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CONSEIL DE L'EUROPE

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

30 May 2025

Case Document No. 1

International Movement ATD - Fourth World v. Spain
Complaint No. 241/2024

COMPLAINT

Registered at the Secretariat on 4 June 2024

TO THE EXECUTIVE SECRETARY OF THE COMMITTEE

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Mr Bruno Dabout¹, representing the INTERNATIONAL MOVEMENT ATD FOURTH WORLD, whose headquarters are located at 12 rue Pasteur 95480 Pierrelaye, France, and which figures as No. 13 on the Council of Europe's list of international non-governmental organisations entitled to lodge collective complaints, and vested in the power to represent the association in accordance with the certification attached (**Document 1**)², **STATES AS FOLLOWS:**

I submit hereby a COLLECTIVE COMPLAINT pursuant to the 1995 Additional Protocol to the European Social Charter (the Charter), under Articles 1 and 2 of the Protocol and Articles 23 et seq. of the Rules of the European Committee of Social Rights, against the Kingdom of Spain, on the subject of Law 19/2021 of 20 December (the Law on the minimum living income or *ingreso mínimo vital*, referred to hereinafter as the LIMV), which provides for the establishment of the minimum living income (IMV) and for its application, and several provisions of which are incompatible with Articles 1, 7, 13, 15, 16, 17, 27, 30, 31 and E of the Charter, as will be outlined below.

For clarity's sake, this complaint, as lodged with the European Committee of Social Rights (the ECSR), will be structured as follows:

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I. ADMISSIBILITY

The complainant organisation's locus standi. Under Articles 1 and 2 of the 1995 Additional Protocol to the Charter, the organisation International Movement ATD Fourth World has standing to lodge this collective complaint because it appears on the list of international non-governmental organisations (INGOs) entitled to lodge collective complaints, registered as No. 13 on the list published by the Governmental Committee on 1 January 2025 (GB (2024) 54) (**Document 2**).³

Under its By-Laws (**Document 3**),⁴ ATD Fourth World's objective is "[to bring] together individuals, families, and groups of people who refuse the fate of extreme poverty in which they are condemned to live. The Association engages men and women from all origins and all countries who share in this refusal. ... The International Movement ATD Fourth World acts for the advancement of a society where the equal dignity of each human being can be recognized, and where extreme poverty and social exclusion will be banished" (Article 1); it "represents, especially at the international level, the interests and hopes of the most disadvantaged people, families, and groups in order that their voices be heard in every place where decisions are made that concern their future and the future of humanity and in order that they be recognized as partners" (Article 2.c).

ATD Fourth World also "collaborates, in the most appropriate way, with national and international institutions and bodies that are able to facilitate or contribute to the realization of the Association's objectives. And, in general, encourages various organizations, within their respective capacities, to take into account the victims of extreme poverty, and to act together in order to transform this state of extreme poverty" (Article 2.k).

ATD Fourth World has already filed collective complaints under the aforementioned Additional Protocol against the Kingdom of Spain, such as Complaint No. 206/2022, registered on 2 March 2022 and lodged jointly with Defence for Children International (DCI), the European Federation of National Organisations working with the Homeless (FEANTSA), Magistrats Européens pour la Démocratie et les Libertés (MEDEL) and the Confederación Sindical de Comisiones Obreras (CCOO).

On 29 June 2021, ATD Fourth World submitted a report to the ECSR in the context of the reporting cycle on Spain over the period from 2016 to 2019 concerning breaches by Spanish legislation of Article 13 with regard to minimum incomes and IMV. The ECSR took account of this report when assessing the situation over the following period, as stated in Conclusions XXII-2 (2021), page 34.

The respondent state's undertakings. This collective complaint is directed against Spain.

Spain acceded to the Social Charter through an instrument of ratification of 29 April 1980, published in Official Journal (BOE) No. 153 of 26 June 1980.

It acceded to the revised Social Charter of 1996 through an instrument of ratification of 11 June 2021, published in BOE No. 139 of 11 June 2021 (pages 71274 to 71327), then acceded to the Additional Protocol to the Charter through an instrument of ratification published in the BOE of 28 June 2021.

³ **Document 2.** Updated list of certified INGOs.

⁴ **Document 3.** By-Laws of the International Movement ATD Fourth World.

On 2 November 2022, a new ratification was published in the BOE ([Document 4](#)).⁵ This was superfluous however as Spain had already acceded to the Additional Protocol on 1 July 2021 in accordance with the BOE of 11 June 2021. The instrument of ratification is also “strange” in terms of legal doctrine, as it contains a reservation to the treaty which is invalid and makes provision, in breach of the law, not to apply the treaty to undocumented foreign nationals. According to Article 19 of the Vienna Convention of 1969 and Article 21 of Law 25/2014, a reservation or a statement of interpretation may not be entered if it is incompatible with the object and purpose of the treaty. It may be entered in the event of incompatibility with domestic law, but this is not the case here.

