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COMITÉ EUROPÉEN DES DROITS SOCIAUX

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Case Document No. 4

Comisiones Obreras de Castilla y León (CCOO CyL) and Unión General de Trabajadores de Castilla y León (UGT CyL) v. Spain
Complaint No. 228/2023

REPLY FROM THE GOVERNMENT TO THE COMPLAINANT ORGANISATIONS ON THE MERITS

Registered at the Secretariat on 31 October 2024

MINISTERIO
DE LA PRESIDENCIA, JUSTICIA
Y RELACIONES CON LAS CORTES

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL
DE ASUNTOS CONSTITUCIONALES
Y DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

COLLECTIVE COMPLAINT
No. 228/2023

CC.OO. CyL and U.G.T. CyL

v.

SPAIN

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On 20-09-2024 the Committee has communicated to the Kingdom of Spain the answer of *Comisiones Obreras de Castilla y León (CCOO CyL) and Unión General de Trabajadores de Castilla y León (UGT CyL)*, regarding the Government response sent on 31/05/2024 on the merits of the present collective complaint.

Accordingly, within the time-limit granted for this purpose and following instructions from the Spanish Government, we hereby submit the answer to the aforementioned allegations, attaching in an Annex and several documents attached to it, the position of the Junta de Castilla y León on the merits of this complaint.

I

ON THE TRADE UNION´S ALLEGATIONS

1. Both applicant´s -the Spanish trade unions UGT de Castilla y León and CCOO de Castilla y León-share the point of view of the Spanish Government in general and, especially, in relation to the conflict around the Labour Dispute Resolution System and the SERLA Foundation, which has the function of ensuring its proper functioning. In fact, both organisations are represented alongside the Ministry of Labour in the legal proceedings listed in the Government's report. .

2. The reasons that lead the Spanish Government [1]to consider that the failure to comply by the *Junta de Castilla y León* of their acquired commitments and of its own regulations and, in particular, its failure to comply with the provision laid down in Article 16 § 1 of Law 8/2008, of 16 October, for the establishment of the Council for Social Dialogue and Regulation of Institutional Participation, which expressly recognises and regulates a nominative grant for the purpose of fostering social dialogue, is also a breach of the revised Social Charter, as it undermines the proper functioning of trade unions and employers'

[1] The report submitted by the Ministry of Labour and Social Economy is attached hereto as an Annex.

organisations as representatives of their own economic and social interests in *Castilla y León*, were explained in the first set of observations and are hereby reproduced:

"**1.** ***The action of the Junta de Castilla y León***

In the order of the Regional Ministry of Industry, Trade and Employment, which rejected the request made by the Minister for Labour and Social Economy of 10 March 2023, it is argued that the purpose of the said request of 10 March 2023 is the absence of public funding for the SERLA entity, on the understanding that, given that it is Law 3/2022, of 29 December, on the General Budget of the Community of Castilla y León for 2023, which does not provide for a nominal allocation for the SERLA Foundation, the preliminary requirement is directed against an act against which it is not possible to bring a contentious-administrative action, since it is an act of a legislative nature. <u>These arguments must first of all be disregarded in order to focus the assessment on the real issue at stake, which is none other than the conduct of the regional administration.</u>

On this point, it should be pointed out that the fact that an action carried out under the protection of a regulation with the status of law owes its unlawfulness to the eventual unconstitutionality of that regulation does not prevent that action from being controlled by the ordinary courts. It is for such cases that our legal system provides for the figure of the question of unconstitutionality (Chapter III of Title II of Organic Law 2/1979, of 3 October, of the Constitutional Court), the raising of which is possible not only even if an appeal of unconstitutionality against a specific legal rule has not been raised - as suggested by the Junta de Castilla y León - but would even be appropriate despite the dismissal of an appeal against the rule in question (Article 29 § 2 LOTC). Therefore, it is illogical to claim that the inactivity of the Administration is not controllable because it is caused by the unconstitutionality of a law, as the corresponding court will have the instrument of the question of unconstitutionality against such an eventuality.

