March 2019

# 1961 European Social Charter

## European Committee of Social Rights

## Conclusions XXI-3 (2018)

# SPAIN

*This text may be subject to editorial revision.*

The following chapter concerns Spain which ratified the 1961 Charter on 6 May 1980. The deadline for submitting the 30th report was 31 October 2017 and Spain submitted it on 14 November 2017.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 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 provisions from the above-mentioned group.

The reference period was 1 January 2013 to 31 December 2016.

The conclusions relating to Spain concern 17 situations and are as follows:

– 8 conclusions of conformity: Articles 2§2, 2§5, 4§3, 4§5, 5, 6§1 and Articles 2 and 3 of the Additional Protocol;

– 7 conclusions of non-conformity: Articles 2§1, 2§3, 4§1, 4§2, 4§4, 6§2 and 6§4.

In respect of the other 2 situations related to Articles 2§4 and 6§3 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 Charter. The Committee requests the authorities to remedy this situation by providing the information in the next report.

During the current examination, the Committee noted the following positive developments:

**Article 2§4**

The Royal Decree 299/2016 on the protection of health and safety for workers who face the risks of exposure to electromagnetic fields, further strengthened the specific protection, in addition to the general Law No. 31/1995 on the prevention of occupational risks.

**Article 2 of the Additional Protocol**

In the field of public administrations, Spain signed on 21 December 2015 the "Framework Agreement on information and consultation rights for central governments administrations". The Sectorial Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety.

**Article 3 of the Additional Protocol**

The Royal Decree 1084/2014 of 19 December 2014 amending the Royal Decree 67/2010 of 29 January 2010 on the adaptation of the legislation on the prevention of occupational risks to the general administration of the State has intervened to amend the legislation on the participation of workers in the determination and improvement of working conditions. This amendment is essentially in response to the decision of the General Bargaining Committee of the General State Administration, adopted on October 29, 2012, regarding the allocation of resources to the bargaining and participation structures and the streamlining of these structures. The decision concerns on the one hand the election of the delegates to the prevention and the credits of hours which they benefit and, on the other hand, the committees of safety and health at work, which must adapt, except in the cases provided for

in the said royal decree, to the new definition of "workplace" according to which it constitutes the new electoral unit.

The agreement of the General Negotiating Committee of the General State Administration is also at the origin of the provisions contained in Royal Decree-Law 20/2012 of 23 July 2012 adopting measures to guarantee budgetary stability and to encourage competitiveness. Specifically, Article 10 of this text designates the General Negotiating Committees as the responsible bodies for agreements in this area, in particular as regards the exercise of representational and negotiating functions.

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The next 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 of maternity (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 2018.

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Conclusions and reports are available at www.coe.int/socialcharter as well as in the HUDOC database.

**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 27 April 2018 and in the Government's reply to these comments of 27 June 2018.

The Committee noted previously that under Section 34(2) of the Workers' Statute, an irregular distribution of working hours over the year may 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 time respect minimum legal daily and weekly rest periods (Conclusions XX-3 (2014)).

In its previous conclusion (Conclusions XX-3), the Committee recalled that flexibility measures regarding working time are not as such in breach of the Charter. It recalled (*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:

- 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.
- 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.
- 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 part on *weekly working time,* below.

As regards the precise legal framework under which flexible working time arrangements operate, the Committee asked how often the employer, in the absence of a collective agreement, had taken a unilateral decision to redistribute 10% of the working hours (Conclusions XX-3 (2014)). No such information is provided in the national report. The Committee reiterates its question.

As regards the reference period, the Committee noted that the Workers' Statute still provided for one year reference periods, as a general rule. The Committee asked 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 (Conclusions XX-3 (2014)). In the absence of such information, the Committee reiterates its question.

In its previous conclusion, the Committee noted 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 concluded that the situation in Spain was 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 (Conclusions XX-3 (2014)).

The current report indicates that the services of the Labour and Social Security Inspectorate wish to emphasize that the possibility of weekly hours of over 60 hours is more theoretical than real, and that inspections carried out on companies have not revealed such practices.

The Committee understands, however, that the situation in law which it has previously found not in conformity with the Charter has not changed and therefore it reiterates its previous finding of non-conformity.

