date information on the law and practice on changes that

occurred during the reference period. It also recalls that, in order to ensure a decent standard of living within the meaning of Article 4§1 of the 1961 Charter, remuneration must be above the minimum threshold, set at 50% of the net average wage. This is the case when the net minimum wage is above 60% of the net average wage. When the net minimum wage is between 50% and 60% of the net average wage, the State Party must show that the wage provides a decent standard of living (Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1).

In the light of the report and the EUROSTAT data, the Committee notes that the minimum wage of tenured civil servants is above the limit of 60% of the net average wage. It also notes that after social security contributions and income tax, the SMI as well as the minimum wage of contractual staff are below the minimum threshold set at 50% of the net average wage, and are therefore manifestly unfair within the meaning of Article 4§1 of the 1961 Charter. It asks that the next report contain information on the coverage rate by collective agreements applied in the private and public sectors as well as on agreed minimum wages. It also asks for information on the minimum remuneration applicable to the economically dependent self-employed workers covered by section 11 and what follows in the Self-employment Regulation Act of 11 July 2007 (No. 20/2007).

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4§1 of the 1961 Charter on the grounds that:

- the minimum wage for workers in the private sector does not secure a decent standard of living;
- the minimum wage for contractual staff in the civil service does not secure a decent standard of living.

Article 4 - Right to a fair remuneration

Paragraph 2 - Increased remuneration for overtime work

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

In its previous conclusion (Conclusions XIX-3) the Committee held that the situation was not in conformity with the Charter as the Workers' Statute did not guarantee workers the right to increased remuneration or to a longer rest period in compensation for overtime.

More specifically, Section 35 of the Workers' Statute simply allows collective bargaining to fix the increased rate of remuneration or compensatory leave. However the Statute provides that overtime cannot be paid at a lower rate than a regular working hour, or should be compensated with leave of equal length to the overtime worked.

According to the report the collective agreement for non-civil service employees in the General Administration of the State provides that overtime shall be compensated preferentially with rest periods which are accruable at two hours per each hour worked.

The Committee notes from the report of the Governmental Committee (TS-G (2012)1, §§124-129) that in 2009 55.99% of all registered collective agreements, contained clauses providing for an increased remuneration for overtime. These agreements cover 52% of workers.

The Committee takes note of the information provided concerning overtime work in the public sector and also of the information about collective agreements providing for an increased remuneration for overtime. The Committee observes, however, that the situation in law which it has previously found not in conformity with the Charter has not changed. Therefore, the Committee repeats its previous finding of non-conformity on the ground that the Workers' Statute does not guarantee increased remuneration or compensatory time off for overtime work.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4§2 of the 1961 Charter on the ground that the Workers' Statute does not guarantee increased remuneration or an increased compensatory time-off for overtime work.

Article 4 - Right to a fair remuneration

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

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

Legal basis of equal pay

Article 17 of the Workers' Statute establishes that any regulatory provisions, clauses in collective bargaining agreements, individual pacts or unilateral decisions by the employer shall be deemed null and void if they give rise to situations of direct or indirect discrimination in remuneration for reasons of gender .

Article 28 of the Workers' Statute lays down that the employer is obliged to pay the same remuneration for work of equal value, whether paid directly or indirectly and whatever the nature of such remuneration, in the form of wages or otherwise. There may be no discrimination based on gender in any of the elements or conditions of such remuneration.

Royal Legislative Decree 5/2000 provides that any infringement through wage discrimination based on gender is contrary to Article 28 of the Workers' Statute (equal remuneration based on gender). According to the report, such infringement would, also, be contrary to Article 4§3 of the Charter (equal remuneration for work of equal value).

Guarantees of enforcement and judicial safeguards

The Committee refers to its conclusion under Article 1 of the Additional Protocol of 1988 (Conclusions XIX-1 (2012) and considers that the situation is in conformity on this point.

Methods of comparison and other measures

According to the report, Article 46 of the Organic Law 3/2007 on real equality between women and men regulates the concept and content of the equality plans in companies, which should fix specific objectives of equality to be achieved, including on questions of remuneration. The Directorate General for the Labour and Social Security considered it necessary to carry out a permanent plan for action with the aim of supervising the compliance of companies with their obligations under this Law.

In 2009, 12 out of 241 companies inspected (including financial institutions, hotels, cleaning of buildings, retail trade etc) were involved in wage discrimination cases. In 2010, seven cases of wage discrimination were identified in 362 companies inspected.

In 2011 Instruction 3/2011 was issued to supervise effective equality between women and men. It establishes that such supervision will be a permanent area of action. In 2011 a total of 445 companies were investigated and three infringements were discovered.

The Committee notes from Eurostat data that the unadjusted Gender Pay Gap in Spain stood at 17.8% in 2011, while the EU27 average was 16.2%.

