

**COMMENTS BY THE SPANISH AUTHORITIES
(MINISTRY OF EDUCATION, CULTURE AND SPORTS; MINISTRY OF
HEALTH, SOCIAL AFFAIRS AND EQUALITY; MINISTRY OF JUSTICE)
ON THE COMMISSIONER FOR HUMAN RIGHTS' REPORT ON SPAIN
(9 OCTOBER 2013)**

COMMENTS BY THE MINISTRY OF EDUCATION, CULTURE AND SPORTS TO THE DRAFT REPORT OF THE HUMAN RIGHTS COMMISSIONER OF THE COUNCIL OF EUROPE, ON HIS VISIT TO SPAIN (3 TO 7.JUN.2013)

After analyzing the draft report of the Human Rights Commissioner of the Council of Europe, Mr. Nils Muiznieks, following his visit to Spain from 7 to June 13, 2013, the Ministry of Education, Culture and Sports submits information and arguments presented during the visit, that can help complete the above report in paragraphs 30, 35-37, 49, 54, 72-76, 95 and 96:

I. IMPACT OF THE ECONOMIC CRISIS AND BUDGETARY AUSTERITY MEASURES IN CHILDHOOD.

a. The impact of austerity measures on children's access to quality education.

In relation to section 30 of the report, the following should be noted with regard to non-university education:

1. Investment in education has risen sharply in recent years. Drawing on 2007 (last year before the crisis), there has been an absolute increase of 957 million, from €45.958,2 million in 2007 to a budgeted 46.915,2 million in 2013. As a percentage of the GDP, this means a 0,19% increase (from 4,36% to 4,55%).
2. According to the latest consolidated data available, expenditure per student in Spain exceeds the EU average, both in absolute terms (€7.861 in Spain, €6.829 in the EU) and as a percentage of GDP per capita (32.3% in Spain, 27.2% in the EU).
3. According to the latest published data concerning the academic year 2011-2012, and the forecast for 2012-2013, the number of students enrolled in non-university education has increased in 83.083 students, equivalent to 1%.
4. The budget for scholarships and study grants from the Ministry of Education, Culture and Sports rose sharply between the academic years 2003-2004 and 2012-2013, from €739.27 million to €1552.70 million, a 110% increase. Again, taking the beginning of the crisis as baseline (2007-2008), the increase has been €520.95 million, 49% of the amount spent that year.

5. Devolution of education competences allows each Autonomous Community to adapt its strategies to the existing socio-economic context. Thus, analyzing the 2010-2011 variation of expenditure in non-university education by Autonomous Communities through its departments, we find such disparate examples as the Valencian Community (almost 7% decrease), Catalonia (5% decrease), the Basque Country and Andalusia (2,5% decrease), Madrid (almost 0,5% increase), and Castilla-La Mancha (almost 6% increase).



6. According to research conducted to date, and according to the OECD in its PISA report 2006, there is no link between public investment in education and early school dropout.

b. Changes in human and civic rights education

With regard to sections 35 to 37, and 49, the following comments can be provided:

Education in values is crucial in the current context. Values, that is, each society or culture's ideas or beliefs, that influence the individual's behaviour, that are closely related to norms, that are acquired throughout our lifetime, and that we assume as our own.

Education in values not only shapes the individual's personality, but regulates our conduct and directly influences the society in which we live. To work on education in values makes students better understand the world, formalizes them as persons, and integrates them into society. Education in values allows as well contextualizing the teaching-learning process of the students, especially in a new context of competency-based education.

The present Government is firmly committed to maintain the objectives and contents set by the UN World Programme for Human Rights Education and the guidelines and recommendations of the Council of Europe, as well as the EU Strategy for Youth 2010-2018 which declared one of its main goals the promotion of active citizenship, social inclusion and solidarity among all young people.

1. ORGANIC LAW ON EDUCATION

Education in values is one of the aims of Spanish educational system, as stated in the current ORGANIC LAW ON EDUCATION, of 2006, which establishes as principles of the educational system, among others, the quality of education for all students, regardless of their conditions and circumstances, and equity, ensuring equal opportunities, educational inclusion and non-discrimination and acting as a compensator personal inequalities, cultural, economic and social.