Furthermore, it should be questioned whether, in this case, the action of the regional administration is due solely to the provisions of Law 3/2022 of 29 December, given that the regional administration retains the capacity to make the necessary budgetary modifications to comply with its obligations, in accordance with Section 2 of Chapter IV

of Title IV of Law 2/2006, of 3 May, on the Finance and Public Sector of the Community of Castilla y León.

In short, it cannot be held that judicial review of the actions of the Junta de Castilla y León is impeded because it is doubtfully based on the provisions of a regulation with the status of a law.

In view of the foregoing, the inadmissibility of the request of 10 March 2023 on the formal grounds raised by the Junta de Castilla y León is ruled out. Thus, it should be pointed out that in no way can a prior request, directed against a lack of material activity, be considered extemporaneous. With regard to this concept, the Supreme Court, in its judgment no. 366/2020, of 5 February 2020 (reiterating the criterion contained in judgment no. 1080/2018, of 26 June 2018), has noted the following:

"On the basis of the above, and with an interpretation of Articles 29 § 1 and 46 § 2 LJCA, we must conclude that the jurisdictional challenge of the inactivity of the Administration, once the request (which can be reiterated as long as the inactivity persists and no response is given) and the period established in Article 29 § 1 have been complied with, is not subject to the limitation period established in Article 46 § 2."

It follows from the foregoing that inactivity can be appealed for as long as it persists, given the continuous failure to comply with the law that it entails, so that the prior request is not subject to any time-limit on those occasions in which, as in the present case, the Administration persists in its conduct. This should also be considered without prejudice to the possibility of also acting against formal acts that are contrary to the legal system, such as the order of the Regional Ministry of Industry, Trade and Employment granting a monetary contribution to the Regional Labour Relations Service Foundation of Castilla y León (SERLA Foundation), for the financing of its activity in the financial year 2023, signed on 13 April 2023.

In any event, what is of paramount importance is that there were no formal reasons for disregarding the prior request made by the Ministry of Labour and Social Economy on 10 March 2023, and that the Junta de Castilla y León has persisted in its conduct - in

particular through the order of the Regional Ministry of Industry, Trade and Employment granting a monetary contribution, to the SERLA Foundation, for the financing of its activity in the financial year 2023, signed on 13 April 2023 - which amounts to an unlawful action under Spanish law and for which the latter provides for appropriate filtering mechanisms, as will be reasoned in the following paragraphs.

2. Jurisdiction and procedure

As has been pointed out, although judgment no. 1694/2023, of 3 November, of the Social Division of the High Court of Justice of Castilla y León - Valladolid Division - dismissed the claim brought by CCOO CyL and UGT CyL, it is true that this decision is questionable, for the reasons stated in the notice in which the appeal on points of law [recurso de casación] against that judgment was lodged. Thus (extracts from the aforementioned document are quoted):

(a) The jurisdiction of the social court will not be limited by the integration of the SERLA Foundation into the institutional public sector, but the jurisdiction will be determined by the subject-matter of the dispute, not by the person of the defendant or the plaintiff.

(b) The nature of the SERLA Foundation is controversial, but in no case is it a sign of the public administration's capacity for self-organisation.

(c) The purpose of the foundation and of the III ASACL is of a purely labour and trade union nature. Thus, there are a number of judgments that refer to how the question of the financial contribution to be made to labour foundations is of a labour nature ... For instance, judgments of the Social Division of the High Court of Justice of Asturias no. 2518/2002, of 13 September (appeal no. 2495/2001), or of the High Court of Justice of Catalonia no. 5402/2002, of 23 July (appeal no. 8775/2001) or no. 8899/2001, of 15 November (appeal no. 4845/2001).

Therefore, in the Spanish legal system there are procedural channels in labour matters to guarantee the defence of the rights of trade union organisations with regard to the autonomous settlement of disputes.

3. Applicable labour law

3.1. Recourse to autonomous dispute resolution systems is the subject of numerous references in the revised text of the Workers' Statute Act, approved by Royal Legislative Decree no. 2/2015, of 23 October. In any event, for these purposes, the provisions of Article 85 WS must be taken as a starting point:

(...) e) Appointment of a joint committee on the representation of the negotiating parties to deal with those issues determined by law and any others attributed to it, as well as the determination of procedures and deadlines for action by this committee, including the submission of discrepancies arising within it to the non-judicial systems of dispute resolution determined by means of the inter-professional agreements at the state or autonomous community level provided for in Article 83.

