



March 2023

## **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions XXII-3 (2022)

**SPAIN**

*This text may be subject to editorial revision.*

The function of the European Committee of Social Rights is to rule on the conformity of the situation in States with the European Social Charter. In respect of national reports, it adopts conclusions; in respect of collective complaints, it adopts decisions.

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

The following chapter concerns Spain, which ratified the 1961 European Social Charter on 6 May 1980. The deadline for submitting the 34<sup>th</sup> report was 31 December 2021 and Spain submitted it on 31 December 2021.

The Committee recalls that Spain was asked to reply to the specific targeted questions posed under various provisions (questions included in the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter). The Committee therefore focused specifically on these aspects. It also assessed the replies to the previous conclusions of non-conformity, deferral and conformity pending receipt of information (Conclusions XXI-3 (2018)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-3 (2018)) found the situation to be in conformity, there was no examination of the situation in 2022.

Joint comments on the 34<sup>th</sup> report by the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT) were registered on 29 June 2022 and comments by the Galician Trade Union Confederation (CIG) were registered on 5 July 2022. The reply from the Government to all comments was registered on 6 October 2022.

In accordance with the reporting system adopted by the Committee of Ministers at the 1196<sup>th</sup> meeting of the Ministers' Deputies on 2-3 April 2014, the report concerned the following provisions of the thematic group III "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 from 1 January 2017 to 31 December 2020.

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

– 6 conclusions of conformity: Articles 2§2, 2§5, 4§3, 4§5, 6§1 of the 1961 Charter and 2 of the Additional Protocol,

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

In respect of the other 3 situations related to Articles 5 and 6§3 of the 1961 Charter and 3 of the Additional Protocol, the Committee needs further information in order to examine the situation.

The Committee considers that the absence of the information requested amounts to a breach of the reporting obligation entered into by Spain under the 1961 Charter.

The next report from Spain will be on the Revised European Social Charter, which Spain ratified on 17 May 2021, and deal with the following provisions of the thematic group IV "Children, families, 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 children and young persons to social, legal and economic protection (Article 17),
- the right of migrant workers and their families to protection and assistance (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The deadline for submitting that report was 31 December 2022.

Conclusions and reports are available at [www.coe.int/socialcharter](http://www.coe.int/socialcharter).

## **Article 2 - Right to just conditions of work**

### *Paragraph 1 - Reasonable working time*

The Committee takes note of the information contained in the report submitted by Spain and in the comments by the *Confederación Intersindical Galega* (CIG) and CCOO and UGT and of the Government's response.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 2§1 of the 1961 Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions falling within the thematic group "Labour rights").

In its previous conclusion, the Committee considered 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 could exceed 60 hours in flexible working time arrangements and for certain categories of workers (Conclusions XXI-3 (2018)). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

### **Measures to ensure reasonable working hours**

In its previous conclusion, the Committee found the situation in Spain not to be in conformity with Article 2§1 of the 1961 Charter on the ground that the maximum weekly working time could exceed 60 hours in flexible working time arrangements and for certain categories of workers (Conclusions XXI-3 (2018)). The Committee also asked how often the employer, in the absence of a collective agreement, had taken a unilateral decision to redistribute 10% of the working hours. It also asked for more evidence that, in practice, the workers on flexible working time arrangements with long reference periods did not work unreasonable hours or an excessive number of long working weeks.

In reply, the report states that, during the reference period, no changes were made to Articles 34 and 37 of the Workers' Statute regulating the issue of maximum working time. The report states that the Committee is misinterpreting the 1961 Charter by specifying and quantifying the number of working hours considered reasonable, and by assuming that any excess results in a non-compliance with the 1961 Charter. Working hours in Spain fall within the limit of the EU legal regulation and are applied in combination with the possibility that by collective agreement or, failing that, by agreement between the company and the workers' representatives, an irregular distribution of working hours over the course of the year may be established as an element of flexibility in the organisation of working time. The possibility of the working week exceeding 60 hours – a limit that is not defined by the 1961 Charter – is more a theoretical possibility than a reality.

The report further provides some examples taken from collective agreements that address the irregular distribution of hours. The collective agreement for the footwear industry states that up to 10% of annual hours can be more flexible and more than 9 hours per day can be worked (10 hours being the maximum). The national collective agreement for retail drugstores, herbalists and perfume stores also states that, in general, the ordinary eight-hour working day may be exceeded by no more than one hour. The 7<sup>th</sup> national collective agreement for the sector comprising manufacturers of gypsum, plaster, whitewash and constituent products states that when the company imposes an irregular distribution of working hours, it can be as follows: daily working hours may not be less than 7 or more than 9 hours, weekly working hours may not be less than 35 or more than 45 hours. The 5<sup>th</sup> national collective agreement for tax administrators and advisors states that during periods of maximum commercial activity, the weekly workload may not exceed 48 hours. The national collective agreement for the dairy industry and related products states that, in case of an irregular distribution of hours, a worker may not be obliged to extend his/her ordinary working day by more than 2 hours a day or to

reduce it by more than 1 hour. The collective agreement for the wood sector states that in case of an irregular distribution of hours, daily working time may not be less than 7 or more than 9 hours, weekly working time may not be less than 35 or more than 45 hours.

In its comments, the CIG states that the right to reasonable working time does not exist with a weekly time of more than 60 hours. The CCOO and the UGT state that, in the case of drivers, working times are unstable. Furthermore, the irregular distributions of working time throughout 2017 were negotiated in 831 collective agreements resulting in a workday longer than 9 hours. In its response, the Government considers that Spain is in conformity with Article 2§1 of the 1961 Charter.

The Committee notes that the Charter does not expressly define what constitutes reasonable working hours; however, it has already held a number of times that a total working week which, within the framework of “flexibility regulations”, may attain up to 60 hours per week or exceed 60 hours per week is unreasonable (e.g., Conclusions XIV-2 (1998), Netherlands; Conclusions 2018, Turkey). The Committee further notes that no new information is provided in the report that would allow it to conclude that 60 working hours cannot be exceeded in flexible working time arrangements and for certain categories of workers. Moreover, the Committee notes that, for the second time in a row, it did not obtain any answer to its questions on how often the employer, in the absence of a collective agreement, had taken a unilateral decision to redistribute 10% of the working hours and on more evidence that, in practice, the workers on flexible working time arrangements with long reference periods did not work unreasonable hours or an excessive number of long working weeks. In these circumstances, the Committee reiterates its conclusion of non-conformity on the ground that the maximum weekly working time may exceed 60 hours in flexible working time arrangements and for certain categories of workers.

In its targeted question, the Committee asked for updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). It also asked for detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).

