



March 2022

# **EUROPEAN SOCIAL CHARTER**

European Committee of Social Rights

Conclusions XXII-2 (2021)

## **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, is contained in the General Introduction to all Conclusions.

The following chapter concerns Spain, which ratified the 1961 European Social Charter on 6 May 1980 and the Revised European Social Charter on 17 May 2021. The deadline for submitting the XXXX report was 31 December 2020 and Spain submitted it on 26 January 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 of 3 June 2020, 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 all findings of non-conformity or deferral in its previous conclusions (Conclusions XXI-2 (2017)).

In addition, the Committee recalls that no targeted questions were asked under certain provisions. If the previous conclusion (Conclusions XXI-2 (2017)) found the situation to be in conformity, there was no examination of the situation in 2020.

Comments on the 33<sup>th</sup> report by *Movimiento ATD Cuarto Mundo España* were registered on 29 June 2021. Comments on the 33<sup>th</sup> report by the *Confederación Intersindical Galega* were registered on 30 June 2021. Comments on the 33<sup>th</sup> report by *Confederación Sindical de Comisiones Obreras (CCOO-Spain)* and *Unión General de Trabajadores y Trabajadoras de España (UGT-Spain)* were registered on 9 July 2021. The reply from the Government to these comments was registered on 3 September 2021. Comments on thematic group II "Health, social security and social protection" by the Amnesty International were registered on 1 July 2021.

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 II "Health, social security and social protection":

- the right to safe and healthy working conditions (Article 3);
- the right to protection of health (Article 11);
- the right to social security (Article 12);
- the right to social and medical assistance (Article 13);
- the right to benefit from social welfare services (Article 14);
- the right of elderly persons to social protection (Article 4 of the Additional Protocol).

Spain has accepted all provisions from the above-mentioned group.

The reference period was from 1 January 2016 to 31 December 2019.

The conclusions relating to Spain concern 14 situations and are as follows:

– 5 conclusions of conformity: Articles 3§3, 11§2, 12§2, 14§1 and 14§2.

– 5 conclusions of non-conformity: Articles 3§2, 12§1, 12§4, 13§1 and Article 4 of the Additional Protocol.

In respect of the other four situations related to Articles 3§1, 11§1, 11§3 and 12§3, 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 deal with 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).

The deadline for submitting that report was 31 December 2021.

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

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 1 - Safety and health regulations*

The Committee takes note of the information contained in the report submitted by Spain and in the comments by the *Confederación Intersindical Galega* of 30 June 2021 and *Confederación Sindical de Comisiones Obreras* (CCOO-Spain) and *Unión General de Trabajadores y Trabajadoras de España* (UGT-Spain) of 9 July 2021.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 3§1 of the 1961 Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, pending receipt of the requested information, the Committee concluded that the situation in Spain was in conformity with Article 3§1 of the 1961 Charter (Conclusions XXI-2 (2017)). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted question.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

#### **Content of the regulations on health and safety at work**

The Committee previously found the situation to be in conformity in this respect (Conclusions XXI-2 (2017)).

The report lists a significant number of specific regulations adopted during the reference period by relevant authorities which relate to issues of safety and health at work, such as application of hygiene and safety conditions to devices and systems that are used in explosive environment (Royal Decree No. 144/2016); use of devices with radioactive parts or electrical devices (Instruction of the Council on Nuclear Safety of 26 April 2016, No. IS-40); limited use of certain dangerous substances in electrical devices (Ministerial Order No. PRE/772/2016); safety of elevators (Royal Decree No. 203/2016); protection of health and safety of workers from risks related to exposure to electromagnetic fields (Royal Decree No. 299/2016); work at night (Royal Decree No. 311/2016); marine equipment and other issues related to ships (Royal Decree No. 701/2016); handling of fluorinated gases (Royal Decree No. 115/2017); reduced contributions for occupational risks for companies which have significantly reduced accidents at work (Royal Decree No. 231/2017); regulations for fire protection installations (Royal Decree No. 513/2017); use and storage of chemical products (Royal Decree No. 656/2017); mining safety (Ministerial Order No. ETYU/995/2017); reforms of status of the self-employed (Law No. 6/2017); approval of the list of occupational illnesses (Royal Decree No. 257/2018); nuclear safety (Royal Decree No. 1400/2018); safety of refrigeration devices (Royal Decree No. 552/2019); optimisation of the use of ionising radiation (Royal Decree No. 601/2019). The report also provides a non-exhaustive list of collective agreements in different sectors (plaster and lime, industry and technology, rice processing, chemicals, glass and ceramic, catering, graphic arts, paper, shoes, leather and fur, metal) related to stress and harassment at work, adopted between 2016 and 2019.

In its targeted question on Article 3§1, the Committee asked for detailed information on the regulatory responses adopted to improve occupational safety and health in connection with known and also evolving or new situations such as in the digital and platform economy by, for example, strictly limiting and regulating electronic monitoring of workers, by recognising a

right to disconnect, right to be unavailable outside agreed working and standby time, mandatory digital disconnection from the work environment during rest periods. It also requested information on regulations adopted in response to emerging occupational risks.

In response, the report states that the Law on Data Protection and Guarantee of Digital Rights (No. 3/2018) acknowledged the right to disconnect. The Law states that workers have a right to disconnect outside of their legally established working time, and their rest and vacation time must be respected, as well as their personal and family life. The employer must establish an internal policy concerning digital disconnection, and this policy should provide for training and awareness-raising in the reasonable use of technology in order to prevent digital fatigue. The right to digital disconnection must be preserved especially when the work is carried remotely in whole or in part. Provisions on digital disconnection are also integrated in the texts of the Law of Workers and the Law of Civil Servants.

Confederación Intersindical Galega submitted its comments on the report and it states that workers are uncertain as to which aspects of their private lives are monitored, it also criticises the lack of definition of the right to disconnect and states that risks of platform work are often unknown to workers themselves. Confederación Sindical de Comisiones Obreras (CCOO-Spain) and Unión General de Trabajadores y Trabajadoras de España (UGT-Spain) submitted their comments to the report and they state that the reduced contribution system for companies that reduced accidents at work is detrimental to workers and only beneficial for companies.

In its response to the comments submitted by the Confederación Intersindical Galega and Confederación Sindical de Comisiones Obreras (CCOO-Spain) and Unión General de Trabajadores y Trabajadoras de España (UGT-Spain), the Government states that encouraging compliance with obligations is one way of preventing risks at work. With regard to digital disconnection and teleworking, the Government mentions several legal acts, which fall outside of the reference period for the purposes of the present reporting cycle.

The Covid-19 pandemic has changed the way many people work, and many workers now telework or work remotely. Teleworking or remote working may lead to excessive working hours.

The Committee considers that, consistent with States Parties' obligations in terms of Article 3§1, in order to protect the physical and mental health of persons teleworking or working remotely and to ensure the right of every worker to a safe and healthy working environment, it is necessary to enable fully the right of workers to refuse to perform work outside their normal working hours (other than work considered to be overtime and fully recognised accordingly) or while on holiday or on other forms of leave (sometimes referred to as the "right to disconnect").

States Parties should ensure there is a legal right not to be penalised or discriminated against for refusing to undertake work outside normal working hours. States must also ensure that there is a legal right to protection from victimisation for complaining when an employer expressly or implicitly requires work to be carried out outside working hours. 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 (e.g. those during probationary periods or for those on temporary or precarious contracts).

Being connected outside normal working hours also increases the risk of electronic monitoring of workers during such periods, which is facilitated by technical devices and software. This can further blur the boundaries between work and private life and may have implications for the physical and mental health of workers.

Therefore, the Committee considers that States Parties must take measures to limit and regulate the electronic monitoring of workers.

### ***Protection against hazardous substances and agents***

In its previous conclusion, with regard to benzene, the Committee asked for information about categories of workers who carried out the types of work listed in Annex XVII to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). The Committee also asked whether there were any plans to revise Royal Decree No. 396/2007 laying down the minimum provisions concerning safety and health applicable to workers who are at risk of being exposed to asbestos. Also, the Committee asked for information concerning Directive 2009/148/EC of the European Parliament and of the Council of 30 November 2009 on the protection of workers from the risks related to exposure to asbestos at work which repealed Directive 83/477/EEC, including whether the limit values laid down by the Directive were actually in force and whether they were being adhered to. With regard to ionising radiation, the Committee requested clarifications of the amendments made by Royal Decree No. 1439/2010 to the regulation on protection against ionising radiation. Finally, the Committee asked whether workers were protected up to a level at least equivalent to that set in the Recommendations by the International Commission on Radiological Protection (ICRP Publication No. 103, 2007) (Conclusions XXI-2 (2017)).

With regard to benzene, the report quotes specific provisions under Annex XVII to REACH related to benzene. It further states that, under relevant legislation, workers younger than 18 years old cannot work with substances that can cause cancer and for pregnant, breastfeeding women and those who gave birth benzene is classified as a substance that can cause cancer.

With regard to asbestos, the report mentions the Programme of evaluation of health surveillance for workers exposed to asbestos of 2017. According to the results of the Programme, 2,526 companies provided information about 56,373 workers who worked with asbestos. The report also states that there are no plans to revise the Royal Decree No. 396/2007 but that technical guides have been reviewed to remedy various interpretative nuances of the said legal text. The report further states that the limit values laid down by the Directive 2009/148/EC are in force, and the specific limit value for asbestos is 0.1 fibres in cubic centimetre during the eight-hour working time. The report clarifies that all companies that carry out activities including asbestos must register in the register of companies exposed to the risk of asbestos.

In their comments on the report, CCOO-Spain and UGT-Spain criticize the Government for only partial transposition of the Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation. They also criticize the Government for the delayed transposition of the Directive 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work as well as for the fact that there are no plans to modify the Royal Decree No. 396/2006.

The Government replies that different rules transposed the Directive 2013/59/Euratom. It also states that two further evaluations of the National Programme for the Monitoring of the Health of Workers Exposed to Asbestos, which was adopted in 2003, were carried out. It also states that the European asbestos directive will be revised, which will also lead to the revision of the Royal Decree No. 396/2006.

The Committee notes that the deadline of the transposition of Directive 2017/2398 was 17 January 2020 and that it falls outside the reference period for the purposes of the present reporting cycle.

The Committee asks the next report to provide information on whether the Directive 2013/59/Euratom has been fully incorporated into national law. The Committee considers

that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Spain is in conformity with Article 3§1 of the 1961 Charter.

### ***Personal scope of the regulations***

The Committee previously found the situation to be in conformity in this respect but asked for updated information on the legal framework concerning protection of the self-employed. It also requested information about the consequences in the insecure employment sector, more specifically “teleworking” (Conclusions XXI-2 (2017)).

The report provides no updated information on the legal framework concerning protection of self-employed. In their comments CCOO-Spain and UGT-Spain state that self-employed often do not receive training on risk prevention and that the tool aimed at self-employed (Prevention 10) is not effective in practice.

The Government states that the Prevention 10 tool is aimed at knowing the occupational risks to which the self-employed workers are exposed and the most appropriate measures to prevent them, as well as making easier to fulfil their obligations.

As regards the consequences in the insecure employment sector, as already noted by the Committee, the report provides information about Royal Decree No. 28/2020 on telework, which falls outside the reference period for the purposes of the present reporting cycle.