The **fundamental principles** of education, that inspire the entire Spanish education system, are included in both the Preamble and in the first article of the Law, which highlights the importance of the transmission of those values that favour personal freedom, responsibility, democratic citizenship, solidarity, tolerance, equality, respect and justice, which are the basis of life in society.

The first chapter of the Law goes on stating the **aims** which will guide the Spanish educational system, of which we can highlight, besides the full development of the student's personality and abilities, goals as important as education on the respect for fundamental rights and freedoms, on equality of rights and opportunities between men and women, on equal treatment and non-discrimination of the disabled, on the exercise of tolerance and freedom within the democratic principles of coexistence, as well as conflict prevention and peaceful resolution, education for peace, respect for human rights, cooperation and solidarity between peoples and the acquisition of values that foster respect for living beings and the environment, and preparation for the practice of citizenship and active participation in economy, society and culture, with a critical and responsible attitude, and with adaptability to the changing situations of knowledge society.

The Spanish curriculum specifically includes education in values in its compulsory stages both as a stage goal and in its organization and pedagogical principles.

a) Primary education

First, in primary education, "Education for citizenship and human rights" is established as one of the compulsory subjects, which is taught in one of the courses of the third cycle of this stage (10- to 12-year-old students).

This subject contributes to the development of basic skills, interacting directly with social and civic competence, and contributing to the acquisition of knowledge of democratic societies' fundamentals and modes of organization, to the valuation of the conquest of human rights, and to the rejection of conflicts between human groups and of situations of injustice.

Its specific contents include the principles enshrined in the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the Spanish Constitution, as well as its implementation by different institutions, and its content is organized into three sections: The Individual and interpersonal and social relationships; life in community; and to live in society. Besides, without prejudice to their specific treatment in some subjects of the stage, education in values is to be worked on in all subjects.

b) Compulsory secondary education

In compulsory secondary education, education in values is to be worked on across all subjects, and two compulsory subjects specifically addressing human rights are also taught: "Education for Citizenship and Human Rights", taught in one of the first three grades (12- to 15-year-old students), and "Ethical-civic education" in the fourth year (15- to 16-year-olds).

Some features are common to both subjects: both are divided into blocks ranging from personal and nearest spheres to global and more general levels, both share a common set of content leading the acquisition of methods, social skills and attitudes basic to the development of a sound coexistence and democratic citizenship, and both are based on reflection on the person and interpersonal relationships.

Common to both subjects are also the knowledge and reflection on human rights from its historical perspective, and the study of the features and fundamental problems of 21st century societies and global world. While "Education for citizenship and human rights" is about knowing reality from social learning, "Ethical-civic Education" focuses on the ethical reflection that begins with the affective relationships with nearest environment, and contributes, through moral dilemmas, to the construction of a civic moral consciousness.

The Organic Law on Education, according to the above, establishes the subject for Citizenship Education, aimed at giving all students a field for the reflection, analysis and study of the key features and functioning of a democratic system, of the principles established in the Spanish Constitution and universal declarations of human rights, as well as the common values that make the bedrock of democratic citizenship in a global context. The inclusion of this area as a separate subject in the curriculum makes it very prominent within the set of educational activities, in the same line as international organizations such as the United Nations or the Council of Europe.

2. DRAFT ORGANIC LAW ON IMPROVEMENT OF THE QUALITY OF EDUCATION (currently before Parliament).

On May 17th, 2013 the draft LAW ON IMPROVEMENT OF THE QUALITY OF EDUCATION was approved by the Cabinet, in order to amend the 2006 Organic Law of Education, yet significantly maintaining the principles of the previous Law.