Article 91 WS also sets out more specifically the delimitation of the use of such systems:

1. Without prejudice to the competences legally attributed to the social jurisdiction, the hearing and resolution of issues arising from the application and interpretation of collective bargaining agreements shall correspond to the joint committee thereof.

2. Notwithstanding the provisions of the previous section, in the collective bargaining agreements and in the agreements referred to in Article 83 §§ 2 and 3, procedures such as mediation and arbitration may be determined for the settlement of collective disputes arising from the application and interpretation of collective bargaining agreements. The agreement reached through mediation and the arbitration award shall have the same legal effectiveness and processing as the collective bargaining agreements regulated in this Act, provided that those who have adopted the agreement or signed the arbitration award have the legal standing to agree, within the scope of the dispute, on a collective agreement in accordance with the provisions of Articles 87, 88 and 89. These agreements and awards may be challenged on the grounds and in accordance with the procedures provided for collective bargaining agreements. Specifically, an appeal may be lodged against the

arbitration award in the event that the requirements and formalities determined for this purpose have not been observed in the arbitration proceedings, or when the award has ruled on points not submitted to its decision.

3. In cases of collective disputes relating to the interpretation or application of the agreement, the joint committee concerned shall intervene prior to the formal submission of the dispute in the non-judicial procedures referred to in the previous section or before the competent court.

4. The resolutions of the joint committee on the interpretation or application of the agreement shall have the same legal effectiveness and processing as the collective bargaining agreements regulated by this law.

5. The dispute settlement procedures referred to in this Article shall also apply to disputes of an individual nature where the parties expressly submit to them.

On that basis, the following references can be mentioned in the remaining articles:

(a) On the one hand, Article 85 § 1 WS already provides for the possibility of lodging an appeal by the parties to these systems, since it provides that while respecting the laws, collective bargaining agreements may regulate matters of an economic, labour or trade union nature ..., including procedures for deciding discrepancies arising in the consultation periods provided for in Articles 40, 41, 47 and 51. Accordingly, Articles 40 § 2, 41 § 4, 47 § 3 and 51 § 2 WS (with regard to consultation periods relating to geographical mobility, substantial modification of working conditions, reduction of working hours or suspension of the contract for economic, technical, organisational or production reasons or due to force majeure and collective dismissal) state that the company and the workers' representatives may agree at any time to replace the consultation period with the mediation or arbitration procedure applicable in the company, which must be carried out within the maximum time-limit identified for that period.

Furthermore, the thirteenth additional provision states that in the event that, even if no procedure for deciding discrepancies in the consultation periods has been agreed in the applicable collective bargaining agreement, non-judicial dispute resolution bodies or procedures have been determined in accordance with Article 83 in the corresponding territorial area, the parties to those consultation periods may submit their dispute to those bodies by mutual agreement.

(b) On the other hand, there are two express mentions of procedures in which recourse to autonomous systems is mandatory.

Thus, the second to last paragraph of Article 82 § 3 WS, with regard to the non-application of the collective bargaining agreement, states the following:

In the event of disagreement during the consultation period, either of the parties may submit the discrepancy to the collective bargaining committee, which shall have a maximum period of seven days to reach a decision, starting from the date on which the discrepancy was submitted to it. When the intervention of the committee has not been requested or the committee has not reached an agreement, the parties shall resort to the procedures established in the interprofessional agreements at the State or Autonomous Community level, provided for in Article 83, to effectively decide the discrepancies arising in the negotiation of the agreements referred to in this section, including the prior commitment to submit the discrepancies to binding arbitration, in which case the arbitration award shall have the same effectiveness as the agreements in the consultation period, and shall only be subject to appeal in accordance with the procedure and on the grounds determined in Article 91.

For its part, Article 86 § 4 WS, with regard to the duration of the agreement, provides as follows:

4. If one year has elapsed since the termination of the collective bargaining agreement without a new agreement having been agreed, the parties shall submit to the mediation procedures regulated in the interprofessional agreements at State or regional level provided for in Article 83, in order to effectively resolve the existing discrepancies.