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

In the context of the Covid-19 crisis, the Committee recalls that it requested information in the targeted questions under Article 3§1 of the 1961 Charter on the protection of frontline workers.

In response, the report states that, since the state of emergency was declared on 14 March 2020, a number of regulations have been adopted. These regulations are related to certain urgent measures in the economic sector and designated towards the protection of public health (Royal Decree-Law No. 6/2020); measures taken in the defence sector (Instructions by the Ministry of Defence of 15 March 2020); measures aimed at dealing with economic and social crisis (Royal Decree-Law No. 8/2020); measures for acquisition and distribution of masks by the Ministry of transport mobility and urban agenda (Order of the Ministry of transport mobility and urban agenda No. TMA/263/2020); measures concerning residencies for the elderly and the medico-social establishments there (Order of the Ministry of Health No. SND/265/2020); waste management related to Covid-19 (Order of the Ministry of Health No. SND/271/2020); distribution of information related to Covid-19 (Order of the Ministry of Health No. SND/275/2020); temporary derogation from the rules on driving and rest time in the context of the transport of goods (Decision of the Directorate of land transport of 26 March 2020); dissemination of information within residential social establishments in the context of Covid-19. Also, regulations were adopted that were related to vocational training and allowances in the fishing sector (Royal Decree No. 449/2020); training of railway staff (Order of the Ministry of transport mobility and urban agenda No. TMA/379/2020); certain measures to facilitate the transport of goods (Order of the Ministry of transport mobility and urban agenda No. TMA/229/2020); measures related to the transport of animals (Order of the Ministry of transport mobility and urban agenda No. TMA/279/2020); measures on the use of bioethanol in the making of hand sanitizers (Order of the Ministry of Health No. SND/321/2020); certain activities related to works on buildings (Order of the Ministry of Health No. SND/340/2020); the use of armed forces of certain biocides (Order of the Ministry of Health No. SND/351/2020); exceptional measures guaranteeing public access to hygiene products to prevent the spread of Covid-19 (Order of the Ministry of Health No. SND/354/2020); personal protective equipment in small and medium enterprises (Decision of the Secretariat General of Industries and Small and Medium Enterprises of 23 April 2020); resumption of activities in the hotel and restaurant sector in the less affected territories (Order of the Ministry of Health No. SND/386/2020); opening of certain shops (Order of the

Ministry of Health No. SND/388/2020); the use of masks in various means of transport (Order of the Ministry of transport mobility and urban agenda No. TMA/384/2020); resumption of sport competitions (Decision of the Presidency of the Superior Council of Sports of 4 May 2020); epidemiological surveillance (Order of the Ministry of Health No. SND/404/2020); easing of certain restrictions (Order of the Ministry of Health No. SND/399/2020); availability of antiseptics for healthy skin (Order of the Ministry of Health No. SND/402/2020); measures temporarily reintroducing border control (Order of the Ministry of Interior No. INT/401/2020); quarantine conditions for persons coming to Spain from other countries (Order of the Ministry of Health No. SND/403/2020); the obligatory use of masks (Order of the Ministry of Health No. SND/422/2020); limiting the entry into Spain of aircrafts and passenger ships (Order of the Ministry of Health SND/441/2020).

The report further states that the National Institute for Safety and Health at Work adopted technical documents related to the protection of safety and health of workers in different sectors, such as social services, transport of goods, industry, construction sites, trade in food, drinks and basic products, veterinary centres, mining, fishing, agriculture and livestock, gas stations, funerary services, industrial laundry, restaurant and delivery, management and administration, press and communications, textile, odontology, waste, use of air conditioning systems. Also, regulations were adopted on well-being of workers, psychosocial risks related to teleworking, ergonomic advices on teleworking. Regulations were adopted on the use of personal protective equipment, such as masks, gloves in order to reduce the risks related to Covid-19.

Confederación Intersindical Galega states that frontline workers lacked personal protective equipment.

In response to the comments of the Confederación Intersindical Galega, the Government states that necessary measures were taken to protect police personnel and to provide assistance required by health authorities.

#### *Conclusion*

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



### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 2 - Enforcement of safety and health regulations*

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 3§2 of the 1961 Charter as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion (Conclusions XXI-2 (2017)), the Committee concluded that the situation in Spain was not in conformity with Article 3§2 of the 1961 Charter.

Assessment of the Committee will therefore concern the information provided by the Government in response to the targeted questions and the previous conclusion of non-conformity.

#### ***Accidents at work and occupational diseases***

The Committee previously examined (Conclusions XXI-2 (2017)) the situation regarding accidents at work and occupational diseases and concluded that the situation in Spain was not in conformity with Article 3§2 of the 1961 Charter on the ground that measures taken to reduce the number of accidents at work were insufficient and that monitoring of occupational diseases was not satisfactory over the reference period. It asked that the next report provide information on the legal definition of occupational diseases; the mechanism for recognising, reviewing and revising of occupational diseases (or the list of occupational diseases); the incidence rate and the number of recognised and reported occupational diseases during the reference period (broken down by sector of activity and year), including cases of fatal occupational diseases, and the measures taken and/or envisaged to counter insufficiency in the declaration and recognition of cases of occupational diseases; the most frequent occupational diseases during the reference period, as well as the preventive measures taken or envisaged.

In its targeted question on Article 3§2 with regard to accidents at work and occupational diseases, the Committee asked for information on statistical data on prevalence of work-related death, injury and disability including as regards suicide or other forms of self-harm, PTSD, burn-out and alcohol or other substance use disorders, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs (e.g. cycle delivery services, including those employed or whose work is managed through digital platform; performers in the sports entertainment industry, including in particular contact sports; jobs involving particular forms of interaction with clients and expected to use potentially harmful substances such as alcohol or other psychoactive products; new forms of high-yield high-stress trading; military and law enforcement; etc.) and also as regards the victims of harassment at work and poor management.

The report indicates that Instruction no. 1/2019 on safety and health conditions in temporary work has been approved. This is based on the observation that the temporary nature has an impact on work accidents because this modality of hiring is often associated with reduced rights to training and security protection. The Committee also takes note of the information concerning in particular other campaigns on psychosocial risks and road safety and those in the sectors and occupations most affected by work accidents.

The report does not provide data on work related death, injury and disability, nor any figure concerning fatal or non-fatal accidents at work, and their incidence rates. The Committee

stresses the importance of this information in the assessment of the efficiency of the monitoring of accidents at work and occupational diseases.

In its comments on the report, registered at the Secretariat on 30 June 2021, the *Confederación Intersindical Galega* (CIG) states that the increase in the number of fatal accidents at work in recent years cannot be explained by the change in criteria of registration of fatal accidents at work (since 2016, a death that occurs as a result of a work accident is registered as fatal accident, even if the death did not occur on the same day as the accident) or by the recent inclusion of self-employed in the occupational accident statistics. In the CIG's view, the reason for this increase is the lack of sufficient attention paid by companies to occupational health and safety issues and the Government should take urgent measures and introduce a plan against workplace accidents immediately.

In its comments, registered at the Secretariat on 9 July 2021, the *Confederación sindical de Comisiones Obreras* (CCOO) and *Unión general de trabajadores de España* (UGT) assert that regulatory changes that have been made in this period are not achieving positive effects to achieve towards the objective of reducing the work-related accident rate. Comparing the incidence rate of accidents at work between 2012 and 2018, the CCOO and UGT state that there is a cumulative increase of 15.6%. They also underline that the decrease in the incidence rate in 2019 was not due to the improvement in working conditions but rather a statistical result of the inclusion of self-employed workers in the data to be taken into account.

According to EUROSTAT data, the number of fatal accidents at work was 271 in 2016, 290 in 2017 and 2018 and, with a sharp increase, 322 in 2019. The incidence rates of such accidents were 2.89 in 2016 and 2017 and 2.84 in 2018. Those figures are higher than the EU-27 average in the same period (2.29 in 2016 and 2.21 in 2018).

According to the same data, the number of non-fatal accidents (causing 4 days of absence from work) at work increased from 331,612 in 2016 to 367,900 in 2018. The incidence rate of such accidents increased from 3,209.81 in 2016 to 3,275.08 in 2018. Those figures are higher than the EU-27 average in the same period (1,772.37 in 2016 and 1,768.93 in 2018).

The Committee reiterates its request for information in the targeted questions, with regard to accidents at work and occupational diseases concerned statistical data on prevalence of work-related death, injury and disability including as regards suicide or other forms of self-harm, PTSD, burn-out and alcohol or other substance use disorders, as well as on epidemiological studies conducted to assess the long(er)-term health impact of new high-risk jobs and also as regards the victims of harassment at work and poor management.

The report does not provide any answer with regard to the question raised by the Committee in the previous conclusion concerning occupational diseases. The Committee reiterates its request in this regard and stresses the importance of this information in the assessment of the efficiency of monitoring of occupational diseases. In the previous conclusion, observing that the previous report did not provide any relevant figures for the number of occupational diseases, the Committee concluded that the monitoring of occupational diseases was not satisfactory over the reference period.

The Committee still considers that occupational diseases are not monitored effectively and that the measures taken to reduce the number of accidents at work are insufficient. The Committee therefore reiterates its conclusion of non-conformity in this respect.

### ***Activities of the Labour Inspectorate***

The Committee previously examined (Conclusions XXI-2 (2017) the activities of the Labour Inspectorate and considered that in order to assess the conformity of the situation with Article 3§2, it needed to know the proportion of the total workforce which is covered by the inspections. The Committee therefore requested that the next report indicate the proportion

of workers who are covered by inspections and the percentage of companies which underwent a health and safety inspection in the years covered by the reference period.

The targeted question with regard to the activities of the Labour inspectorate concerned the organisation of the Labour Inspectorate, and the trends in resources allocated to labour inspection services, including human resources; number of health and safety inspection visits by the Labour Inspectorate and the proportion of workers and companies covered by the inspections as well as the number of breaches to health and safety regulations and the nature and type of sanctions; whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors.

In reply, the report indicates that the number of labour inspectors increased from 960 in 2016 to 965 in 2018 and the number of sub-inspectors increased, from 837 in 2016 to 901 in 2018. The report also informs that 833 new inspectors and sub-inspectors will be hired to the Labour Inspectorate (ITSS) within the next five years which will result in an increase of 23% of ITSS human resources. The decisions in relation to vacancy notices for 353 new posts were published in the Official Journal in October 2018.

The report indicates that since the introduction of its new statute of “autonomous organisation” on 8 April 2018, ITSS has a separate budget which amounts to 126.46 million € in 2018. The Committee also takes note of the measures taken for the modernisation of management procedures and the reinforcement of cooperation and collaboration between the Labour Inspectorate, the regions, fiscal administration, and public prosecution.

According to the report, the number of labour inspection visits by inspectors was 279,048 in 2016, 266,718 in 2018 and 276,935 in 2019. According to 2018 data, 67,52% of those visits took place in the service sector and 17,47% in the construction sector. In 2018, the inspection services issued in total 112,226 service orders (101,761 in 2016) in the field of prevention of professional risks. As a result, specific actions have been taken by the Labour Inspectorate, such as control of the use of personal protection equipment by the workers, of management of prevention of professional risks by enterprises etc. In 2018, labour inspectors issued 120 orders of cessation of activity (160 in 2017) in enterprises for imminent and grave occupational risks.