The current report provides information on the legal framework applicable to civil servants as well to contractual employees of general administration of state. The working time of employees of the general administration of state and its public bodies has been established at 37 hours and 30 minutes on average per week or one thousand six hundred and forty-two hours a year.

The Committee asked previously 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 (Conclusions XX-3 (2014)). The current national report does not provide any information on this point. The Committee reiterates its question**.**

The Committee takes note of the information provided by the Spanish Confederation of trade unions according to which in Spain many workers or groups of workers carry out on-call duties to meet the requirements of the company. Given that they are not present at their place of work, this period is not considered as actual working time. Section 34.5 of the Workers' Statute provides that "working time is calculated so that at the beginning and at the end of the working day the worker is at his workplace" (which associates working time with physical presence in the workplace). The Committee asks for further information on this point, including data on the situation in practice in the next report.

*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 and of the fact that there had been no changes to the situation, which it previously had considered to be in conformity with the Charter (Conclusions XX-3 (2014)).

*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.

In its previous conclusion (Conclusions (XX-3) 2014), the Committee asked for confirmation whether the law provided for the possibility of taking unused leave at a later date in non-maternity-related cases of temporary incapacity. The report confirms that annual leave, which could not be taken due to illness or accident, may be carried over for a maximum period of 18 months. The Committee considers that the situation is in conformity with the 1961 Charter in this respect.

The Committee also asked whether the requirement that one of the periods of leave must last two weeks or more, so that the employee can enjoy an uninterrupted period of rest of at least two weeks, was respected in all cases. The report states that in Spain annual leave must be taken in installments of at least five uninterrupted working days. The Committee considers the situation not to be in conformity with Article 2§3 of the 1961 Charter on this ground.

*Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 2§3 of the 1961 Charter on the ground that **not all employees have the right** to take at least two weeks of uninterrupted holiday during the year.

**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 Parties 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 and secondly what compensatory measures are applied to workers exposed to risks which cannot be or have not yet been eliminated or sufficiently reduced either despite the effective application of the preventive measures referred to above or because they have not been applied.

***Elimination or reduction of risks***

As regards the aspect of progressive elimination of the inherent risks in dangerous or unhealthy occupations, the Committee refers to its findings of conformity in the conclusion under Article 3§1 of the 1961 Charter (Conclusions XX-2(2013) and XXI-2(2017)) for a description of dangerous activities and the preventive measures taken in their respect. In the reference period, the Royal Decree 299/2016 on the protection of health and safety for workers who face the risks of exposure to electromagnetic fields, further strengthened the specific protection, in addition to the general Law No. 31/1995 on the prevention of occupational risks. The Committee considers that the situation is in conformity with the 1961 Charter on this point.

***Measures in response to residual risks***

In its previous conclusion (Conclusions XX-3 (2016)), the Committee noted that the Law No. 31/1995 and the Royal Decree No. 1561/1995 on working time, together with implementing decrees for various specific hazardous occupations, all provide for limitation of exposure time and/or adjustment of working hours, whenever it is impossible to protect the worker from the harmful effects of working conditions, despite the application of occupational safety and health measures. The Committee further noted provisions on specific limitations of the working day indicating maximum number of hours in work with exposure to environmental risks, in farm and field work, in mining and other underground work and in work carried out in cold thermal environments (e.g. cold stores, chambers and freezing facilities) and requested more detailed information on their actual application. It also asked about limitations of the working time for other workers engaged in unhealthy occupations. Finally, the Committee reiterated its previous question whether any regulations or collective agreements provide for additional paid leave.

In response, the report recalls provisions on the reduction of working time applicable to in some fields of occupational risk: i.e. in rural areas working day in unusal conditions of temperature or humidity cannot exceed 6 hours and 20 minutes a day, maximum duration of working time for minors is 5 hours, workers exposed to freezing temperature in cold chambers are entitled to 15-minute recovery time every fourty-five minutes and cannot work longer than six hours a day. The report also provides information on maximum hours of work for night workers exposed to significant levels of stress.

The report does not provide information as to whether workers exposed to harmful conditions are granted additional paid annual leave. The Committee recalls that the 1961 Charter is focused on measures taken in response to residual risks and explicitly requires the State Parties to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations.