Furthermore, provided that there is an express, prior or contemporaneous agreement, the parties shall submit to the arbitration procedures regulated by these interprofessional agreements, in which case the arbitration award shall have the same legal effect as collective agreements and may only be appealed against in accordance with the procedure and on the grounds set out in Article 91.

Without prejudice to the development and final solution of the aforementioned mediation and arbitration procedures, in the absence of a pact, when the bargaining process has elapsed without an agreement being reached, the collective bargaining agreement shall remain in force.

3.2. In the procedural sphere, Law 36/2011, of 10 October, regulating Social Jurisdiction, devotes Title V to the avoidance of proceedings, indicating in Article 63 LRJS that a prior requirement for the processing of proceedings is the attempt at conciliation or, as the case may be, mediation before the corresponding administrative service or before the body that assumes these functions, which may be constituted by means of interprofessional agreements or collective bargaining agreements referred to in Article 83 of the Revised Text of the Workers' Statute Act, as well as by means of the agreements of professional interest referred to in Articles 13 and 18 § 1 of the Self-employed Workers' Statute Act. This provision is consistent with Article 156 LRJS, which requires the attempt at conciliation or mediation prior to the process of collective disputes.

4. Recourse to the use of procedures managed by the SERLA Foundation, in particular, is mandatory.

4.1. In the aforementioned order of 3 April 2023, in which the preliminary request of 10 March 2023 is rejected, the Junta de Castilla y León states that neither the III ASACL, nor the Supreme Court judgment no. 729/2020, 30 July 2020, establishes that the Administration is obliged to finance the agreements signed between these organisations for this purpose.

Nothing is said, however, about the nature of the competences of the State and the Autonomous Communities in labour matters. The Junta de Castilla y León also adds that, despite the fact that it was the Junta de Castilla y León which agreed to set up the SERLA Foundation (as could not be otherwise), the funding agreement ceased to be in force on 2 October 2021. This, far from exempting the Administration from any responsibility, as claimed, rather confirms the thesis of this Ministry, which is repeated below.

In response to the above, it should be recalled that the legal references cited in point 2 of the present report are reflected, in particular, in the interprofessional agreements whose content is implemented through the powers exercised by the SERLA Foundation. In particular, Article 8 of the III ASACL states the following:

The procedures assumed by SERLA provided for in this Agreement shall apply in the following cases:

1. Collective and multiple disputes.

In disputes affecting the general interests of a generic group of workers or a generic group susceptible to individual characterisation, in the cases of:

(a) Disagreements in the interpretation and application of State regulation, collective bargaining agreement, whatever its effectiveness, company pacts or agreements, or a company practice.

(b) Disagreements with company decisions of a collective or multiple nature under the terms established in the Workers' Statute.

(c) Disputes arising from disagreements that have arisen during the consultation period and, where appropriate, after submission to the collective bargaining committee, without agreement having been reached on the non-application of working conditions provided for in the applicable collective bargaining agreement, as referred to in Article 82 § 3 of the Workers' Statute.

(d) Disagreements arising from a breach of the duty to negotiate or connected with good faith negotiation.

(e) Disagreements arising during the negotiation of a collective bargaining agreement, company agreement or pact that leads to a deadlock in negotiations.

(f) Disputes that may lead to the calling of a strike or that arise over the determination of security and maintenance services in the event of a strike.

(g) Disagreements arising in the joint committees of collective agreements that make it impossible for them to adopt agreements for the resolution of issues that are legally or conventionally attributed to them.

(h) Disputes arising in the negotiation of collective agreements in which the duration has not been agreed upon after the termination and conclusion of the agreed duration, under the terms provided for in Article 13.

(i) They shall also apply to those disputes that the parties voluntarily and by mutual agreement submit to SERLA for processing.

2. Individual disputes. The conciliation-mediation and arbitration procedures shall apply, under the terms established in this Agreement, in individual disputes that may arise between employers and employees, except for those covered by the exclusions set out in Article 9.