Publication of the ratification in the BOE, as set out in of the appendix, is a requirement under Spanish domestic legislation for a treaty to become a full part of Spanish law and for Spain to be obliged to comply with the treaty under the provisions of the treaty itself.

II. CONTEXT

First. The minimum incomes granted by Spain’s Autonomous Communities

The ECSR has frequently had occasion to comment on the system set up in Spain by the Autonomous Communities, in accordance with their constitutionally assigned powers, to ensure that persons in vulnerable situations have a sufficient income, most recently in the context of its report of 2021 on Spain, Conclusions XXII-2 (2021). This means that the Committee has already been informed of the situation prior to this and therefore that this complaint will relate only to the circumstances prevailing at the time of its submission.

Under Article 148.1.20^e of the Spanish Constitution, the Autonomous Communities may exercise powers in the social assistance sphere. As a result, they have assumed all powers in the area of social protection.

The Autonomous Communities have specific rules governing various types of minimum income, as set out in the table below:

Autonomous Community	Current legislation
Andalusia	Decree-Law 14/2022 of 20 December, adopting extraordinary and emergency measures concerning the minimum social inclusion income in Andalusia, amending Decree-Law 3/2017 of 19 December (adding a new Chapter IX).
Aragon	Decree 161/2021 of 13 October regulating Aragon’s supplementary benefit to the minimum income established by Law 3/2021 of 20 May.
Principality of Asturias	Law 3/2021 of 30 June on guaranteeing subsistence rights and benefits.
Balearic Islands	Decree-Law 10/2020 of 12 June on economic and social benefits.
Canary Islands	Law 5/2022 of 19 December, on the Canary Islands citizenship income.
Cantabria	Law 2/2007 of 27 March 2007 on social rights and services regulating the basic social income (amended on 1 January 2023).
Castile and León	Law 2/2020 of 24 November amending Decree-Law 1/2019 of 10 January.
Castilla-La Mancha	The Resolution of 13/12/2022, setting the minimum solidarity income allowances for 2023, established by Decree 179/2002 on the development of minimum solidarity income, emergency social assistance and financial benefits for disadvantaged groups.

⁵ **Document 4.** Ratification by Spain of the Additional Protocol to the European Social Charter, as published in the BOE on 2 November 2022. Available at www.boe.es/diario_boe/txt.php?id=BOE-A-2022-17976

Catalonia	Law 3/2018 of 23 October amending Law 14/2017 of 20 July on guaranteed citizenship income. Decree 5/2022 of 28 April adopting implementing regulations and amending Decree 123/2007 of 29 May, establishing the rules for the application and award of subjective-right socio-economic benefits and establishing the requirements for entitlement to the benefits set up, as part of changes to Law 13/2006 of 27 July on economic and social benefits.
Community of Valencia	Decree-Law 7/2020 of 26 June, amending Law 19/2017 of 20 December on the Valencia inclusion income.
Extremadura	Law 5/2019 of 20 February on the guaranteed income in Extremadura.
Autonomous Community of Galicia	Law 10/2013 of 27 November on social inclusion in Galicia.
Autonomous Community of Madrid	Law 15/2001 of 27 December 2001 on the minimum inclusion income in the Community of Madrid, partly amended by Article 5 of Law 8/2012 of 28 December on fiscal and administrative measures.
Autonomous Community of the Region of Murcia	Law 3/2007 of 16 March on the basic inclusion income of the Region of Murcia. Decree 163/2017 of 31 May approving the implementing regulation.
Chartered Community of Navarre	Law 15/2016 of 11 November on social inclusion and guaranteed income. Community Decree 26/2018 of 25 April on changes to the rights referred to in Law 15/2016.
Basque Country	Law 3/2023 of 20 April amending Law 14/2022 of 22 December on the Basque guaranteed income and inclusion system.
La Rioja	Law 4/2017 of 28 April on the Rioja citizenship income.

Table drawn up by ATD Forth World on the basis of the regulations in force.

Until the publication of the law to which this complaint relates, benefits designed to prevent the risk of poverty and exclusion were governed by the laws of each Autonomous Community and there was no standardised national legislation. The result was that there were 17 separate systems governing such benefits.

Second. Decisions of the European Committee of Social Rights on income benefits awarded by the Autonomous Communities

The European Committee of Social Rights (the ECSR) has ruled on numerous occasions on the conformity of the Spanish Autonomous Communities' legislation with Article 13 of the Charter:

- Conclusions X-2 (1990);
- Conclusions XIII-4 (1996);
- Conclusions XVI-1 (2003);
- Conclusions XX-2 (2013);
- Conclusions XXI-2 (2017);
- Conclusions XXII-2 (2021).

In all these cases, the ECSR detected non-conformities with the Charter. Since the Spanish Constitution provides that the Autonomous Communities may exercise these powers, the Committee has applied the doctrine set out in its decision on the merits of 8 December 2004 (Complaint No. 15/2003): "... even if under domestic law local or regional authorities, trade unions or professional organisations are responsible for exercising a particular function, states party to the Charter are still responsible, under their international obligations, to ensure that such responsibilities are properly exercised".

