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TWENTIETH ITEM ON THE AGENDA

Report of the Director-General

Fourth Supplementary Report: Report of the Committee set up to examine the representation alleging non-observance by Spain of the Minimum Wage Fixing Convention, 1970 (No. 131), submitted under article 24 of the ILO Constitution by the Trade Union Confederation of Workers' Committees (CCOO) and the General Union of Workers (UGT)

I. Introduction

1. By a communication dated 6 March 2014, the Trade Union Confederation of Workers' Committees (CCOO) and the General Union of Workers (UGT), referring to article 24 of the Constitution of the International Labour Organization (ILO), made a representation to the International Labour Office alleging non-observance by Spain of the Minimum Wage Fixing Convention, 1970 (No. 131). On 22 July 2015, the two confederations sent additional allegations, which were forwarded to the Government.
2. This representation relates to a Convention which was ratified by Spain on 30 November 1971 and is in force for that country.
3. The provisions of the ILO Constitution concerning the submission of representations are as follows:

Article 24

Representations of non-observance of Conventions

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party,

the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

4. In accordance with article 1 of the Standing Orders concerning the procedure for the examination of representations, as amended by the Governing Body at its 291st Session (November 2004), the Director-General acknowledged receipt of the representation and informed the Government of Spain thereof. At its 322nd Session (November 2014), the Governing Body, in accordance with the recommendation of its Officers, decided that the representation was receivable and appointed members of the tripartite committee for its examination: Mr Luis Rodrigo Morales Vélez (Government member, Mexico), Ms Renate Hornung-Draus (Employer member, Germany) and Ms Maria Fernanda C. Francisco (Worker member, Angola).
5. The Government of Spain sent its observations in reply to the representation and the additional information in a communication dated 22 October 2015.
6. In a communication dated 25 April 2016, the Office requested the Government to provide additional information related to the allegations.
7. In a communication dated 15 June 2016, the Government provided the information requested.
8. The Committee met on 21 March 2016, 4 November 2016 and 15 March 2017 to examine the representation and adopt its report.

II. Examination of the representation

A. The complainants' allegations

9. The CCOO and the UGT allege that the Government has not given effect to Articles 3 and 4(2) of Convention No. 131 as it fixed a minimum interoccupational wage (SMI) for 2014 and 2015 that does not cover the needs of workers and their families and that it failed to engage in a process of full consultation with the trade unions.
10. The complainant organizations recall that in Spain the SMI is a fundamental element of economic and social policy which is solidly anchored in the Constitution (Article 35(1) of the Constitution recognizes the right to remuneration sufficient to meet the needs of workers and their families). They add that the criteria for fixing the annual amount of the SMI are set out in section 27(1) of Royal Legislative Decree No. 1/1995 of 24 March, approving the amended text of the Workers' Charter, which provides that:
 1. The Government, following consultation with the most representative trade union organizations and employers' associations, shall determine annually the minimum interoccupational wage, taking into account:
 - (a) the consumer price index;
 - (b) the average national productivity rate;

- (c) the increase in the contribution of labour to national income; and
- (d) the general economic situation.

The amount shall also be revised every six months if the forecasts for the price index are not met.

The revision of the minimum interoccupational wage shall not affect either the structure or amount of occupational wages where, taken as a whole and calculated on an annual basis, they are higher than that level.