This draft modifies in a single article some articles related to these issues, changing the wording of paragraphs b), k) and l) of Article 1 of the Organic Law of Education setting out the principles in the following terms:

b) Equity, ensuring equal opportunity, educational inclusion, non-discrimination and universal accessibility, and acting as a compensator of personal, cultural, economic and social inequalities, with a focus on those deriving from disability.

k) Education for conflict prevention and peaceful resolution, and for nonviolence in all areas of personal, family and social life, especially with regard to bullying.

l) The development of equality of rights and opportunities and the promotion of effective equality between men and women, as well as the prevention of gender violence.

This new Law is thus intended to guarantee quality, inclusive education for all children, and conveys a firm commitment to education in values and democratic citizenship.

Along with the transmission and implementation of values that favour personal freedom, responsibility, democratic citizenship, solidarity, tolerance, equality, respect and justice, it also provides for the preparation for the exercise of citizenship and for active participation in economy, society, and culture, with a critical and responsible attitude, and adaptability to the changing situations of knowledge society, as an end towards which the education system is oriented.

This motivation is clearly shown in section XIV of the preamble to the new draft Law, that reads: "The Recommendation (2002) 12, dated October 16, 2002, the Committee of Ministers of Council of Europe to member states on education for democratic citizenship, notes that education for democratic citizenship is fundamental to promote a free, tolerant and just society, and that it contributes to defending the values and principles of freedom, pluralism, human rights and the rule of law, which are the foundations of democracy".

Preparation for active citizenship and the acquisition of social and civic competences, as set out in the Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for permanent learning, are thus considered essential in the new Law.

In order to enhance its transferability and guiding nature, this organic law advocates a change in methodology that tackles the need for education in values in a cross-curricular way, so that civic and constitutional learning is at this stage incorporated in all subjects. Thus, the acquisition of social and civic competences is included in the daily dynamics of teaching and learning processes and fosters, in this incorporated approach, its learning and understanding.

a) Primary education

In the primary stage, the objective "*knowing and appreciating the values and norms of living together, learning to act accordingly, preparing for the exercise of active citizenship, and respecting human rights, and the pluralism of a democratic society*", contained in the Organic Law on Education, is maintained.

In organizing primary education, besides the aforementioned mainstreaming of civic and constitutional education, the new law determines that, among the specific subjects of every course, and at the parents' or legal guardians' discretion, the student will take either Religion or Civic and Social Values.

b) Compulsory secondary education

With regard to compulsory secondary education, the draft law maintains the existing objective of the Organic Law on Education, for students "to assume their duties responsibly, to know and exercise their rights in respect for others, to practice tolerance, cooperation and solidarity between persons and groups, to exercise dialogue consolidating human rights as common values of a pluralistic society, and to prepare for the exercise of democratic citizenship."

Besides the aforementioned mainstreaming of civic and constitutional education, the student will take, in each of the three courses of the first cycle of compulsory secondary education, and in the second cycle, within the block of specific subjects, Religion or Ethical Values, at the parents' or legal guardians' (or, in its case, the student's) discretion.

As noted, the new Law in this regard not only does NOT mean the disappearance of the contents of the "Education for Citizenship" subject taught in two courses of secondary school, but also that education in values and human rights HAS BEEN REINFORCED in this new law, since the subject Ethical Values included in the two compulsory cycles and in every year of the secondary cycle, its contents being moreover evaluated, and being an option to the subject of religion. Furthermore, under the new Law, its content is mainstreamed across the whole curriculum as a civic-citizen competence, enhancing its learning and importance within the education system.

Finally, it should be noted that, outside curricula, the Ministry of Education, Culture and Sport is actively involved in a number of cross-cutting action plans and strategies (such as that Strategic Plan on Citizenship and Integration 2011-2014, the National Strategy for the Social Inclusion of the Roma Population in Spain 2012-2020, the 2nd National Human Rights Plan, or the incoming Plan on Living Together and Human Rights, that develop the European core competence: *Social and civic competences as a complement to the school curriculum*).

II. IMPACT OF ECONOMIC CRISIS AND AUSTERITY MEASURES ON PERSONS WITH DISABILITIES

With regard to paragraph 54, the following comments are worth noting:

The Ministry of Education, Culture and Sports developed, together with representatives of the Autonomous Communities and of the Spanish Committee of Representatives of Persons with Disabilities, a "Plan for Inclusion of Students with Special Educational Needs". Approved on June 8, 2011, its ultimate goal is the improvement of educational attention to students, more specifically to those with special educational needs.