The report also explains that during the reference period, the action of the Labour Inspectorate mainly concerned the following subjects: safety conditions in the workplace, working machines and equipment, training and information for workers, means of personal protection, risk assessment, stairs, platforms and openings, planning of the preventive action and health surveillance. The report specifies that in 2018, the public administration was the subject of 2,455 injunctions, according to the special administrative procedure for the imposition of corrective measures for breach of professional risks within the framework of the general administration of the State.

In response to the targeted question on whether inspectors are entitled to inspect all workplaces, including residential premises, in all economic sectors, the report explains that labour inspectors are entitled to enter freely at any time and without notice, a workplace, establishment or place subject to inspection and to remain there. If the place subject to inspection is the home of a natural person, the inspectors must obtain his/her express consent or, failing that, judicial authorisation.

The report does not indicate the proportion of workers who are covered by inspections or the percentage of companies which underwent a health and safety inspection in the years covered by the reference period. The Committee also asks more detailed and updated information on the nature and type of sanctions in case of breaches to health and safety regulations. The Committee considers that if the requested information is not provided in the next report, there will be nothing to establish that the activities of the Labour Inspectorate are effective in the practice.

### *Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 3§2 of the 1961 Charter on the grounds that:

- the measures taken to reduce the number of accidents at work are insufficient;
- occupational diseases are not monitored effectively.

### **Article 3 - Right to safe and healthy working conditions**

#### *Paragraph 3 - Consultation with employers' and workers' organisations on safety and health issues*

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 as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection"). However, no targeted questions were posed in respect of Article 3§3 of the 1961 Charter.

The Committee refers to its previous conclusion (Conclusion XXI-2 (2017)) where, after taking note that the previous report submitted by Spain did not provide any information on Article 3§3 of the Charter, it deferred its conclusions. The Committee will therefore restrict its consideration to the Government's replies to the previous conclusion of deferral.

The Committee also refers to its Conclusions XXI-2 (2013) and XIX-2(2009), where it concluded that the consultation structures and procedures at the national level and in the enterprises were in conformity with Article 3§3 of the 1961 Charter. On the same occasion, the Committee took note of the fact that the "Spanish Strategy in the field of health and safety at work 2007 – 2012" (SESST) was geared to reinforcing the role of the different social actors and ensuring greater participation by employers and employees in improving health and safety at work.

The report explains that National Commission for Occupational Safety and Health (CNSST) is the collegial advisory body on which public administrations rely for the formulation of prevention policies. It is also the main body with institutional participation in the field of occupational safety and health. It is made up of representatives of all the autonomous communities competent in matters of occupational risk prevention and, on an equal basis, representatives of the general state administration and the most representative employers' and trade union organizations.

The report also underlines that the CNSST operates in plenary, in standing committee and in working groups. The plenary is the body that approves CNSST agreements and reports on draft legislation. The main objectives of the working groups are to reduce accidents at work and occupational diseases in priority sectors and activities due to the high number of accidents, to improve the health and safety conditions of certain groups of workers, and to study and prevent specific risks.

During the period 2016-2019, 213 meetings were held, including 6 in plenary formation and the others in standing committees, groups and sub-working groups. The report provides a list of legislative proposals in the field of security and health at work prepared by the CNSST. Among the agreements adopted by the CNSST during this period, the report refers in particular to the Action plan for the Spanish occupational safety and health strategy 2017-18 and 2019-20.

#### *Conclusion*

The Committee concludes that the situation in Spain is in conformity with Article 3§3 of the 1961 Charter.

## **Article 11 - Right to protection of health**

### *Paragraph 1 - Removal of the causes of ill-health*

The Committee takes note of the information contained in the report submitted by Spain and in the comments by the *Confederación Intersindical Galega* of 30 June 2021 and *Confederación Sindical de Comisiones Obreras* (CCOO-Spain) and *Unión General de Trabajadores y Trabajadoras de España* (UGT-Spain) of 9 July 2021, and in the Government's response to the comments of 3 September 2021.

The Committee recalls that for the purposes of the present report, States were asked to reply to targeted questions for Article 11§1 of the 1961 Charter, as well as, where applicable, previous conclusions of non-conformity or deferrals (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection").

In its previous conclusion, the Committee concluded that the situation in Spain was in conformity with Article 11§1 of the 1961 Charter (Conclusions XXI-2 (2017)). The assessment of the Committee will therefore only concern the information provided by the Government in response to the targeted questions.

The Committee wishes to point out that it will take note of the reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### ***Measures to ensure the highest possible standard of health***

In its targeted question for this cycle, the Committee asked for overall and disaggregated statistical data on life expectancy across the country and different population groups (urban; rural; distinct ethnic groups and minorities; longer term homeless or unemployed; etc.) identifying anomalous situation (e.g. particular areas in the community; specific professions or jobs; proximity to active or decommissioned industrial or highly contaminated sites or mines; etc.) and on prevalence of particular diseases among relevant groups (e.g. cancer) or blood borne infectious diseases (e.g. new cases HIV or Hepatitis C among people suffering from substance use disorders or who are held in prison; etc.).

The Committee notes from the World Bank data that life expectancy at birth in Spain in 2019 was 83.5 (average), an increase from 2015 when it was 82.8. In 2019, life expectancy at birth was 80.9 for men (in 2015 it was 80.1) and 86.2 for women (in 2015 it was 85.7). Life expectancy at birth in Spain remains the highest in the European Union. The Committee further notes from the World Bank data that the death rate in the Spain decreased slightly from 9.1 deaths per 1,000 inhabitants in 2015 to 8.8 deaths per 1,000 inhabitants in 2019.

The report states that the statistical information in Spain does not take into account information on ethnic-group membership. The information on the prevalence of various illnesses among ethnic minorities is therefore taken from surveys carried out among the Roma population. The Committee notes that the results of the most recent survey were published in 2014, which is outside the reference period for the purposes of the current reporting cycle. The Committee recalls that the gathering and analysis of statistical data (with due safeguards for privacy and against other abuses) is indispensable for the formulation of a rational policy aiming at the protection of particularly vulnerable groups or at reducing a particular phenomenon (see, *mutatis mutandis*, ERRC v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23; ERRC v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27; Conclusions 2005, France, Article

31§2, p.268). Therefore the Committee asks again for information on statistical data across ethnic groups.

The Committee notes that according to the report *Spain: Country Health Profile 2019* (OECD, the European Observatory on Health Systems and Policies and the European Commission), inequalities in life expectancy are less pronounced than in many other EU countries. According to the same report, over one-third of all deaths in Spain can be attributed to behavioural risk factors, such as dietary habits, tobacco smoking, alcohol consumption and low levels of physical activity.

The report provides information on HIV rate, which was 8.65 per 100,000 inhabitants in 2018. Among those infected, 85.3 per cent was men and the average age of those infected was 36 years. Among prisoners, the prevalence of HIV was 4.2 per cent in 2018.

The report provides that the rate of Hepatitis C in 2018 was 3.02 per 100,000 inhabitants. Among prisoners, the prevalence of Hepatitis C was 10.2 per cent in 2018.

The Confederación Intersindical Galega (CIG) submitted its comments to the report and expressed concern that the health statistics in Spain do not take into account the ethnic variable, as well as that the health situation among Roma minority is worse than that of the general population. In its response, the Government does not comment on this issue.

### **Access to healthcare**

In its targeted question, the Committee asked for information about sexual and reproductive healthcare services for women and girls (including access to abortion) and statistical information about early (underage or minor) motherhood, as well as child and maternal mortality.

The Committee notes that the report provides no information in reply to its targeted question. The report only provides a list of links to websites of the Ministry of Health, where all the information is in Spanish.

The report does not provide information on the maternal and infant mortality. According to the World Bank data, in 2016 maternal mortality rate per 100,000 live births was 4. The infant mortality rate per 1,000 live births was 2.6 in 2019, a slight decrease from 2015, when it was 2.7.

The Committee reiterates its request for information on maternal and infant mortality and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Spain is in conformity with Article 11§1 of the 1961 Charter on this point.

The report provides a link to information on abortions (in Spanish). According to that information in 2019 the abortion rate per 1,000 women aged between 15 and 44 years, was 11.53, an increase in comparison with 2015, when it was 10.40.

The CIG submitted its comments and stated that information submitted by the Government in reply to the targeted question cannot be considered to be sufficient. Confederación Sindical de Comisiones Obreras (CCOO-Spain) and Unión General de Trabajadores y Trabajadoras de España (UGT-Spain) submitted their comments to the report and they state that the report of the Government contains links to websites but does not carry out any analysis of the situation. CCOO-Spain and UGT-Spain state that the Spanish legislation requires three informative phases to take place in order to access an induced abortion and that the abortion can only be carried out in accredited public or private health centres. In its response, the Government does not comment on this issue.

The Committee thus asks the next report to provide information on access to abortion, including on the informative phases needed in order to access an induced abortion, on the costs of abortion and whether they are reimbursed by the State in total or in part.

The Committee asks for information on the measures taken to ensure that women and girls have access to modern contraception. It also asks for information on the proportion of the cost of contraceptives that is not covered by the State (in cases where the cost is not fully reimbursed by the State).

The Committee reiterates its request to provide statistical information about early (underage or minor) motherhood.

The Committee asks the next report to contain information on the public health expenditure as a share of GDP.

The Committee refers to its general question as regards the right to protection of health of transgender persons in the general introduction. The Committee recalls that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11. Article 11 imposes a range of positive and negative obligations, including the obligation of the state to refrain from interfering directly or indirectly with the enjoyment of the right to health. Any kind of unnecessary medical treatment can be considered as contrary to Article 11, if accessing another right is contingent upon undergoing that treatment (*Transgender Europe and ILGA Europe v. Czech Republic*, Complaint No. 117/2015, decision on the merits of 15 May 2018, §§74, 79, 80).

The Committee recalls that state recognition of a person's gender identity is itself a right recognised by international human rights law, including in the jurisprudence of the European Court of Human Rights, and is important to guaranteeing the full enjoyment of all human rights. It also recalls that any medical treatment without free informed consent (subject to strict exceptions) cannot be compatible with physical integrity or with the right to protection of health. Guaranteeing free consent is fundamental to the enjoyment of the right to health, and is integral to autonomy and human dignity and the obligation to protect the right to health (*Transgender Europe and ILGA Europe v. Czech Republic*, op. cit. §§78 and 82).

The Committee invites states to provide information on the access of transgender persons to gender reassignment treatment (both in terms of availability and accessibility). It asks whether legal gender recognition for transgender persons requires (in law or in practice) that they undergo sterilisation or any other medical requirements which could impair their health or physical and psychological integrity. The Committee also invites states to provide information on measures taken to ensure that access to healthcare in general, including sexual and reproductive healthcare, is provided without discrimination on the basis of gender identity.

In its targeted question, the Committee asked for information on measures to ensure informed consent to health-related interventions or treatment (under Article 11§2). The Committee takes note of the definition of informed consent presented in the report ("the authorisation which the patient, in full possession of their faculties and after being properly informed, gives freely, voluntarily and consciously for an intervention affecting their health to be carried out"). According to the report, the patient's rights here are governed by (national) Law No. 41/2002 on the autonomy of patients and rights and obligations in respect of clinical documentation and information, as well as relevant texts enacted at regional level. In accordance with Law No. 16/2003 of 28 May 2003 on the Cohesion and Quality of the National Health System, the patient's informed consent must always be obtained for certain techniques, technologies or procedures which come under Ministry of Health supervision.