In this regard, the Committee asks the next report to provide detailed information and statistical data, where possible, on the application of reduced working hours and/or other preventive measures or any other measures responding to residual risks (for instance shifts, rotation of workers, etc), as well as on other types of workers exposed to residual risks, beyond those already mentioned. The Committee also asks for updated information on the activities of the labour inspection in supervising compliance with relevant measures reducing the length of exposure to risks, in particular the rules on reduced working hours, additional paid holidays or other. Should the next report not provide comprehensive information on these issues, there will be nothing to show that the situation is in conformity with the 1961 Charter on this point. Meanwhile, the Committee reserves its position.

*Conclusion*

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

**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.

As no new information was provided on Article 2§5 of the Charter, the Committee assumes that the situation, which it has previously found to be in conformity with the Charter, has not changed. It thus asks that the next report confirms this assumption and provides a full and up-to-date description of the situation in law and practice in respect of Article 2§5.

*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 notes the information in the Spanish report. It also notes the information in the comments submitted by the *Confederación Sindical de Comisiones Obreras* (CCOO) and the *Unión General de Trabajadores* (UGT) of 27 April 2018 and the government's reply of 27 June 2018.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee found that the situation was not in conformity with Article 4§1 of the 1961 Charter on the grounds that (1) the minimum wage for workers in the private sector did not secure a decent standard of living, and (2) the minimum wage for contractual staff in the civil service did not secure a decent standard of living. It had previously requested information on the net minimum and average wages.

The Committee notes from the report that Royal Decree 1717/2012 of 28 December 2012 set the minimum interprofessional wage at € 645.30 per month (€ 9 034.20 over 14 months) in 2013. It was raised to € 655.20 (€ 9 172.80 over 14 months) in 2016 by Royal Decree 1171/2015 of 29 December 2015. However, despite repeated requests, the report still fails to provide the requested information on the net minimum and average wages for the reference period.

According to EUROSTAT data, the average annual earnings of single workers without children (100% of an average worker) in 2016 were € 26 710.29 (€ 2 225.86 per month over 12 months) gross and € 20 998.93 (€ 1 749.91 per month over 12 months) net of social security contributions and taxes. The minimum income represented 34.10% of average income.

The Committee observes that, despite repeated requests, there is no information in the report on net minimum and average wages for the reference period. In the light of the report and the EUROSTAT data, the Committee finds that, despite the rise in the minimum wage, the situation remains unchanged and it maintains its previous finding of non-conformity. It therefore again asks for information on the net value of the minimum and average wages.

Turning to the public sector, the report states that the 2016 National Budget Act, law no. 48/2015 of 29 October 2015, re-established the December 2012 end-of-year bonus for public sector staff, which had been abolished in response to the economic crisis.

The report also states that it has been laid down the following basic levels of pay for 2016: € 27 000.68 (€ 1 928.62 € per month over 14 months) for higher level graduate officials; € 22 350.30 (€ 1 596.45 per month over 14 months) for intermediate level graduate officials; € 17 487.40 (€ 1 249.10 € per month over 14 months) for senior technical staff; € 14 623.70 (€ 1 044.55 € per month over 14 months) for clerks; and € 13 835.08 (€ 988.22 per month over 14 months) for ancillary staff.

In the light of the report and the EUROSTAT data, the Committee considers that the minimum salary of tenured civil servants, particularly ancillary staff and clerks, is around 50% of the national net average income. It therefore asks for information in the next report on any transfers or social benefits to which workers paid the national minimum income and their families are entitled. It also asks the next report to provide information on the net average wage for civil servants.

The report supplies no information on the minimum wage for contractual staff in the civil service, from which the Committee concludes that the situation remains unchanged. It therefore maintains its previous finding of non-conformity on this point. It asks the next report to provide information on the net average wage for contractual staff in the civil service.

In its previous conclusion (Conclusions XX-3 (2014)), the Committee requested information on the coverage rates by collective agreements in the private and public sectors and on the agreed minimum wages. It also asked 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). Since the report does not provide the requested information it repeats the question.

*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. 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 27 April 2018 and in the Government's reply to these comments of 27 June 2018.