11. The complainant organizations indicate that the criteria set out in that section do not limit the discretion of the Government, as the factor of the general economic situation (clause (d)) is so ambiguous that it can be used to justify any decision that is adopted and as the provision, in contrast with Article 3 of Convention No. 131, does not use the imperative, but a weaker wording, namely “taking into account”.
12. The complainant organizations refer to Royal Legislative Decree No. 3/2004 of 25 June, which they indicate was the result of a real and exhaustive process of consultation between the Government and the most representative social partners. They observe that this Decree provides, among other provisions, that: “The Government and the social partners shall determine, in the context of social dialogue ... the reform of section 27 of the amended text of the Workers’ Charter to provide a new basis for the determination of the SMI annually by the Government and to prevent losses in purchasing power”; and that it recognizes the need for “the contribution to the effective application of the constitutional right of workers to sufficient remuneration to meet their needs and those of their family, the recovery of the loss of purchasing power of the SMI, and its approximation to an amount nearer to 60 per cent of the average wage of workers as recommended by the European Social Charter of the Council of Europe”. The complainant organizations indicate that, despite the provisions of the Decree, section 27 of the Workers’ Charter has not yet been amended.
13. With regard to the level of the SMI, the complainant organizations indicate that, with the onset of the economic recession there was a change in its trajectory, and that over recent years it has lost 5.8 points of its purchasing power. They add that the SMI reached its highest level in relation to the average wage in 2007 (41.5 per cent) and that it fell to around 40 per cent of that level in 2012 and 2013, thereby becoming more remote from the European objective of 60 per cent of the average wage. They also affirm that the fall in the level of income and the greater inequality of income is giving rise to a deterioration in the living standards of the population and an increase in the population at risk of poverty. They add that the SMI is used to determine the minimum levels of social security contributions, which means that it affects many more workers than those who earn the minimum wage. Accordingly, the freezing of, or minimal increases in the SMI in recent years have not only resulted in lower wages for workers, but also imply lower social benefits in future.
14. The complainant organizations also note that the European Committee of Social Rights of the Council of Europe, in conclusions XIX-3 in 2010, when analysing the level of the minimum wage in Spain in relation to Article 4 of the European Social Charter for the period 2007–09, concluded that the situation in Spain was not in conformity with Article 4(1) of the Charter, as the minimum wage was manifestly unfair. They also recall that the Committee on Economic, Social and Cultural Rights (CESCR) of the United Nations Economic and Social Council (ECOSOC), in its consideration of the reports submitted by States parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (May 2012), expressed concern at the fact that the SMI had been frozen since 2011 at a level which did not allow for a decent standard of living.
15. The complainant organizations add that the Spanish SMI is very much lower than the average for the principal countries in the European Union and the level that would correspond to a country of Spain’s level of development. Of the countries in the European

Union that have introduced a minimum wage, Spain is the one with the lowest SMI in relation to the average wage (the SMI only amounts to 34.3 per cent of the average wage). They also note that, according to 2015 data, the SMI in current euros is €757 a month, which is barely higher than 50 per cent of the minimum wage in the most developed countries in Europe that have a minimum wage.

16. The complainant organizations indicate that Royal Decree No. 1046/2013 froze the SMI for 2014 and they allege that this freeze, combined with the loss of purchasing power of wages and pensions, is in contrast with the rise in prices for essential household services and goods. They add that in both 2013 and 2014 the SMI was frozen at €9,034 gross annually, and that in 2015 it was set at €9,080.40 gross, which is very close to the at-risk-of-poverty threshold for a single person (€7,961). They further observe that the inadequacy of the SMI is alarming given that the subsistence of workers and their families depend on it. According to the data of the 2014 living standards survey (ECV) (the data for the survey correspond to 2013), the at-risk-of-poverty threshold for a household consisting of two adults was €11,942, and for a household consisting of two adults and two children it was €16,719. They consider that, even though Royal Decree No. 1106/2014 increased the SMI for 2015 by 0.5 per cent compared to 2014, the SMI still does not guarantee the minimum subsistence conditions for workers and their families, as shown by ECV data. They also allege that economic factors and the crisis do not justify the manifest and alarming insufficiency of the minimum wage in Spain, which does not cover the needs of workers and their families and does not contribute to the reduction of poverty or the improvement of social protection.
17. They also indicate that the Government has made no effort to give effect to the recommendations made by the Committee of Experts on the Application of Conventions and Recommendations in 2013 in terms of: (a) taking full account of the needs of workers and their families, and not just the objectives of economic policy, when undertaking the annual adjustment of the minimum wage in future, so as to avoid depreciation in the purchasing power of the SMI; and (b) fully involving the social partners, on an equal footing, in decision-making in this field.
18. The complainant organizations also allege that, in the process of determining the SMI, the Government is in systematic contravention of the right to consultation set out in section 27(1) of the Workers' Charter, and assert that this is in violation of Article 4(2) of the Convention. They add that each year, when the period for the adjustment of the SMI is approaching, they write to the Government urging it to improve the SMI and make proposals for doing so. They affirm that, in reply to this communication, each year they only receive, as a merely formal procedure, the preliminary draft of the Royal Decree which will determine the SMI, without the documentation taken into account for its determination, which prevents them from forming their views in full knowledge of the facts. In relation to the determination of the SMI for 2014, they allege that on 26 December 2013 they received the draft text of the Royal Decree, with the indication that the deadline for their response was the following day (27 December, before 9.30 a.m.), on which date the Council of Ministers approved the Royal Decree, which was published in the Official Bulletin on 30 December 2013. They add that in 2015 the Government once again unilaterally fixed the SMI by means of Royal Decree No. 1106/2014, thereby reducing consultation with the social partners to a mere formal procedure.