The Committee recalls that teleworking or remote working may lead to excessive working hours. It also reiterates that it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours or while on holiday or on other forms of leave (sometimes referred to as the ‘right to disconnect’). States Parties must ensure that employers have a duty to put in place arrangements to limit or discourage unaccounted for out-of-hours work, especially for categories of workers who may feel pressed to overperform. In some cases, arrangements may be necessary to ensure the digital disconnect in order to guarantee the enjoyment of rest periods (Statement on digital disconnect and electronic monitoring of workers).

The report does not provide the information requested; therefore, the Committee reiterates its request for information.

### ***Law and practice regarding on-call periods***

In its previous conclusions, the Committee asked for information on the rules that apply to on-call service and whether inactive periods of on-call duty were considered as a rest period in their entirety or in part (Conclusions XXI-3 (2018), Conclusions XX-3 (2014)). It also asked for information on the data on the situation in practice regarding the calculation of working time when on on-call duty and not at one’s workplace (Conclusions XXI-3 (2018)).

In the targeted question, the Committee asked for information on law and practice as regards on-call time and service (including as regards zero-hour contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.

In reply, the report states that the Spanish law has no general legal provisions regulating availability times. However, there are specific regulations for certain sectors, including those for various transport sectors and for work at sea set out in Royal Decree 1561/1995, on special working hours, as well as those set out in Royal Decree 1146/2006, which regulates the special employment relationship for the postgraduate training of specialists in health sciences. This issue is also addressed in collective agreements. In all cases the Spanish courts clearly distinguish between on-call obligations requiring the worker's physical presence at the workplace and those merely requiring that the worker be contactable. In cases when the worker has to be present at the workplace, such on-call time is considered working time. On the other hand, if a worker has to be contactable without being required to be present at the workplace, such on-call time is not considered working time (judgment of the Supreme Court of Spain (Labour Chamber) of 27 January 2009).

In its comments, the CIG states that there is no rule in the Worker's Statute or in the regulatory development of special working hours that guarantees the right to rest of workers in case of standby duty in a specified place. In their comments, the CCOO and the UGT state that the employer can establish an irregular distribution of 10% of worktime throughout the year if this is not regulated by an agreement or collective agreement. They mention the case of bodyguards, who must be available on call and do not have to be at a certain place determined by the employer, and this time is not considered working time. They mention some Supreme Court rulings on on-call duty and note that they go against the Committee's case-law. In its response, the Government states that there are different rules depending on whether the worker has to stay at the workplace or in another place.

The Committee recalls that in its decision on the merits of 23 June 2010 *Confédération générale du travail* (CGT) v. France, Complaint No. 55/2009, §§ 64-65, it held that when an on-call period during which no effective work is undertaken is regarded a period of rest, this violated Article 2§1 of the Charter. The Committee found that the absence of effective work, determined a posteriori for a period of time that the employee a priori did not have at his or her disposal, cannot constitute an adequate criterion for regarding such a period a rest period. The Committee holds that the equivalisation of an on-call period to a rest period, in its entirety, constitutes a violation of the right to reasonable working hours, both for the stand-by duty at the employer's premises as well as for the on-call time spent at home. The Committee again asks whether inactive periods of on-call duty are considered or not as rest periods. The Committee notes that if this information is not provided in the next report, there will be nothing to establish that the situation is conformity with Article 2§1 of the 1961 Charter.

The Committee also notes that no information is provided on zero-hour contracts.

### **Covid-19**

In the context of the Covid-19 crisis, the Committee asked the States Parties to provide information on the impact of the Covid-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. More specifically, the Committee asked for information on the enjoyment of the right to reasonable working time in the following sectors: healthcare and social work; law enforcement, defence and other essential public services; education, transport.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report states that Article 5 of the Royal Decree-Law 8/2020 established the preferential nature of teleworking as an exceptional measure to guarantee the resumption of normal labour relations once the exceptional public health situation had elapsed. However, the widespread adoption of remote working revealed the need to improve ordinary labour relations creating a framework that would offer legal certainty to the parties to the employment relationship. Consequently, Royal Decree-Law 28/2020 on remote working was approved and was then superseded by Act 10/2021 on remote working.

The report further states that Article 6 of the Royal Decree-Law 8/2020 establishes the right of workers who are able to substantiate the need to take care of their spouse or partner, a first or second degree relative, to be able to modify or reduce their working hours. The validity of this measure was extended several times, lastly until 28 February 2022. In addition, Article 34.8 of the Workers' Statute was amended by Royal Decree-Law 6/2019 in order to establish the right of workers to request modifications to the duration and distribution of their working day, the organisation of their working time and the way they work.

In its comments, the CIG notes that the Covid-19 pandemic might have increased the inequalities already present in the Spanish labour market, as access to remote work has not been homogenous among workers.

### *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.

See dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter.

## **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.

The Committee recalls that no targeted questions were asked for Article 2§2 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in Spain to be in conformity with the Charter (Conclusions XXI-3 (2018)), there was no examination of the situation in 2022 on this point. Therefore, the Committee reiterates its previous conclusion.

### ***Covid-19***

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

### *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, and in the comments by the *Confederación Intersindical Galega (CIG)*, and by the *Confederación sindical de Comisiones Obreras (CCOO)* and *Unión general de trabajadores de España (UGT)*.

The Committee recalls that no targeted questions were asked for Article 2§3 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

In its previous conclusion, the Committee considered that the situation in Spain was not in conformity with Article 2§3, on the ground that not all employees had the right to take at least two weeks of uninterrupted holiday during the year (Conclusions XXI-3 (2018)).

The report indicates that a full-time worker may take 22 working days (30 calendar days) of paid holiday time annually. Under Article 38§2 of the Worker’s Statute, the period or periods of their enjoyment shall be established by mutual agreement between the employer and the worker, in accordance with what is established, where applicable, in the collective agreements on annual holiday planning. The Committee takes note of the examples of collective agreements provided in the report that establish an uninterrupted two-week vacation period.

In this regard, the CCOO and UGT in its comments state that when collective bargaining does not guarantee minimum periods for taking holidays, it is left to individual agreements, without imposing any limit as regards the possibility of dividing up these periods. Moreover, in the absence of any agreement between the parties, the regulation does not establish a minimum period either, leaving it up to the competent authority to establish holiday periods without complying with any specific criteria.

In addition, the CIG states in its comments that the Resolution of 28 February 2019 (repealed the previous Resolution of 28 December 2012) of the Public Administration State Secretariat dictates instructions on working hours of personnel at the service of the General State Administration and its public bodies. By virtue of this Resolution, public employees are entitled to 22 days of annual holiday with pay which may be taken in minimum periods of five consecutive days; at least half of the holiday (that is 11 working days) must be taken during the summer period, namely between 16 June and 15 September, unless the working schedule, in consideration of the particular types of services provided in each sector, specifies other periods.