The Committee recalls that in its conclusion under Article 1 of the Additional Protocol of 1988 (Conclusions XIX-1 (2012)) it referred to its Statement of Interpretation in the General Introduction and asked whether in equal pay litigation cases it was possible to make comparisons of pay and jobs outside the company directly concerned.

In this connection, the Committee notes from the supplementary information provided by the Government that pay comparisons are possible in cases in which several companies are covered by a collective works agreement, insofar as all collective agreements are published

(Article 90 of the Workers Statute), which makes pay comparisons possible. As regards the cases in which the terms and conditions of employment are laid down centrally for more than one company, the comparison is also possible. Such comparison may be more difficult if the conditions of employment are not provided for all workers through collective agreement, but are set in their employment contract.

The Committee notes that the Constitutional Court has held that the information regarding remuneration and economic conditions of workers, falls within the concept of privacy and must be protected. According to the report, such confidentiality provisions make it difficult to compare wages across companies.

The Committee further notes that when the Labour Inspectorate monitors the observance of the equal pay principle in enterprises it does not verify whether one enterprise in a given sector pays the same wages to its employees as another enterprise operating in the same sector as long as the wage levels depend on various factors, such as financial performance of an enterprise.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 4§3 of the 1961 Charter.

Article 4 - Right to a fair remuneration

Paragraph 4 - Reasonable notice of termination of employment

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information contained in the comments made by the *Confederación Sindical de Comisiones Obreras* (CCOO) and the *Unión General de Trabajadores* (UGT) of 23 July 2014 and in the Government's reply to these comments of 14 October 2014.

It previously concluded (Conclusions XIX-3 (2010)) that the situation was not in conformity with Article 4§4 of the 1961 Charter, on the grounds that workers with fixed-term contracts of less than one year whose contracts were terminated before they expired were not granted any notice, and workers on fixed-term contracts of more than one year whose contracts were terminated before they expired were only granted 15 days' notice. The representative of Spain informed the Governmental Committee that there had been a change in the situation with regard to the first ground of non-conformity (Report concerning Conclusions XIX-3 (2010), §§176-183).

Reasonable notice

The Committee notes that under Article 49, paragraph 1 of the Workers' Statute (TRLET), as amended by Law No. 3/2012 of 6 July 2012 on urgent labour market reform measures, notice periods applicable to indefinite and fixed-term employment contracts in the private sector and non-civil service employment in general state administration vary according to the reasons for termination of employment, which may be any of the following:

a. Mutual agreement of the parties to the employment contract;
b. Grounds set out in the employment contract;
c. Expiry of the employment contract or realisation of its aims;
d. Resignation of the employee;
e. Death or invalidity of the employee;
f. Retirement of the employee;
g. Death, retirement or winding up of the employer;
h. Force majeure, making it permanently impossible to carry out the work;
i. Collective redundancy for economic, technical, organisational or production-related reasons;
j. Resignation of the employee as a result of a breach of contract by the employer;
k. Individual dismissal;
l. Termination of the employment contract for objective reasons;
m. Resignation of employee forced to abandon their posts permanently following an offence motivated by gender.

Article 49, paragraph 1 of the TRLET provides, in the cases referred to under (c), for compensation of 12 days' salary per year of service (paragraph 1) and 15 days' notice for fixed-term contracts of more than one year (paragraph 4); in the cases referred to under (g), for one month's notice; in the cases referred to under (h), for compensation of an amount determined by the Employment Office in the five days after the application was filed (Article 51, paragraph 7 of the TRLET); in the cases referred to under (l), for 15 days' notice (Articles 52 and 53, paragraph 1 of the TRLET).

The Committee points out that by accepting Article 4§4 of the 1961 Charter, States Parties undertook to recognise the right of all workers to a reasonable period of notice for termination of employment (Conclusions XIII-4 (1996), Belgium), the reasonable nature of the period being determined primarily in accordance with the length of service. While it is accepted that the period of notice may be replaced by severance pay, such pay should be equivalent to the

wages that would have been paid during the corresponding period of notice. It considers in the present case that the notice period and/or compensation in lieu are in conformity with Article 4§4 of the 1961 Charter under certain circumstances, but insufficient in the following circumstances:

- Dismissal when employment contracts expire or when their aims have been achieved (ground given in Article 49, paragraph 1(c) of the TRLET);
- Termination of the employment contract on the death or retirement of employers who are natural persons or the winding up of employers which are legal persons (ground given in Article 49, paragraph 1(g) of the TRLET), for employees with more than three years of service;
- Termination of the employment contract for objective reasons (ground given in Article 49, paragraph 1(l) of the TRLET), for employees with more than six months of service.

The Committee asks for information in the next report on the special laws referred to in Article 49, paragraph 1(c), sub-paragraph 1 of the TRLET and on the notice periods and/or compensation applied in practice in the following cases: dismissal for invalidity; retirement of the employee; termination for force majeure; individual dismissal; termination of the contract for objective reasons; resignation of employees following an offence motivated by gender (grounds given in Article 49, paragraph 1(e), (f), (h), (j), (k) and (m)). In the meantime, it reserves its position on these issues.