It is worth highlighting for specific treatment, mediation in conflicts arising from the application of Article 54 § 2.f of the Workers' Statute, referring to the impact at work of situations of consumption of alcohol and other drugs, as well as other labour conflicts that may have this cause as origin and develop preventive actions thereof, with the aim of favouring the recovery of workers for the development of their work in normal situations in line with the agreement signed between the Administration of the Community of Castilla y León and CECALE, CCOO and UGT, on 6 June 2016.

Moreover, Article 2 of the Agreement deals with the effectiveness of these procedures:

1. This Agreement is established in accordance with the provisions of Title III of the Workers' Statute, Articles 6 and 7 of the Organic Law on Freedom of Association and Article 63 of the Law Regulating Social Jurisdiction (LRJS).

It therefore constitutes the expression of the will of the workers' and employers' representatives, freely adopted by virtue of their collective autonomy and develops the provisions of Article 83 § 3 of the Workers' Statute, as it deals with specific matters such as the autonomous resolution of labour disputes and certain aspects of collective bargaining.

2. This Agreement shall be binding on all employers' organisations and trade unions, as well as on all companies and workers in any sector of activity in Castilla y León.

3. Conciliations and mediations carried out or attempted in accordance with this Agreement replace for all purposes the attempt at conciliation before the administrative service that Articles 63 and 156 of the LRJS requires as a prerequisite for any judicial procedure of individual or collective dispute. It will therefore be necessary to exhaust the mediator-conciliator procedure before the SERLA as a prerequisite for the filing of a legal action for the labour disputes referred to in Article 8 of this Agreement in Castilla y León.

The effectiveness of this Agreement is general and its application will be direct vis-à-vis third parties, except in those aspects in which it expressly provides otherwise. It is not necessary for its effectiveness and validity, therefore, the express incorporation of its clauses into the collective bargaining agreements that may be signed in the Autonomous Community of Castilla y León, without prejudice to the prior intervention of the Joint Committees, in those cases in which their action has been determined as mandatory.

4.2. In this regard, it is worth citing the Supreme Court judgment no. 729/2020, of 30 July 2020, and in particular its sixth legal ground:

5. Contrary to the reasoning of the appealed judgment, which holds that the dispute revolves around a labour regulation and invokes Article 149 § 1.7th CC, we are faced with the need to interpret a procedural regulation and, as such, it is true that not only can it not be subject to free disposal, but that it constitutes the exclusive competence of the State - with the sole exception of those derived from the specifics of the substantive law of the Autonomous Communities - (Article 149 § 1.6th CC).

On this point, it is precisely the state legislature who has designed the procedural instrument, and this is not shaped as a unique and imperative tool, but open to the intervention of the social partners, who through statutory collective bargaining have the legitimacy and capacity not only to determine the conciliation and mediation procedures, but also to create the body that will develop them and how it will operate. There is, therefore, no violation of the system of sources, as it is a power expressly granted by a legal provision.

6. There are several reasons why the Chamber does not share the reasoning and decision of the instance:

(a) From the point of view of safeguarding the right to collective bargaining (Article 37 § 1 CC.) and the right to adopt collective conflict measures (Article 37 § 2 CC), we should recall that the Constitutional Court has held that, among the powers contained therein, is not only the right to raise a conflict (CC judgment no. 74/1983), "but also the right to create their own autonomous means of deciding it. This last possibility, precisely because it is a shortcoming of our system of labour relations, even pointed out by the International Labour Organisation (ILO), is an objective long pursued by our employers' and trade union organisations, as has often been expressed in the interprofessional agreements. Moreover, the need for collective autonomy to create its own autonomous means of resolving labour disputes is not only felt by those organisations, but is also sought and encouraged by the legislature and, in general, by the public authorities, due to its potentially beneficial nature for the labour relations system" (CC judgment no. 217/1991).

That being so, when the legislature takes the step of including that power in the procedural requirement, it is broadening the spectrum and scope of autonomous dispute resolution,

giving it greater content and effects. It remains to be seen, therefore, whether this extension is authorised exclusively on an optional basis for the parties, as the appealed judgment believes, or, on the contrary, whether collective bargaining can extend this self-compositional autonomy to all types of disputes as the sole means of complying with the pre-procedural procedure.

(b) If the negotiating parties can agree to submit disputes to an autonomous out-of-court settlement system, and this, in turn, can serve as a pre-procedural mechanism, there is nothing to prevent such an agreement from being unconditional.