However, the Committee notes from the CCOO and UGT comments that a minimum period of holidays appears for a certain type or category of workers, namely domestic workers. According to Article 9§7 of Royal Decree 1620/2011 of 14 November 2011, which regulates the special labour relationship of domestic workers, “the period of annual holidays shall be thirty calendar days, which may be divided into two or more periods, although at least one of them shall be at least fifteen consecutive calendar days.”

In view of the above, the Committee understands that the situation in Spain with regard to annual leave that must be taken in instalments of at least five continuous working days has not changed during the reference period. Consequently, it reiterates its previous conclusion of non-conformity on this point.

### **Covid-19**

In reply to the question regarding special arrangements related to the pandemic, the report does not provide any information.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

*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 recalls that no targeted questions were asked for Article 2§4 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee deferred its previous conclusion pending receipt of the information requested 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 (Conclusions XXI-3 (2018)).

### ***Elimination or reduction of risks***

The Committee noted that the situation was considered to be in conformity with the 1961 Charter on this point, so it reiterates its previous conclusion of conformity.

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

The Committee asked for 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 example shifts, rotation of workers, etc), as well as on other types of workers exposed to residual risks, beyond those already mentioned. The Committee also asked 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.

The report reiterates the information previously submitted, specifically that for some occupations special limitations on the length of the working hours are provided for. The law does not provide for the limitation of exposure to risks by reducing their duration as a compensatory measure, but it foresees various organisational measures taken to protect workers' health and safety. In this respect, numerous regulations stipulate the company's obligations to adopt appropriate technical and/or organisational measures to reduce workers' exposure to risk. Several examples are given, but no detailed information on what is the situation in those cases in which risks cannot be reduced completely, no statistics nor any information on the monitoring activities of the labour inspectorate, in spite of its former questions.

The Committee recalls that when the risks have not been eliminated or sufficiently reduced despite the application of the measures described above, or if such measures have not been applied, the second part of Article 2§4 requires States to grant workers exposed to such risks one form or another of compensation. The aim of these compensatory measures should be to afford the persons concerned sufficient regular rest time to recover from the stress and fatigue caused by their occupation and thus maintain their vigilance or limit their exposure to the risk.

The Committee therefore considers that it is not established that all workers performing dangerous or unhealthy work are entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

### ***Covid-19 related measures***

No information was provided on measures taken during the Covid-19 pandemic in this field.

### *Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 2§4 of the 1961 Charter on the ground that it has not been established that all workers performing dangerous or unhealthy work are entitled to appropriate compensation measures, such as reduced working hours or additional paid leave.

**Article 2 - Right to just conditions of work**

*Paragraph 5 - Weekly rest period*

The Committee recalls that no targeted questions were asked for Article 2§5 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle.

As the previous conclusion found the situation in Spain to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore, the Committee reiterates its previous conclusion.

*Conclusion*

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

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

### *Paragraph 1 - Decent remuneration*

The Committee takes note of the information contained in the report submitted by Spain and the comments from the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT).

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§1 of the Charter as well as, where applicable, previous conclusions of non-conformity, deferrals or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Labour rights").

In its previous conclusion (Conclusions 2018) the Committee found that the situation was not in conformity with the Charter as the minimum wage for private sector workers and for contractual staff in the civil service did not ensure a decent standard of living.

The Committee's assessment will therefore relate to the information provided by the Government in response to the questions raised in the previous conclusion as well as the targeted questions with regard to Article 4§1 of the Charter.

### **Fair remuneration**

The Committee observes that the report provides information about the evolution of the minimum wage. It notes that in 2020 the minimum wage in the private sector was set at € 950 per month, which represents a 31% increase since 2019. The Committee notes that this wage is paid 14 times a year and therefore, it amounted to €1.108 per month, calculated over 12 months. According to Eurostat that the gross average earnings in 2020 amounted to € 26.028 and to €20.632 net. According to Eurostat the minimum wage amounted to €1.108 in 2020.

The Committee notes that the report does not provide information about the net minimum wage. It observes that the gross minimum wage stood at 51% of the gross average earnings. However, in the absence of information concerning the net minimum wage, the Committee considers that it has not been established that the minimum wage in the private sector can ensure a decent standard of living.

The Committee further notes that the report does not provide any information concerning the public sector. The Committee takes note of the Royal Decree-Law 2/2020 of January 21, 2020, approving urgent measures regarding remuneration in the public sector. The Committee notes that this Royal Decree establishes different levels of the minimum wage for the different categories of public workers. It notes that the lowest minimum wage is established for workers in category C2, who receive 12 times € 650 euros for 12 months and additional € 644,40 for two months (€757 calculated for 12 months). The Committee also notes that in Category E the lowest minimum wage was set at € 694 per month.

However, in the absence of information concerning the gross and net minimum wages paid in the public sector, the Committee considers that it has not been established that the minimum wage in the public sector can ensure a decent standard of living. It asks the next report to provide full information concerning minimum gross and net wages paid in the public sector, by category.

The Committee notes from the Comments by the *Confederación sindical de Comisiones Obreras* (CCOO) and *Unión general de trabajadores de España* (UGT) as well as the *Confederación Intersindical Galega* (CIG) on the national report of Spain that the Royal Decree 152/2022, of February 22 has taken into account the conclusions of the Committee and provides that the increase in the minimum wage aims at ensuring a decent standard of living for workers and their families, which is set at 60% of the average wage by the Committee. However, the CCOO, UGT and CIG consider that this threshold has not yet been attained. In

reply, the Government also indicates that when establishing the levels of minimum interprofessional wage in the Royal Decree 817/2021 account was taken of the need to guarantee a fair remuneration as interpreted by the Committee.

### ***Workers in atypical employment***

As part of its targeted questions the Committee asks for information on measures taken to ensure fair remuneration sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. It also asks for enforcement activities (e.g. by labour inspectorates or other relevant bodies) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).

The Committee considers that the requirement that workers be remunerated fairly to ensure a decent standard of living for themselves and their families applies equally to atypical jobs, such as part-time work, temporary work, fixed-term work, casual and seasonal work. In some cases, prevailing wages or contractual arrangements lead to a significant number of so-called working poor, including persons working two or more jobs or full-time workers living in substandard conditions.

The Committee refers in particular to workers employed in emerging arrangements, such as the gig economy or platform economy, who are incorrectly classified as self-employed and therefore, do not have access to the applicable labour and social protection rights. As a result of the misclassification, such persons cannot enjoy the rights and protection to which they are entitled as workers. These rights include the right to a minimum wage.

The Committee asks what measures are being taken to ensure fair remuneration of workers in atypical jobs as well as misclassified self-employed persons in the platform economy.

### ***Covid-19***

As part of its targeted questions, the Committee also asked for specific information about furlough schemes during the pandemic. The Committee notes that the report does not provide this information.