B. The Government's observations

19. The Government indicates in its response that the issues raised in the representation with direct reference to the content of the Convention are substantially two: (a) the amount of the SMI; and (b) the consultation procedure.

20. With regard to the amount of the SMI, the Government recalls that its current adjustments have not been carried out in a climate of economic expansion but, on the contrary, within a context of economic recession, which requires the adoption of adjustment measures to defend enterprise productivity and viability, and the maintenance and improvement of the level of employment. It indicates that in this context it is endeavouring to adopt measures which allow enterprises a greater margin for manoeuvre and cost containment, thereby allowing their continued existence so that they can maintain and even, where possible, increase their workforce. The Government adds that, although the Committee on Economic, Social and Cultural Rights expressed concern at the fact that the SMI had been frozen in Spain since 2011 at a value which did not allow for a decent standard of living, this observation was made “in the context of the international economic and financial crisis”, which is a circumstance that needs to be taken particularly into account, as it is an element to be considered when determining the minimum wage, in accordance with Convention No. 131 (Article 3(b)). The Government adds that the negative economic situation is clearly referred to in the legal reforms adopted in recent years, and particularly Act No. 3/2012 adopting urgent labour market reform measures. It adds that the situation described in the Act is acknowledged as a fundamental aspect, among other issues, in wage moderation, in the Second Agreement on Employment and Collective Bargaining 2012, 2013, 2014 (II AENC), concluded on 25 January 2012 by the Spanish Confederation of Employers’ Organizations (CEOE), the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME) and by the CCOO and the UGT. The Government adds that the II AENC recognizes that the adoption of wage moderation measures is one of the means of strengthening the competitiveness of the Spanish production system and issues guidelines on the wages negotiated for the period 2012–14. It also observes that the preamble to Royal Decree No. 1046/2013, which determined the SMI for 2014, indicates that “the current difficult economic situation ... argues for the adoption of wage policies in 2014 which can contribute to the objective of economic recovery and employment creation”, for which reason the SMI was maintained at the same level as in 2013. In this regard, the Government recalls that Convention No. 131 includes among the criteria which are to be taken into account when fixing the minimum wage, the desirability of maintaining a high level of employment, even though this is not the only element to be taken into consideration. The Government adds that the fact that the decisions to contain the amount of the SMI are related to the current economic situation can be seen clearly if fluctuations in the SMI over recent years are taken into account. If the level of the SMI since 2002 is taken into consideration, it will be seen that there was an increase of 30 per cent accumulated during the period 2004–08, with the amount of the SMI rising from €460.50 in 2004 to €600 in 2008. In 2009 and 2010, despite the situation of economic recession, the SMI was increased by 4 per cent and 1.49 per cent, respectively. The Government adds that this exceptional economic situation called for the adoption of measures to contain the level of the SMI, in an attempt to balance the constitutional right of workers to receive adequate remuneration to cover their needs and those of their families (Article 35 of the Constitution) with the maintenance of other rights and benefits that needed to be protected, in accordance with Article 40(1) of the Constitution, which includes the mandate of the public authorities to implement a policy intended to achieve full employment.
21. With regard to the view of the complainant organizations that the amount of the SMI does not reach the level of 60 per cent of the average wage and is therefore not a just wage, the Government considers that the relation between the average wage and the minimum wage is not in itself an adequate indicator if it is not supplemented by other data, such as the percentage of workers who receive the SMI. In this respect, it indicates that according to the data of the National Institute of Statistics (INE), the percentage of workers whose earnings correspond to the level of the SMI is relatively low in Spain. In this regard, it refers to INE data for 2008–12, which show that in 2012 only 1.52 per cent of wage earners working full time received between 0 and 1 SMI. The Government notes that data are only used for wage earners with a full-time contract so as to ensure the homogeneity of the data, and that if all

workers who receive between 0 and 1 SMI are included, irrespective of their working time, the percentage increases. It also observes that the percentage of workers who earned between twice and more than eight times the SMI in 2008–12, according to the same table, was over 65 per cent. The Government explains that this low percentage of full-time workers directly affected by the level of the SMI is due to the fact that most workers are covered by the wage scales set out in collective agreements, most of which establish wages higher than the SMI for all categories of workers. It also notes that, according to the INE data, the percentage of full-time workers receiving between 0 and 1 SMI has not changed significantly in recent years.