Application to all workers

According to comments made by CCOO and UGT, there is a risk that the extended 12-month probationary period introduced for entrepreneur support contracts by section 4, paragraph 3 of Law No. 3/2012, during which dismissal is authorised without notice or compensation, will be misused to turn this type of contract into temporary employment. According to the Government's reply, the law reserves this type of contract for companies with fewer than 50 employees, provides for a limited use until the unemployment rate falls below 15%, and includes provisions to prevent its misuse. Furthermore, as Article 4§4 of the 1961 Charter does not include any rules on the length of probationary periods, the latter would remains unrestricted.

The Committee notes that under section 8, paragraph 3 of Royal Decree No. 2720/1998 of 18 December 1998 clarifying Article 15 of the Workers' Statute with regard to fixed-term contracts, failure by employers to apply the notice periods provided for in Article 15 of the TRLET gives rise to the application of equivalent compensation. According to the Government's reply, the 15-day notice period provided for by Article 49, paragraph 1(c), sub-paragraph 4 of the TRLET applies when a fixed-term contract expires, while the notice periods and/or compensation that apply to early termination of contracts are set out in ordinary law.

The Committee points out that protection by means of notice periods and/or compensation in lieu thereof must cover all workers regardless of whether they have a fixed-term or a permanent contract (Conclusions XIII-4 (1996), Belgium) and regardless of the reason for the termination of their employment (Conclusions XIV-2 (1998), Spain). This protection covers probationary periods (General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) / Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, §§26 and 28). The Committee notes in the present case that no notice period or compensation is provided for for dismissal during the exceptional probationary period of the entrepreneur support contract. It therefore considers that section 4, paragraph 3 of Law No. 3/2012 is not in conformity with Article 4§4 of the 1961

Charter in this respect. It asks that the next report state what notice period and/or compensation is applicable to dismissal during probationary periods under Article 14, paragraphs 1 and 2 of the TRLET. In the meantime, it reserves its position on this issue.

The Committee also points out that, while ILO Convention No. 158 on Termination of Employment (1982) allows for fixed-term contracts to be excluded from its scope of application, such exclusion does not automatically entail the conformity of a State Party's legislation and practice with the 1961 Charter, which the Committee examines autonomously and on a case by case basis (*Confédération générale du travail* (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §38). In the present case it notes that employees on fixed-term contracts whose contracts are terminated before they expire are entitled to standard notice periods and/or compensation under ordinary law. It therefore extends its finding of non-conformity with Article 4§4 of the 1961 Charter in circumstances of inadequacy of notice periods and/or compensation in lieu thereof to fixed-term contracts.

The Committee asserts that in order to guarantee that the protection granted by Article 4§4 of the Charter is effective, the notice period and/or compensation in lieu should not be left to the discretion of the parties to the employment contract but be governed by legal instruments such as legislation, case law, regulations or collective agreements. It considers in the present case that the provisions for notice periods which are to be determined by the mutual agreement of the parties to the employment contract or on grounds set out in the employment contract (under Article 49, paragraph 1(a) and (b) of the TRLET) are not in conformity with Article 4§4 of the 1961 Charter.

The Committee asks for information in the next report on any changes in the situation. It asks in particular for information on dismissal on disciplinary grounds and wrongful dismissal, the special laws to which Article 49, paragraph 1(c), sub-paragraph 1 of the TRLET refers, and whether there is provided for employees to take leave during notice periods to look for new employment. It also asks for information on the notice periods and/or compensation in lieu that apply to the economically dependent self-employed workers referred to in sections 11 and further of Law No. 20/2007 of 11 July 2007 on the status of self-employed workers, the civil servants governed by the Basic Status of Public-sector Employees Act of 12 April 2007 (No. 7/2007) (EBEP), and the domestic employees, performing artists, commercial representatives and dockers covered by the special employment relationship described in Article 2, paragraph 1 of the TRLET.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4§4 of the 1961 Charter on the grounds that:

- the notice period that applies to permanent and fixed-term employment contracts under the following circumstances is not reasonable:
    - dismissal when an employment contract expires or when its objectives are realised;
    - termination of employment contracts based on the death or retirement of an employer who is a natural person or based on the winding up an employer which is a legal person, beyond three years of service;
    - termination of employment contracts for objective reasons, beyond six month of service.
- employees on probationary periods under entrepreneur support contracts may be dismissed without notice;
- notice periods may be left to the discretion of the parties to an employment contract.

Article 4 - Right to a fair remuneration

Paragraph 5 - Limits to wage deductions

The Committee observes that the report submitted by Spain does not contain any information on this provision. It takes note of the information provided in the response of 9 June 2014 to its request for information.

It has concluded from Conclusions IX-2 (1986) onwards that the situation in Spain with regard to the protection of wages was in conformity with Article 4§5 of the 1961 Charter.