In its previous conclusion (Conclusions XX-3 (2014)) the Committee held that the situation was not in conformity with the Charter as the Workers' Statute did not guarantee increased remuneration or an increased compensatory time-off for overtime work.

The Committee noted previously that 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 (Conclusions XX-3 (2014)). The current report adds that under Section 35 of the Workers' Statute, workers receive compensation for overtime in the form of equivalent time off paid within four months after completion of overtime work.

The current report provides information concerning overtime work in the public sector and in the General Administration of the State. 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 same collective agreement provides that it may be established by agreement that overtime shall be compensated by means of increased remuneration.

The Committee takes note of the information provided by the Spanish confederation of trade unions according to which a widespread practice of unpaid/uncompensated overtime exists in some sectors, especially in the private field. It is reported that the majority of unpaid overtime is revealed in the private sector of the economy (with 86% of unpaid overtime and 85% of employees who are working overtime). The Committee asks for information on the situation of overtime in the private sector, including data of the labour inspection services.

The Committee observes, however, that the situation in law which it has previously found not in conformity with the Charter has not changed. The Committee recalls that by Article 4§2 of the Charter, the States Parties undertake "to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases." The principle established by this provision is based on the assumption that overtime work requires increased effort on the part of the worker (Conclusions I, Statement of Interpretation on Article 4§2). Therefore, the Committee reiterates its previous finding of non-conformity on the ground that the Workers' Statute does not guarantee increased remuneration or an increased 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 and women men with respect to remuneration*

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

***Legal basis of equal pay***

There are no key changes in the legislation during the reference period, but two new decrees were adopted with positive impact on the fair remuneration principle: legislative royal decree 2/2015, which establishes that all collective agreement, contract or unilateral decision of the employer contrary to the principle of equality and equal pay is null and void; and legislative decree 5/2015, which extends specifically the principle of non-discrimination to public employees.

***Guarantees of enforcement and judicial safeguards***

There are no new elements under this section. In its former conclusions, the Committee considered it to be in conformity with the Charter.

***Methods of comparison***

The Committee had requested information in its Conclusions XX-3 (2014) on out of company pay comparisons. The Committee notes that the report also makes reference to the Constitutional Court case-law, which has held that the information regarding remuneration and economic conditions of workers, falls within the concept of privacy and must be protected. According to this, such confidentiality provisions make it difficult to compare wages across companies.

However, in the report submitted by CCOO, it is raised that this should not be an obstacle for entreprises to provide the information needed on wages, as this should not include the specific data on each worker, but only objective elements concerning the type of job, the sex of the worker, working hours, seniority and other elements relevant to ensure fair remuneration.

CCOO also raises the inadequacy of out of company job comparisons. They raise that the report of the Government explains that pay comparisons are possible in three different types of cases: when several companies are covered by a collective works agreement, insofar as all collective agreements are published; the cases in which the terms and conditions of employment are laid down centrally for more than one company; finally, when the holding itself sets the conditions of the employment contract (and this is not set through a collective agreement), a copy of these contracts are given to the workers' representatives. However, CCOO stresses that the legislation does not ensure the right of workers to access information on the gender pay gap.

***Statistics***

The Committee notes from the Eurostat data that unadjusted Gender Pay Gap in Spain stood at 19.3% in 2013 (the average gender pay gap in the EU is 16.3% int he same period). According to EIGE's report on Spain of 2017, women take important unpaid tasks, and tend to spend longer periods off the labour market than men. Pay discrimination still exists. However, the trend is positive, as Spain has reduced its gender pay gap, which stood at 14.2% in 2016 (when the EU average was 16.2%). The Committee requests further information on the specific measures taken to narrow down the gender pay gap.

***Policy and other measures***

According to the report, a strategic equality plan to reduce inequalities between women and men is in force for the period 2014-2016, with three different main areas of development:

reducing existing inequalities in remuneration; reconciling professional and family life and eliminating violence against women. In public employment, there is full equal access to employment, as well as on the working conditions and professional development. The plan also includes measures to train and raise awareness on equality and fighting discrimination. The Government submits that 60% of transversal measures and 75% of the specific measures on fair remuneration have already been put in place.

*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 in the comments submitted by the *Confederación Sindical de Comisiones Obreras* (CCOO) and the *Unión General de Trabajadores* (UGT) of 27 April 2018 and the government's reply to these comments of 27 June 2018.