- 22.** The Government affirms that section 27(1) of the Workers' Charter is in conformity with Convention No. 131, not only with regard to the criteria set out for determining the level of the SMI, but also in relation to the weighting of those criteria by the authorities responsible for determining the amount of the SMI. It considers that the wording used in section 27 of the Workers' Charter, "the Government shall fix the minimum interoccupational wage ... taking into account", is similar to the wording of Convention No. 131, ("The elements to be taken into consideration ..."). In this respect, it considers that the wording of the Workers' Charter cannot be the same as that of Convention No. 131, as the latter instrument is intended for the legislative authorities of States which have ratified the Convention. It adds that it is not aware of any comments by the Committee of Experts concerning the conformity of the wording of section 27 of the Workers' Charter with Convention No. 131.
- 23.** The Government also indicates that Spanish legislation is in conformity with the other essential elements set out in paragraph 61 of the General Survey, namely: (i) as broad a scope of application as possible; (ii) full consultation with the social partners, on an equal footing, in the design and operation of the minimum wage system and, where appropriate, their direct participation in the system; (iii) the inclusion of both the needs of workers and their families and economic factors in determining the levels of minimum wages; (iv) the periodic adjustment of minimum wage rates to reflect changes in the cost of living and other economic conditions; and (v) the implementation of appropriate measures to ensure the effective application of all provisions relating to minimum wages.
- 24.** With regard to the claim by the complainant organizations that the level of the SMI is used to determine minimum basic social security contributions and that it therefore affects a much higher number of workers than those who receive the minimum wage, the Government indicates that in the Spanish system social security contributions are calculated on the basis of the real wages received by workers. This means that all workers with earnings above the level of the SMI pay higher contributions to social security than workers who earn the SMI.
- 25.** With reference to the allegation by the complainant organizations that the level of the SMI for 2015 does not guarantee minimum subsistence conditions for workers and their families, the Government refers to the explanation of the reasons given for Royal Decree No. 1106/2014, which indicates that "the new amounts, which represent an increase of 0.5 per cent in relation to those in force between 1 January and 31 December 2014, are the result of taking into consideration jointly all of the factors envisaged in section 27(1) of the Workers' Charter".
- 26.** In response to the Committee's request for further information, the Government adds that, as established in the Royal Decrees determining the SMI for 2014 and 2015, the SMI was fixed after taking into consideration jointly all of the factors envisaged in the Workers' Charter, which were in turn influenced by the social and economic situation at the national and international level. It also indicates that the elements considered when fixing the SMI include: fluctuations in gross domestic product (GDP) and its determinants; trends in employment, its composition and determinants, according to the national accounts; fluctuations in the consumer price index and the inflation target of the Central European