The Government's reply to the request for information states that Law No. 35/2010 of 17 September 2010 on urgent labour market reform measures amended Article 26, paragraph 1 of the Workers' Statute (TRLET) to restrict benefits in kind to 30% of pay and to guarantee a cash payment equivalent to the minimum interprofessional wage (SMI). This limit now applies to the special employment relationships described in Article 2, paragraph 1 (a) to (i) of the TRLET.

The Committee notes that Article 26, paragraph 1 of the TRLET also authorises deductions of employees' social contributions and income tax deductions. Article 29, paragraph 1 of the TRLET authorises payment of advances on wages and Article 27, paragraph 2 of the TRLET states that wages up to the level of the SMI are unattachable.

The Committee also notes the UN Committee on Economic, Social and Cultural Rights' concern (Concluding observations of 6 June 2012, §§18 and 21) with regard to the fact that the minimum wage has been frozen at a level that does not allow for a decent standard of living and with regard to**[]** the situation of households being overwhelmed by housing costs after taking mortgages.

The Committee points out that the purpose of Article 4§5 of the 1961 Charter is to ensure that workers who enjoy the protection afforded by this provision are not deprived of their basic means of subsistence (Conclusions XVIII-2 (2007), Poland). It also points out that national laws or regulations, collective agreements or arbitration awards must define the reasons for deductions from pay in a clear and precise manner and the protection must include all forms of deductions from wages.

In order to assess whether this is the case, the Committee asks for updated information on the situation in the next report, particularly on the following aspects: the conditions under which it is permitted for workers to consent to their wages being forfeited, assigned or pledged for the benefit of their employer or third parties; additional grounds for deductions from wages (trade union dues, execution of court decisions or administrative orders, fines for criminal or disciplinary offences (Article 58 of the TRLET), maintenance claims, tax debts or compensation owed, repayment of advances on pay, suspension of contracts (Article 45 of the TRLET), temporary lay-offs (Article 47 of the TRLET), etc.); the limits on the attachment of wages provided for by the Civil Procedure Act of 7 January 2000 (No. 1/2000); and the limits applicable to deductions on concurrent grounds. It asks how deductions in respect of benefits in kind are calculated and whether workers are authorised to waive their right to limited deductions from wages. Lastly, it requests information on the changes made by Order No. 106/2014 of the Minister of Employment and Social Security of 31 January 2014 on the general rules on contributions to the social security scheme, unemployment insurance, protection against reductions in activity and wage guarantee and vocational training funds.

Conclusion

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

Article 5 - Right to organise

The Committee takes note of the information contained in the report submitted by Spain, as well as the comments from the Spanish Trade Union Confederations registered on 4 August 2014 and the Government's response registered on 22 October 2014.

The Committee already examined the situation with respect to the right to organise (forming trade unions and employer associations, freedom to join or not join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. The report indicates that there have been no developments in the framework of the right to organise, which was considered in conformity, with the exception of two issues which prompted the Committee to raise questions in its two previous conclusions. The Committee will therefore only consider the additional information in reply to these questions.

Freedom to join or not to join a trade union

As regards collective bargaining fees (*canon de negociación colectiva*), Section 11 of Organic Law No. 11/1985 on Trade Union Freedom provides that each worker must expressly agree in writing to the payment of such fees. In its previous conclusion, the Committee asked for information on how frequently these fees were collected and what their amount was. The report does not indicate the frequency of collection of fees and states that the amount of the fee is relatively low without providing any specific figure. Therefore, the Committee reiterates its questions and requests further details.

Trade union activities

The Committee previously noted that, under Section 9.1 of Organic Law No. 11/1985 on Trade Union Freedom, elected representatives of the most representative trade unions must be given access to the workplace to take part in trade union activities or those of the employees as a whole. The Committee asked what the situation was for representatives of other trade unions in terms of access to the workplace. The report underlines that notwithstanding the above mentioned article, there is nothing preventing workers in the company or workplaces who are members of a trade union that is not classified as most representative from setting up a trade union branch, under Article 8.1 of Organic Law No. 11/1985 on Trade Union Freedom. In practice this means the presence in the workplace of any trade union organisation, regardless of its level of representation. More specifically, the report mentions Article 8.5 of Royal Legislative Decree 5/2000 which classifies the prevention of access to workplaces for a trade union organization that is not considered as most representative as a serious infringement of labour law.

The Committee takes note of the view expressed by the Spanish Trade Union Confederations, stating that the strategy of the Government with regard to Public Administrations aims at weakening the trade unions by reducing their power to act and influence workplaces as well as lowering their prominence in the right to collective negotiation.

The Committee asks the Government to provide comments on the above mentioned statement as well as to provide further information on the legislation and agreements mentioned in its reply to the Spanish Trade Union Confederations.