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

In the context of the Covid-19 crisis, the Committee asked the States Parties to evaluate the adequacy of measures taken to limit the spread of virus in the population, as well as the measures taken to treat the ill (under Article 11§3).



For the purposes of Article 11§1, the Committee considers information focused on measures taken to treat the ill (sufficient number of hospital beds, including intensive care units and equipment, and rapid deployment of sufficient numbers of medical personnel).

The report states that a number of documents were published on the website of the Ministry of Health on the Covid-19 crisis. These documents include information on Covid-19, measures of prevention and hygiene.

CCOO-Spain and UGT-Spain express their concerns about worsening of public primary care during the pandemic, including delays in appointments. Amnesty International expresses its concern related to the pandemic, such as closing of local health centres and clinics, and provides recommendations, such as to strengthen the primary health care system; guarantee access to primary care for the most vulnerable.

The Committee recalls that during a pandemic, States Parties must take all necessary measures to treat those who fall ill, including ensuring the availability of a sufficient number of hospital beds, intensive care units and equipment. All possible measures must be taken to ensure that an adequate number of healthcare professionals are deployed (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

The Committee recalls that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and States must ensure that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status are adequately protected by the healthcare measures put in place. Moreover, States must take specific, targeted measures to ensure enjoyment of the right to protection of health of those whose work (whether formal or informal) places them at particular risk of infection (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

During a pandemic, States must take all possible measures as referred to above in the shortest possible time, with the maximum use of financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### *Conclusion*

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

## **Article 11 - Right to protection of health**

### *Paragraph 2 - Advisory and educational facilities*

The Committee takes note of the information contained in the report submitted by Spain.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter with respect to the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

In its previous conclusion, the Committee found that the situation in Spain was in conformity with Article 11§2 of the Charter (Conclusions XXI-2 (2017)).

### ***Education and awareness raising***

In its targeted questions, the Committee asked for information about health education (including sexual and reproductive health education) and related prevention strategies (including through empowerment that can serve as a factor in addressing self-harm conducts, eating disorders, alcohol and drug use) in the community, on a lifelong or ongoing basis, and in schools.

The report provides detailed information concerning the relevant preventive measures and activities (information campaigns, publications, prevention strategies, training courses, etc.) conducted under various national plans and programmes aimed at the general public. The measures cover a variety of areas such as physical exercise, trauma prevention and road safety, prevention of smoking and of abuse of alcohol, drugs (legal and illegal) and other psychoactive or potentially addictive substances.

The report indicates that the national mental health strategy of the National Health System is currently being updated. One of the aims of the new strategy is to promote healthy lifestyles, in particular physical exercise, healthy eating, personal hygiene, quality sleep, healthy sexuality, abandonment of unhealthy habits, stress management, prevention of addiction, suicidal behaviour, situations of dependency, etc.

In addition, the report mentions the establishment by the Ministry of Health of a “Network of health schools for citizens” during the reference period. The aims of the network include improving knowledge, skills and behaviour regarding health care, health promotion and disease prevention, and promoting health culture and education.

The report further states that the health prevention and promotion strategy of the National Health System, which was approved by the Interterritorial Council of the National Health System on 18 December 2013, provides a common framework for improving public health and well-being. The strategy is based on a lifelong approach and involves the active participation of various groups in society. According to the report, it is divided into three strands, i.e., environments, risk factors and population groups. The Committee takes note of various health education, prevention and promotion activities conducted by the Ministry of Health under the strategy during the reference period.

The report also indicates that an agreement was signed by the Ministry of Education and Vocational Training and the Ministry of Health, Consumer Affairs and Social Welfare on 11 November 2019 to promote health education in schools. The agreement carries on from the framework agreement in force since 2005 and is intended to provide a general framework for co-operation between the two ministries so as to foster the implementation of health education and promotion activities in schools: introduction of content on health tailored to each stage in the curriculum; in-class health education to encourage healthy lifestyles and develop useful life skills; promotion of healthy, participatory and community-oriented

educational environments; support for the health schools, which implement a comprehensive approach geared to promoting the health and well-being of the educational community and the development of its social capital. The Committee notes that the agreement aims at introducing these activities into the various plans and strategies listed in the report.

As regards sexual and reproductive health education, the report indicates that the Public Health Board of the Interterritorial Council of the National Health System approved the 2019-2020 operational plan of the national sexual health strategy on 20 June 2019. It addresses the new challenges which have emerged in the area since the adoption of the national sexual and reproductive health strategy announced in Law 2/2010. The plan provides for the priority implementation of eight measures over the relevant period. The Committee notes that one of the measures set out is improving co-ordination with the educational sector with a view to including sexual education in all stages of the school curriculum.

In its targeted questions, the Committee also asked for information about awareness-raising and education with respect to sexual orientation and gender identity (SOGI) and to gender-based violence. In response, the report describes the various measures taken in this area. In particular, it states that the Directorate General of Sexual Diversity and LGBTI Rights in the Ministry of Equality runs training activities to combat homophobic and transphobic bullying in schools. The seminars held as part of the project “Embracing diversity: an educational responsibility” are designed to provide the teaching staff, guidance and management staff and heads of primary and secondary schools with the necessary tools for identifying and preventing bullying in schools. In addition, in 2017 the State Secretariat for Equality conducted a study on “LGBT people and employment in Spain: moving towards inclusive workspaces that respect sexual orientation and gender identity and expression”. The results of the study led to the implementation of a project entitled “ADIM – Improving the management of LGBT diversity in the public and private sectors” under the European Union’s Rights, Equality and Citizenship Programme.

### ***Counselling and screening***

In its previous conclusion, the Committee found that the situation in Spain was in conformity with Article 11§2 with respect to counselling and screening services available to pregnant women and children (Conclusions XXI-2 (2017)).

With regard to specific measures to combat pseudoscience in the field of health issues, the report indicates that the Ministry of Health and the Ministry of Science and Innovation are working to develop an action plan to combat pseudoscience and its effects. Moreover, the plan to protect health and combat pseudo-treatments published in 2018 is aimed at defining and implementing measures under a comprehensive approach designed to protect individuals against such pseudo-treatments. According to the report, the health authorities have an obligation to protect health and must provide the public with detailed information so that they can distinguish between, on the one hand, services and treatments whose therapeutic effect has been proven and, on the other, products and other methods for which this is not the case. The Committee notes that the assessment report on pseudo-treatments is being updated, and requests that updated information be provided in the next monitoring cycle.

### ***Conclusion***

The Committee concludes that the situation in Spain is in conformity with Article 11§2 of the 1961 Charter.

## **Article 11 - Right to protection of health**

### *Paragraph 3 - Prevention of diseases and accidents*

The Committee takes note of the information contained in the report submitted by Spain.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about healthcareservices in prison; community-based mental health services; drug abuse prevention and harm reduction; healthy environment; immunisation and epidemiological monitoring; Covid-19; and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In its previous conclusion, the Committee concluded that the situation in Spain was in conformity with Article 11§3 of the 1961 Charter (Conclusions 2017).

### ***Healthcare services in places of detention***

In a targeted question, the Committee asked for a general overview of healthcare services in places of detention, in particular prisons (under whose responsibility they operate/which ministry they report to, staffing levels and other resources, practical arrangements, medical screening on arrival, access to specialist care, prevention of communicable diseases, mental health-care provision, conditions of care in community-based establishments when necessary, etc.).

The report provides information about the healthcare staffing complement in prisons and in two prison psychiatric hospitals, and about the structure of the prison healthcare services, which operate under the supervision of the Ministry of the Interior. The report provides further information about the prevention, detection and treatment of transmissible diseases in prisons, about health education, as well as data about the number of persons receiving different types of testing or treatment in facilities within or outside the penitentiary system. The report also provides a detailed overview of arrangements in place for mental health treatment and rehabilitation, as well as data on the incidence of mental health disorders, often associated with drug use.

### ***Community-based mental health services***

In a targeted question, the Committee asked for information regarding the availability and extent of community-based mental health services and on the transition to community-based mental health from former large-scale institutions. The Committee also asked for statistical information on outreach measures in connection with the mental health assessment of vulnerable populations and on proactive measures adopted to ensure that persons in need of mental healthcare are not neglected.

The report provides limited information about the number of mental health centres as of 2014, before the reference period, and without any explanations about the type of services provided in these facilities. The report additionally states that work on updating the national

mental health strategy is currently underway and that research work is planned on the connection between poverty and mental health.

Consistent with the World Health Organisation (WHO) Comprehensive Mental Health Action Plan 2013-2030, and other relevant standards, the Committee considers that a human rights-compliant approach to mental health requires at a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental health legislation and strategies that are in line with the Convention on the Rights of Persons with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c) implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations.

The Committee notes that the information requested in the targeted question is not provided. Therefore, the Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Spain is in conformity with Article 11§3 of the 1961 Charter.

The Committee notes that Article 15§3 of the Revised Charter ordinarily provides an opportunity to examine the process of deinstitutionalisation of persons with disabilities. As the 1961 Charter lacks a similar provision, the issue in question falls to be assessed under Article 11§3.

The Committee notes that, in its most recent concluding observations regarding the situation in Spain, the Committee on the Rights of Persons with Disabilities (CRPD, 2019) expressed concern about the limited access to personal assistance; the continuing investment of public funds in the construction of new residential institutions for persons with disabilities; and the lack of a deinstitutionalisation strategy and action plan to promote independent living for all persons with disabilities within their community.

The Committee asks for information as follows:

- the number of fully and/or partially closed institutions, or the reduction in the number of beds in long-stay psychiatric hospitals; if a deinstitutionalisation strategy is in place, what the timeline is for the closure of all institutions;
- the alternatives that have been put in place: the type of community-based services, including access to personal assistance, housing options, and access to mainstream services, including employment and education;
- with regard to housing, to what extent people leaving institutions are able to choose where and with whom they would like to live, and whether they are obliged to access a particular living arrangement to access support;
- data on the number of people living in group housing (small group homes, family-type homes, etc.) after leaving institutions, disaggregated by age and impairment;
- how services are funded, how disability-related costs are funded, and how individuals are assessed for access to different support services and allowances;
- how the quality of community-based services is monitored, and how persons with disabilities and their representative organisations are involved in the delivery, monitoring or evaluation of community-based services.

### ***Drug abuse prevention and harm reduction***

In a targeted question, the Committee asked for information about drug-related deaths and transmission of infectious diseases among people who use or inject psychoactive substances both in the community and in custodial settings. The Committee also asked for an overview of the national policy designed to respond to substance use and related disorders (dissuasion, education, and public health-based harm reduction approaches, including use or availability of WHO listed essential medicines for opioid agonist treatment)

while ensuring that the “available, accessible, acceptable and sufficient quality” criteria (WHO’s 3AQ) are respected, subject always to the exigency of informed consent. This rules out, on the one hand, consent by constraint (such as in the case of acceptance of detox and other mandatory treatment in lieu of deprivation of liberty as punishment) and, on the other hand, consent based on insufficient, inaccurate or misleading information (i.e. not based on state of the art scientific evidence).