The Committee recalls that in the context of the COVID-19 pandemic, States Parties must devote necessary efforts to reaching and respecting this minimum requirement and to regularly adjust minimum rates of pay. The right to fair remuneration includes the right to an increased pay for workers most exposed to COVID-19-related risks. More generally, income losses during lockdowns or additional costs incurred by teleworking and work from home practices due to COVID-19 should be adequately compensated.

The Committee asks whether the financial support provided for workers through furlough schemes was ensured throughout the period of partial or full suspension of activities due to the pandemic. It also asks what was the minimum level of support provided and what proportion of workers concerned were covered under such schemes.

### ***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:

- it has not been established that the minimum wage in the private sector can ensure a decent standard of living;
- it has not been established that the minimum wage in the public sector can ensure 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 and in the comments by the *Confederación Intersindical Galega* (CIG) and CCOO and UGT and of the Government's response.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§2 of the 1961 Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions falling within the thematic group "Labour rights").

In its previous conclusion, the Committee considered that the situation in Spain was not in conformity with 4§2 of the 1961 Charter on the ground that the Workers' Statute did not guarantee increased remuneration or an increased compensatory time-off for overtime work (Conclusions XXI-3 (2018)). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted question.

### **Rules on increased remuneration for overtime work**

Previously, the Committee found that the situation in Spain was not in conformity with Article 4§2 of the 1961 Charter on the ground that the Workers' Statute did not guarantee increased remuneration or an increased compensatory time-off for overtime work (Conclusions XXI-3 (2018)). The Committee also asked for information on the situation of overtime in the private sector, including data of the labour inspection services.

The report states that Article 35 of the Workers' Statute provides that remuneration for overtime work shall be established by collective bargaining, and under no circumstances shall it be lower than the amount paid for ordinary working hours. The legislative option gives preference to compensatory rest over remuneration because it states that in the absence of collective agreement in this respect, it shall be understood that overtime work shall be compensated by means of rest. Moreover, Article 35.4 of the Workers' Statute states that the provision of work in overtime hours must be voluntary, unless this provision has been agreed in a collective agreement, or individual employment contract, within the limits of paragraph 2 of this Article. This paragraph states that a maximum of 80 hours yearly can be worked as overtime, except for those hours that are necessary to prevent or repair damage caused by accidents, or other extraordinary damage requiring urgent attention.

The report further states that the reform of the Workers' Statute was carried out through Royal Decree-Law 8/2019 on urgent measures for social protection and on combating insecurity regarding working hours. Article 34.9 of that Royal Decree-Law introduced an obligation to keep a daily record of the working hours of the entire staff, including the specific time at which such hours start and end for each worker. This change facilitates the work of the Labour and Social Security Inspectorate as regards monitoring the provision of and remuneration for, or compensation with equivalent rest periods for overtime hours. The obligation to record working hours is also applicable in the case of teleworking.

In its comments, the CIG states that the Spain's legislator chose not to stipulate a salary increase by law for remuneration of overtime work, ignoring the Committee's repeated conclusions. It further states that a widespread practice of unpaid overtime exists in sectors such as banking, textiles, hospitality, commerce and metal/auto repair shops, as well as in companies with fewer than 50 workers. CIG also states that women undertake a significant amount of unpaid overtime. In their comments, CCOO and UGT state that legally there is no obligation to increase the rate of remuneration to compensate for overtime work. This lack of guarantees is even more obvious in the case of part-time contracts where any work carried



out beyond the agreed hours is not considered overtime, but “supplementary hours” which are paid at the same rate as normal working time. In its response, the Government states that the supervision and control of the rules and limits applicable to the maximum duration of working time and overtime are the responsibility of the Labour and Social Security Inspectorate.

The Committee reiterates the aim of Article 4§2 is to ensure that the additional occupation of workers during overtime is rewarded. Under this provision such reward must take the form of an increased rate of remuneration. However, the Committee recognises reward in the form of time off, provided that the aim of the provision is met. This means, in particular, that where remuneration for overtime is entirely given in the form of time off, Article 4§2 requires that this time be longer than the additional hours worked (Conclusions 2014, Slovak Republic). The principle of this provision is that work performed outside normal working hours requires an increased effort on the part of the worker, who therefore should be paid at a rate higher than the normal wage (Conclusions XIV-2, Statement of Interpretation of Article 4§2).

The Committee notes that, as it appears from the report, the situation in Spain has not changed, the remuneration for overtime is dependent on the existence of collective agreements and the conditions therein and the time off given for overtime is only equivalent to the overtime worked. The Committee thus reiterates its conclusion of non-conformity on this point. Also, the Committee notes that no data is provided on overtime in the private sector in the report and thus it reiterates this request for information.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked the States Parties to explain the impact of the Covid-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. The Committee asked for specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, increased compensation).

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

The report provides no information requested.

### *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 increased remuneration or an increased compensatory time-off for overtime work is not guaranteed.

## **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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 4§3 of the Charter, as well as, where applicable, previous conclusions of non conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

With respect to Article 4§3, the States were asked to provide information on the impact of Covid-19 pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.

The Committee recalls that it examines the right to equal pay under Article 20 (Article 1 of the 1988 Additional Protocol) and Article 4§3 of the Charter and does so every two years (under thematic group 1 “Employment, training and equal opportunities”, and thematic group 3 “Labour rights”). As Spain has accepted Article 1 of the 1988 Additional Protocol, the Committee examines policies and other measures to reduce the gender pay gap under this Article of the Charter. The Committee also points out that Spain ratified the Revised European Social Charter on 17 May 2021 (outside the reference period), accepting, among others, Article 20.

As the previous conclusion (Conclusions XXI-3 (2018)) found the situation in Spain to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore, the Committee reiterates its previous conclusion.

### ***The impact of Covid-19 on the right of men and women workers to equal pay for work of equal value***

The report does not provide any information in response to the question on the impact of Covid-19.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021.

### *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 and in the comments by the *Confederación Intersindical Galega* (CIG) and CCOO and UGT and the Government's response.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted questions for Article 4§4 of the 1961 Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions falling within the thematic group "Labour rights").

In its previous conclusion, the Committee considered that the situation in Spain was not in conformity with Article 4§4 of the 1961 Charter (Conclusions XX-3 (2018)).

The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity, and to the targeted questions.

The Committee refers to its statement of interpretation on Article 4§4 (2018), where the Committee recalled that a reasonable notice period on termination of employment is regarded as one of the components of fair remuneration. The Committee further recalls that a reasonable notice period is one during which workers are entitled to their regular remuneration and that takes account of the workers' length of service, the need not to deprive workers abruptly of their means of subsistence, as well as the need to inform workers of the termination in good time so as to enable them to seek a new job. The Committee points out that it is for governments to prove that these elements have been considered when devising and applying the basic rules on notice periods.