Conclusion

Pending receipt the information requested, the Committee concludes that the situation in Spain is in conformity with Article 5 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 1 - Joint consultation

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

The report indicates that procedures for joint consultation between workers and employers operate in the National Consultative Commission on Collective Agreements, which is a tripartite collegiate body created by the Workers' Statute in 1980. This body answers to the Directorate General for Employment of the Ministry of Employment and Social Security. It is composed of a Chairperson, 18 members (6 representing the central government, 6 representing the main employers' organisations and 6 the main trade unions) and a Secretary.

Originally, the aim of this body was solely to advise and consult the parties in collective bargaining. With time it has assumed other functions such as acting as an observatory for the collective bargaining process in charge of collecting information, studies and documents and promoting them. More recently, under Royal Decree-Law No. 3/2012 it acquired a new function consisting of the resolution of disagreements between the parties. This Decree-Law deals with the non-application of employment conditions included in the collective agreement in question when the parties cannot agree.

Conclusion

The Committee concludes that the situation in Spain is in conformity with Article 6§1 of the 1961 Charter.

Article 6 - Right to bargain collectively

Paragraph 2 - Negotiation procedures

The Committee takes note of the information contained in the report submitted by Spain, as well as of the comments from the Spanish Trade Union Confederations registered on 4 August 2014 and of the Government's response registered on 22 October 2014.

The Committee notes that the rules governing collective bargaining were subject to change during the reference period with the enactment of Royal Decree-Law No. 7/2011, and Royal Decree-Law No. 3/2012 which was subsequently translated into Act No. 3/2012 with amendments tabled by the Parliament.

The Committee notes the comments from the Spanish Trade Union Confederations, registered on 4 August 2014, which state that during the preparation of the Royal Decree-Law No. 3/2012 of 10 February on urgent measures to reform the labour market there was no consultation or negotiation of any kind with the trade unions. The Committee notes that a number of technical meetings took place following the promotion of the Royal Decree-Law, but that no consultation occurred prior to its promulgation. It also notes that this Law was the subject of a complaint to the ILO, which published its conclusions and recommendations in the 371st report of the Committee on Freedom of Association.

The Committee notes the comments from the Spanish Trade Union Confederations concerning the consequences that Royal Decree-Law 3/2012 had on the content of the "Second Agreement for Employment and Collective Bargaining 2012, 2013 and 2014" (2nd AENC) signed on 25 January 2012 by the trade unions and employers' organisations.

In its response, registered on 22 October 2014, the Government underlines that this Decree-Law has been issued in a situation of emergency in accordance with Article 86 of the Constitution, which justifies the adoption of such an instrument. Moreover, it makes reference to Royal Decree-Law No. 7/2011 of 10 June 2011, which already dealt with urgent measures to reform collective bargaining to show that the lack of agreement between the social partners on an agreed reform of collective bargaining was well known. Finally, it quotes the Constitutional Court, which in its Ruling states that the Constitution does not establish a specific model for collective bargaining and that this latter may be subject to limitations, as in the present case, if there exists a legitimate purpose to safeguard other constitutional rights, the limitations are reasonable and the requirements of proportionality are met.

The Committee considers that measures aimed to consolidate public finances, to ensure the financial viability of pension schemes or to encourage employment could be legitimate in times of economic crisis but "should not have as a consequence the reduction of the protection of the rights recognised by the Charter. Hence, the governments are bound to take all necessary steps to ensure that the rights of the Charter are effectively guaranteed at a period of time when beneficiaries need protection the most" (General Introduction to Conclusions XIX-2, 2009).

The Committee furthermore recalls that when issuing provisions that will restrict the rights guaranteed in the 1961 Charter, the state parties must pursuant to Article 31 of the 1961 Charter be capable of establishing that any restrictions or limitations are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals and thus in line with Article 31 (Collective Complaint no. 80/2012, *Pensioners' Union of the Agricultural Bank of Greece (ATE)* v. Greece).

The Committee notes that in relation to the government's claim that the urgency of the situation required legislation without consultation, the economic crisis had affected the country beginning

in 2008, when unemployment rose from 11.3% to 17.9% in 2009 according to Eurostat data. With regard to the period preceding the adoption of Royal Decree 3/2012, unemployment rose from 19.9% in 2010 to 21.4% in 2011. Furthermore, the Committee notes that both Royal Decree-Law No. 7/2011 and the 2nd AENC already dealt with issues related to collective bargaining and working conditions. The Committee also notes the Conclusions of the ILO Committee on Freedom of Association, which stressed that decisions on negotiation procedures should be arrived at through social dialogue. It therefore considers that the government's reasons do not supply sufficient grounds for derogation from the principals of voluntary negotiations through failure to consult on the reforms which govern negotiation procedures. The Committee recalls that the Contracting States undertook actively to promote the conclusion of collective agreements (Statement of Interpretation on Article 6§2, Conclusions I (1969)). It also recalls that Article 6§2 entails the obligation to arrange for the participation of those concerned, through the intermediary of their representatives, in the drafting of the regulations which are to apply to them (Conclusions III (1973), Germany).