Bank; trends in apparent labour productivity; trends in the remuneration of employees and its share in GDP; trends in the main labour market statistical factors according to the labour force survey, including activity, occupation and unemployment rates; recent data on social security coverage; notified recruitments and registered unemployment; the development of the wages agreed upon in collective agreements; the macroeconomic forecast for Spain and the Eurozone; the European and world economic situation; historical information on low-wage workers affected by the SMI; and the framework for wage negotiations, such as that provided for the years in question by the II AENC 2012, 2013 and 2014. The Government adds, regarding the elements referred to in Convention No. 131, that it should be noted that the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups and economic factors may be associated in the joint consideration of, among other factors: (a) the increased share of labour in national income, based on the level of employment and remuneration, which determine the capacity to cover the needs of workers and their families through wages from labour, which is the main source of income for workers; (b) an analysis of fluctuations in the consumer price index, which allows for the assessment of the impact on the purchasing power of the SMI as a means of covering the needs of workers and their families; (c) the general level of wages in the country which, although not mentioned explicitly in the Workers' Charter, is incorporated in the annual SMI revision process, in so far as the process includes an assessment of the average wage increases agreed upon in collective bargaining, and trends in the wages of workers covered by collective bargaining; and (d) trends in other relevant parameters related to social benefits, such as pensions. The Government indicates that it cannot be confirmed that the fluctuations in the SMI over the period 2014–15 might have resulted in a departure from what is considered reasonable in terms of the trends in several variables relating to the needs of workers and their families. In this period, the SMI increased more than inflation, which meant that there was no loss in purchasing power and that the SMI remained close to the average wage increase agreed upon in collective agreements. The Government considers that, during the revision of the SMI for 2014 and 2015, the applicable legal framework, the procedure followed in the application of the framework, the joint consideration of the criteria established by law and its outcome, ensured that the SMI was determined in accordance with Convention No. 131. The Government considers that the flexibility accorded to member States to determine the criteria that must be applied in the periodic adjustment of minimum wages and their respective weighting was not exceeded, and that the elements of the Convention were taken into account, as far as possible and appropriate. In particular, consideration was given to the fact that an adequate living wage goes beyond the satisfaction of food, housing and clothing needs, and includes the possibility of participating in the country's social and cultural life, and that the determination of such a wage should take into account economic factors.

27. The Government emphasizes that the supervision and enforcement of the legislation respecting wages and social security are the responsibility of the Labour and Social Security Inspectorate, and that nowhere in the representation is reference made to the action of the inspectorate in ensuring effective compliance with Convention No. 131.
28. In response to the allegations made by the complainant organizations concerning the alleged failure by the Government to comply with the requirement to ensure consultations with the social partners during the process of the periodic revision of the SMI, the Government indicates that, when determining the SMI for 2014, it noted the position of the complainants in this regard. The Government adds that in the days prior to the approval of the Royal Decree determining the SMI for 2014, the Minister of Employment and Social Security held conversations on the SMI with the leaders of the trade union organizations which have signed the representation.

29. The Government adds that the draft Royal Decree determining the SMI for 2015, accompanied by a report analysing the impact of the Decree, was sent to the social partners for consultation on 19 December 2014. The CCOO and UGT replied in writing on 23 December 2014 indicating their disagreement with the proposal. The Government therefore considers that it has complied with the provisions of Article 4(2) of Convention No. 131.
30. Regarding consultation, the Government has provided, upon the request of the Committee, a copy of ruling No. 4524/2015 of the Supreme Court in Madrid, which set aside the claim by the Confederation of Galician Unions to declare null and void Royal Decree No. 1046/2013 determining the SMI for 2014. The claim is based on the allegation that, with regard to the consultations on the draft Royal Decree, "... what took place was not ... a genuine consultation process, but rather a mere formality, as no time was allowed [for the workers' organizations] to examine the draft, and the publication of the text coincided with the receipt of the draft". According to the complainant, this violated, among others, section 27(1) of the Workers' Charter and Convention No. 131. The ruling is based, inter alia, on the fact that the adjective "full" relating to the consultation required in Article 4(2) of Convention No. 131, implies a process in which all possibilities for consultation have been exhausted: "consultation in this context does not refer to a period of time, but rather to ensuring that all necessary individuals are consulted, which is in accordance with the standards of institutional representativity set out by our legislation for the most representative organizations, and which, as has been seen, have been given effect". In this regard, the ruling sets aside the claim, "... particularly since the speed of the process established certainly did not prevent the other employers' organizations or other trade union organizations from giving their opinion or issuing a report ...". The Court adds that this invalidates the allegation that Article 28(1) of the Constitution was violated by preventing, in practice, the complainant union from fulfilling its function of institutional representativity accorded to it as the most representative trade union, since it was held to be the most representative organization, and was afforded the opportunity to give its opinion.

III. The Committee's conclusions

31. The Committee has based its conclusions on the review of the allegations by the complainants and the information provided by the Government under the present procedure.
32. The Committee observes that the Trade Union Confederation of Workers' Commissions (CCOO) and the General Union of Workers (UGT) allege that the Government has failed to comply with Articles 3 and 4(2) of Convention No. 131, as it: (a) determined a minimum interoccupational wage (SMI) for 2014 and 2015 which does not cover the needs of workers and their families; and (b) did not engage in a process of full consultation with trade unions during the procedure of the determination of the SMI for 2014 and 2015.
33. Articles 3 and 4(2) of Convention No. 131 are relevant to the examination of the present representation:

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include –

- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

...