The proposed actions to achieve this purpose are grouped into the following areas: social and family context, education of students, educational centres, teachers and other education professionals, lifelong training, and labour insertion, collaboration between education authorities and other institutions.

In addition, the Ministry maintains its calls for subsidies to non-profit entities that provide education to students with special needs. The next table contains the recent evolution of this budgetary line:

	2010-2011	2011-2012	2012-2013	2013-2014
Total subsidies	757.199 €	1.557.199 €	977.759 €	977.759 €

- **Impact of fiscal austerity measures on the access to inclusive education by children with disabilities.**

With regard to sections 72 to 76 of the report, the following comments can be formulated:

Title II of the Organic Law on Education states that comprehensive care to students with disabilities is to be governed by the principles of normalization and inclusion.

It also states that education authorities shall ensure the schooling of these students, and arrange the procedures and resources needed to the early identification of their educational needs and enabling them to reach the maximum development of their personal abilities and of general goals set forth by the Law. In turn, centres will have an adequate school organization, and conduct the curricular adjustments and diversifications required to make it possible for all students to achieving the established objectives.

It also specifies that the schooling of the referred students shall be governed by the principles of normalization and inclusion and, and guarantees non-discrimination and effective equality in access to and permanence in the education system, allowing to introduce flexibility measures, when deemed necessary. The education of these students in special schools or units, which may be extended to the age of 21, shall only be carried out when their needs cannot be met within the framework of mainstream school measures of attention to the diversity.

The new Law does not change, but preserves, these aspects of the Education Law. The draft also includes the ambitious targets with regard to innovation, education, employment, social inclusion and climate / energy, of the EU Strategy for Smart, Sustainable and Inclusive Growth, for 2020. The educational objectives, in particular, seek to ensure that, as a minimum, at least 40% of the population between 30 and 34 complete higher education grades (or equivalent), and that dropout is reduced to less than 10%. This goal entails, in turn, decreasing early school dropout and failure rates, and improving the conditions for young people to have a better and more appropriate training enabling them to obtain employment upon completion of their studies.

According to the European Disability Strategy 2010-2020, adopted in 2010 by the European Commission, this improvement in the levels of education should also target people with disabilities, who will be guaranteed inclusive, quality education and training within the framework of the "Youth on the move" initiative, set out by European Strategy for Smart Growth itself. To this end, the International Convention on the Rights of Persons with Disabilities, adopted by the UN in December 2006, in force and fully applicable in Spain since May 2008, is taken as guiding framework and necessary reference.

The draft Law specifies as well that educational authorities shall guarantee disabled students that take part in learning and performance improvement programs the available support resources that, in general, are made available to these students in the Spanish educational system.

With regard to university education, scholarships and general grants are the main instrument at the disposal of the Ministry of Education, Culture and Sports to ensure universal access to education and to achieve equality of opportunities.

For this reason, and despite the current context of austerity and severe budgetary constraints, the Ministry will increase its general scholarships budget in 2014 by over 20%.

The offered amount has thus been calculated at 1417.54 M €. This is the largest amount for general scholarships in our fiscal history, both in relative and absolute terms.

Scholarships are conceived as a right, so that all every applicant meeting the requirements of the offer is entitled. The requirements are economic and academic.

Academic performance is crucial in determining the final amount given to each student, as the variable part of the amount depends on it. This is intended for students who, in the same economic situation as others, make efforts in their studies, to receive a higher amount.

Economic thresholds have not been modified despite the crisis, but the changes in relation to academic requirements move towards a general scholarship system that not only ensures access to education for all, but also offers more opportunities for those who obtain better academic results coming from more depressed socio-economic backgrounds.

Aids for students with a specific need for educational support

This aid is intended for students with special educational needs associated with either some form of disability or a severe behaviour disorder, resulting in the need for special education, or to a high intellectual capacity, requiring specific support and attention.