The Committee has explicitly considered that there are measures that could be taken to combat the economic crisis and its effects, which are not contrary to the Charter (Collective Complaint no. 80/2012, *Pensioners' Union of the Agricultural Bank of Greece (ATE)* v. Greece, §66). Taking into consideration the provisions of Article 31 of 1961 Charter mentioned above, the Committee considers in this context that the measures taken in Spain are disproportionate to the aims pursued and therefore they do not comply with the conditions established by Article 31 of the 1961 Charter.

Through the failure to consult the most representative trade unions or employers' organisations in the drafting of the Royal Decree-Law No. 3/2012, which fundamentally affects the regulation of collective bargaining and working conditions, the Committee considers that the government has failed to promote voluntary negotiation. In this respect, the situation is not in conformity with article 6§2 of the 1961 Charter.

It notes the Government's averment that the 2nd AENC was not repealed, but considers that where the Royal Decree Law No. 3/2012 differs in substance from the 2nd AENC on any issue, the agreement shall cease to have application and therefore is effectively repealed insofar as it provided alternative conditions.

The Committee also notes that according to the comments from the Spanish Trade Union Confederations, the new drafting of Article 84.2 of the Workers' Statute establishes the primacy of the company-level collective agreement as against collective agreements of a broader scope.

In its response, the Government first stresses the limited nature of the priority, which does not represent a "primacy". Second, it explains that the priority is not arbitrary but responds to the need to allow a series of matters to be preferably negotiated at company level because this latter constitutes the most appropriate level. Third, it makes reference to the Ruling of the Constitutional Court dated of 16 July 2014, which states that the right to collective bargaining is a right that is implemented by law and that it is up to the legislature to order the results of the bargaining process and determine the rules of concurrence and organization of the agreements. The legislature may therefore as in the present case extend or restrict the margin of intervention of collective autonomy.

The Committee asks for information on the practical implementation of this rule and for confirmation that the matters negotiated at company level may not be applied detrimentally to the worker where a state level collective agreement is in place. In the meantime, it finds that the provision for establishment of "primacy" does not overly restrict the right to collective bargaining, as it still allows trade unions to decide which industrial relationships they wish to regulate in

collective agreements and at what level these agreements should be made, therefore it falls within the margin of appreciation of the State party.

The Committee further notes from the comments of the Spanish Trade Union Confederations that according to the new drafting of Article 41 of the Workers' Statute the employer is unilaterally allowed not to apply the working conditions previously agreed with the workers' representatives in company level pacts and agreements.

In reply, the Government makes the following statements concerning the substantial modifications of working conditions:

- if they are collective in nature, pursuant to the Workers' Statute there is a consultation period with the workers' representatives on the circumstances involved;
- a collective claim may be made against decisions adopted by the employer;
- an individual claim before employment courts is possible if the decisions adopted are individual in nature.

The Committee considers that the employment court would be bound by Article 41 of Act No. 3/2012 to accept that significant changes in the working conditions, on "economic, technical organizational or production-related grounds" (as defined in article 82(3)), are lawful. This law does not adequately define the bases for unilateral disapplication. The Committee asks for examples or case-law interpreting this Article so as to establish what these grounds include. However, it considers that the collective or individual right to appeal to an employment court following decisions by the employer to suspend or disapply matters contained within a collective agreement is not sufficient to prevent the undermining of voluntary negotiation procedures. Furthermore, following the consultation period mentioned by the Government, which may not apply in every case, if no agreement has been reached the employer may still unilaterally apply the changes. The legitimation of unilateral derogation from freely negotiated collective agreements is in violation of the obligation to promote negotiation procedures. Accordingly, the Committee finds that the situation is in violation of Article 6§2 of the 1961 Charter on this point.

Finally, the Spanish Trade Union Confederations state that the interference of the public authorities in the validity of the collective agreements negotiated before the labour reform measures is not in conformity with Article 6§2 of the 1961 Charter. It stresses that this is due to the modification of Article 86.3 of the Workers' Statute, which eliminates the previous provision that maintained the validity of a collective agreement until it was replaced by a new one.

In its response, the Government stresses that the principle of the extension of collective agreements does not disappear with the 2012 labour reform. The reform only limits the duration of the extension period to one year following the denunciation of the agreement, unless the parties agree otherwise.

The Committee considers that the automatic termination of a collective agreement where the parties have failed to agree to its continuance and failed to conclude a replacement agreement within one year of its denunciation is not in violation of the right to bargain collectively.

As to the public sector, the Committee notes the adoption and entry into force of Act **No.** 7/2007 of 12 April 2007 on the Statute of Public-Sector Employees, which:

- provides for public employees' right to collective bargaining, representation and participation in the determination of their working conditions;
- establishes that General Platforms of Public Administration be created;
- regulates issues concerning representation of civil servants and their election.