Following on from its statement of interpretation on Article 4§4 (2018), the Committee recalls that the question of the reasonableness of the notice periods will no longer be addressed, except where the notice periods are manifestly unreasonable. The Committee will assess this question on the basis of:

1. The rules governing the setting of notice periods (or the level of compensation in lieu of notice):
  - according to the source of the rule, namely the law, collective agreements, individual contracts and court judgments;
  - during any probationary periods, including those in the public service;
  - with regard to the treatment of workers in insecure jobs;
  - in the event of termination of employment for reasons outside the parties' control;
  - including any circumstances in which workers can be dismissed without notice or compensation.
2. Acknowledgment, by law, collective agreement or individual contract of length of service, whether with the same employer or where a worker has been successively employed in precarious forms of employment relations.

### ***Reasonable period of notice: legal framework and length of service***

The Committee asked in its targeted question about information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the Covid-19 crisis and the pandemic.

The report does not provide any information in this respect.

In its previous conclusion, the Committee found that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that a two-week notice period for termination of

the employment contract for objective reasons was unreasonable for workers with more than 6 months service.

In response to the conclusion of non-conformity, the report states that, according to Article 49.1 c) and Article 53 of the Statute of Workers, when an employment contract exceeding 6 months of service is terminated due to objective reasons, the notice period shall be 15 days. In addition, the company is required to pay the worker compensation of 20 days' salary per year of service, with periods of under one year being calculated on a pro rata basis in months with a maximum of 12 monthly payments.

As noted above, the Committee will no longer assess the reasonableness of notice periods in detail, but in line with the criteria above. In the light of the information provided in the report, the Committee considers that the 15-day notice period for all contracts exceeding 6 months of service together with the severance payment of 20 days' salary per year of service with a maximum of 12 monthly payments is in conformity with Article 4§4 of the 1961 Charter.

### ***Notice periods during probationary periods***

In its previous conclusion the Committee found that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that there was no notice period for workers on probation (Conclusions XX-3 (2018)).

The report states that according to Article 14 paragraph 3 of the Workers' Statute, the employer and the employee may withdraw from the contract during the probationary period without the need to allege any cause or to pay any compensation, unless a period of notice has been agreed upon. The report further states that the workers who disagree with the termination of the contract during the probationary period have 20 days to file an appeal against it.

In its comments, CIG and CCOO and UGT state that the previous non-conformity has not been resolved.

In its response, the Government states that it would be unreasonable to require a notice period during probation. However, this does not mean that the employee cannot appeal to the judicial bodies if they disagree with the termination of contract.

The Committee notes that there have been no developments concerning the previous ground of non-conformity. The Committee therefore reiterates its previous conclusion of non-conformity in this respect.

### ***Notice periods with regard to workers in insecure jobs***

The Committee previously found that the situation was in conformity with the Article 4§4 of the 1961 Charter in this respect (Conclusions XX-3 (2018)).

### ***Notice periods in the event of termination of employment for reasons outside the parties' control***

In its previous conclusion the Committee found that the situation was not in conformity with Article 4§4 of the 1961 Charter on the ground that there is no notice period in the event of the employer's death or incapacity (Conclusions XX-3 (2018)).

The Committee notes that the report states that in the event of termination of employment contracts due to the death, retirement or incapacity of the employer, Article 49.1.g of the Workers' Statute provides that the worker is entitled to payment of an amount equivalent to one month's salary.

The Committee has decided to reassess its case law as regards the notice period in the event of termination of employment due to the death of the employer who is a natural person, as such notice period could not be given by the deceased employer. Therefore, the Committee

no longer considers that the situation in Spain is not in conformity with Article 4§4 of the 1961 Charter on the ground that there is no notice period in the event of death of the employer who is a natural person.

***Circumstances in which workers can be dismissed without notice or compensation***

The Committee previously found that the situation was in conformity with Article 4§4 of the 1961 Charter in this respect (Conclusions XX-3 (2018)).

*Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 4§4 of the 1961 Charter on the ground that there is no notice period 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.

The Committee recalls that no questions were asked for Article 4§5 of the Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in Spain to be in conformity with the Charter, there was no examination of the situation in 2022.

Therefore, the Committee reiterates its previous conclusion.

*Conclusion*

The Committee concludes that the situation in Spain is in conformity with Article 4§5 of the 1961 Charter.

## **Article 5 - Right to organise**

The Committee takes note that there was no information on Article 5 in the report submitted by Spain.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to the targeted questions for Article 5 of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee concluded that the situation in Spain was in conformity with Article 5 of the Charter.

The Committee also recalls that in the General Introduction of Conclusions 2018, it posed a general question under Article 5 and asked States to provide, in the next report, information on the right of members of the armed forces to organise.

The assessment of the Committee will therefore concern the information provided in the report in response to the targeted questions and to the general question.

### ***Restrictions on the right to organise***

The Committee asked in its targeted question for information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. The report provides no information in this respect. The Committee recalls that it has previously found the situation in conformity with Article 5 of the Charter (most recently Conclusions 2018). Therefore, it considers that the situation remains in conformity in this respect, however it requests the next report to confirm that there are no public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations.

### ***Personal scope***

As regards the right of members of the armed forces to organise, the Committee asks the next report to provide the requested information. If the requested information is not provided there will be nothing to establish that the situation is in conformity with the Charter.

### ***Conclusion***

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

## **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 recalls that no targeted questions were asked for Article 6§1 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions relating to the “Labour rights” thematic group).

As the previous conclusion found the situation in Spain to be in conformity with the Charter, there was no examination of the situation in 2022. 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 submitted jointly by the *Confederación Sindical de Comisiones Obreras* (CCOO), the *Unión General de Trabajadores y Trabajadoras de España* (UGT), and by the *Confederación Intersindical Galega* (CIG), respectively.

The Committee recalls that no targeted questions were asked for Article 6§2 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the 1961 Charter in respect of the provisions relating to the “Labour rights” thematic group).

The Committee also recalls that in the General Introduction to Conclusions XXI-3 (2018), it posed a general question under Article 6§2 of the 1961 Charter and asked States to provide, in the next report, information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

In its previous conclusion, the Committee considered that the situation in Spain was not in conformity with Article 6§2 of the 1961 Charter on the ground that national legislation permitted employers unilaterally not to apply conditions agreed in collective agreements (Conclusions 2018). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

According to the information in the report and the comments submitted by trade union organisations, there has been no change to the situation giving rise to the finding of non-conformity. Therefore, the Committee reiterates its previous conclusion.

The Committee further asked for information regarding the proportion of workers covered by a collective agreement (Conclusions 2018). As the report provides no information on this point, the Committee reiterates its request.

As the report does not provide any relevant information in relation to the above-mentioned general question, the Committee reiterates its request for information on the measures taken or planned to guarantee the right to collective bargaining for self-employed workers and other workers falling outside the usual definition of dependent employee.