AIDS TO STUDENTS WITH SPECIAL EDUCATIONAL NEEDS		
ACADEMIC YEAR	AIDED STUDENTS	TOTAL AMOUNT (€)
2009/2010	53.658	51.893.543,70
2010/2011	58.969	58.703.662,40
2011/2012	61.619	60.008.340,47
2012/2013 (provisional data)	69.927	64.831.738,87

Next are the figures detailing the aids granted and their total amount, for the academic years 2009/2010 to 2012/2013.

Specifics of the general call for scholarships for disabled students

This call is addressed to all university level students, who must meet the requirements laid down in the call, but the student's disability shall be taken into account when affecting him/her to a degree equal to or greater than 65%.

On the other hand, when calculating the computable income as part of the economic requirements, deductions will be higher for these students.

University access for the disabled

Organic Law 4/2007, on Universities, provides that **persons with disabilities are entitled to full exemption from fees and charges for studies** leading to the award of a degree, if they have a recognized degree of disability equal to or greater than 33%.

The Ministry has moreover signed a number of **cooperation agreements** with several foundations (ONCE foundation, Universia Foundation, Vodafone Foundation, Repsol Foundation) **amounting to € 800,000**, to promote the access and inclusion of persons with disabilities in the Spanish university system, in both public and in private universities.

Noteworthy is the huge effort being made by one of the few universities under the Ministry, the National University of Distance Education (UNED), in the integration of disabled students. In fact this university assembles 50% of all disabled students (8000 of the existing 16000).

The UNED has become the leading university for disabled students and has been a pioneer in Spain in the adaptation of teaching-learning and assessment processes to the needs derived from disability or functional diversity, as well as in the development of a network of volunteers who contribute to the integration of disabled students. Similarly, the built-up awareness of the university's teachers and administrative staff has really made it possible for students with disabilities to enjoy the same opportunities as their peers.

The Ministry intends to build on the valuable experience of the UNED, as a model for the rest of the university system, to help it become an example of integration. Moreover, the Ministry, through the Forum for Inclusion, where the Spanish Committee of Representatives of Persons with Disabilities can debate with the authorities, intends to further progress in several specific areas (access by the disabled to excellence campuses, improve statistical information with regard to their inclusion and permanence in the university system, new methodologies, analyzing the scholarship and aid system, etc...)

Conclusions and recommendations

With regard to **paragraph 95**, the following information is to be noted:

Besides the aforementioned Forum for Inclusion, Plan for Inclusion, and subsidies no non-profit entities, the Ministry guarantees the enrolment of these students in education centres (regular and special education), provides the necessary resources for their adequate care and maintains a network of preferential centres for students with impaired mobility or hearing, as they more specific technical and professional means. There are teachers specialized in therapeutic pedagogy, and in speech and hearing, with teams of educational and psycho-pedagogical guidance and early intervention, and for the attention to students with hearing impairment, these centres have also interpreters of Spanish sign language and deaf advisors.

For pupils with special educational needs and problems of personal autonomy, who require physiotherapy or healthcare, specialized personnel is available, namely physiotherapists, educational technical assistants, and university graduates in nursing.

In addition, a considerable number of partnership agreements, with national and international, governmental and non-governmental, partners, are in place in order to extend attention capacities, with regard to the blind, to the deaf, and other groups of disabled persons.

With regard to **Section 96** of the report, the following must be mentioned:

According to statistical data referred to the 2010-2011 academic year, 78.1% of students with disabilities are schooled in mainstream centres, and the rest in special schools.

By type of disability, the percentage of students enrolled in mainstream schools is as follows: hearing, 92.7%; mobility, 84.8%; mental, 79.4%; visual, 94.9%; severe disorders 81.4%; combined impairments, 37.9%.