2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

A. Allegations relating to the determination of the level of the minimum wage for 2014 and 2015

- 34.** With regard to the allegations of the complainant organizations that the level of the SMI determined for 2014 and 2015 does not guarantee the minimum subsistence conditions of workers and their families, the Committee notes the indication by the complainant organizations that: (a) the SMI has lost 5.8 points of its purchasing power in recent years; (b) the SMI is much lower than the European objective of 60 per cent of the average wage, and is at a much lower level than the average for European Union countries and the amount that would correspond to a country with Spain's level of economic development; (c) the Committee on Economic, Social and Cultural Rights (CESCR) of the United Nations Economic and Social Council (ECOSOC) expressed concern at the fact that the SMI had been frozen since 2011 at a level that did not allow for a decent standard of living; (d) the SMI does not guarantee the minimum subsistence conditions for workers and their families as, in both 2013 and 2014, it was frozen at the gross annual rate of €9,034, and in 2015 it was fixed at the gross rate of €9,080.40 (an increase of 0.5 per cent), which is very close to the at-risk-of-poverty threshold for one person, and very much below the at-risk-of-poverty threshold for a household of two adults and two children, according to the data of the 2014 living conditions survey, in contrast with price increases for essential household services and supplies; and (e) the Government made no effort to give effect to the recommendations made in 2013 by the Committee of Experts on the Application of Conventions and Recommendations to: take full account of the needs of workers and their families, and not just economic policy objectives, in future adjustments of the minimum wage, avoiding depreciation in the purchasing power of the SMI, and to involve fully the social partners, on an equal footing, in decision-making on the determination of the minimum wage.
- 35.** The Committee notes that, in reply to the allegations of the complainant organizations, the Government indicates that: (a) the current adjustments to the level of the SMI are not being made within a climate of economic expansion but, on the contrary, within a context of economic recession, which requires the adoption of adjustment measures with a view to defending enterprise productivity and viability, and the maintenance and improvement of the level of employment; (b) although the Committee on Economic, Social and Cultural Rights expressed concern at the fact that the SMI had been frozen in Spain since 2011 at a value which did not allow for a decent standard of living, this observation was made "in the context of the international economic and financial crisis"; (c) II AENC 2012, 2013 and 2014, concluded on 25 January 2012 by the Spanish Confederation of Employers' Organizations (CEOE), the Spanish Confederation of Small and Medium-sized Enterprises (CEPYME), and by the CCOO and the UGT, recognizes the negative economic situation as a basic reason for wage moderation and that the adoption of wage moderation measures is one of the means of strengthening the competitiveness of the Spanish production system; (d) the fact that the decisions to contain the amount of the SMI are related to the current economic situation can be seen clearly if fluctuations in the SMI over recent years are taken into account; (e) the exceptional economic situation called for the adoption of measures to contain the level of the SMI, in an attempt to balance the constitutional right of workers to receive adequate remuneration to cover their needs and those of their families (Article 35 of the Constitution) with the maintenance of other rights and benefits that needed to be

protected, in accordance with Article 40(1) of the Constitution, which includes the mandate of the public authorities to implement a policy intended to achieve full employment; (f) the relation between the average wage and the minimum wage, which is the basis of the European objective of 60 per cent of the average wage, is not in itself an adequate indicator in assessing the level of the SMI if it is not supplemented by other data, such as the percentage of workers who receive the SMI; and (g) the percentage of workers whose earnings correspond to the level of the SMI is relatively low in Spain (in 2012, only 1.52 per cent of wage earners working full time received between 0 and 1 SMI).

