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THE ILO RECOGNISES THAT THE 2012 LABOUR REFORM VIOLATES THE RIGHTS OF FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

The Committee on Freedom of Association concludes that the Government should have promoted a process of effective social dialogue instead of using the crisis to impose this reform and violate signed contracts

Addressing the complaint presented by CCOO and UGT, the ILO Committee on Freedom of Association recognizes that the labour reforms that the Spanish Government imposed in 2012 violate the rights of freedom of association and collective bargaining as recognized by agreements ratified by Spain.

To the ILO, the financial crisis was not just cause for violating the international agreements endorsed by our country on this subject; because of this, the Government should promote a process of effective social dialogue, instead of imposing the labour reforms. To that end, both unions demand the reversal of this unfair and regressive law, and exhort more respect from the Government for the accepted agreements between our social partners in the Second Agreement on Employment and Collective Bargaining (II AENC), also violated a few days after signing this reform.

In a joint note, CCOO and UGT declare:

“The ILO published the 371st Report of the Committee on Freedom of Association that contains the report relating to the complaint that UGT and CCOO presented together against the Spanish Government for the violation of the right to freedom of association and the right to bargain collectively, recognized and guaranteed in ILO Conventions Nos 87, 98 and 154, ratified by Spain, had been violated by the Royal Legislative Decree No. 3/2012 of 10 February 2012 on urgent measures for labour market reform, adopted by the Government and confirmed by the Congress of Deputies, and the subsequent Law 3/2012.”

Also, the report analyses the complaint related to public sector issues affected by the unilateral decision of the Government, through Royal Legislative Decree No. 20/2012 of 13 July 2012, to take steps to ensure budgetary stability and promote competition and to establish a series of measures reorganizing and streamlining the public administrations, thereby altering the statutory and contractual status of all public sector employees, or of State public sector employees alone.

The Government, in their communications with the Committee due to the complaint, held, along with other arguments, that in the case of an economic crisis the adopted methods are a normative measure, and asked for the dismissal of the complaint.

The Committee on Freedom of Association confirms in its conclusions the absence of consultation with the major trade unions (CCOO and UGT), in spite of the importance the Committee attaches “to holding consultations with the most representative workers’ and employers’ organizations with sufficient advance notice and, in particular, to ensuring that the drafts of laws or Royal Legislative Decrees are submitted to these organizations for consultation well before their adoption by the

Government as a prerequisite for consideration by Parliament". And it recalls that "the principles governing consultation remain valid during crises that require the taking of urgent measures", reiterating the conclusions that it formulated in its June 2013 meeting on a case involving Spain where it drew attention to 'the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organizations of the sector involved', as well as 'the value of consulting organizations of employers and workers during the preparation and application of legislation which affects their interests. The Committee highlights the importance of holding detailed consultations and making sure that the parties have sufficient time to prepare and express their points of view.'"

In brief, "the Committee expects that from now on the principles concerning consultation on legislation affecting the interests of trade unions and their members will be fully respected, and requests the Government take measures in this regard."

On the other hand, relating to the content of the labour reform (Royal Legislative Decree and the Law 3/2012) imposed a few days after the Second Agreement on Employment and Collective Bargaining (II AENC) was signed by the employers' organizations, CEOE and CEPYME, and the workers' organizations, CCOO and UGT, and in contradiction to the substance of the law, we remind the Government of:

- The importance of collective bargaining and the respect of the agreements reached in the contracts.
- Concerning the varied and permanent methods established by the Law 3/2012 that change what was agreed to by the Committee, "highlights that the elaboration of procedures systemically favouring decentralized bargaining of exclusionary provisions that are less favourable than the provisions at a higher level can lead to an overall destabilization of the collective bargaining machinery and of workers' and employers' organizations and constitutes in this regards a weakening of freedom of association and collective bargaining contrary to the principles of Conventions Nos 87 and 98."
- The implied risk derived from giving enterprise collective agreements priority of application can destabilize the collective bargaining procedures, and weakens trade union freedom and collective bargaining – violating again the principles stated in Conventions Nos 87 and 98 – and the serious economic problems of enterprises do not justify the resource to mechanisms not determined in the framework of social dialogue. In this sense, the Committee reminds the Government that the determination of the bargaining level is essentially a matter to be left to the discretion of the parties."

Under these circumstances, the Committee stresses, "the importance of ensuring that the essential rules governing the system of labour relations and collective bargaining are shared, to the maximum extent possible, by the most representative workers' and employers' organization. It therefore invites the Government to promote a tripartite dialogue on Act No. 3/2012 in order to achieve this goal from the perspective of the principles established in the ILO Conventions on collective bargaining that Spain has ratified."

Regarding the reductions contained in Royal Legislative Decree 20/2012 that affected public sector employees (as seems convincing to the Committee), State bodies should remember that they should not change the content of freely and collectively bargained contracts. If the economic and employment situation is unusual, the solution is not to force a renegotiation, suspend, or reverse existing contracts. Instead, they should try to convince the parties while promoting social dialogue. The committee salutes the agreements reached with the trade unions after the fact, but they only cover one part of the issues that they need to address. This shows the importance negotiation tables have in tackling the array of issues in the complaint about Public Administration.

Considering the ILO Freedom of Association Committee's Report, the Government should do the right thing and sit down to negotiate a revision to the labour reform law as we, the trade unions, have been demanding since the moment it was imposed.

In conclusion, according to the ILO, the economic crisis is not just cause to violate the international agreements signed by Spain concerning freedom of association and collective bargaining. Instead, the Government should have promoted effective social dialogue instead of imposing the labour reform. To this respect, it should be reminded article 10.2 of the Constitution, "Provisions relating to the fundamental rights and liberties recognised by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain." The right to freedom of association is established in Article 28, and the right to collective bargaining in Article 37, both in the chapter, "Rights and Liberties."

[Full text of the Report of the ILO Committee on Freedom of Association](#)

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