More information, on the Ministry's website: <http://www.mecd.gob.es/dms-static/b84361d7-0c90-4fee-abbe-689e9b6e964b/d7-e--especial-pdf.pdf>

Comments by the Ministry for Health, Social Affairs and Equality to the Commissioner for Human Rights of the Council of Europe's report following his visit to Spain from 3 to 7 June 2013

- **Point 2:** *The Secretary of State for Social Services and Equality should also be mentioned among the authorities met by the Commissioner.*
- **Point 6:** *The April 2013 unemployment rate that is mentioned (27,1%) corresponds to the second trimester, whereas the under-25 unemployment rate that is mentioned (57,2%) corresponds to the first trimester. It would be more consistent to mention the under-25 employment rate of the second trimester (56,14%).*
- **Point 9:** *The rate of children at risk of poverty for 2011 is indicated at 30,6%, but this figure actually corresponds to the AROPE rate (which combines 3 indicators: poverty risk, severe material deprivation, and households with very low work intensity). The under-25 relative poverty in 2011 was 27,2%.*

In addition, with regard to the concern expressed in the report with the impact of austerity measures in children belonging to vulnerable groups, such as Roma or immigrants, several elements can be pointed out:

- *the existence of security networks, coordinated by this Ministry, in order to guarantee basic benefits throughout the territory.*
- *the existence of a specific Roma development programme.*
- *the recent (April 2013) approval of a the 2nd Strategic Plan on Childhood and Adolescence 2013-2106.*
- *the imminent approval of a new National Action Plan on Social Inclusion, that includes a specific objective with regard to child poverty.*
- *the existing food distribution programme, by which the Ministry purchases EU Common Agricultural Policy surplus foodstuffs and distributes them in Spain in cooperation with food banks and the Red Cross. This programme has increased for Spain in €5M in 2013, for a total over €85M, 17,12% of the amount distributed in the EU.*
- *the income tax portion devoted to social subsidies has been remodelled, in order to prioritize specific actions, among which a new priority of "urgency programmes" has been created, to help fund food distribution, soup kitchens, and other provisions for basic needs.*
- *the launch of a Social Plan, in coordination with the Treasury, to help local and regional administrations pay their debts to NGOs and allow them to continue their social work.*

At any rate, it must be borne in mind that, at present, and despite the increase in child poverty, all children are guaranteed, in accordance with current legislation, access to healthcare, education, and social services.

- **Point 18:** *the correct reference would be: "2nd Strategic Plan on Childhood and Adolescence 2013-2106".*
- **Points 20 and 21:** *access to health cards for foreigners has been made dependent on the status of "legal resident" which applies both EU- and non-EU citizens who have obtained this status. Before this reform, foreigners had access to public healthcare "in the same conditions as Spaniards", simply on the basis of being*

registered in a Spanish municipality, regardless of their status of legal or non-legal residence. A foreigner with no residence authorization (and hence not contributing to the Social Security system) could thus obtain a health card on the mere basis of his municipal registration. Paradoxically, this was not possible for Spaniards abroad, who were required to present a European health card or a private insurance. Spain went as far as to pay private insurance for its citizens residing abroad who could not afford it, because they couldn't otherwise access healthcare, whereas for foreigners in Spain this was always possible, by simply registering in a municipality. It was obvious that the principle of reciprocity that should govern inter-country relations was not, with regard to healthcare, being upheld.

The Court of Accounts (highest auditing body of the Spanish public sector) published a report in 2012, where it was found that 676.000 EU citizens had obtained a Spanish health card irregularly. Additionally, the right to access to Spanish health system on the sole requirement of the municipal registration has cost, since 2000, a calculated €917M, of which €639M could not be billed to the country of origin. The Court of Accounts made the recommendation that measures should be taken to prevent the recognition of the right to access the Spanish Healthcare System, as "persons without sufficient economic resources" of people already covered by the social security of their country of origin (in the case of citizens of the EU or of countries with which Spain has a relevant bilateral agreement), or of people with sufficient resources outside Spain, by requiring the corresponding certification from the authorities of their country of origin.