The Committee previously concluded (Conclusions XX-3(2014)) that the situation was not in conformity with Article 4§4 of the 1961 Charter on the grounds that:

- the notice period that applies to permanent contracts is unreasonable in the following circumstances:
    - dismissal when an employment contract expires or when its aims have been achieved;
    - termination of employment contracts on the death or retirement of employers who are natural persons or on the winding up of employers which are legal persons, for employees with more than three years' service;
    - termination of employment contracts for objective reasons for employees with more than six months' 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.

The Committee notes that the *Confederación Sindical de Comisiones Obreras* (CCOO) and the *Unión General de Trabajadores* (UGT) commented that, to date, neither domestic legislation nor national practices had resolved these issues, and that temporary workers had no guarantee of a minimum notice period in the event of the termination of the employment relationship. Labour legislation had not rectified the shortcomings observed by the Committee in the past. The situation today remained unchanged, without any measures having been taken to prevent a violation of the Charter.

In its reply to these observations, the Government argues that:

- For temporary contracts lasting more than a year, the minimum notice period is a fortnight;
- In the event of the cessation of the legal personality of the contracting party , the notice period is a fortnight;
- In the event of termination of contract due to death, incapacity or retirement of the employer, there is no notice period.

The Committee considers that the situation is still not in conformity on the grounds that a two week notice period for workers with more than 6 months service in not reasonable.

Furthermore, the Committee reiterates that Article 4§4 does not apply in cases of dismissal alone; it also applies to any termination of employment resulting from the bankruptcy, incapacity or death of the employer who is a natural person (Conclusions XIV-2 (1998), Spain). It observes that there is no notice period in the event of termination of contract following the employer's death or incapacity, which constitutes a ground for non-conformity with Article 4§4 of the 1961 Charter.

*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:

- Notice period of two weeks is unreasonable for workers with more than 6 months service;
- there is no notice period in the event of the employer's death or incapacity or for workers on probation.

**Article 4 - Right to a fair remuneration**

*Paragraph 5 - Limits to deduction from wages*

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

In its previous conclusion (Conclusions XX-3 (2014)), the Committee noted that the report did not contain information on this provision and decided to postpone its decision. It pointed out, however, that since the Conclusions IX-2 (1986) the situation in Spain with regard to wage protection had been in conformity with Article 4§5 of the 1961 Charter. The Committee had, nonetheless, asked for updated information on the situation, particularly on the conditions under which it was permitted for workers to consent to their wages being forfeited, assigned or pledged for the benefit of their employer or third parties; on additional grounds for deductions from wages; and on limits on the attachment of wages.

The Committee notes the comments submitted on 27 April 2018 by the Confederación Sindical de Comisiones Obreras (CCOO) and the Unión General de Trabajadores (UGT) that there was no rule limiting the wage deductions that a company may apply when it considers that an employee personally owes it money. Wage deductions are thus used as a way of offsetting this supposed debt. The CCOO and the UGT called upon the Committee to conclude that the situation in Spain was not in conformity with Article 4§5 of the Charter given that the legislation did not guarantee that:

- companies could not make deductions from wages on the ground of an employee's presumed debt without a court's intervention,
- the amount of the deductions was confined to a sum enabling the worker to retain a decent standard of living, i.e. at least the minimum salary or an amount proportionate to their family status.

The Government's report and reply to these comments state as follows:

Under Article 27 point 2 of of the Workers' Statute, read together with Article 607 of the Law on civil proceedings, the portion of wages, emoluments, pensions, remunerations or their equivalent corresponding to the amount of the minimum salary cannot be attached. Remunerations exceeding the minimum salary may be attached in accordance with tranches and scales, from 30 to 90% for the wages amounting to more than five times the amount of the minimum salary. The relevant decision may be appealed before the courts.

Under Article 3.5 of the Workers' Statute workers cannot validly waive the rights conferred upon them under mandatory legal provisions, whether before or after they have acquired them. Nor can they validly waive rights for which no waiver exists under the terms of a collective agreement.

Under Article 58.3 of the Workers' Statute sanctions which reduce an employee's annual leave and financial penalties are prohibited.