The report addresses the request for information only insofar as drug use in prison is concerned, mainly by presenting data from a survey on drug consumption carried out in 2016. The data refers to drug use prevalence and trends, drug-related infectious diseases and emergencies, and drug-induced deaths. Prevention and health education programmes include counselling, drug treatment and harm reduction measures.

The Committee refers to the Spain Country Drug Report 2019 by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), which noted that incidence of newly diagnosed HIV cases among people who inject drugs remained low in 2017. The drug-induced mortality rate among adults (aged 15-64 years) was 16 deaths per million in 2016. The drug policy adopts a public health approach and includes harm reduction measures such as preventive educational interventions, clean needles and syringes, testing and vaccination for drug-related infections, or emergency care and assistance. Opioid agonist treatment is available.

The Committee asks for updated information about drug-related deaths and transmission of infectious diseases, as well as an overview of the national policy designed to respond to substance use and related disorders among people who use or inject psychoactive substances in the community.

### ***Healthy environment***

In a targeted question, the Committee asked for information on the measures taken to prevent exposure to air, water or other forms of environmental pollution, including proximity to active or decommissioned (but not properly isolated or decontaminated) industrial sites with contaminant or toxic emissions, leakages or outflows, including slow releases or transfers to the neighbouring environment, nuclear sites, mines, as well as measures taken to address the health problems of the populations affected, and about measures taken to inform the public, including pupils and students, about general and local environmental problems.

The Committee refers to the Spain Country Report that forms part of the Environmental Implementation Review 2019, which noted a series of challenges including water governance and wastewater, as well as poor air quality correlated with traffic congestion in major metropolitan areas. Notably, following a ruling of the Court of Justice of the European Union of 25 July 2018, Spain has received pecuniary sanctions for failing to comply with the Urban Wastewater Treatment Directive.

The Committee notes that the information requested is not provided, namely about the measures taken to prevent exposure to air, water or other forms of environmental pollution, to address the health problems of the populations affected, and to inform the public about general and local environmental problems, and asks for it to be provided in the next report. The Committee reiterates its request and considers that if the requested information is not provided in the next report, there will be nothing to establish that the situation in Spain is in conformity with Article 11§3 of the 1961 Charter.

### ***Immunisation and epidemiological monitoring***

In a targeted question, the Committee asked States Parties to describe the measures taken to ensure that vaccine research is promoted, adequately funded and efficiently coordinated across public and private actors.

The report provides information about the arrangements in place for sourcing and distributing vaccines.

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

The Committee asked States Parties to evaluate the adequacy of measures taken to limit the spread of the Covid-19 virus in the population (testing and tracing, physical distancing and self-isolation, provision of surgical masks, disinfectant, etc.).

The report presents briefly the efforts undertaken by the Ministry of Health to provide the public with comprehensive and updated information in relation to the Covid-10 pandemic, including by opening a designated section on its website, and by using social media.

The Committee recalls that States Parties must take measures to prevent and limit the spread of the virus, including testing and tracing, physical distancing and self-isolation, the provision of adequate masks and disinfectant, as well as the imposition of quarantine and 'lockdown' arrangements. All such measures must be designed and implemented having regard to the current state of scientific knowledge and in accordance with relevant human rights standards (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). Furthermore, access to healthcare must be ensured to everyone without discrimination. This implies that healthcare in a pandemic must be effective and affordable to everyone, and that groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected by the healthcare measures put in place (Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020).

### *Conclusion*

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

## **Article 12 - Right to social security**

### *Paragraph 1 - Existence of a social security system*

The Committee takes note of the information contained in the report submitted by Spain and comments received from the Confederation sindical de Comisiones Obreras (CCOO) and Unión general de trabajadores de España (UGT) as well as the Confederación Intersindical Galega.

### **Risks covered, financing of benefits and personal coverage**

In its previous conclusion the Committee considered that the personal coverage of social security risks was adequate. The Committee asks the next report to provide information concerning the personal coverage of income-replacement benefits (unemployment, sickness, disability) expressed as a percentage of personal coverage out of the active population.

### **Adequacy of benefits**

According to Eurostat, the poverty level, defined as 50% of the median equivalised income stood at € 626 per month. 40% of the median equivalised income corresponded to €501 monthly.

In its previous conclusion (Conclusions 2017) the Committee considered that the minimum level of unemployment benefit was inadequate as it fell below 40% of the median equivalised income. The Committee notes from MISSOC that the amount of unemployment assistance benefits is calculated according to the Public Income Rate of Multiple Effects (*Indicador Público de Renta de Efectos Múltiples, IPREM*) established annually by law. Benefits are not based on earnings. The Committee takes note of different types of benefits:

- Allowance: 80% of the *IPREM*.
- Active Integration Income (*Renta Activa de Inserción, RAI*): 80% of the *IPREM* in force.
- Professional requalification programme (*Programa de recualificación profesional*): 75% of the *IPREM* in force (85% in case of 3 dependants).
- Employment activation programme (*Programa de activación para el empleo*): 80% of the *IPREM* in force.

According to MISSOC the *IPREM* amounted to €17.93 per day or €537.84 per month or €6,454.03 per year in 2019. The Committee notes that the amount of *IPREM* itself falls below 50% of the median equivalised income. Therefore, the benefits that are calculated on its basis fall below 40% of the median equivalised income and are, therefore, not adequate.

The Committee notes from Comments by the Confederation sindical de Comisiones Obreras (CCOO) and Unión general de trabajadores de España (UGT) that household employees are excluded from unemployment protection, which is indirectly discriminatory since the group of employees is predominantly female. The Committee also notes from the comments by the Confederación Intersindical Galega that Spain requires part-time workers, mostly women, compared to full-time workers, a proportionately longer contribution period to access, where appropriate, a contributory retirement pension.

As regards the level of benefits, CCOO and UGT also refer to the exclusion of workers under 45 years of age without the right to a contributory benefit from unemployment assistance protection. As regards the level of unemployment benefit, CCOO and UGT state that the general amounts of unemployment assistance are insufficient and so is the amount of benefits due to the loss of a part-time job. The Committee asks the next report to respond to the points raised in these comments.



In its previous conclusion the Committee observed that the temporary incapacity, or sickness benefits were not linked to the national reference system for social benefits (IPREM), but corresponded to 60% (from the 4<sup>th</sup> to the 20<sup>th</sup> day of sick leave) or 75% (from the 21<sup>st</sup> day) of the minimum wage. The Committee thus noted that the minimum level of sickness benefit was between 40% and 50% of the median equivalised income, when calculated on the basis of the minimum wage. The Committee accordingly asked whether additional benefits were paid to a person earning the minimum level of sickness benefit.

The Committee notes in this respect that as regards the adequacy of the temporary incapacity for work benefit (ITT), many employers supplement the minimum amount, in accordance with collective agreements, to reach 100% of the salary. According to the report, the temporary incapacity benefit is paid as long as the worker is incapacitated for work and receives health care from social security and lasts in the event of accident or illness, whatever the cause, 365 days, which may be extended by 180 days if it is considered that the worker will be able to return to work following his recovery.

According to the report, in 2019, the average duration of the benefit for employees due to illness or an accident of non-occupational origin was 38.5 days (37.8 days in 2015), while the average duration of the benefit due to an accident at work or an occupational disease was 39.35 days (36.02 in 2015). The report states that the situation which was taken as an example by the Committee in its previous conclusion (sickness benefit calculated on the basis of the minimum wage at 60%) was a very rare case. On average, a patient will receive 75% of his/her salary and the amount concerned is above the reference poverty line.

The Committee notes that the minimum wage in Spain in 2019 amounted to € 1050. Therefore, the minimum level of sickness benefit, calculated on the basis of 60% of the minimum wage is adequate.

As regards adequacy of old age pensions, the Committee refers to its conclusion under Article 23 of the Charter.

#### *Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 12§1 of the 1961 Charter on the ground that the minimum level of unemployment benefit is not adequate.

**Article 12 - Right to social security**

*Paragraph 2 - Maintenance of a social security system at a satisfactory level at least equal to that necessary for the ratification of the International Labour Convention No. 102*

The Committee takes note of the information contained in the report submitted by Spain.

The Committee recalls that Spain ratified the European Code of Social Security on 8 March 1994 and has accepted Parts II-VI, VIII and IX.

The Committee notes from Resolution CM/ResCSS(2020)17 of the Committee of Ministers on the application of the European Code of Social Security by Spain (period from 1 July 2018 to 30 June 2019) that the law and practice in Spain continue to give full effect to all Parts of the Code which have been accepted, subject to reviewing conditions of lump-sum compensation for permanent partial disability under Part VI. In so doing, Spain maintains a social security system that meets the requirements of ILO Convention No. 102.

*Conclusion*

The Committee concludes that the situation in Spain is in conformity with Article 12§2 of the 1961 Charter.

## **Article 12 - Right to social security**

### *Paragraph 3 - Development of the social security system*

The Committee takes note of the information contained in the report submitted by Spain.

The Committee recalls that States were asked to reply to two targeted questions for Article 12§3 of the Charter as well as, where applicable, the previous conclusions of non-conformity or deferral (see the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”).

In its previous conclusion, the Committee found that the situation in Spain was in conformity with Article 12§3 of the 1961 Charter (Conclusions XXI-2 (2017)). It will therefore restrict its consideration to the Government’s replies to the two targeted questions, namely:

- social security coverage, and its modalities, provided to persons employed by digital platforms or whose work is managed via such platforms; and
- any impact of the Covid-19 crisis on social security coverage, and any specific measures taken to compensate for or alleviate any possible negative impact.

The Committee wishes to point out that it will take note of the reply to the second question for information purposes only, as it relates to developments that occurred outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section below will not be assessed for the purposes of Charter compliance in the current reporting cycle.

### **Platform workers**

The Committee recalls that it has posed a targeted question to all States on social security cover for persons employed or whose work is managed by digital platforms. The emergence of these new forms of employment has had a negative impact on certain rights of these workers, as explained in the General Introduction. In matters of social security, compliance with Article 12§3 of the Charter requires that the existing social security systems be adapted to the specific situation and needs of the workers concerned, in order to guarantee that they enjoy the social benefits included within the scope of Article 12§1. The Committee is keenly aware that there are significant gaps in the social coverage of workers in new forms of employment such as platform workers. It considers that the States Parties are under an obligation to take all the necessary measures to address these shortcomings.

In particular States Parties must take steps to ensure that all workers in new forms of employment have an appropriate legal status (employee, self-employed or other category) and that this status is in line with the actual situation thus avoiding abuse (such as the use of “bogus” or “false” self-employed status to circumvent the applicable social security regulations) and conferring adequate social security rights as guaranteed by Article 12 of the Charter on the platform workers.

The Committee notes that in its report, the Government referred to developments in the legal framework for social security during the reference period. In particular, a number of laws, royal decree-laws, royal decrees and ministerial orders were adopted, introducing changes to, inter alia, social security, unemployment and termination compensation contributions, social security pensions and other public social benefits, the special social security scheme for self-employed workers and the Labour and Social Security Inspectorate. Some of these texts introduced emergency measures, for example to increase social protection, tackle job insecurity and implement the Youth Guarantee. The Government also provided tables setting out the minimum payment levels of contributory pensions (retirement, permanent disability, survivors’ pensions, etc.).