In its most recent examination, relating to the period from 2016 to 2019 (Conclusions XXII-2 (2021)), the ECSR reiterated the findings of non-conformity it had made with regard to previous periods, including breaches of Article 13.1 of the Charter on the following grounds:

- a) inadequacy of benefits, set at 50% of median equivalised income (€626 per single person on the date of the revision);
- b) a minimum length-of-residence requirement to be entitled to benefit;
- c) a lower age limit for entitlement;
- d) failure to guarantee continuity of payment for the whole period of need.

ATD Fourth World submitted a report to the ECSR on 29 June 2021 alerting it to problems it should examine concerning the implementation and management of IMV and the lack of co-ordination with the minimum income benefits of the Autonomous Communities.

In the text referred to, entitled “Arguments to the Report sent by the Spanish Government concerning the Review of Article 13 of the European Social Charter” (**Document 5**),⁶ we highlighted violations of Article 13 by the law on IMV (LIMV) and the practices of the authorities. The ECSR was not able to take account of our report because the period under examination in Conclusions XXII-2 (2021) was 2016-2019. We present it here again so that the ECSR can take it into account when examining this complaint.

Third. The social context

According to the data presented by the European Anti-Poverty Network (EAPN) in its report on the state of poverty in Spain for 2008-2019 (**Document 6**),⁷ in 2019, over 11 million people, or about 25.3% of Spain’s population, were at threat of poverty or social exclusion. Of these, 9.7 million were at threat of poverty, which was a slight improvement over 2018 (20.7% compared to 21.5%), but still higher than the figure for 2008, just before the impact of the global economic and social crisis was felt in Spain (670 000 more people). The latest data for 2020, which is when IMV was introduced, are no better: the at-risk-of-poverty-or-social-exclusion rate has risen to 26.4%, the risk of poverty has increased from 20.7% to 21%, and 7% of the population are in a situation of severe material deprivation, compared to 4.7% in 2019 (Spanish National Institute of Statistics, INE, 2021). The at-risk-of-poverty-or-social-exclusion rate has increased at varying rates according to age groups, the highest increase of 4.8% being among persons over the age of 65, which is a real cause for concern.

It is worrying that nearly half of single-parent households with minors and adolescents are in this risk group (EAPN, 2020). In 2020, according to the INE, the percentage was 49.1% for a single adult with dependent minors. About 9% of the population, or 4.3 million people, were living in extreme poverty, a situation in which people experience deprivation and living conditions very similar to those in developing countries, from which Spain is supposed to be far removed. Furthermore, in 2020, according to the income data for 2019, 1.4% of the population were at threat simultaneously of poverty, severe material deprivation and low employment rates.

Consequently, when IMV was introduced, Spain had not reached its poverty and social exclusion reduction goal of reducing this group to 1.5 million people (Europe Strategy 2020; Sustainable Development Goals 1 and 10; Articles 10.3 and 11 of the International Covenant on Economic, Social and Cultural Rights). This problem had already been noted by Philip Alston, UN Special Rapporteur on human rights and extreme poverty, on his visit to Spain in February 2020

⁶ **Document 5.** Movement ATD Fourth World, 2021, report. *Arguments to the Report sent by the Spanish Government concerning the Review of Article 13 of the European Social Charter.*

⁷ **Document 6.** EAPN, 2020. *El estado de la pobreza. Seguimiento del indicador de pobreza y exclusión social en España, 2008-2019* [The state of poverty. Survey of poverty and social inclusion indicators in Spain, 2008-2019]. Available at www.eapn.es/estadodepobreza/ARCHIVO/documentos/Informe_AROPE_2020_Xg35pbM.pdf

(Document 7).⁸ Furthermore, these data, which are already damning, failed to take full account of the devastating effect of the pandemic, which began in 2020 and whose effects are still being felt everywhere.

Severe material deprivation is measured by nine indicators. In 2020, those which had increased most were, in order, as follows: firstly, late payment of bills relating to the main residence or payments on credit in the last twelve months (13.5%, rising from 8.3% in 2019); second, energy poverty, i.e. lacking the means to heat one's dwelling to a sufficient temperature (10.9% compared to 7.6%); and, third, being unable to afford a meal based on meat, chicken or fish at least every two days (5.4% compared to 3.8%). Social transfers succeeded only in reducing the at-risk-of-poverty-or-social-exclusion rate by 22.94%, which was less than the EU average of 33.2%, according to the report by the Special Rapporteur referred to above.

We will now look at the more recent data, namely those of 2022, published in 2023, once IMV had been set up.

The poverty risk threshold in 2022 was €10 088 per year. Persons living in households whose income per consumer unit was lower than two-thirds of the threshold, i.e. €6 725 per year (or €560 per month), were considered to be in a situation of extreme poverty.

According to the EAPN poverty report of 2023⁹ and the INE's survey of living conditions in 2023,¹⁰ the data are not very positive.