The procedure for reimbursing advance salary payments is laid down in the applicable collective agreement or, failing that, in the agreement reached between employer and employee. It is an "advance payment" of the salary to which employees are entitled based on the hours worked, that it is therefore not a loan granted by the employer and cannot give rise to additional costs or interest.

Lastly, the authorities point out that the Labour and Social Security Inspectorate supervises and monitors the observance of regulations governing employment relationships (including with regard to wages) and social security and ensures that workers receive their correct remuneration in terms of both frequency and the amount established by law or by a collective agreement. The Inspectorate systematically verifies that deductions made from workers' wages with respect to contributions are correct.

In view of this information, the Committee concludes that the legislation provides for limits on the wage deductions in a clear and precise manner and that this procedure is conducted under a judicial control. The Committee considers that the legislation in place establishes

effective protection regarding wage deductions in accordance with Article 4§5 of the 1961 Charter.

*Conclusion*

The Committee concludes that the situation in Spain is in conformity with Article 4§5 of the Charter.

## Article 5 - Right to organise

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

The Committee has examined the situation with respect to the right to organise (forming trade unions and employers' organisations, freedom to join or not to join a trade union, trade union activities, representativeness, and personal scope) in its previous conclusions. It will therefore only consider recent developments and additional information in this conclusion.

The Committee previously found the situation to be in conformity. The Committee notes from the report that there has been no change to the situation.

### *Personal scope*

The Committee refers to the general question on the right of members of the armed forces to organise.

*Conclusion*

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 Committee previously found the situation to be in conformity with the Charter. The report indicates that there has been no change to this situation. Therefore the Committee reiterates its previous conclusion.

*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 the comments from the Spanish Trade Union Confederations registered on 27 April 2018 and the Government's response registered on 27 June 2018.

The Committee previously considered that 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 affected the regulation of collective bargaining and working conditions was not in conformity with article 6§2 of the 1961 Charter (Conclusions 2014).

The Committee recalls that this was a one off, and it has no information that such a situation repeated itself during the reference period, although the legislation remains in force.

The Committee further previously noted that the new Article 84§2 of the Workers' Statute establishes the primacy of the company-level collective agreement as against collective agreements of a broader scope.

The Committee asked 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 found 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 (Conclusions 2014).

The report provides no real information in this respect. According the Spanish Trade Union Confederations enterprises have used this provision in order to derogate from standards set by sectoral level agreements, without the enterprise have to justify such the necessity of such a measure by reference to its economic situation.

The Committee requests the next report to provide complete information on under what circumstances may a company level agreement have primacy over a sectoral or national level agreement and to what extent.

The Committee further found the situation not to be in conformity with Article 6§2 of the Charter on the grounds that according to the amended Article 41 of the Workers' Statute an employer is unilaterally allowed not to apply the working conditions previously agreed with the workers' representatives in company level pacts and agreements (Conclusions 2014).

According to the information in the report and from the Spanish Trade Union Confederations there has been no change to this situation. Therefore the Committee reiterates its previous conclusion.

The Committee notes that there was a slight increase in the number of collective agreements in force during the reference period (albeit at the company level). However it wishes the next report to indicate what proportion of workers are covered by a collective agreement.

*Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 6§2 of the 1961 Charter on the ground that legislation permits employers unilaterally not to apply conditions agreed in collective agreements.

**Article 6 - Right to bargain collectively**

*Paragraph 3 - Conciliation and arbitration*

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 27 April 2018 and the Government's response registered on 27 June 2018.

The Committee previously concluded that the situation was in conformity with the Charter pending further information on the implementation of Article 82.3 of the Workers statute, as amended by Law No 3/2012 (Conclusions 2014).

The Committee recalls that the Spanish Trade Union Confederations alleged that Article 82.3 of the Workers' Statute Act imposes compulsory arbitration either by the National Consultative Commission on Collective Agreements (CCNCC) or by the equivalent body in the autonomous regions for the purpose of solving disputes, related to the non-application of a collective agreement (Conclusions 2014).