However, the Government has not provided any information regarding the social security coverage of digital platform workers. The Committee therefore reiterates its question. It asks for information in the next report on the number of digital platform workers (as a percentage of the total number of workers), their status (employees, self-employed and/or other category), the number/percentage of these workers by status and their social security protection (by status). In the meantime, the Committee reserves its position on this point.

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

In response to the second question, the Government refers to measures that were introduced in the first half of 2020 to mitigate the pandemic's negative impact. These measures included paying temporary incapacity benefits to workers required to stay at home for Covid-19 related health reasons (Royal Decree-Law No. 6/2020 of 10 March 2020), halving employers' social security contributions for private companies in the tourism industry, hotel trade or in the tourism-related retail sector (Royal Decree-Law No. 7/2020 of 12 March 2020), granting benefits to self-employed workers whose activity had been discontinued as a result of a sharp drop in turnover (Royal Decree-Law No. 8/2020 of 17 March 2020), simplifying the handling of procedures by social security bodies (Royal Decree-Law No. 13/2020 of 7 April 2020) and introducing a guaranteed minimum income (Royal Decree-Law No. 20/2020 of 29 May 2020).

### *Conclusion*

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

## **Article 12 - Right to social security**

### *Paragraph 4 - Social security of persons moving between States*

The Committee takes note of the information contained in the report submitted by Spain.

### ***Equality of treatment and retention of accrued benefits (Article 12§4)***

#### ***Right to equal treatment***

The Committee recalls that the guarantee of equal treatment within the meaning of Article 12§4 requires States Parties to remove all forms of discrimination against nationals of other States Parties from their social security legislation (Conclusions XIII-4 (1996), Statement of Interpretation on Article 12§4). Both direct and indirect discrimination should be eliminated. National legislation cannot reserve a social security benefit to nationals only or impose extra or more restrictive conditions on foreigners. Nor may national legislation stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with than nationals, and therefore affect them to a greater degree. However, pursuant to the Charter's Appendix legislation may require the completion of a period of residence for non-contributory benefits. In this respect, Article 12§4a requires that any such prescribed period of residence be reasonable. The Committee considers that the right to equal treatment covers both equal access to the social security system and equal conditions for entitlement to social security benefits.

As regards equal access to social security system, the Committee notes from the report that Article 14 of Organic Law 4/2000 of January 11, 2020 on the rights and freedoms of foreigners in Spain and their social integration, provides that resident foreigners have the right to social security benefits and services under the same conditions as nationals. In addition, Article 7, paragraph 2, of the General Law on Social Security (LGSS), approved by Royal Legislative Decree 8/2015 of October 30, 2015, provides that foreigners, legally residing in Spain are included in the scope of non-contributory benefits, under the conditions provided for by Organic Law 4/2000 of 11 January 2020 on the rights and freedoms of foreigners in Spain and their social integration and, where applicable, by treaties, conventions, agreements or international instruments approved, signed or ratified for this purpose.

As regards conditions for entitlement to social security benefits, in its previous conclusions (Conclusions XXI-2) the Committee considered that the situation was not in conformity with the Charter as the ten-year residence requirement applicable to nationals of States Parties that are not EU members or part of the EEA for entitlement to non-contributory pension was excessive.

The Committee notes from the report in this regard that in the social security system in force, for the purposes of non-contributory pensions, it is certain that the length of residence required to benefit from the non-contributory pensions is excessive, regardless of the nationality of the person concerned, whether Spanish or foreign. To be entitled to these benefits, it is necessary to satisfy a period of legal residence in Spanish territory, namely ten years between the age of sixteen and the age of admission to old-age pension, two of which must be consecutive and immediately prior to the service request. These conditions were established from the initial moment from which Law 26/1990 of 20 December 1990 implemented a non-contributory benefit scheme in the field of social security. According to the report, when drafting this law, account was taken of the criteria provided for in the European Convention on Social Security of 14 December 1972, ratified by Spain in 1986. Article 8, paragraph 2 of this Convention provides that the entitlement to non-contributory benefits, the amount of which does not depend on the length of the periods of residence completed, may be made conditional on the beneficiary having resided in the territory of the Contracting Party concerned or, in the case of survivors' benefits, on the deceased having

resided there for a period which may not be set at more than ten years between the age of sixteen and the pensionable age, of which it may be required that five years shall immediately precede the lodging of the claim, for old-age benefits.

The Committee considers that the situation which it has previously found not to be in conformity with the Charter has not changed. The legislation imposes an excessive residence requirement to benefit from the non-contributory pension.

As regards equal treatment in respect of family benefits, the Committee recalls that the purpose of child benefits is to compensate the costs of maintenance, care and education of children. Such costs primarily occur in the State where the child actually resides.

The Committee further recalls that child benefits are covered by different provisions of the Charter, and in particular by Article 12§1 and Article 16 of the Charter. Under Article 12§1 States Parties have an obligation to establish and maintain a social security system including a family benefits branch. Under Article 16 States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be child benefits provided as part of social security, available either universally or subject to a means-test. States Parties have a unilateral obligation to pay child benefits in respect of all children resident in their territory on an equal footing, whether they are nationals or have moved from another State Party.

The Committee is aware that States Parties that are also EU Member States, on the basis of the EU legislation on coordination of the social security system are obliged to apply coordination rules which to a large extent prescribe exportability of child benefits and family allowances. When the situation is covered by the Charter, and the EU legislation does not apply, the Committee has regard to its interpretation according to which the payment of child benefits to all residing children, as a starting point, is a unilateral obligation for all States Parties. The Committee decides no longer to examine the issue of exportability of child benefits under Article 12§4a.

Under Article 12§4a of the Charter the Committee will only examine whether child benefits are paid to children, having moved from another State Party, on an equal footing with nationals, thus ensuring equal treatment of all resident children. Under Article 16 the Committee will examine equal treatment of families as regards access to family benefits and whether the legislation imposes length of residence requirement on families for entitlement to child benefit.

The Committee notes in this respect that the child benefit is paid in respect of all resident children in Spain. Therefore, the situation is in conformity in this respect.

### ***Right to retain accrued benefits***

The Committee recalls that old-age benefit, disability benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one State according to the eligibility criteria laid down under national legislation should be maintained (exported) irrespective of whether the beneficiary moves between the territories. The Committee asks what is the legal basis for exportability of old age, disability and survivor's benefits and the international coordination in the social security field with non-EEA States.

### ***Maintenance of accruing rights***

The Committee recalls that under Article 12§4b there should be no disadvantage in terms of accrual of rights for persons who move to another State for employment in instances in which they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementation of the right to maintenance of accruing rights requires, where necessary, the accumulation of employment or insurance periods completed in another territory for the purposes of the opening, calculation and payment of benefits. In the case of long-term

benefits, the pro-rata approach should also be employed. States may choose between the following means in order to ensure maintenance of accruing rights: bilateral or multilateral agreement or, unilateral, legislative or administrative measures. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

The Committee notes that Spain has ratified the European Convention on Social Security. The Committee asks how the maintenance of accruing rights and accumulation of employment or insurance periods is ensured for nationals of those States Parties with which no relevant bilateral agreements have been concluded.

#### *Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 12§4 of the 1961 Charter on the ground that the length of residence requirement (10 years) for entitlement to non-contributory old-age pension is excessive.

### **Article 13 - Right to social and medical assistance**

#### *Paragraph 1 - Adequate assistance for every person in need*

The Committee takes note of the information contained in the report of Spain. It also takes note of the information contained in the comments of the Inter-Union Confederation of Galicia, the CCOO and UGT trade unions, the NGO "*Movimiento ATD Cuarto Mundo España*" and Amnesty International.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group "Health, social security and social protection") as well as previous conclusions of non-conformity or deferrals.

Therefore it will focus on the Government's replies to the targeted questions, namely about measures taken to ensure that the right to social and medical assistance is ensured and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion considered that the situation in Spain does not comply with Article 13§1 of the 1961 Charter on the grounds that: the granting of the minimum income is subject to a condition of length of residence in the majority of the Autonomous Communities; the granting of the minimum income is subject to age criteria (25 years); the minimum income is not paid for as long as necessary; the level of social assistance paid to a single person with no resources is not sufficient.

#### **General legal framework, types of benefits and eligibility criteria**

The report notes that the situation in Spain has changed radically since the introduction of the minimum subsistence income (RMV), as a result of the entry into force of Royal Decree-Law 20/2020 of 29 May 2020, which establishes the minimum subsistence income. The report considers that this change brings Spain into full compliance with the Charter, since, from the publication of this regulation, all families with children in a vulnerable situation are entitled to a benefit that supplements their income within the limits indicated below, regardless of whether the Autonomous Communities may create additional benefits. The Committee takes this information into account, but notes that it is outside the reference period. The *Cuarto Mundo* Movement and the Galician Inter-Union Confederation make very detailed comments on the new regulation and the RMV, which will be taken into account when assessing this situation in the next cycle.

The report also refers to the entry into force on 31 July 2018 of Royal Decree-Law 7/2018 of 27 July 2018 on universal access to the national health system, amending Law 16/2003 of 28 May 2003 on the cohesion and quality of the national health system, the universality of health care in Spain is guaranteed through the re-establishment of the right to health protection and health care for all persons, regardless of nationality, who have established residence in Spanish territory. The new regulatory framework establishes as holders of the right to health protection and health care all persons of Spanish nationality and foreign nationals who have established residence in Spanish territory, as well as persons entitled to health care in accordance with Community regulations coordinating social security systems or bilateral agreements including health care. It also provides that foreigners who are not registered or authorised to reside in Spain are entitled to health protection and health care



under the same conditions as persons of Spanish nationality, at the expense of public funds, provided that the persons do not have a third party liable to pay.

*Cuarto Mundo* refers in its report to the fact that there are significant delays in accessing social assistance and aid recognised by the legislation, especially in the years 2015 to 2018. Citing the Ombudsman, it also highlights the unequal application of benefits throughout the Spanish territory, as this depends on the autonomous communities in practice and results in a de facto lack of uniformity.

The report does not provide any information on the conditions for eligibility for the minimum income, in particular the residence and age requirements, or on the duration of the income. The Committee considers that the situation, which was previously found to be contrary to the Charter, has not changed during the reference period and therefore reiterates its finding of non-conformity on these points.

### ***Level of benefits***

In assessing the situation for the reference period, the Committee shall take into account the following elements:

- **Basic benefits:** the Committee notes that the minimum integration income during the reference period is the sole responsibility of the Autonomous Communities. As noted above, the conditions to be fulfilled (e.g. minimum length of residence or minimum age), the duration of the benefit or its amount may vary from one Autonomous Community to another. However, what they all have in common is that they are aimed at individuals and families who do not have sufficient financial resources to meet their basic needs and overcome their material difficulties. The Ministry of Health compiles the main data related to the Minimum Integration Income in the form of reports every year. The Committee notes that in 2019 the amount of the minimum income ranged between € 400 and €900.
- **Supplementary benefits:** the Committee notes that the report does not answer its question concerning regular supplementary benefits available to all poor people, in addition to the guaranteed minimum income. The Committee reiterates its question.
- **Poverty threshold** (set at 50% of the adjusted median income and calculated on the basis of the at-risk-of-poverty threshold established by Eurostat): it was estimated at €626 in 2019.