### **Covid-19**

In reply to the question regarding the special arrangements related to the pandemic, the report does not provide any information.

### *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 national 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 and of the comments from the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT).

The Committee recalls that no questions were asked for Article 6§3 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

The Committee deferred its previous conclusion (Conclusions XXI-3 (2018)) pending receipt of:

- detailed information on the circumstances in which a dispute may be referred to the National Consultative Commission on Collective Agreements (CCNCC) and on whether this concerns conflicts of interest or only conflicts of rights, and
- information on whether both the trade unions and employers have to agree to the issue being submitted to the CCNCC.

In its report, the Government does not answer any of the questions put. However, it does provide some information on developments at the end of the reference period. In particular, it states that by decision of 10 December 2020, the Directorate-General for Labour ordered the registration and publication of the Sixth Agreement on Autonomous Labour Dispute Resolution (out-of-court system) concluded by the social partners in accordance with Articles 83§3, 90§2 and 90§3 of the Workers' Statute (hereinafter Agreement VI).

The purpose of Agreement VI is to maintain and develop an autonomous system for settling collective labour disputes between companies and workers or the organisations representing them. It seeks, in particular, to facilitate and make more effective the settlement of disputes in collective bargaining negotiations so as to break stalemates, of disputes in joint collective bargaining committees, of disputes in certain consultation periods provided for in the Workers' Statute and of disputes that lead to strikes being called.

Agreement VI deals with the nature, functions and composition of the Inter-Confederation Mediation and Arbitration Service (SIMA-FSP) as a tripartite institution involving the trade union and employers' organisations that are signatories thereto, as well as the General State Administration. Formally established as a public-sector foundation under the Ministry of Labour and Social Economy, it is publicly funded and co-ordinates mediation and arbitration procedures (that are free of charge for the parties).

The Government adds that Royal Decree 499/2020 defining the basic organisational structure of the Ministry of Labour and Social Economy assigned to the Directorate-General for Labour certain functions relating to conciliation, mediation and arbitration of labour disputes, as well as to anticipating, analysing and monitoring collective disputes.

The CCOO and UGT state that there was no change during the reference period to regulations on procedures for modifying working conditions when these are established by collective agreements (for example, Article 82§3 of the Workers' Statute), nor any change to the implementing provisions stipulated by the CCNCC, and that Royal Decree 1362/2012, which governs the CCNCC, still makes arbitration mandatory.

The Committee asks for up-to-date and detailed information in the next report on:

- collective labour disputes which can or must be referred for arbitration (conclusion/amendment of collective agreements and/or application/interpretation of collective agreements);
- the authority or authorities responsible for carrying out such arbitration;

- whether referral of arbitration to the authority or authorities is voluntary or compulsory.

The Committee points out that should the next report not provide the information requested, there will be nothing to show that the situation is in conformity with Article 6§3 of the 1961 Charter.

*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 and of the comments from the Trade Union Confederation of Workers' Commissions (CCOO), the General Union of Workers (UGT) and the Galician Trade Union Confederation (*Confederación Intersindical Galega*).

The Committee recalls that no targeted questions were asked for Article 6§4 of the 1961 Charter. For this reason, only States in relation to which the previous conclusion had been a conclusion of non-conformity, deferral or conformity pending receipt of information were required to provide information for this provision in the current reporting cycle (see the appendix to the letter in which the Committee requested a report on the implementation of the Charter in respect of the provisions relating to the "Labour rights" thematic group).

The Committee also recalls that in the General Introduction to Conclusions XXI-3 (2018), it posed a general question under Article 6§4 and asked States to provide, in the next report, information on the right of members of the police to strike and any restrictions.

In its previous conclusion, the Committee considered that the situation in Spain was not in conformity with Article 6§4 of the 1961 Charter (Conclusions XXI-3 (2018)). The assessment of the Committee will therefore concern the information provided in the report in response to the conclusion of non-conformity and to the general question.

### ***Right to collective action***

#### ***Restrictions to the right to strike, procedural requirements***

In its previous conclusion, the Committee considered that the situation was not in conformity with Article 6§4 of the 1961 Charter on the ground that legislation authorised the Government to impose compulsory arbitration to end a strike in cases which went beyond the limits permitted by Article 31 of the 1961 Charter. The Committee asked that the next report provide information on when and in what circumstances compulsory arbitration had been used.

In its report, the Government states that the legislation has not changed; nevertheless, it does not share the Committee's opinion.

The Government points out that compulsory arbitration to end a strike may be used only in the exceptional circumstance provided for in Article 10 of Royal Decree-Law 17/1977 on labour relations, which requires that the following three conditions be met: i) that the strike continue for an extensive period or that it produce serious consequences, ii) that the parties hold irreconcilable positions; and iii) that the strike cause serious harm to the national economy. These conditions, which must all be present simultaneously, refer to the serious implications of the strike for the rights and freedoms of others; consequently, the circumstances under which the authorities are permitted to have recourse to arbitration cannot be considered as being broader in scope than the ones envisaged in Article 31 of the 1961 Charter.

The Government further states that compulsory arbitration is a little used instrument, that arbitrator impartiality must be guaranteed, and that judicial oversight of such arbitration must be possible.

The Committee points out that the use of compulsory arbitration to terminate a strike is contrary to the Charter except in the cases provided for in Article 31, in other words it must be prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

The Committee notes that in Spain, recourse to compulsory arbitration is provided for in the legislation. Article 10 of Royal Decree-Law 17/1977, however, sets out the conditions under which recourse to compulsory arbitration may be had in too vague and general terms ("taking

into account the duration or consequences of the strike, the positions of the parties and the serious harm to the national economy”). Moreover, the Government has not provided precise information on when and in what circumstances compulsory arbitration was used during the reference period. Consequently, the Committee reiterates its conclusion of non-conformity on this point.

### ***Right of the police to strike***

The Government has not answered the general question asked in the General Introduction to Conclusions XXI-3 (2018).

The Committee notes, however, that Article 8§3 a) of Organic Law 9/2015 relating to the regime of the national police personnel provides that such personnel “cannot in any case exercise the right to strike”.

The Committee points out with regard to the regulation of the collective bargaining rights of police officers, that states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action (European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on admissibility and the merits of 2 December 2013, §211). Under domestic law the police are denied the right to strike. The Committee considers therefore that the situation is not in conformity with Article 6§4 of the Charter on the ground that this absolute prohibition on the right to strike for the police goes beyond the limits set by Article 31 of the 1961 Charter.

### ***Covid-19***

In the context of the Covid-19 crisis, the Committee asked all States to provide information on:

- specific measures taken during the pandemic to ensure the right to strike;
- as regards minimum or essential services, any measures introduced in connection with the Covid-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.

The Committee notes that the Government has not provided the requested information.