The Government had indicated that when the consultation period ends without agreement and the procedures for resolution established under the inter-professional agreements of national or regional scope provided for under Article 83 of the Workers' Statute cannot be applied, either of the parties may submit the resolution of the dispute to the CCNCC or the corresponding bodies of the autonomous regions. It underlined that "the expression "either of the parties may submit" is different from the compulsory character seen by the trade unions with respect to this arbitration". However, the Spanish Confederation of Trade Unions maintains that the situation still amounts to a form of compulsory arbitration.

The Committee recalled that any form of recourse to compulsory arbitration constitutes a violation of this provision, whether domestic law allows one of the parties to refer a dispute to arbitration without the consent of the other party or allows the Government or any other authority to refer the dispute to arbitration without the consent of one party or both. Such a restriction is nonetheless possible if it falls within the limits prescribed by Article 31 of the Charter.

It further recalls that Article 6§3 of the 1961 Charter only applies to conflict of interests not interests of rights, i.e. generally conflicts which concern the conclusion of a collective agreement or the modification, through collective bargaining, of conditions of work contained in an existing collective agreement. It does not concern conflicts of rights, i.e. conflicts related to the application and implementation of a collective agreement.

The Committee asks the next report to provide detailed information on the situation under what circumstances can the CCNCC be seized, whether it may be seized with conflicts of interests or only rights and whether both the trade unions and employers have to agree to the issue being submitted to the CCNCC. Meanwhile the Committee defers its conclusion.

*Conclusion*

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

**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 27 April 2018 and of the Government's response registered on 27 June 2018.

***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 asks for more detailed description of these exceptional circumstances.

The Committee in its previous conclusions (Conclusions XIX-3 (2010) and XX-3 (2014)), 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 asks to be kept informed of when and in what circumstances this procedure has been used.

The Committee refers to its general question on the right of members of the police to strike.

***Consequences of a strike***

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.

*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 strikes in cases which go beyond the limits 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 (CCOO and UGT) .

The Committee previously examined the situation in Spain and found it in conformity with the 1961 Charter subject to information being provided on certain issues.

***Legal framework***

The Committee has previously analysed the legal framework of the right of workers to be informed and consulted and found it in conformity with the Charter.

***Scope***

In Spain the Legal basis of information and consultation structures is the Workers' Statute and its amendments. The report indicates that in accordance with Article 4 of this Act all workers without prejudice to other forms of participation, employees are entitled to participate in the company through representative bodies and have the right to information and consultation(see latest amendment, **according to** Royal legislative decree n.2/2015 of 23 October 2015).

***Personal scope***

In its previous conclusions (XX-3) (2014) the Committee asked about the personal scope of the legislation and in particular with regard to the minimum number of workers required for the establishment of information sharing and consultation procedures in line with Directive 2002/14 EC. From ILO website source, in Spain the workforce-size threshold for the establishment of works councils and the application of information and consultation provisions is of 6 to 10 workers, to elect employees representatives with the same functions as works councils and of 50 workers to elect works councils.

***Supervision***

The Committee takes note of the statistics provided by the Spanish Labour and Social Security Inspectorate in its supervisory action relating to the right of representation of workers and trade unions.

In its previous conclusions (XX-3) (2014) the Committee following the comments made by the Spanish Trade Union Confederations asked to provide information on the applicable legislation and its implementation with respect to the public civil servants.

The report, in reply to the question, indicates that with regard to public civil servants, Article 40 of the General Statute for Public Employees establishes that the Staff Committees and, where appropriate, the staff representatives shall carry out specific tasks in their respective fields like "(a) receipt of information on the human resources policy and data relating to the evolution of remuneration, the likely evolution of employment in the relevant field and performance improvement programs. The report also indicates that while the differences between consultation and negotiation are not always easy to assess, the 2015 Workers' Statute provides for consultation to address topics that have a particular impact on employees, such as collective staff transfers (section 40), substantial modification of working conditions (Article 41), suspension of contract or reduction of working time for economic, technical, organizational, production or force majeure reasons (Article 47) or collective redundancies (Art. 51). The report recalls that in the field of public administrations, Spain signed on 21 December 2015 the "Framework Agreement on information and consultation rights for central governments administrations". The Sectoral Social Dialogue Committee for Central Government Administrations signed a social partner agreement on common

minimum standards of information and consultation rights for central administration workers in matters of restructuring, work-life balance, working time and occupational health and safety.