The Committee has previously concluded that the situation was not in conformity with the Charter on the grounds that the level of social assistance for single persons was manifestly insufficient in some communities (according to information from the Ministry, some communities would be exceptions, such as the Basque Country, Aragon, Madrid or Valencia). Indeed, the minimum income guarantee is less than 50% of the adjusted median income of Eurostat and is therefore insufficient.

### ***Right of appeal and legal aid***

The Committee notes that no targeted questions were asked as regards the right of appeal and legal aid. It had recalled that the right to assistance could not be left to the sole discretion of the Administration, but must constitute an individual right established by law and be accompanied by an effective right of appeal. It had requested in its previous conclusion updated information on the right of appeal and legal aid.

*Cuarto Mundo* refers to problems related to the fact that during the appeal to the relevant administrative and judicial bodies, aid is suspended, which may create increased risks of poverty and social expulsion for families in an already precarious situation. They also report problems with the notification of decisions, which would prevent applicants from preparing appeals. The Committee requests that the next report contain detailed information on social assistance appeals, time limits and access to tribunals.

### ***Personal scope of application***

The specific questions asked in relation to Article 13§1 this year do not include an assessment of assistance to nationals of States Parties legally residing in the territory. Therefore, this particular issue will only be assessed if there was a request for information or a non-compliance in the previous round.

#### **Foreign nationals unlawfully present on the territory**

The Committee recalls that persons in an irregular situation must have a legally recognised right to the satisfaction of basic human material need (food, clothing, shelter) in situations of emergency to cope with an urgent and serious state of need. It likewise is for the States to ensure that this right is made effective also in practice (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §187).

In its previous conclusion, the Committee had requested updated information on the emergency social assistance available to foreign nationals in an irregular situation in the territory. The report cites Article 14 of Organic Law 4/2000, of 11 January 2000, on the rights and freedoms of foreigners in Spain and their social integration, which provides that foreigners, regardless of their administrative situation, are entitled to basic social services and benefits. The Committee notes that this falls outside the reference period and requests that the next report provide updated information on this subject, including what is considered a basic social benefit, access to emergency care and whether benefits are harmonised in the Autonomous Communities.

Pending receipt of the information requested, the Committee considers that the situation in Spain complies with Article 13§1 as regards personal scope.

### ***Medical and social assistance during the Covid-19 pandemic***

The report states that, in accordance with the General Public Health Act 33/2011 of 4 October 2011, the public health services of the National Health System include prevention, assistance, surveillance and control actions aimed at preserving the public health of the entire population, regardless of their access to the health system, as well as avoiding the risks associated with health alert and emergency situations. In this sense, the document entitled "Health intervention in situations of risk to public health", approved by all the Autonomous Communities in the Interterritorial Council of the National Health System (December 2013), aims to provide a framework for the situations that must be dealt with in the interest of public health, among which is the suspicion of an infectious disease that is subject to epidemiological surveillance, control and/or elimination on an international scale. No specific information is provided on the measures taken under Covid-19. The Committee requests that the next report should outline these measures to ensure access to social and medical assistance during the pandemic.

#### ***Conclusion***

The Committee concludes that the situation in Spain is not in conformity with Article 13§1 of the 1961 Charter on the grounds that:

- minimum income eligibility is subject to a length of residence requirement in the majority of Autonomous Communities;
- minimum income eligibility is subject to age requirements;
- minimum income is not paid for as long as the need persists;
- the level of social assistance paid to a single person is not adequate.

**Article 13 - Right to social and medical assistance**

*Paragraph 2 - Non-discrimination in the exercise of social and political rights*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

**Article 13 - Right to social and medical assistance**

*Paragraph 3 - Prevention, abolition or alleviation of need*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

**Article 13 - Right to social and medical assistance**

*Paragraph 4 - Specific emergency assistance for non-residents*

The Committee notes that no targeted questions were asked under this provision. As the previous conclusion found the situation to be in conformity there was no examination of the situation in the current cycle.

## **Article 14 - The right to benefit from social welfare services**

### *Paragraph 1 - Promotion or provision of social services*

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information contained in the comments by the Confederación Sindical de Comisiones Obreras (CCOO) and Unión general de trabajadores de España (UGT) and by the Amnesty International.

The Committee recalls that Article 14§1 guarantees the right to benefit from general social welfare services. It notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely how and to what extent the operation of social services was maintained during the COVID-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future. The Committee wishes to point out that it will take note of the information provided in reply to the question relating to COVID-19 for information purposes only, as it relates to developments outside the reference period (i.e. after 31 December 2019). In other words, the information referred to in the COVID-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

In the previous conclusion (Conclusions 2017) the Committee found the situation to be in conformity with the Charter. The report does not indicate any change to the organisation of provision of social services in the reference period.

In reply to the targeted questions, the report provides that the social services continued to operate in the state of emergency declared by the government on 14 March 2020 by Royal Decree 463/2020 for the management of the health crisis caused by COVID-19. Given the impossibility of face-to-face care, the necessary alternative solutions (telematics, telephone, etc.) have been sought to guarantee the coverage of the essential minimums. The report lists measures adopted to expand the social pillar that protects the most vulnerable social groups, as well as financial support launched by the Ministry of Social Rights. Within the framework of the public social services system, in the context of the crisis caused by COVID-19, the Secretary of State for Social Rights drew up and circulated to all the social services departments of the autonomous communities recommendations for coordination and management measures for all the primary care social services. Furthermore, social, economic and health measures have been taken to promote the care of vulnerable individuals and families, such as: minimum income guarantee, aid and support for habitual housing, halting evictions, support for landlords and tenants, insurance of supplies, support for employment, support for the self-employed, for workers who have lost or suspended their jobs, etc.

The Committee notes the comments submitted by the CCOO and UGT that the COVID-19 pandemics strained the social services system and its set of benefits and services, which were considered essential services.

The report does not contain information on any specific measures taken in anticipation of possible crises of such type reoccurring.

### *Conclusion*

The Committee concludes that the situation in Spain is in conformity with Article 14§1 of the 1961 Charter.

## **Article 14 - The right to benefit from social welfare services**

### *Paragraph 2 - Public participation in the establishment and maintenance of social services*

The Committee takes note of the information contained in the report submitted by Spain. It also takes note of the information contained in the comments by the Confederación Sindical de Comisiones Obreras (CCOO) and Unión general de trabajadores de España (UGT), registered on 9 July 2021.

The Committee recalls that Article 14§2 requires States Parties to provide support for voluntary associations seeking to establish social welfare services. The “individuals and voluntary or other organisations” referred to in paragraph 2 include the voluntary sector (non-governmental organisations and other associations), private individuals, and private firms.

The Committee further notes that for the purposes of the current examination, States were asked to reply to the specific targeted questions posed to States in relation to this provision (questions included in the appendix to the letter of 3 June 2020, in which the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the scope of the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals. States were therefore requested to provide information on user involvement in social services (“co-production”), in particular on how such involvement is ensured and promoted in legislation, in budget allocations and decision-making at all levels, as well as in the design and delivery of services in practice. Co-production is understood here to mean that social services work together with users of the services on the basis of fundamental principles, such as equality, diversity, accessibility and reciprocity.

In its previous conclusion (Conclusions XXI-2 (2017)), the Committee found the situation to be in conformity with the Charter. The report provides that the participation, coordination and management of all those directly or indirectly involved in the public social services system is ensured through various channels. The municipal social services are the main partners at the local level and are represented in the Delegated Commission of Social Services of the Territorial Council of Social Services and the System for Autonomy and Dependency Care (a body for dialogue between the government and the autonomies). In addition, the Ministry of Social Rights signed in 2020 a collaboration agreement to encourage participation and exchange of experience between the General State Administration and primary care social services, creating the Primary Care Social Services Advisory Group with various representative municipalities, in order to exchange information and facilitate the participation of local communities. Finally, the government intends to improve regulation in the area of social services, and in this regard, a project shall be launched to analyze the elements that should be included in a future national law on social services and an integral system of information on these services. The Committee notes that some of these measures fall outside the reference period and it will assess them in the next cycle. It thus requests to be informed on any developments in this respect. It also asks whether any other practical measures, including budgetary ones, have been adopted or envisaged to support and promote users involvement.

### *Conclusion*

Pending receipt of the information requested, the Committee concludes that the situation in Spain is in conformity with Article 14§2 of the 1961 Charter.

#### **Article 4 of the 1988 Additional Protocol - Right of the elderly to social protection**

The Committee takes note of the information contained in the report submitted by Spain as well as the observations submitted by Amnesty International on the 1 July 2021 and the response of the Government submitted on 3 September 2021.

The Committee notes that for the purposes of the present report, States were asked to reply to the specific targeted questions posed to States for this provision (questions included in the appendix to the letter of 3 June 2020, whereby the Committee requested a report on the implementation of the Charter in respect of the provisions falling within the thematic group “Health, social security and social protection”) as well as previous conclusions of non-conformity or deferrals.

Therefore, it will focus on the Government’s replies to the targeted questions, namely about measures taken to ensure that the social and economic rights of older persons are respected and Covid-19 and any previous deferrals or non-conformities.

The Committee wishes to point out that it will take note of the information provided in reply to the question relating to Covid-19 for information purposes only, as it relates to developments outside the reference period (namely, after 31 December 2019). In other words, the information referred to in the Covid-19 section will not be assessed for the purposes of Charter compliance in the current reporting cycle.

The previous conclusion was deferred (Conclusions XXI-2, 2017).

#### ***Autonomy, inclusion and active citizenship***

##### ***Legislative framework***

The Committee recalls that Article 4 of the 1988 Additional Protocol to the 1961 Charter requires State Parties to undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. The expression “full members of society” used in Article 4 of the Additional Protocol requires that older persons must suffer no ostracism on account of their age. The right to take part in society’s various fields of activity should be ensured to everyone active or retired, living in an institution or not.

The Committee takes due account of contemporaneous definitions of ageism which refer to the stereotypes, prejudices and discrimination directed towards other or oneself based on age (see for example WHO report on Ageism, 2021, p. XIX) As the World Health Organisation has noted, “... ageism has serious and far-reaching consequences for people’s health, well-being and human rights“(WHO report on Ageism, 2021, p. XVI).

The Covid-19 crisis has exposed and exacerbated a lack of equal treatment of older persons. This has included in the healthcare context, where there have been instances of rationing of scarce resources (e.g. ventilators) based on stereotyped perceptions of quality of life, vulnerability and decline in old age.

Equal treatment calls for an approach based on the equal recognition of the value of older persons’ lives in all the areas addressed by the Charter.

Article 4 of the 1988 Additional Protocol of the Charter requires the existence of an adequate legal framework for combating age discrimination in a range of areas beyond employment, namely in access to goods, facilities and services, such as insurance and banking products, allocation of resources and facilities. Discrimination against older persons in terms of social rights enjoyment, is also contrary to the Preamble.

The overall emphasis in the Charter on using social rights to underpin personal autonomy and respect the dignity of older persons and their right to flourish in the community requires a commitment to identifying and eliminating ageist attitudes and those laws, policies and



other measures which reflect or reinforce ageism. The Committee considers that States Parties, in addition to adopting comprehensive legislation prohibiting discrimination on grounds of age, must take a wide range of measures to combat ageism in society. Such measures should include reviewing (and as necessary amending) legislation and policy for discrimination on grounds of age, adopting action plans to ensure the equality of older persons, promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns, and promoting inter generational solidarity.

