

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

27 June 2023

Case Document No. 4

Confederación Sindical de Comisiones Obreras (CCOO) v. Spain
Complaint No. 218/2022

**REPLY FROM THE GOVERNMENT TO THE CCOO'S
RESPONSE ON ADMISSIBILITY**

Registered at the Secretariat on 2 June 2023



MINISTERIO
DE JUSTICIA

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL DE ASUNTOS
CONSTITUCIONALES Y DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

**THE SPANISH GOVERNMENT'S REPLY TO THE CCOO's
OBSERVATIONS ON THE ADMISSIBILITY OF THE COMPLAINT**

**COLLECTIVE COMPLAINT
No. 218/2022**

**CONFEDERACIÓN SINDICAL DE COMISIONES OBRERAS (CCOO)
v. Spain**

On 25/04/2023, the Committee has communicated the response of the *Confederación Sindical de Comisiones Obreras* (CCOO) to the Spanish Government's observations on the admissibility submitted by this party on 20/02/2023

Within the time-limit granted, and on behalf of the Kingdom of Spain, we thereby come to reply to CCOO's claims on the admissibility of the complaint:

1. The complainant organisation is mistaken in claiming that, by not challenging their **standing** to lodge the complaint in our observations on the admissibility, or its compliance with the **formal requirements** for filing the complaint, the State fails to raise arguments on inadmissibility.
2. It is true that the complainant's standing to appear and its compliance with the formal requirements for filing the complaint has not been questioned; however, in contrast to what has been stated, **we do invoke the existence of grounds for inadmissibility with regard to the claims set out in Points (1), (2) and (6) of the "plea" of the complaint.**

In particular, as stated in paragraph 5 of our written observations, we invoke that **some aspects mentioned by the complainant organisation as alleged violations of Article 24 of the Charter do not raise issues of satisfactory application of the Charter according to the legislation and/or practice in Spain, since it invokes obligations that are clearly not covered by the Charter, which renders the claims at issue manifestly illfounded**, as further explained below.

The case *Syndicat national des Dermato-Vénérologues v. France*, no. 28/2008, was also cited in our observations, where the Committee stated that the acts invoked were not of such a nature as to lead to the conclusion that there had been a violation of a right guaranteed in the Revised Charter.

3. The CCOO's allegation that the objections submitted by the Government do not question the concurrence of admissibility grounds (first claim of the complainant organisation) or that "the grounds of inadmissibility have not been reported" (fourth claim), is therefore unfounded, portraying our allegations on inadmissibility as a mere disagreement on the merits ("*the objections raised by the Government ... merely disagree that, with regard to the merits of the complaint, it should not be upheld*"¹).

¹ The statement by the complainant is reproduced *verbatim*, despite its obvious grammatical errors.

On the CCOO's response to the ground of inadmissibility regarding the claims set out in Points (1) and (2) of the "plea" of the complaint, as set out in the Section 1 of our observations (§§ 7 to 18).

Previous remark:

4. In response to the explanation we made in § 7 of our observations of inadmissibility regarding the inaccuracy of the generic statement referred to in claim (1) of the complaint, the complainant organisation clarifies that the complaint exclusively refers to the **unfair dismissal** regime "*where the court has no margin of appreciation to impose reinstatement.*"

They point to several passages of the complaint in which specific reference is made to **unfair** dismissal under the Spanish system, as distinct from null and void dismissal.

5. In that respect, it should be stated that since the text of the complaint refers in a number of times to **unfair** dismissal, it is incomprehensible that when specifying the first of the claims relied on in the plea of the complaint, reference is not made to unfair dismissal, but rather to a more generic category such as '**unfair dismissal**', which includes different cases of unlawful dismissal or dismissal contrary to the law (that is, unfair dismissal and null and void dismissal).
6. For this reason, the Government was obliged to make the clarification contained in § 7 of the observations of inadmissibility.