Firstly, Spain has about 1.8 million people at risk of poverty or social exclusion more than it should to meet its commitments under Agenda 2030. The number of people in this situation according to Agenda 2030 criteria comes to 26% of the total population, or about 12.3 million people, and is higher than the 2008 rate, which was 23.8%. There are also huge regional disparities between the Autonomous Communities.

Secondly, in 2022, Spain had about 9.7 million poor people, 43.5% of whom were in a situation of extreme poverty, i.e. over 4.2 million. The living conditions of the most disadvantaged people have substantially deteriorated.

Third, according to data from the 2023 survey of living conditions referred to above, children and adolescents are hugely affected. In 2022 the severe material deprivation rate for children and adolescents was 10.1%, the highest figure since 2008. This means that one child in ten is in this situation, which is twice as many as in 2008.

Fourth, the most severely affected group of children and adolescents is those between the ages of 13 and 18, 34.9% of whom are exposed to the threat of poverty and social exclusion, followed by 31.4% of children between 4 and 12 and 29.9% of those between 0 and 3.

Spain has the third highest at-risk-of-poverty-or-social-exclusion rate among persons under 18 of the EU member countries, surpassed only by Bulgaria and Romania.

In total, 32.2% of Spanish children and adolescents are at risk of poverty and social exclusion, which amounts to a frightening figure of 2.6 million children.

8 Document 7. Report of the Special Rapporteur on extreme poverty and human rights. Visit to Spain. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/44/40/Add.2&Lang=E>

9 EAPN, 2023. *El estado de la pobreza. Seguimiento de los indicadores de la Agenda UE 2030, 2015-2022* [The state of poverty. Survey of indicators from Agenda 2030. 2015-2022. Autonomous Communities]. Available (in Spanish only) at www.eapn.es/estadodepobreza/ARCHIVO/documentos/informe-ARPE-2023-la-situacion-en-las-CCAA.pdf

10 Survey of living conditions, 2023, available at www.ine.es/prensa/ecv_2022.pdf and https://www.ine.es/prensa/ecv_2022.pdf (https://www.ine.es/prensa/ecv_2022.pdf&ved=2ahUKewiox7T-puFAXVUUaQEhVvhDwMQFnoECAYQAQ&usg=AOvVaw0c67HZjaMNO4LSXW_XWlww)

Fifth, social transfers in Spain have not succeeded in reducing poverty significantly. The poverty rate has been reduced from 27.9% to 20.4%, which is largely inadequate.

The following table, taken from the report referred to (EAPN, 2023) (page 16), shows a small reduction in the at-risk-of-poverty-or-social-exclusion rate in only five Autonomous Communities, the Balearic Islands, Extremadura, Ceuta, Galicia and Valencia. In all the other regions this rate is higher than it was in 2008.

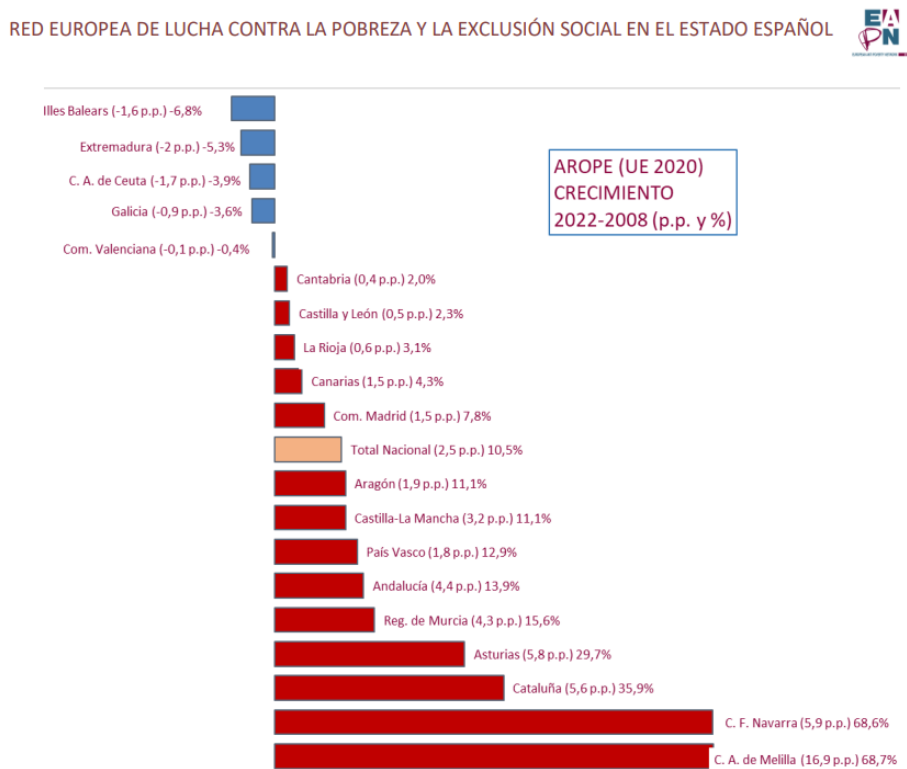


Table from the 2023 EAPN report, page 16.