- 36.** The Committee also notes the Government's indication that: (a) joint consideration has been given to all the factors referred to in section 27(1) of the Workers' Charter; (b) the needs of workers and their families and the economic criteria established in Article 3 of Convention No. 131 have been taken into account, given that the following elements, as far as possible and appropriate, were assessed jointly when determining the SMI: the increased share of labour in national income; an analysis of fluctuations in the consumer price index, which allows for the assessment of the impact on the purchasing power of the SMI as a means of covering the needs of workers and their families; the general level of wages in the country; and trends in other relevant parameters related to social benefits, such as pensions; (c) the fluctuations of the SMI in the period 2014–15 did not result in a departure from what is considered reasonable in terms of the trends in several variables relating to the needs of workers and their families; and (d) in 2014 and 2015, the SMI increased more than the inflation recorded in that period, which meant that there was no loss in purchasing power and that the SMI remained close to the average wage increase agreed upon in collective agreements.
- 37.** The Committee notes all this information. While it understands the concern of the complainant organizations regarding the level of the SMI determined for 2014 and 2015 (which it deems to be very close to the poverty threshold), the Committee notes that the determination of the SMI took place in a context of crisis and economic downturn, and that the SMI increased more than the inflation recorded in that period, which meant that there was no loss in purchasing power and that the SMI remained close to the average wage increase agreed upon in collective agreements.
- 38.** In this context, the Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations, in its 2014 General Survey on minimum wage systems (103rd Session of the International Labour Conference, General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135) – Report III(1B), paragraphs 283 and 284), states that: “Convention No. 131 leaves member States with considerable leeway in determining the precise criteria to be applied in the fixing or periodic adjustment of minimum wages and their respective weighting. The elements that it lists have to be taken into consideration ‘so far as possible and appropriate’ and ‘in relation to national practice and conditions’.”

However, certain basic rules are established that have to be respected by all the parties. In order to meet their objective of social protection, minimum wages have to meet the needs of workers and their families. Although the Convention does not specify the types of needs that have to be met, it should be borne in mind that the Preamble to the ILO Constitution proclaims that an improvement of conditions of labour is urgently required, in particular the provision of an adequate living wage. The Committee emphasized in Chapter I that the concept of “living wage” takes into account more than the satisfaction of food, housing and clothing needs, and includes the possibility of participating in the country's social and cultural life. However, this consideration does not of itself suffice to ensure full conformity with the provisions of the Convention. The minimum wage also has to be fixed taking into account economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. The desired balance is not always easy to achieve. Indeed, if the minimum wage is too low, it will not achieve its objective of social protection. If it is too high, it runs the risk of not being widely respected or giving rise to the

expansion of the informal economy. However, social and economic considerations are not necessarily conflicting.

39. *In these circumstances, the Committee requests that the Government continues, in consultation with the most representative workers' and employers' organizations, to make every effort necessary to take into consideration, so far as possible and appropriate, the needs of workers and their families and the economic factors mentioned in Article 3(a) and (b) of the Convention and give them proper weight in determining the level of minimum wages.*
40. With reference to the criteria for the determination of the SMI, the Committee observes that the preamble to Royal Legislative Decree No. 3/2004 of 25 June provides that "the Government and the social partners shall determine, in the context of social dialogue ... the reform of section 27 of the amended text of the Workers' Charter to provide a new basis for the determination of the SMI annually by the Government and to prevent losses in purchasing power". *In this context, in the light of this Decree, the Committee considers that the Government and the social partners could deal, in the context of social dialogue, with this matter on the basis of the provisions of Article 3 of the Convention.*

B. Allegation concerning the absence of consultation with the social partners in the determination of the minimum wage

41. With regard to the allegation concerning the non-existence of an exhaustive process of consultation with trade unions in the process of determining the SMI in 2014 and 2015, the Committee notes that the complainant organizations contend that the consultation was reduced to a mere formality which did not give the social partners the opportunity to form their views with full knowledge of the facts in order to be heard and considered. The Committee also observes the indication by the complainant organizations that for 2014 they received the draft text of the Royal Decree determining the SMI with the notification that the deadline for replies was the next day, on which date the Council of Ministers approved the Decree. They add that in 2015 the Government once again determined the SMI unilaterally, again reducing consultation with the social partners to a mere formal procedure.
42. In this connection, the Committee notes the Government's indication that, in relation to the SMI for 2014: (a) when determining the SMI for 2014 it already knew the position of the complainant organizations in this regard, as on 12 November 2013 they had written to the Minister of Employment and Social Security urging the Government to improve the SMI with a view to progressively recuperating its purchasing power and returning to the objective of achieving the level of 60 per cent of the net average wage, and calling for the reform of section 27 of the Workers' Charter to establish a new basis for the annual adjustment of the SMI; (b) in the days prior to the approval of the Royal Decree determining the SMI, the Minister of Employment and Social Security held conversations on the SMI with the leaders of the complainant organizations; and (c) on 26 December 2013, the documentation relating to the draft Royal Decree determining the SMI for 2014 was sent to the complainant organizations. The Committee also notes ruling No. 4524/2015 of the Supreme Court in Madrid, provided by the Government at the request of the Committee, which set aside the claim by the Confederation of Galician Unions to declare null and void Royal Decree No. 1046/2013 fixing the SMI for 2014. The claim is based on the allegation that a genuine consultation process did not take place, but was rather a mere formality, as the workers' organizations were not given the time to examine the draft in violation of section 27(1) of the Workers' Charter and Convention No. 131. The ruling sets aside the claim on the basis of, inter alia, the fact that: (a) the adjective "full" relating to consultation in Article 4(2) of Convention No. 131 does not relate to a period of time but refers to a process in which the possibilities for consultation are exhausted, that is to say where all those who should have