The concurrence of grounds of inadmissibility

7. We refer to the statements made in §§ 9 to 18 of our observations on admissibility.
8. It is striking that -beyond clarifying that the complaint refers specifically to the regime of unfair dismissal in the Spanish system, and not to the regime of null and void dismissal-, **the claimant organisation does not make any comment in its written pleadings on the arguments that we set out at length in our written observations. Arguments that lead to the conclusion, as set out in § 12, that the claim raised in Point (1), in so far as it is made independently –with no link to the fourth claim–, must be declared inadmissible, since the mere fact that a system does not provide for the possibility of reinstatement of the worker in certain cases of**

"unfair" dismissal - which is what is complained of in this first claim - does not mean that the system is incompatible with the Charter: indeed, it will only be incompatible if, in addition to not providing for the worker's reinstatement, it does not provide for a system of adequate compensation within the meaning of Article 24 of the Charter.

9. Similarly, **the complainant organisation does not make any particular observation on our expositin on the inadmissibility of the claim in point (2) of the “plea” of the complaint; indeed, such claim lacks any ground that justifies the examination on the merits by the Committee.** As stated in § 17 of our observations, the dismissal in the case described by CCOO in claim (2) - dismissal as a means of preventing the legitimate exercise by the workers of their rights, in particular those recognised in the European Social Charter or in the Revised European Social Charter - in the Spanish system would generally be classified as a null and void dismissal, and in this case compulsory reinstatement is provided for, which has not been challenged or qualified by the complainant organisation in its submission. Thus, **no compatibility problem arises with the Convention, and the matter therefore falls outside the competence *ratione materiae* of the Committee.**

On the CCOO’s reply to the ground of inadmissibility of the claim stated in Point (6) of the “plea” of the complaint, made in Section 2 of our observations (§§ 19 to 27).

10. The claim in Point (6) of the “plea” of the complaint, to which we refer in our observations on admissibility, is clearly unfounded. Accordingly, in the Spanish Government’s view, the claim should be excluded from the scope of the Committee’s examination, which should be limited to those aspects which may genuinely give rise to doubts as to the compatibility of the Spanish system with the Charter system.
11. At this point, we refer to the statements made in our observations, which have not been challenged by the claimant organisation beyond merely claiming that it is a “substantive” issue.
12. As stated, the claim revolves around an unrealistic assumption.
13. As can be easily observed, the Spanish law adequately protects those who find themselves in the situation described above, with Article 15.4 of the Workers’ Statute declaring the conversion of the temporary relationship into a permanent one

in such cases -with certain precision in the case of workers in the public sector-, either by having denounced the situation in a declaratory process brought by the worker during the term of the employment relationship, or when the termination of the employment relationship is agreed:

- i. In the first case, the workers shall continue to provide services with the status of permanent employee in their company, and shall enjoy the same rights and conditions as if they had had that status from the beginning of the employment relationship.
- ii. In the second case, the termination of the employment relationship due to the alleged expiry of the term of the allegedly temporary contract will, in any event, be considered unfair or null and void (depending on the circumstances), with the consequences generally provided for in the applicable legislation. It is also possible for an irregularly temporary worker to be subject to objective - or, as the case may be, disciplinary - dismissal, with the same regime as that applicable to permanent workers. It is therefore not clear to what extent their standard of protection is affected, with regard to Article 24 of the Charter.

As stated, it is also possible for an irregularly temporary worker to be subject to objective - or, as the case may be, disciplinary - dismissal, with the same regime as that applicable to permanent workers. It is therefore not clear to what extent their standard of protection is affected, with regard to Article 24 of the Charter.

14. The situation is similar when it comes to personnel hired by the Public Administrations under temporary contracts used in an irregular manner -without there being a real cause of temporary employment that would cover the use of such temporary contract, or there being such a real cause of temporary employment, but the maximum periods laid down have been exceeded. We refer here to the statements made in § 21 et seq. of our observations, from which it can be concluded that the assertion that this group is subject to less protection, and that the compensation granted to "*indefinidos no fijos*" [indefinite non-permanent] workers in the event of dismissal is "lowered" - as is insistently claimed by the complainant organisation - is not correct.



From the foregoing, the Spanish Government REQUESTS from the Committee:

That, in conformity with the statements made in our written observations on admissibility submitted on 20/02/2023, the claims made in points 1, 2 and 6 of the “plea” of the complaint be declared inadmissible, in the absence of any appearance of violation of the Revised European Social Charter which would justify an examination on the merits by the Committee.

Madrid for Strasbourg, 2 June 2023

The Co-Agent of Spain

Heide-Elena Nicolás Martínez