Fourth. Background and development of IMV at state level.

In 2020, the state set up IMV through Royal Decree-Law 20/2020 of 29 May (**Document 8**),¹¹ pursuant to Article 41 of the Spanish Constitution, defining this new measure as a “subjective right to a financial benefit guaranteeing a minimum level of income to persons in a situation of economic vulnerability in the terms defined in this Royal Decree-Law” (Article 2.1) and a benefit which, “regardless of any assistance which may be set up by the Autonomous Communities in the exercise of their powers, ... forms part of the protective action of the social security system as a non-contributory financial benefit” (Article 2.2).

The explanatory memorandum to this text states that the aim of this benefit is to standardise the minimum income benefits of the Autonomous Communities, which differ in terms of protection, requirements and amount.

¹¹ **Document 8.** Royal Decree-Law 20/2020, of 29 May, establishing IMV, available at www.boe.es/buscar/act.php?id=BOE-A-2020-5493

This was neither a new nor an exceptional idea on the part of the Government. In June 2017, the Economic and Social Council (**Document 9**)¹² had pointed out that despite the reforms in recent decades to the minimum income benefits awarded by regions under their own powers (Article 148.1.20^e of the Spanish Constitution), significant differences in terms of access and effectiveness remained. The Council had also criticised the amounts awarded, stating that they were not enough to combat poverty.

Royal Decree-Law 20/2020 established this new benefit during the COVID-19 crisis with the intention of incorporating it into the social protection system and rationalising the system, as stated in the explanatory memorandum. It was also specified that this benefit was intended to be permanent and was not meant to be one of the temporary measures adopted as part of the social shield set up by the Spanish Government to mitigate the effects of the pandemic.

The objectives of the law were set out very clearly and broadly from the start:

- 1) to guarantee inclusion and avoid the poverty trap;
- 2) to cover the risk of poverty and social exclusion.

However, the current legislation on IMV achieves neither of these aims, as we will show in this complaint and has been pointed out by legal writers (Burriel, 2021)¹³. In addition, the same grounds of non-conformity with the Charter were identified as with the minimum incomes established by the Autonomous Communities, namely age and length of residence requirements, insufficient amounts and the definition of “households”.

In Spain, IMV is a non-contributory benefit, which is justified, among other things, by Spain’s existing high structural indicators of inequality, poverty and social exclusion.

Although this law is recent and it does have its merits, it has already undergone many amendments because of the adverse effects it has had. These amendments were intended to remedy some problems with its initial configuration and were introduced through the following instruments:

- Royal Decree-Law 25/2020 of 3 July
- Royal Decree-Law 28/2020 of 22 September
- Royal Decree-Law 30/2020 of 29 September
- Resolution of 16 December 2020, of the Comptroller General of the State Administration
- Royal Decree-Law 35/2020 of 22 December
- Royal Decree-Law 3/2021 of 2 February.

However, there are still many technical and practical problems with the benefit including a lack of implementing regulations, the absence of social dialogue during the preparation of the law and the subsequent amendments and its incompatibility with the ECSR’s decisions and the European Pillar of Social Rights, which states that “everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services. For those who can work, minimum income benefits should be combined with incentives to (re)integrate into the labour market” (principle 14).

12 **Document 9**, Economic and Social Council, Spain, Informe [Report] 01/2017. *Políticas públicas para combatir la pobreza en España* [Public policies to combat poverty in Spain], pages 83-94; available at www.ces.es/documents/10180/4509980/Inf0117.pdf/042f5f55-ee64-4d18-8040-b51df3ce0e6d

13 Burriel Rodríguez-Diosdado, P. (2021), “Algunas incongruencias del Ingreso Mínimo Vital con el Pilar Europeo de Derechos Sociales: y la pobreza sigue ahí” [Some incompatibilities between the minimum living income and the European Pillar of Social Rights: poverty is still present], in *A proteção social na encruzilhada*, pages 69-79, available at <https://idus.us.es/server/api/core/bitstreams/14905634-fba5-4755-844ca9003e697812/content>

The LIMV (**Document 10**),¹⁴ is currently in force and hence is the subject of this complaint.

This law has been amended.

Fifth. IMV – a social assistance benefit, falling within the remit of the Social Charter

IMV is a benefit designed to prevent the risk of poverty and social exclusion for persons living alone or cohabiting where they find themselves in situations of vulnerability owing to the absence of sufficient financial resources (Article 1 of the LIMV). It is therefore covered by Article 13 of the European Social Charter, even though the explanatory memorandum to the law governing it makes no reference to this.

IMV and the pre-existing minimum inclusion incomes (which are not in conformity with the Charter according to the aforementioned conclusions of the ECSR), have established a model of last-resort social assistance provision in Spain through financial benefits intended for persons or households in situations of low income or poverty.