The Committee points out that in its Statement on Covid-19 and social rights adopted on 24 March 2021, it specified that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or inadequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the protection afforded by the Charter.

### ***Conclusion***

The Committee concludes that the situation in Spain is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- legislation authorises the Government to impose arbitration to end a strike in cases which go beyond the limits set by Article 31 of the 1961 Charter;
- the police are denied the right to strike.

## **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.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 21 of the Charter (Article 2 of the Additional Protocol to the 1961 Charter), as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions XXI-3 (2018)). The assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions.

The Committee recalls that Article 2 of the Additional Protocol to the 1961 Charter secures the right of workers to information and consultation within the undertaking, so that they are enabled to influence the company decisions which substantially affect them and that their views are considered when such decisions are taken, such as changes in the work organisation and in the working conditions.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to information and consultation. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis, whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The Committee notes from the report that it appears that no specific measures were taken in this respect.

The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers’ representatives in terms of Article 21 of the Charter (Article 2 of the Additional Protocol to the 1961 Charter).

### *Conclusion*

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.

The Committee recalls that in the context of the present monitoring cycle, States were asked to reply to targeted question for Article 3 of the 1988 Additional Protocol of the Charter, as well as, where applicable, previous conclusions of non-conformity, deferrals, or conformity pending receipt of information (see the appendix to the letter, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Labour rights”).

The Committee recalls that Article 3 of the 1988 Additional Protocol (Article 22 of the Charter) secures the right of workers to participate, by themselves or through their representatives, in the shaping and improvement of their working environment.

In its previous conclusion, the Committee found the situation to be in conformity with the Charter (see Conclusions XXI-3 (2018)) pending receipt of information requested on organisation of social and socio-cultural services and facilities. The assessment of the Committee will therefore concern the information provided by the Government in response to the questions raised in its previous conclusion, and to the targeted questions.

In its previous conclusion and the precedent one (Conclusions XX-3 (2014)) the Committee asked to be informed about the national legislation and practice in respect of the right of workers to take part in 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. The Committee thus reiterates its questions and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter on this point.

For this examination cycle, the Committee requested information on specific measures taken during the Covid-19 pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. It requested, in particular, specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.

The Committee notes from the report that it appears that no specific measures were taken during the pandemic. The Committee refers to its statement on Covid-19 and social rights of 24 March 2021 in that it recalled that social dialogue has taken on new dimensions and new importance during the Covid-19 crisis. Trade unions and employers’ organisations should be consulted at all levels on both employment-related measures focused on fighting and containing Covid-19 in the short term and efforts directed towards recovery from the economically disruptive effects of the pandemic in the longer term. This is called for at all levels, including the industry/sectoral level and the company level where new health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers’ representatives in terms of Article 22 of the Charter.

#### *Conclusion*

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

### ***Dissenting opinion by Carmen Salcedo Beltrán on Article 2§1 of the 1961 European Social Charter and the Revised European Social Charter***

Article 2§1 of the 1961 European Social Charter, and the Revised European Social Charter provides that the Contracting Parties, with a view to ensuring the effective exercise of the right to just conditions of work, undertake "to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit".

The European Committee of Social Rights has ruled in the past on this provision and in particular on the guarantees provided for on-call duty, those periods during which the employee, without being at his place of work and without being at the permanent and immediate disposal of the employer, must be contactable and able to intervene in order to carry out work for the company.

The Committee examined their legal regime through the two systems for monitoring the compliance with the European Social Charter. On the one hand, four decisions on the merits, under the collective complaints procedure have been adopted: decision on the merits of 12 October 2004, *Confédération française de l'Encadrement CFE-CGC v. France*, Collective Complaint No. 16/2003; decision on the merits of 8 December 2004, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No. 22/2003; decision on the merits of 23 June 2020, *Confédération Générale du Travail (CGT) v. France*, Collective Complaint No 55/2009; decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No 149/2017.

On the other hand, directly or indirectly, 68 conclusions on the reporting system, of which 35 were of non-conformity, have been adopted (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3, Conclusions 2013, Conclusions 2011, Conclusions 2010, Conclusions XVIII-2, Conclusions 2007, Conclusions XVII-1, Conclusions XVI-2, Conclusions XVI-1).

As a result of this consolidated case law, the Committee has focused its attention on on-call periods, in order to decide whether or not article 2§1 of the European Social Charter has been complied with, or violated, on two specific points that it has clearly identified in this respect:

1°. On one hand, on the payment to the on-call employee of a compensation, either in financial form (bonus) or in the form of rest, in order to compensate for the impact on his/her ability to organise his private life and manage his personal time in the same way as if he/she was not on call.

2°. On the other hand, on the minimum duration of the compulsory daily and/or weekly rest period which all States must respect and which all workers must enjoy. It is common for employees to start their on-call period, totally or partially, at the end of their working day and end it at the beginning of the next working day. Even if the employee is not required to carry out actual work, the consequence is that he/she will not have had his/her rest time at his/her disposal in full freedom or without any difficulty, i.e. the conditions and purpose of the minimum rest period are difficult to achieve *stricto sensu*.

In this perspective, I would like to emphasise the two effects mentioned which impact on two different elements of the employment relationship (salary and minimum rest period). States often integrate them together into one, so that the payment of a bonus is the most usual (only) remedy (compensation for the first effect) and the legal assimilation of the on-call period without carrying out actual work to rest time (i.e. it has no consideration for the second effect).

The case law that the ECSR has adopted in recent years has considered both effects separately. Both must be valued and respected at the same time. On one hand, the availability of the employee to intervene must be compensated. On the other hand, the consequences for the minimum period of compulsory rest must be considered. For this reason, in the four



decisions on the merits mentioned above, France was condemned for the violation of article 2§1 of the revised European Social Charter. As far as France is concerned, even though Article L3121-9 of the Labour Code provides that "the period of on-call duty shall be compensated for, either financially or in the form of rest", it should be noted that considering on-call duty without intervention for the calculation of the minimum daily rest period undermines the second condition. Indeed, it is necessary to point out that the ECSR specified in the last decision on the merits that this considering will involve a violation of the provision if it is "in its entirety" (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017).

In the 2022 conclusions, on-call duty was specifically examined. The Committee requested information on the legislation and practice regarding working time, on-call duty and how inactive periods of on-call duty were treated in terms of working time and rest and their remuneration.

It should be noted that most responses did not answer in the affirmative. In other words, the State reports did not inform the Committee simply that "on-call time is working time or rest time". However, the answers had a negative meaning, i.e., the responses stated verbatim that on-call duty "is not considered as working time".

The majority of the Committee felt that this information did not answer the question asked and decided to defer most of the conclusions.