The new legal framework is in line with the EU Directive on cross-border healthcare, that states that "This Directive should not give any person an entitlement to enter, stay or reside in a Member State in order to receive healthcare in that State", and that "Member States should continue to be able to specify in their national legislation who is considered as an insured person for the purposes of their public healthcare scheme and social security legislation as long as the patients' rights set out in this Directive are secured.

The new regulation in place puts an end to a host of irregularities in the obtainment of the Spanish health card, and contributes to the sustainability of the healthcare system. This Government advocates that foreigners living in Spain must do so legally, as can be expected of a Government defending its citizens' interest. It is not coherent with international obligations, nor democratic, to promote the continuity of situations of illegality or irregular residence by citizens of other nationalities under a cover of tolerance that maintains situations that undermine the citizenship rights that come with the legality of residence in a country.

Despite all this, persons not authorized to reside in Spain continue to enjoy full and unrestricted access to public healthcare in case of serious illness and accident, in the case of expecting mothers including birth and afterbirth care, and for persons younger than 18 "in the same conditions as Spaniards". This is the most generous system in the EU: all other EU MS impose stricter and more restrictive norms on the access to healthcare by irregular migrants. In some cases (Austria, Sweden) the system is simply closed to these persons, and in other cases there is a limited time of stay in the country, after which access to public healthcare is no longer possible.

All foreigners are given healthcare if they request it. But, according to legislation, if they are not insured, they must afterwards document the inexistence of a

third party obliged to pay, they have no other health coverage, they do have insufficient resources, and that they reside in Spain; in other words, that they have not come to Spain in order to get healthcare, the so-called “healthcare tourism”, something ruled out by EU law. In case they have neither coverage nor resources, regional social services will determine the kind of assistance that will be provided, with regard to healthcare as well as to other basic needs.

It must also be underlined that no instance has to date been reported to the Ministry for Health, Social Affairs, and Equality, where a patient has been denied health attention.

It can be added that actions in the field of prevention and control of infectious diseases or of community interest (such as vaccinations, VIH/AIDS prevention, tuberculosis, etc.) do not depend on the migratory status of the person in question, so that no increase can be expected in the incidence or prevalence of transmissible or epidemic diseases, and in fact no change in this regard has so far been reported by the system of epidemiologic surveillance. The percentage of persons ill, affected or infected by compulsory declaration conditions has also not experienced any increase over the last months.

- **Points 24 and 25:** *The Spanish Government has planned to introduce the new medical degree “Doctor Specialist in Child and Adolescent Psychiatry”, in order to guarantee the children’s and adolescents’ right to be treated by specialized practitioners at this stage of their lives.*

Spain also has a Mental Health Strategy in the National Health System, considered a prestigious and authoritative reference in this matter, and regional governments have as well been driven to create specific programmes with regard to children’s and adolescents’ mental health. The Strategy’s funding has contributed to implement those regional programmes.

- **Point 56:** *with regard to the view expressed by the Commissioner that the correspondence between levels of disability and access to services is problematic from the point of view of the Convention on the Rights of Persons with Disabilities, it must be borne in mind that the Autonomy Law does not qualify disability, but dependency, the degree of which determines the access to the autonomy and dependency system services.*

The official declaration of disability is regulated by other legislative acts, and evaluated as a social disadvantage against the person’s environment and possible material, social, or cultural obstacles to live independently and be included in the community. The support needed by the person is associated to this level of social disadvantage.

The procedure of recognition, declaration and qualification of the degree of disability takes the WHO International classification of impairments, disabilities, and handicaps (1980) as reference, but also includes social factors (family, environment, economic, culture, labour, and is in the process of being adapted to the WHO International classification of functioning, disability and health (2001).

- **Point 57:** *with regard to the deferment to 2012, and later to 2015, of the access to the services and benefits of the autonomy and dependency system, by “grade I” (moderate dependency) beneficiaries, it must be pointed out that this has been necessary in order to adequately prioritize persons with a higher degree of dependency. It had been found that in recent years there were persons with higher degrees of*

dependency waiting to obtain services while other, less dependent ones, were already in the system.