The creation of IMV has made it possible to grant a subjective social right to a main financial non-contributory benefit funded by state transfers, which is set out in Article 42.1 c) of Legislative Royal Decree 8/2015 of 30 October approving the text recasting the General Law on Social Security (LGSS). This is a social assistance benefit, which requires “evidence of need” (Article 11 of Law 19/2021), awarded for an indefinite duration for as long as the situation persists but not intended to be a lifelong benefit.

The guaranteed income provided for by the law forms part of the non-contributory benefits of the social security system and guarantees a minimum income for persons or households whose income is lower by 10 euros than the threshold set by the law according to the number of persons making up the household concerned (€565.37 per month for a single person and increasing amounts according to the number of members and the composition of the household).

The law sees this benefit as a minimum inclusion income designed to cover the period over which the criterion of need persists. However, it is also subject to the requirement that claimants must present evidence of their income and resources.

According to the law, it is compatible with other incomes or salaries received by claimants and other beneficiaries in the household, but this does mean that every form of income must be taken into account when assessing the vulnerability of the individual or the household.

Because of its make-up and its nature, we believe that IMV, like the minimum incomes of the Autonomous Communities, can be categorised as a social assistance benefit.

This point is crucial because it enables us to back up our allegations that IMV is in breach of the Social Charter and EU law.

Consequently, we assert that the benefit called “**minimum living income**” – which we consider to be in breach of the Charter and forms the basis for this collective complaint – is **a social assistance benefit**. This is a crucial matter, **whatever the title given to the benefit** and whether or not it is included in the LGSS.

According to the ECSR Digest, the main criterion for differentiating between a social security benefit and a social assistance benefit is the benefit’s purpose and entitlement conditions.

14 **Document 10**. Law 19/2021 of 20 December establishing the minimum living income, available at <https://www.defensordelpueblo.es/wpcontent/uploads/2023/03/Defensor-del-Pueblo-Informe-anual-2022.pdf>

The ECHR considers social assistance to cover benefits for which individual need forms the basic criterion for entitlement, with no need to be affiliated to a social security body intended to cover a specific risk or for a qualifying period or the payment of contributions. Furthermore, as is specified in Article 13.1 of the Charter, this type of benefit is awarded where the person concerned is unable to secure sufficient resources by their own means or through social security benefits to enable them to obtain appropriate assistance or the care necessitated by their condition. Consequently, the main criterion for eligibility is individual need (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, paragraph 110; Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13).

Under ECSR case law, the **lack of sufficient resources** is one of the criteria which obliges the member states to activate their social assistance machinery (Conclusions 2013, Bulgaria).

The ECSR understands “sufficient resources” to mean the resources needed to lead a decent life and satisfy fundamental needs, in accordance with the case law (as pointed out, in particular, in Conclusions XIII-4 (1996), Statement of Interpretation on Article 13).

The level of resources below which the right to assistance is triggered has also been addressed by the ECSR, which defined it on the basis of the poverty threshold (Conclusions XIV-1, 1998, Portugal). It is the point at which an individual is unable to obtain resources either by their own means or from other sources, particularly through benefits under a social security scheme (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, paragraph 111). Consequently, the right to social assistance in the form of a financial allowance must be a benefit of last resort.

IMV falls within this definition but the LIMV currently in force includes a whole series of requirements which we deem not to be in conformity with the Social Charter, especially Article 13 and the closely linked Article 30.

IMV is both an individual and a collective benefit, as it is intended for persons living alone and in households. In households, one of the members, who must be at least 23 years of age, will be designated as the beneficiary while the others will be considered that person’s dependants. The law does, however, lay down a number of exceptions to this rule.

Besides the vulnerability or economic need criterion (Article 10.1 b) and 11 of the LIMV), entitlement to this benefit is subject to other requirements, and this makes it incompatible with the Charter.

The following is a list of these conditions for entitlement to IMV, which will be elaborated on below (Article 10 of the LIMV):

- a minimum age requirement, including stricter conditions where the claimant is under 30 years of age (Articles 5 and 10.2 of the LIMV);
- **legal, effective and continuous residence** in Spain by the claimant and all other persons in the household for one year prior to the claim (Article 10.1.a));
- establishment of the household six months prior to the claim and a very narrow definition of what is understood by a “household”, (Articles 6, 7, 9 and 10.3 of the LIMV).

Sixth. Co-existence of IMV and the income benefits awarded by the Autonomous Communities

Since the inclusion incomes of the Autonomous Communities are still in force (under the powers granted them by Article 148.1.20^e of the Spanish Constitution) – Spain now has two tiers of benefits intended for persons and families in vulnerable situations: at state level, IMV, which forms part of the non-contributory social-security benefit system, and at autonomous or regional level, minimum inclusion incomes, which are generally complementary and subsidiary.

The creation of IMV resulted in the amendment of some of the Autonomous Communities' minimum incomes and a reduction in the scope of the protection which existed previously, as we shall see below. This has had the reverse effect to that intended by the law.