The Committee also notes from the report the adoption of the III Single Collective Agreement for non-civil service staff in the General Administration of the State on 31 July 2009. This

Agreement maintains the same rights to negotiation, representation and participation of the staff as the previous agreement.

In its previous conclusion, the Committee asked to be provided with details on the implementation of the above mentioned legislative developments. In this regard, the report mentions some recent measures adopted on collective bargaining within the public administration services:

- the creation of the Commission for equality between Women and Men in the public administration services on 27 January 2010, which is in charge of negotiating all the questions referring to equality that may affect public sector employees;
- the manifesto of 25 October 2012 of the Secretariat of State for Public Administrations and several trade unions (e.g. CC.OO, UGT, etc) on the following issues: opening of different Negotiation Boards and technical committees in order to boost areas such as training, prevention of occupational risks, social responsibility and equal opportunities; progress on the structure of collective bargaining; rationalisation of trade union resources; improvement of communication of public sector employees with citizens; etc;
- the agreement of the General Negotiation Board on 29 October 2012 with respect to the allocation of resources and streamlining of negotiations and participation structures.

According to Eurostat it is estimated that about 57.8% of the workforce is covered by collective agreements.

The Committee notes that Royal Decree **No.** 718/2005 of 20 June 2005 regulates the extension of collective agreements.

The Committee recalls that the extension of collective agreements "should take place subject to tripartite analysis of the consequences it would have on the sector to which it is applied".

It wishes the next report to provide information on the provisions of the Royal Decree **No.** 718/2005 related to the extension of collective agreements and on its implementation.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 6§2 of the 1961 Charter on the following grounds:

- Legislation was passed which affects the right to bargain collectively, without consultation of trade unions and employers' organisations.
- Act 3/2012 allows employers unilaterally not to apply conditions agreed in collective agreements.

Article 6 - Right to bargain collectively

Paragraph 4 - Collective action

The Committee takes note of the information contained in the report submitted by Spain, as well as of the comments from the Spanish Trade Union Confederations registered on 4 August 2014 and of the Government's response registered on 22 October 2014.

Collective action: definition and permitted objectives

The Committee previously examined the situation under these headings and found that it was in conformity with the 1961 Charter. The report indicates that there has been no change to this situation.

Entitlement to call a collective action

The Committee previously examined the situation under these headings and found that it was in conformity with the 1961 Charter. The report indicates that there has been no change to this situation.

Specific restrictions to the right to strike and procedural requirements

The Committee recalls that pursuant to Section 10.1 of Royal Legislative-Decree No. 17/1977 of 4 March 1977 the Government may impose arbitration to end a strike in exceptional circumstances, namely when it considers that there is a threat to the rights and freedoms of others because a strike had gone on for too long, the parties' positions were irreconcilable and too much damage was being done to the national economy. According to a Supreme Court judgment of 9 May 1988, a situation permitting Government interference has to be exceptional, or there must be a cumulative series of circumstances, all of which have to be considered by the Government, before it can make use of its exceptional discretionary power.

The Committee recalls that imposing arbitration to end a strike can only be in conformity with Article 6§4 of the Charter if its falls within the limits of Article 31 of the 1961 Charter. Restrictions on the right to strike fall within the limit of Article 31 of the 1961 Charter if they are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others, or for the protection of public interest, national security, public health or morals.

In its last conclusion (Conclusions XIX-3 (2010)), the Committee found that Royal Decree-Law 17/1977 allowed the use of obligatory arbitration in circumstances that exceeded the limits established by Article 31 of the 1961 Charter.

The report states that there has been no change in this respect, therefore the Committee considers that the situation is still not in conformity with the 1961 Charter.

The Committee takes note of the comments from the Spanish Trade Union Confederations stating that the criminalization of trade union activity in the form of informative picket lines in the course of a strike is disproportionate and unjustified and therefore constitutes an infringement of Article 6§4 of the 1961 Charter.

The Committee asks the Government to provide information and comments in relation to the above mentioned matter.

Consequences of a strike

The Committee notes that there have been no changes to the situation under this heading which it previously held to be in conformity with the 1961 Charter.

Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 6§4 of the 1961 Charter on the ground that legislation authorises the Government to impose compulsory arbitration to end a strike in cases which go beyond the derogations permitted by Article 31 of the 1961 Charter.

Article 2 of the 1988 Additional Protocol - Right of workers to be informed and consulted

The Committee takes note of the information contained in the report submitted by Spain, as well as of the comments of the Spanish Trade Union Confederations registered on 4 August 2014 and of the Government's response registered on 22 October 2014.

It takes note of the legislative changes which have occurred during the reference period.

Article 2 of the Additional Protocol to the 1961 Charter provides for the right of employees and/or their representatives, be they trade unions, staff committees, works councils or health and safety committees, to be informed of any matter that could affect their working environment, unless the disclosure of such information could be prejudicial to the undertaking. They must also be consulted in good time on proposed decisions that could substantially affect their interests, particularly ones that might have a significant impact on the employment situation in their undertaking.