The existing regulation until the 2017 Agreement, challenged at present, stated that the self-compositive mechanism would be mandatory if one of the parties resorted to it. However, in any case, once it was used, it had the obvious value of an attempt at prior conciliation/mediation. It is not clear what the legal obstacle is for these same negotiators to increase their commitment by obliging that such use be mandatory in any case.

The disjunctive "or" in the text of Article 63 LRJS makes it clear that the procedural condition is covered in one way or the other and that what the legislature states is that both mechanisms are valid, given their respective regulations, with the collective agreement being the one that designs the second one.

(c) The fact that Article 5 of RD Law 5/1979, which created the Institute for Mediation, Arbitration and Conciliation (IMAC) establishes that "The attempt to hold the conciliation act at the Institute for Mediation, Arbitration and Conciliation, before an official with a Law Degree, shall be a prerequisite for the processing of any labour proceedings before the labour court", does not imply that we are dealing with a rule that is of preferential application to what we have been pointing out. Although it is true that the RDL is not formally repealed, the requirement of the prerequisite has been superseded by subsequent procedural rules, so that its interpretation must necessarily be in line with Article 63 LRJS.

This means that, if statutory collective bargaining has been recognised as having the capacity to establish conciliation and mediation systems that replace those of the administrative services - which were those determined in the aforementioned RDL 5/1979

- these systems will also establish the operating rules of the entities or bodies to which these functions are assigned, and it cannot be argued that these functions are unlawful because they are not conferred on a public institution such as the one that established the aforementioned regulation.

(d) The replacement of administrative services by those created in collective bargaining agreements, in the terms of Article 63 LRJS, is a reality enshrined in other collective bargaining agreements, starting with the V Agreement on Autonomous Settlement of Labour Disputes -ASAC, by its Spanish acronym- (Official Gazette of 23 February 2012), which provides that: ".... mediation shall be mandatory as a pre-procedural requirement for the filing of collective dispute claims before the social jurisdiction by any of the parties and therefore replaces prior administrative conciliation" (Article 12 § 4).

Along the same lines are, for example, the Interprofessional Agreement on labour dispute resolution systems in Andalusia (Regional Official Gazette of 9 February 2015) or Title III.4 of the Interprofessional Agreement of Catalonia for the years 2018-2020 (DOGC of 7 September 2018) which designates the "Labour Court of Catalonia" as "the only autonomous extrajudicial instance in labour disputes arising in Catalonia, in accordance with Article 83 § 3 WS".

(e) Finally, we are not dealing at this stage with a lawsuit in which the framework of competences of the autonomous administration is at stake. We have already seen repeatedly that this approach has led to confusion in the procedural debate. The question of what were, still are or will be the competences of that administration cannot and should not be asessed in this dispute, which is confined exclusively to examining the legality of the clauses of the collective agreement.

4.3. It follows from the above considerations that, in accordance with the provisions of labour legislation, which includes the Agreements that are the result of social partnership between the "social partners" (trade unions and employers' associations), the parties negotiating collective bargaining agreements and agreements setting up autonomous dispute settlement systems are left with the obligation to have recourse to them.

Once this obligation has been established, and as these agreements are part of the legislation that falls within the competence of the State, is mandatory for the Autonomous Community to implement them. This implies that, once these interprofessional agreements have adopted an autonomous system of conflict resolution, such a provision precludes the possibility of complying in any other way (i.e., through recourse to the services of administrative bodies) with the legal provisions imposing recourse to mediation or arbitration mechanisms. Thus, once the autonomous systems of conflict resolution have been shaped by conventional means, and once the compulsory nature of recourse to them has been established, there is no alternative, with indirect proof of this reasoning being the basis of Supreme Court judgment no. 729/2020, 30 July 2020, transcribed above.

Thus, in the specific area of the Autonomous Community of Castilla y León, compliance with the provisions of Articles 82.3 and 86.4 WS and Article 63 LRJS can only be satisfied through recourse to the procedures of the SERLA Foundation, insofar as this system has general effectiveness and obliges all parties included in its scope of application to have recourse to it (Article 2.2 of the III ASACL) and, in particular, the conciliations and mediations developed or attempted in accordance with this Agreement replace for all purposes the attempt at conciliation before the administrative service that Articles 63 and 156 LRJS require as a prerequisite to any judicial procedure of individual or collective dispute (Article 2.3 of the III ASACL).