III. FACTS GIVING RISE TO THE COMPLAINT

First. Institutional and social criticism: from the Ombudsman to academic doctrine

Although the creation of IMV was a sign of progress in the overall system of social benefits intended to prevent situations of poverty, problems with the legislation in terms of its form and how it is to be put into practice have resulted in a chaotic implementation process, giving rise to alarming legal uncertainty for potential beneficiaries. Problems have included excessively long processing times (including abuse of administrative silence), failure to give reasons for many of the decisions adopted and, in the worst cases, rejection of claims from the neediest persons.

Other factors contributing to the legal uncertainty are as follows:

- very poor management of the benefit, particularly because of the blatant lack of material and human resources in the offices in charge of its administration;
- a chaotic and bureaucratic structure for the benefit award system;
- regular review of compliance with requirements resulting in benefits being stopped;
- many families being caught in a trap, as we will explain below, because of amounts paid to them in error, resulting in crushing and indefeasible debts with the National Tax Administration Agency (AEAT), meaning that the state takes with one hand what it gives with the other.

As a result, many public bodies and authorities have criticised the legislation and its implementation, including the following:

- the Ombudsman, in his 2022 annual report (**Document 11**)¹⁵
- the Economic and Social Council, in its report for 2022, Chapter III, pages 101 et seq. (**Document 12**);¹⁶
- the trade union *Comisiones Obreras* in the conclusions to its report "Labour market and protection from unemployment 2022" (**Document 13**);¹⁷
- the Independent Authority for Fiscal Responsibility (AIReF), in opinion poll 1/2022, page 50 (**Document 14**);¹⁸
- the AIReF again, in a second opinion poll, 15 June 2023 (**Document 15**);¹⁹

15 **Document 11.** Annual Report of the Ombudsman, volume 1, 2022, available at <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.defensordelpueblo.es/wp-content/uploads/2023/03/Defensor-del-Pueblo-Informe-anual-2022.pdf&ved=2ahUKEwjJnYPEh5yFAXv7AvsDHeyMB9MQFnoECBMQAQ&usg=AOvVaw0hKM08iKsT132YmzhhlR0n>

16 **Document 12.** Report of the Economic and Social Council for 2022, Chapter III, pages 431-440 et seq., available at <https://www.ces.es/documents/10180/5312314/Memoria-Socioeconomica-CES-2022.pdf/a03c8265-ee92-7803-b252-d44860e0e34c>

17 **Document 13.** Report by *Comisiones Obreras*, 2022, *Mercado de trabajo y protección por desempleo 2022* [Labour market and protection from unemployment, 2022]. Available (in Spanish only) at www.ccoo.es/f69328ced2f55cdaae8d4b1db759513c000001.pdf

18 **Document 14.** Opinion poll on IMV conducted by the Independent Authority for Fiscal Responsibility, 2022, p. 50. Available at <https://www.airef.es/wp-content/uploads/2022/08/IMV/OPINION-AIReF-IMV.pdf>

19 **Document 15.** Second opinion poll on IMV conducted by the Independent Authority for Fiscal Responsibility, 2023. Available at https://www.airef.es/wp-content/uploads/2023/06/IMV/230615.-Opinio%CC%81n.-Segunda-Opinio%CC%81n-IMV_AIReF.pdf

- legal commentators, from whom there has been almost unanimous condemnation, highlighting the law's main shortcomings or even its incompatibility with international law (**Document 16**).

The leading expert, Mr Luis Jimena Quesada (President of the ECSR between 2009 and 2014 and Secretary General of the International Institute of Human Rights, in Strasbourg, France, from 2016 to 2019) has also been very critical about the situation engendered by the implementation of IMV. He goes so far as to state that the management of this benefit has resulted in a desperate situation, because of the high number of rejections, formal problems at legal level (because the benefit is linked to employment), subjective restrictions related to age or the definition of households and the failure of the legislation to establish a stable and applicable regulatory framework or even to assert that it is based on soft law sources such as the European Pillar of Social Rights. In this connection, Mr Jimena Quesada stated as follows:

“In addition, while its legal enforceability should logically exceed the virtues of charity, it fails to set up a regulatory framework which provides stability for the institution and worse still, fails even to draw inspiration from soft-law sources, meaning that it harks back to the virtues of charity and a strange ethico-deontological approach to legislation” (Jimena Quesada, L., 2023).²⁰

Official data confirm that 73% of claims were rejected on the basis of income, property or household composition-related criteria (**Document 12**, pages 57 et seq.). Of the total budget provided for this benefit, only 56% was spent, while at the same time, 57% of potential beneficiaries, representing some 400 000 households have not yet submitted a claim (extract from **Document 12**, page 94).