***Remedies***

The Committee takes note of the statistics provided (2013-2016) on cases of violation of the workers right to information and consultation in relation to the prevention of occupational risks.

Since the last information on what remedies and sanctions are applicable in case of violation by an employer of the information and consultation obligations is outdated, the Committee asks that the next report provides updated information on remedies and sanctions.

*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 (CCOO and UGT) .

The Committee previously examined the situation in Spain and found it in conformity with the 1961 Charter subject to information being provided on certain issues.

The report indicates that the Royal Decree 1084/2014 of 19 December 2014 amending the Royal Decree 67/2010 of 29 January 2010 on the adaptation of the legislation on the prevention of occupational risks to the general administration of the State has intervened to amend the legislation on the participation of workers in the determination and improvement of working conditions.This amendment is essentially in response to the decision of the General Bargaining Committee of the General State Administration, adopted on October 29, 2012, regarding the allocation of resources to the bargaining and participation structures and the streamlining of these structures. The decision concerns on the one hand the election of the delegates to the prevention and the credits of hours which they benefit and, on the other hand, the committees of safety and health at work, which must adapt, except in the cases provided for in the said royal decree, to the new definition of "workplace" according to which it constitutes the new electoral unit. This agreement of the General Negotiating Committee of the General State Administration is also at the origin of the provisions contained in Royal Decree-Law 20/2012 of 23 July 2012 adopting measures to guarantee budgetary stability and to encourage competitiveness. Specifically, Article 10 of this text designates the General Negotiating Committees as the responsible bodies for agreements in this area, in particular as regards the exercise of representational and negotiating functions.

***Working conditions, work organisation and working environment***

In its previous conclusions (XX-3) (2014) the Committee asked to provide a full and up-to-date description of the situation as regards workers' right to take part in the determination and improvement of the working conditions and working environment. The report indicates that the participation of workers in the determination and improvement of their working conditions is mainly through collective bargaining, which allows workers and employers to define working conditions and determine productivity.With regard to the right of workers to participate in the protection of health and safety in the enterprise, Law 31/1995 of 8 November 1995 on the prevention of occupational hazards stipulates that the right of workers to effective protection against risks includes the following rights: right to information, consultation and participation, right to training in prevention, right to stop work in case of serious and imminent risk and right to supervision of health. The employer must therefore consult the workers and authorize their participation, in all matters related to occupational safety and health. Workers have the right to make proposals to the employer and to the participation and representation bodies provided for in that law, in order to improve the protection of occupational safety and health. In this respect the Committee asks how the employees take part in the determination and improvement of working conditions and working environment, when there are no trade union representatives or elected representatives whatsoever in the undertaking.

***Protection of health and safety***

The report indicates also that the Chapter V of the Law 31/1995 regulates the consultation and the participation of workers in the prevention of occupational hazards. The employer must consult the workers (or their representatives when they exist within the company) sufficiently in advance to adopt decisions on the organization and implementation of the protection of the health and prevention of occupational risks in the company, the appointment of employees responsible for the application of emergency measures or the possible consequences of the introduction of new technologies or new equipment for health

and worker safety, among other things.In the area of prevention of occupational risks, employee participation and representation rights are exercised through employee representatives in the company or specific preventions' representatives on occupational risks. Their number varies according to the number of employees of the company. In companies with 50 or more employees, a safety and health committee must also be established. Joint and collegiate body, it allows to consult regularly and periodically the workers on the measures of the company in the prevention of occupational hazards.The Labour and Social Security Inspectorate is responsible for supervising and monitoring compliance with the regulations on the prevention of occupational hazards, including compliance with the right to consultation. and worker participation in this area.

***Organisation of social and socio-cultural services and facilities***

In its previous conclusions (XX-3) (2014) the Committee also asked 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. The report contains no information as to the question posed. In this respect the Committee reiterates its question.

***Enforcement***

The report indicates that the Spanish Labour and social security Inspectorate is responsible, under the law on the establishment of this service, for the supervision and control of compliance with regulations on the prevention of occupational risks, including the respect of the right to consultation and participation of workers in health and safety matters. It also provides national statistics of the Spanish Labour Inspectorate concerning the control of the respect of the right of the workers to be informed and forms of prevention of the occupational risks.

*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.