Accordingly, it is not up to the regional administration to decide how to proceed to comply with the requirements established in the State legislation, given that it is precisely this legislation which recognises, in favour of the parties negotiating the agreements, the capacity to choose for a specific way of implementing such compliance. Once there is an unambiguous agreement provision to that effect, the implementation of the labour legislation must be consistent with it, since that provision constitutes a direct effect of the State law.

It is true that it could be the case that the contractual provisions include systems that do not require public intervention in order to be effective, but this is not the case. The development of the competence for the execution of labour legislation which, in accordance with Article 149.1.7 CC, is assumed by the Autonomous Community, imposes on it the

correlative duty to ensure compliance with and execution of that legislation and of the interprofessional agreements that form part of it, so that the Autonomous Community concerned is responsible for guaranteeing that the mediation system functions properly. And this, it must be reiterated, in the particular way in which it has been foreseen in the specific conventional regulations; in this case, the III ASACL.

4.4. The Order of the Regional Ministry of Industry, Trade and Employment granting a monetary contribution to the Foundation of the Regional Labour Relations Service of Castilla y León (SERLA Foundation) to finance its activity in the financial year 2023, represents an action that departs from the conduct adopted by the Regional Government of Castilla y León to date, in that it omits the dissolution of the SERLA Foundation and the complete removal of its funding. This confirms, once again, the approach of this Department, since it implies the assumption that the total inactivation of the SERLA Foundation, which was initially intended, is completely contrary to the constitutional distribution of competences in labour matters. However, under no circumstances can the alternative finally adopted by the Junta de Castilla y León be considered to be respectful of labour law and State competences.

This is because the only action that is possible is that which respects the content of the III ASACL in those areas in which it is authorised by labour legislation to provide for a specific way of complying with it, in the sense described above.

Thus, the order provides as follows (paragraph 5(b) of the Annex):

(b) Expenditures eligible for funding incurred between 1 July 2023 and 31 December 2023:

- Expenses for the provision of services by companies and professionals: fees for work carried out, as well as per diems and travel expenses for services rendered. These expenses shall be limited exclusively to the management of collective disputes and the intervention of a mediator or arbitrator, as appropriate, in each collective dispute dealt with.

Article 8.2 III ASACL states that the conciliation-mediation and arbitration procedures shall be applicable ... in individual disputes that may arise between employers and employees.

It is therefore clear the continuation of an action contrary to the content of the III ASACL and, therefore, also to the labour regulations, since the effectiveness of one of the provisions that it is specifically empowered to contemplate is being limited. This is because the continuity of the activity of the SERLA Foundation is envisaged, but without the possibility of it carrying out its activity with regard to individual disputes, which completely limits the possibility of the autonomous system agreed in the III ASACL reaching such disputes, as it is impossible to comply with the agreement or alternative system.

Thus, a final factor must be taken into account in this particular case. This is that there is no lack of development of the system envisaged ex novo by the parties negotiating the agreement. On the contrary, on the basis of the existence of an agreed system, developed and fully implemented in the exercise of its functions, the purpose is to render ineffective the commitments made by the Junta de Castilla y León with regard to the management of that system. This, of course, constitutes nothing more than a further violation of State powers, as it contravenes the power granted to the parties negotiating collective agreements and the agreements referred to in Article 83.2 and 3 WS to determine such systems (Article 91.2 WS).

Indeed, as has been pointed out, we are faced with a fully established mediation system which has been operating with the agreement of all parties, so that it was the Junta de Castilla y León which agreed to set up the SERLA Foundation, after which successive financing agreements have been signed. In this context, of course, there are various management alternatives, but the one chosen by the autonomous administration, which dismantles the system consolidated to date and which, moreover, completely disregards the provision which, according to the law, it must carry out under specific terms, is outside the scope of these alternatives.