I regret that I am unable to agree with these conclusions. I will explain my reasons below. Firstly, I consider that the negative responses from the Member States provide sufficient information on the legislative frameworks in place regarding the inclusion of on-call duty in daily or weekly rest periods. In my opinion, it is meaningless not to examine or value the replies, because the sentence "on-call duty is rest time" is not transcribed positively, but "on-call duty is not working time" is transcribed negatively. I believe that the Committee has sufficient information to assess conformity or non-conformity.

In my view, the consequences of not assessing this information are remarkable. Firstly, it encourages States not to provide the information within the time limits set by the Committee and to take advantage of an attitude that, in addition, does not comply with an obligation that they know perfectly well and that they have become accustomed to not fulfilling.

Secondly, it should be remembered that the legal interpretation of the European Social Charter goes beyond a textual interpretation. It is a legal instrument for the protection of human rights which has binding force. A treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Art. 31 Vienna Convention on the Law of Treaties). In the light of the Charter, it means protecting rights that are not theoretical but effective (*European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia*, Collective Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). As such, the Committee has long interpreted the rights and freedoms set out in the Charter in the light of current reality, international instruments and new issues and situations, since the Charter is a living instrument (*Marangopoulos Foundation for Human Rights v. Greece*, Collective Complaint No. 30/2005, decision on the merits of 6 December 2006, §194; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Collective Complaint No. 39/2006, decision on the merits of 5 December 2007, §64 and *ILGA v. Czech Republic*, Collective Complaint No. 117/2015, decision on the merits of 15 May 2018, §75).

Finally, in the event that the Committee does not have all the relevant information, in my view it should take the most favourable meaning for the social rights of the Charter. In other words, States must provide all the information, which becomes a more qualified obligation when this information has been repeatedly requested. Furthermore, I would like to point out that this

information was requested in previous Conclusions (Conclusions 2018, Conclusions XXI-3, Conclusions 2014, Conclusions XX-3). Therefore, the States were obliged to provide all the information that the Committee has repeatedly requested.

In view of the above arguments, my separate dissenting opinion concerns, firstly, those deferred conclusions by the majority of the Committee members regarding the States which, on one hand, replied that on-call duty "is not working time", and then that they take it into account in the minimum rest period which every employee must enjoy. These include Belgium, Bosnia and Herzegovina, Finland, Germany, Italy, Lithuania, North Macedonia, Malta, Montenegro, Slovak Republic and Spain. Similarly, on the other hand, it concerns States that did not respond or did so in a confused or incomplete manner. These are Albania, Estonia, Georgia, Hungary, Ireland, Latvia and the Republic of Moldova. It follows from all the above considerations that the conclusions in relation to all these States should be of non-conformity.

Secondly, my separate dissenting opinion also concerns the "general" findings of conformity with Article 2§1 of the Charter reached by the majority of the Committee in respect of four States. More specifically, with regard to Andorra, the report informs about the on-call time. It "is not considered as actual working time for the purposes of calculating the number of hours of the legal working day, since it does not generate overtime. Nevertheless, it is not considered as rest time either, it being understood that in order to comply with the obligation to benefit from at least one full day of weekly rest, the worker must be released from work at least one day in the week - of course from actual work, but also from the situation of being available outside of his working day-". The document expressly states that one day of weekly rest is respected in relation to on-call duty, but it does not communicate anything about the respect of daily rest (except for a mention of the general minimum duration of 12 hours). In relation to Greece, the report informs that the provisions of labour law do not apply to on-call duty without intervention since, even if the worker has to remain in a given place for a certain period of time, he/she does not have to be physically and mentally ready to work. As regards Luxembourg, the document informs that on-call duty is not working time. Finally, as regards Romania, the report informs, first of all, that Article 111 of the Labour Code, considers the period of availability of the worker as working time. However, immediately, on the organisation and on-call services in the public units of the health sector, informs that on-call duty is carried out on the basis of an individual part-time work contract. On-call hours as well as calls received from home "must be recorded on an on-call attendance sheet, and 'only' the hours actually worked in the health facility where the call is received from home will be considered as on-call hours". Consequently, on the basis of this information, if there are no hours worked or calls, this time is not work. It follows from all the above considerations that the conclusions in relation to these four states should also be of non-conformity.

Thirdly, in coherence, my separate dissenting opinion also concerns the finding of non-conformity with regard to Armenia. This State has informed that the time at home without intervention should be considered as at least half of the working time (Art. 149 of the Labour Code). This legal regulation is in line with the latest case law of the Committee (decision on the merits of 19 May 2021, *Confédération générale du travail (CGT) and Confédération française de l'encadrement-CGC (CFE-CGC) v. France*, Collective Complaint No. 149/2017). In my view, a positive finding on this point should be adopted expressly, independently of the finding of non-conformity on the daily working time of certain categories of workers.

Finally, I would like to raise two important questions following some of the answers contained in the reports. The first question relates to the governmental reports that have justified the national legal regime of on-call duty or non-compliance with previous findings of non-conformity on the basis of the judgments of the Court of Justice of the European Union, including some responses that challenge the Committee's ruling on "misinterpretation" of the Charter. These are Bosnia and Herzegovina, Spain, Italy, Ireland and Luxembourg. It is necessary to recall that the European Committee of Social Rights has affirmed that "the fact that a provision complies with a Community Directive does not remove it from the ambit of the Charter and from the supervision of the Committee" (*Confédération française de*

*l'Encadrement (CFE-CGC) v. France*, Collective Complaint No. 16/2003, decision on the merits of 12 October 2004, §30). Furthermore, it stressed that, even if the European Court of Human Rights considered that "there could be, in certain cases, a presumption of conformity of European Union law with the Convention, such a presumption - even if it could be rebutted - is not intended to apply in relation to the European Social Charter". On the relationship between the Charter and European Union law, it pointed out that "(...) they are two different legal systems, and the principles, rules and obligations which form the latter do not necessarily coincide with the system of values, principles and rights enshrined in the former; (...) whenever it is confronted with the latter, the European Union will have to take account of the latter.) whenever it is confronted with the situation where States take account of or are constrained by European Union law, the Committee will examine on a case-by-case basis the implementation by States Parties of the rights guaranteed by the Charter in domestic law (*General Confederation of Labour of Sweden (LO) and General Confederation of Executives, Civil Servants and Clerks (TCO) v. Sweden*, Collective Complaint No. 85/2013, decision on admissibility and merits of 3 July 2013, §§72-74).

The second issue is that the Charter sets out obligations under international law which are legally binding on the States Parties and that the Committee, as a treaty body, has "exclusive" responsibility for legally assessing whether the provisions of the Charter have been satisfactorily implemented (*Syndicat CFDT de la métallurgie de la Meuse v. France*, Collective Complaint No. 175/2019, decision on the merits of 5 July 2022, §91).

These are the reasons for my different approach to the conclusions of Article 2§1 of the European Social Charter in relation to on-call duty.