Article 4 of the 1988 Additional Protocol further requires that States Parties provide for a procedure of assisted decision making.

With regard to combating age discrimination, the Committee previously noted that age was not among the grounds of discrimination expressly prohibited under Article 14 of the Spanish Constitution, however, it noted that the wording of Article 14 of the Constitution is such that it can cover other grounds than those explicitly listed, including age. Therefore, the Committee wished to know whether there is a case-law on age discrimination outside employment which would protect older persons from such a form of discrimination. It further noted that the Spanish Constitution affords the Autonomous Communities a competence in social matters and, therefore, wished to know whether these Communities have adopted legislation or administrative measures to combat age discrimination (Conclusions XXI-2, 2017).

The report provides no information on this point. The Committee reiterates its request and it underlines that if the relevant information is not provided in the next report, there will be nothing to establish that the situation is in conformity with the Charter in this respect

With regard to assisted decision making for older persons, the Committee asked the next report to provide information about changes to the guardianship system and, in particular, whether it covers assisted decision making (Conclusions XXI-2 2017).

The report provides no information on these issues therefore the Committee reiterates its request for this information.

The Committee recalls that there should be a national legal framework related to assisted decision making for older persons guaranteeing their right to make decisions for themselves. Older persons must not be assumed to be incapable of making their own decisions just because they have a particular medical condition or disability.

States Parties must take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person's autonomy, will and preferences. These may be formal or informal.

Older persons may need assistance to express their will and preferences, therefore all possible ways of communicating, including words, pictures and signs, should be used before concluding that they cannot make the particular decision on their own.

In this connection, the national legal framework must provide appropriate safeguards to prevent the arbitrary deprivation of autonomous decision making by older persons. It must be ensured that any person acting on behalf of older persons interferes to the least possible degree with their wishes and rights (Statement of Interpretation 2013).

### ***Prevention of abuse of older persons***

The Committee asks for information to be provided in the next report, on measures taken to combat the abuse of older persons including measures to raise awareness of the need to eradicate older abuse and neglect (beyond the institutional care context), and any legislative or other measures. It also asks whether data has been collected which would indicate the prevalence of older abuse.

### ***Independent living and long term care***

The Committee asks whether steps have been taken to move away from the institutionalisation of older persons and adopt a long term care and support in the community

model. The Committee recalls that Article 4 of the 1988 Additional Protocol provides that measures should be taken to enable older persons to lead independent lives in their familiar surroundings therefore it considers that older persons requiring long term care should be able to choose their living arrangements. In particular, this requires states to make adequate provision for independent living, including housing suited to their needs and state of health, as well as the necessary resources and supports needed to make independent living possible.

Institutionalisation is a form of segregation, often resulting in a loss of autonomy, choice and independence. The Covid-19 pandemic has put the spotlight on the shortcomings of institutionalised care. The Committee refers in this respect to its Statement on Covid-19 and social rights (adopted March 2021) where it stated that enabling older persons to remain in their familiar surroundings as required by Article 4 of the 1988 Additional Protocol has become even more important in view of the heightened risk of contagion in the congregated settings of nursing homes and other long-term institutional and residential facilities and to the human rights-based argument for investment in the community to give reality to the right to community living is now added a public health argument in favour of moving away from residential institutions as an answer to long term care needs.

The Committee asks the next report to provide updated information on the progress made in providing care in the community, it asks in particular how many older persons reside in institutions -residential care and trends in the area.

### ***Services and facilities***

The Committee previously asked to be provided with further information on the system for complaining about services (Conclusions XXI-1, 2017). No information is provided in this respect therefore the Committee repeats its request for this information.

The Committee asks the next report to provide updated information on the range of services and facilities available to older persons, including long term care, in particular those enabling them to remain active members of their community and to remain in their home. It further asks for information on the costs of such services, whether there is an adequate supply of care services, including long term care services and whether there are waiting lists for services.

The Committee asks what support is available for informal carers.

The Committee notes that many services (and information about services) are increasingly accessible online. Digitalisation provides opportunities for older persons. However older persons may have more limited access to the internet than other groups and may lack the necessary skills to use it. Therefore, the Committee asks what measures have been taken to improve the digital skills of older persons, ensure the accessibility of digital services for older persons, and ensure non-digital services are maintained.

### ***Housing***

The Committee asks the next report to provide information on how the needs of older persons are taken into account in national or local housing policies and strategies as well as information on the supply of sheltered/supported housing and the range of accommodation options for older persons.

### ***Health care***

The Committee previously asked what is the proportion of the cost of medicines to be borne by older persons, whether there are guidelines on health care for older persons if any, programmes for persons with dementia and related illness, palliative care for older persons as well as special training for individuals caring for older persons. It pointed out that, in case such information is not provided, there will be nothing to establish that the situation is in conformity with Article 4 of the Additional Protocol on this point (Conclusions XXI-2, 2017).

The Committee notes that no information was provided in the report on these issues. Therefore, it concludes that it has not been established that there are adequate and affordable health care programmes available to older persons.

The Committee notes from the information submitted by the Government in response to the comments submitted by Amnesty International, that within the framework of the Health Promotion and Prevention Strategy (EPSP) a road map for addressing frailty in older persons was adopted. In this context a Recommendations for addressing frailty in a situation of health crisis generated by Covid-19 was adopted.

The Committee asks that the next report provide information on healthcare programmes specifically designed for older persons.

The Committee notes that the pandemic has had devastating effects on older persons' rights, in particular their right to protection of health (Article 11 of the Charter), with consequences in many cases for their rights to autonomy and to make their own decisions and life-choices, their right to continue to live in the community with adequate and resilient supports to enable them to do so, as well as their right to equal treatment when it comes to the allocation of health care services including life-saving treatments (e.g., triage and ventilators). Whether still living independently or not, many older persons have had their services removed or drastically reduced. This has served to heighten the risk of isolation, loneliness, hunger and lack of ready access to medication.

Further the Covid-19 crisis has exposed examples of a lack of equal treatment of older persons, such as in medical care where rationing of scarce resources (e.g. ventilators) has sometimes been based on stereotyped perceptions of vulnerability and decline in old age. Too much space was allowed for implicit judgments about the 'quality of life' or 'worth' of lives of older persons when setting the boundaries for such triage policies.

The Committee asks whether decisions around the allocation of medical resources may be made solely on the basis of age and asks whether triage protocols have been developed and followed to ensure that such decisions are based on medical needs and the best scientific evidence available.

### ***Institutional care***

The Committee previously noted that there were regional disparities in the provision of institutional care and, asked what measures have been undertaken or planned to remedy to this situation (Conclusion XXI-2, 2017). The report provides no information on this point. The report simply states that it is the responsibility of the autonomous regions to regulate and manage residential institutions.

The Committee repeats its request for the above information.

The Committee considers that the overall emphasis in the Charter on personal autonomy and respect for the dignity of older persons results in a pressing need to re-invest in community-based supports as an alternative to institutions. Where, in the transition period, institutionalisation is unavoidable, Article 4 of the 1988 Additional Protocol requires that living conditions and care be adequate and that the following basic rights are respected: the right to autonomy, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact (including through internet access) with persons close to the older person and the right to complain about treatment and care in institutions. This also applies in the Covid-19 context.

Due to the specific Covid-19 related risks and needs in nursing homes, States Parties must urgently allocate sufficient additional financial means towards them, organise and resource necessary personal protective equipment and ensure that nursing homes have at their disposal sufficient additional qualified staff in terms of qualified health and social workers

and other staff in order to be able to adequately respond to Covid-19 and to ensure that the above mentioned rights of older people in nursing homes are fully respected.

### ***Adequate resources***

When assessing the adequacy of the resources of older persons under Article 4 of the 1988 Additional Protocol, the Committee takes into account all social protection measures guaranteed to older persons and aimed at maintaining an income level allowing them to lead a decent life. In particular, the Committee examines pensions, contributory or non-contributory, and other complementary cash benefits available to older persons. These resources are then compared with median equivalised income. The Committee will also take into consideration relevant indicators relating to at-risk-of-poverty rates for persons aged 65 and over.

The Committee previously asked the next report to provide a full and up-to-date information on the level of non-contributory pension and other benefits and/or allowances beneficiaries of this pension would be entitled to (Conclusions XXI-2, 2017).

The report states that in 2019 the non contributory pension amounted to €5,488 Euros per year for a single person (approximately €457,33 per month). No information is provided on other allowances or supplements a person in receipt of this pension would receive. The report states that the regulation of additional supplements and allowances is a matter for the autonomous communities and the provincial departments of IMSERSO.

According to Eurostat, in 2019 the poverty level, defined as 50% of the median equivalised income stood at € 626 per month. 40% of the median equivalised income corresponded to €501 monthly. The Committee notes that the rate of the non contributory pension falls below 40% of the median equivalized income. The Committee concludes that the situation is not in conformity as the level of the non-contributory pension is manifestly inadequate,

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

The Committee recalls that it asked a targeted question on measures taken to protect the health and well-being of older persons in the context of a pandemic crisis such as Covid-19.

According to the report Royal Decree of 14 March 2020 declared a state of emergency in order to address the Covid-19 pandemic and introduced a number of exceptional measures which modified the functioning of social services.

In particular central Government assumed certain competencies over deciding what measures should be taken to combat Covid-19 in particular as regards what measures should be taken to protect older persons particularly those residing in institutions. Additional resources (€300 million) were made available to the autonomous communities in order to ensure adequate care for older persons, in particular for the provision of services close to the clients home. An additional 100, 000 persons received home care services during the pandemic.

Measures were adopted to ensure the protection of persons working in residential institutions and centres for older persons, to isolate older persons who had Covid-19, to ensure cleaning protocols. In addition measures were taken requiring the autonomous communities to provide periodic information on the incidence of Covid-19 in residential institutions,

The Ministry for Health and IMSERO published numerous recommendations and prevention guides many specifically aimed at older persons.

In order to improve staffing levels conditions for recruitment in social services were relaxed.

The report also provides information on the Plan for a transition to a new normal which is the document guiding the gradual easing of lockdown measures.

The Committee notes the comments of Amnesty International that the Covid-19 pandemic placed Spain's National Healthcare System (NHS) under an unprecedented level of pressure. According to Amnesty International this increased pressure was not accompanied by adequate measures to strengthen primary care and older persons suffered disproportionately. Staff in care homes were not provided with adequate PPE or PCR tests. Care home residents did not have adequate health assistance, were excluded from referrals to hospitals across the board and did not receive the assistance they needed in care homes.

The Committee refers to the section on older persons in its statement on Covid-19 and Social Rights (March 2021) (and to sections cited above). It recalls Article 4 of the 1988 Additional Protocol requires that older persons and their organisations be consulted on policies and measures that concern them directly, including on ad hoc measures taken with regard to the current crisis. Planning for the recovery after the pandemic must take into account the views and specific needs of older persons and be firmly based on the evidence and experience gathered in the pandemic so far.

### *Conclusion*

The Committee concludes that the situation in Spain is not in conformity with Article 4 of the 1988 Additional Protocol to the 1961 Charter on the grounds that:

- the level of the non-contributory pension is manifestly inadequate;
- it has not been established that there are adequate and affordable health care programmes available to older persons.