States may exclude from the scope of this provision those undertakings employing less than a certain number of workers, to be determined by national legislation or practice. In this regard, the Committee considers that minimum thresholds such as those permitted by Directive 2002/14/EC – undertakings with at least 50 employees or establishments with at least 20 employees in any one EU member state – are in conformity with this provision.

In this context, the Committee points out that all categories of worker (all employees holding an employment contract with the company regardless of their status, length of service or place of work) must be included in the calculation of the number of employees enjoying the right to information and consultation (see judgments of the Court of Justice of the European Union, *Confédération générale du travail and Others*, Case No. C-385/05 of 18 January 2007, and *Association de médiation sociale,* Case No. C-176/12 of 15 January 2014).

The Committee notes that Law No. 38/2007 of 16 November 2007 brought the Workers' Statute into line with Directive 2002/14/EC. Article 4 of this law provides that the right to be informed, consulted and to take part in the company constitutes a basic labour right. The Committee reiterates its request concerning the personal scope of the legislation, particularly as regards the calculation of the minimum thresholds mentioned above.

The Committee takes note of the statistics provided by the Labour and Social Security Inspectorate in its supervisory action relating to the right of representation of workers and trade unions. In 2012, 4 303 inspections have been carried out and 1 434 injunctions have been imposed.

With respect to public administration, the Committee notes the comments from the Spanish Trade Union Confederations, registered on 4 August 2014, which state that:

- pursuant to Royal Decree-Law No. 20/2012 there has been a reduction in the single-person representative bodies for public employees;
- the failure to convene participation bodies such as the Public Employment Observatory, the Commission for Equality, etc. has prevented trade unions from their right to information and consultation;
- the use of data protection legislation has restricted trade unions' access to information on working conditions;
- the use of outsourcing procedures for public services and privatization processes took place without any prior dialogue with the trade unions.

The Committee therefore asks the Government to provide information on the applicable legislation mentioned above and its implementation.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 2 of the Additional Protocol to the 1961 Charter.

Article 3 of the 1988 Additional Protocol - Right of workers to take part in the determination and improvement of working conditions and working environment

The Committee takes note of the information contained in the report submitted by Spain, as well as of the comments of the Spanish Trade Union Confederations registered on 4 August 2014 and of the Government's response registered on 22 October 2014.

The Committee assessed the situation as regards workers' right to take part in the determination and improvement of the working conditions and working environment in its previous conclusions (Conclusions XVI-2 (2003), XVIII-2 (2007) and XIX-3 (2010)) and considered it to be in conformity with Article 3 of the Additional Protocol to the 1961 Charter. Therefore it will only consider recent developments in law and practice in this conclusion. However, the Committee asks that the next report provide a full and up-to-date description of the situation.

The Committee recalls that according to the Appendix, Article 3 of the Additional Protocol to the 1961 Charter "(...) affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of bodies in charge of monitoring their application" and that the right of workers' representatives to consultation at the enterprise level in matters of health and safety at the workplace is equally dealt with by Article 3 of the Charter. For the States who have accepted Articles 3 and 22, this issue is examined only under Article 3 of the Additional Protocol to the 1961 Charter. The Committee recalls that for the States who have accepted Articles 3 and also Article 3 of the Additional Protocol to the 1961 Charter, this issue is examined only under Article 3 of the Additional Protocol to the 1961 Charter.

The general legislation with respect to health and safety protection within the company is Law No. 31/1995 of 8 November 1995 on the Prevention of Occupational Risks, which provides for the right of workers to an effective protection against occupational risks through information, consultation and participation in the decision-making process. In addition the report refers to a list of specific legislation implementing this Law, such as the Royal Legislative Decree No. 5/2000, which states that the non-observance of this Law by the employer constitutes an infringement and is subject to a fine ranging from €2 046 to €819 780 depending on the seriousness of the infringement.

With regard to the public administrations, the Committee notes the comments from the Spanish Trade Union Confederations, registered on 4 August 2014, which state that the Royal Decree No. 67/2010 on the adaptation of occupational risk prevention legislation to the General State Administration did not receive any support from trade unions. It also notes from these comments that trade unions did not participate to the reform contained in Article 9 of Royal Decree Law No. 20/2012, which "drastically" reduces the remuneration of public employees when they are in a situation of temporary sick leave arising out of ordinary contingencies (i.e. accidents and common illnesses), by reducing and eliminating Social Action Funds. The Committee therefore asks the next report to provide information on these issues.

The Committee also asks to be informed about the national legislation and practice in respect of the organisation of social and socio-cultural services and facilities within the enterprise, and the supervision of the observance of regulations on this issue.

Conclusion

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 3 of the Additional Protocol to the 1961 Charter.