For the legal reasons set out above, the action of the Junta de Castilla y León must therefore be considered to be in persistent breach of the law. In short, the action of the

Junta de Castilla y León is contrary to the law, in so far as it implies failure to comply with the only provision which allows the interested parties to take action under Articles 82.3 and 86.4 WS and Article 63 LRJS, since, apart from recourse to that Foundation, the State legislation does not recognise any other procedural avenue in that regard."

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Other issues raised by the applicants

3. The applicant´s ask the Government to make a statement on the other issues raised, especially those referring to the suppression by the Regional Consejería of Industry, Trade and Employment of services for workers, whether employed or unemployed, within the framework of active employment policies.

4. On that issue the Government consider is that these allegations refer to points likely to affect the State's competence in labour matters.

5. In particular, with regard to the right to institutional participation set out in article 6.1 of the Organic Law on Freedom of Association (even though this is expressed at the regional level), it can be argued that the regional legislation (article 16 of Law 8/2008, of 16 October, for the creation of the Social Dialogue Council and regulation of institutional participation) establishes the allocation of a nominative subsidy for trade union organisations with the aim of promoting institutional participation, so that respect for the right is inextricably linked to compliance with this precept.

6. Similarly, with regard to on-the-job training, the financing of the development of training actions is provided for in Law 30/2015, of 9 September, which regulates the Vocational Training System for Employment in the field of employment. Order TMS/379/2019, of 28 March, approved the regulatory bases for the granting of subsidies by the State Public Employment Service for the financing of state-wide training plans.

7. On the other hand, Order TES/630/2023, of 14 June (which distributes territorially for the financial year 2023, for its management by the Autonomous Communities with assumed

competences, credits in the labour field financed under the General State Budget, not financed with the Recovery and Resilience Mechanism), establishes that, with regard to the credits consigned in application 19.101.241-B.452 .90, financed from the in-service training quota, must be used to finance in-service training actions related to collective bargaining and social dialogue, in the terms set out in the aforementioned Order TMS/379/2019 of 28 March.

8. Consequently, it can be considered that the Autonomous Community is not earmarking these funds for the purpose provided for in State employment legislation, which is none other than the financing of training plans related to collective bargaining and social dialogue.

9. In view of the above, it can be concluded, along the lines indicated by the complainant organisations, that the Junta de Castilla y León is acting in manifest breach of the labour regulations, thereby affecting State competence in this area. The aforementioned legislation also provides for mechanisms to purge these unlawful conducts, which will be settled in the framework of the corresponding proceedings before the social jurisdiction.

ASSESSMENT OF THE GOVERNMENT OF THE COLLECTIVE COMPLAINT

10. In accordance with the above reasoning, the Government of Spain consider that the actions and omissions of the *Junta de Castilla y León* outlined in the collective complaint by the trade unions are contrary to Spanish labour law, which incorporates guarantees of the effectiveness of autonomous dispute resolution mechanisms. Furthermore, there are also mechanisms available to enforce those guarantees, such as those put forward by the State and by the trade unions *UGT CyL* and *CCOO CyL* themselves. The conduct of the *Junta de Castilla y León* is therefore contrary to the provisions which, in Spain, guarantee respect for the Charter.

II

SUBMISSIONS SENT BY THE JUNTA DE CASTILLA Y LEÓN

The Junta de Castilla y León has sent to this procedural representation their position on the merits of the present collective complaint. This position is contrary to that already expressed of the Government of Spain, who is aligned to the position of the applicants in the judicial procedures still pending in Spain.

Nevertheless, given the procedural position as Agents of the Kingdom of Spain, and taking into account the letter of the Committee, the position of the Junta de Castilla y León, previously sent to this office, is attached in an Annex to this pleading, together with the documentation annexed with it.

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In the light of the foregoing, this party REQUESTS to the Committee:

To take into account the present answer on the applicants' allegations with regard to the collective complaint lodged, together with the Annex attached, and declare that the Spanish legal system fully respects the revised European Charter of Social Rights, being the conduct of the *Junta de Castilla y León* denounced in the collective complaint contrary to the Charter.

Madrid, 31 October 2024

The Co-Agent of Spain before the European Committee of Social Rights

Annex. Submission of the Junta de Castilla y León on the merits of the collective complaint, with several documents attached to it.doming