With regard to the revised scaling in the evaluation of dependency degrees, it must be said that this review of the scaling was already mandated in the original legislation, and that the revision has been decided after an evaluation by a technical commission in which the social services of all regions and of the central government are represented. The new scales evaluate more objectively, and their application has been conducive to a more uniform and truthful evaluation of dependency situations.

- **Point 58:** *the Autonomy Law prescribes a limit of 6 months from the moment of application for the authorities to recognize the situation of dependency. A working group has been created by the Territorial Council of Dependency and Social Services to analyze and improve these procedures.*

- **Points 60 and 61:** *with regard to the Commissioner's understanding that the dependence element has prevailed over the autonomy element, it can be noted that, in 2013, the criteria, recommendations and minimal requirements on the elaboration of plans for the prevention of dependency and the promotion of autonomy, have been approved.*

With regard to the benefits granted for care within the family, it has been confirmed that this benefit tended to become a sort of subsidy to the families, and did not guarantee the best care for the dependent, with also a negative impact on employment. The new measures adopted in 2012 have reinforced the exceptional nature of this benefit, modifying the criteria for its concession, and establishing a monitoring of its users.

COMMENTS MADE BY THE MINISTRY FOR JUSTICE

- With regard to the incidence of evictions on children, we have to mention the Law 1/2013 (14-05-2013) to protect indebted households.

This law provides that evictions have to be postponed for two years when the family is under certain circumstances; for example, when it is a large family, when it has a less than three year old member or if one of the members has a level of disability of more than 33%.

- As far as persons with disabilities are concerned, the Ministry for Justice is preparing a reform of the Civil Code to better fit it to the UN Convention on the Rights of Persons with Disabilities.

The most important aspects of the Civil Code reform are:

. The adoption of a new terminology, with the aim of removing words such as “incapacity” or “handicapped”. The concept of “person with complemented capacity” is introduced.

. The target is not only to protect these persons with complemented capacity, but also to help them to take their own decisions.

. The draft text sets up a list of physical and mental illnesses and provides that only people with one of these illnesses need a legal complement of their capacity in order to guarantee the protection of their interests.

. The draft text regulates several institutions for help and protection. The judges have to decide which one is the most appropriate in each case.

. The draft text also refers to different degrees of protection for people with complemented capacity and for their goods. The highest of them is the “tutela” (guardianship); this degree, which will be applicable only in exceptional cases, implies the substitution in decision-taking.

- The commissioner is concerned about the bill that aims to amend the Criminal Code. This bill includes the criminalisation of the dissemination of messages inciting disturbance of public order. This might lead to limitations to the enjoyment of freedom of expression and freedom of assembly.

First of all, the Criminal Code does not deal with freedom of expression or assembly (that is the field of the Constitution and the Organic Law of 15/07/1983).

So, the bill does not aim to limit the enjoyment of freedom of expression or assembly; on the contrary, it has the purpose of safeguarding the pacific use of it. The bill penalizes those who disturb the public order by making use of violence against people or goods.

At the same time, the criminalisation of the dissemination of messages inciting disturbance of public order in no way means the bill is against political diversity; the aim of this measure is the free expression of the different points of view in a peaceful atmosphere.

- The Commissioner understands that the text of a new Code of Criminal Procedures could be interpreted as extending the grounds for ordering incommunicado detention, since the reference to an offence connected to terrorism, as defined in article 384 of the Code in force is eliminated in the new draft code.

The text the report of the Commissioner deals with (paragraph 107) has been put forward by a group of experts appointed by the Government to launch the reform of the Code for Criminal Procedure. It is a useful document for study but we cannot draw any final conclusion out of it. The government does not have a draft text for a new Code yet.

- Pardons to members of law enforcement authorities and training for prosecutors and judges in the respect for Human Rights.

In Spain, the importance and the social after – effect of a crime are not affected by a pardon. The only possible effect of a pardon is a reduction of the punishment.

The Ministry for Justice is receiving more than 6,000 requests of pardon a year and is informing in favour of granting 6 % or 7% of them.

On the other hand, Human Rights aspects are considered of great importance in the general training of prosecutors and judges.