been consulted have been consulted; and (b) the speed of the consultation process did not prevent two of the four trade unions that were consulted and the employers' organizations that were consulted from giving their opinion on the draft Royal Decree No. 1046/2013.

43. With reference to the SMI for 2015, the Committee notes that the Government indicates that: (a) the draft Royal Decree determining the SMI for 2015, accompanied by a report analysing the impact of the Decree, was sent to the social partners for consultation on 19 December 2014, in compliance with section 27(1) of the Workers' Charter; (b) on 23 December 2014, the complainant organizations replied in writing indicating their disagreement with the proposal; and (c) the submission of the report analysing the impact of the proposed legislation, which describes the factors that, under section 27(1) of the Workers' Charter, have to be taken into account when determining the SMI, shows that the complainant organizations were able to develop their views in full knowledge of the facts concerning the reasons justifying the increase of the SMI by 0.5 per cent in relation to the previous year.
44. With regard to consultations with the social partners on the fixing of minimum wages within the framework of the Convention, the Committee recalls that the term "full" was included during the second discussion of the draft Convention by the International Labour Conference, as a result of an amendment proposed by the Worker members, and supported by various Government groups, on the grounds that on many occasions the consultations held with employers' and workers' organizations were perfunctory (see the preparatory work for Convention No. 131, *Record of Proceedings*, ILC, 54th Session, Geneva, 1970, p. 381).
45. In this regard, the Committee recalls that, in its 2014 General Survey (op. cit., paragraph 203), the Committee of Experts considered, with regard to the issue of consultation, that "... this should not be a mere formality by governmental authorities, but steps should be taken to ensure that the authorities really take into account the concerns and arguments put forward by the social partners to inform their decision-making, including taking into account both the needs of workers and economic realities in fixing minimum wages. This implies that consultation must take place before decisions are taken and that the representatives of the employers' and workers' organizations concerned should be provided with full and pertinent information in order to reach their opinion." The Committee of Experts has also indicated that full consultation with the social partners "... assumes particular importance in periods of economic and social crisis, owing to the considerable repercussions that decisions relating to the fixing and periodic adjustment of minimum wages are likely to have on economic policy, including employment policy, and the purchasing power of workers. ..." (op. cit., paragraph 243). Furthermore, the Committee of Experts emphasized that for consultations to be useful and effective, they "need to be genuine, in the sense of a process that is receptive to constructive and balanced proposals and seeks to accommodate in good faith, in so far as possible, the inevitably conflicting interests of the social partners" (op. cit., paragraph 389).
46. *In these conditions, while noting all this information, the Committee expects that in all processes for the determination of the SMI the Government will fully consult the representative organizations of employers and workers concerned, ensuring that they have full knowledge of all the necessary information and sufficient time to determine their positions.*

IV. The Committee's recommendations

47. *The Committee recommends that the Governing Body:*

- (a) *approve the present report;*

- (b) request the Government, in the context of the application of Convention No. 131, to take into account the observations made in paragraphs 39, 40 and 46 of the Committee's conclusions;*
- (c) invite the Government to provide information in this respect for examination by the Committee of Experts on the Application of Conventions and Recommendations; and*
- (d) make this report publicly available and close the present representation procedure.*

Geneva, 15 March 2017

(Signed) Luis Rodrigo Morales Vélez
Chairperson

Renate Hornung-Draus

Maria Fernanda C. Francisco

Point for decision: Paragraph 47