To reach more potential beneficiaries, the transitional regulations automatically awarded IMV to beneficiaries of the non-contributory dependent child allowance despite the fact that the eligibility requirements for this allowance differ from those for IMV. Three years later, thousands of review proceedings were opened (covering most of these cases) and resulted in the amendment or withdrawal of entitlement to IMV and the initiation of proceedings to recover the overpayments identified. As a result, the payment of IMV made thousands of vulnerable families even poorer because, following the payments they were automatically but mistakenly awarded, they found themselves deprived of any type of income, with debts to the AEAT which it was impossible to pay, and liable to be denied any subsequent benefits.

Document 16²¹ (ref. 202305002) describes a typical example illustrating several thousands of similar cases, namely that of a single mother²² with two children, to whom IMV was automatically awarded from June 2020 onwards because she already received dependent child allowance in respect of one them. It so happened that the second child in the household had another father, from whom the beneficiary was in the process of divorcing. During the review carried out at the end of 2022, in the light of the tax data provided by the AEAT for 2021, a file for overpayment was opened and in November 2022, with no prior notice, the mother's IMV was stopped and she received a demand for reimbursement of €1 455. Finding herself once more without any income, she was forced to request further benefit to alleviate her situation. This was granted in December 2022 but has amounted to only €50 per month since 1 January 2023. Her

20 Jiménez Quesada, L. 2023. El Ingreso Mínimo Vital como derecho fundamental social de nueva generación [The minimum living income as the fundamental social right of a new generation], *IgualdadES*, 8, 205-225. Available (in Spanish only) at <https://doi.org/10.18042/cepc/lgdES.8.07>

²¹ We have highlighted documents (in sepia) deriving from our work with, and statements collected from, persons affected by the IMV reform who helped to collect data and prepare this complaint. In this way we hope to highlight their key role and experience in building a fairer society.

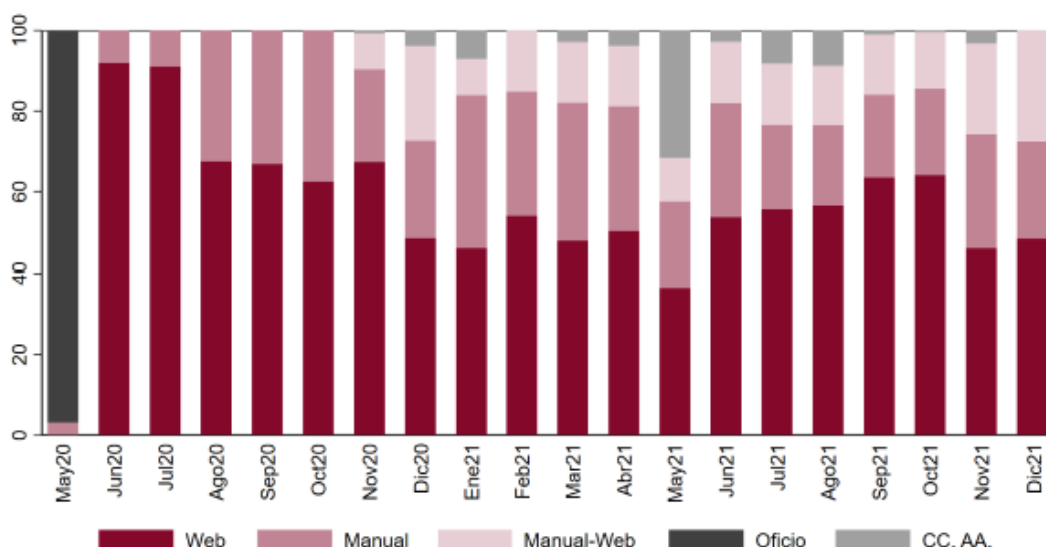
²² Most single-parent families are headed by single mothers, who are often given special support.

complaint, submitted on 5 January 2023 has still not been dealt with and this has prompted here to initiate legal proceedings to counter the authorities' silence.

This anomaly was highlighted by the AIREF, in the report of 2022 already referred to above:

“During the first month of setting up IMV, the files of beneficiaries of dependent child allowance who satisfied IMV requirements were processed automatically, and this resulted in an additional 113 000 beneficiaries. On 31 December 2021, these beneficiaries accounted for 40% of the total number of claims granted, which explains to a degree why the best cover was for households with children.”

GRÁFICO 30. EVOLUCIÓN TEMPORAL DEL CANAL DE TRAMITACIÓN DE LAS SOLICITUDES



Taken from the AIREF report of 2023.

The 2023 AIREF report assesses the impact of the application of the measure from June 2023 onwards and describes its main shortcomings:

“IMV covers 284 000 of the 800 000 households which could claim it (35 %). This figure is similar to that for the previous year. (Annual cost of €1.9 billion, 47% of its potential). 469 000 households which were entitled to IMV but made no claim (non-take-up). 58 % of the potential.

- 61 % are households without children (single persons or households made up solely of adults).
- 64 % live in Andalusia, Catalonia, the Autonomous Community of Valencia or Madrid.
- 38 % are households whose incomes would rise by less than 30% if they were awarded IMV.
- No knowledge on the transfer of regional minimum incomes to IMV: poor quality of the microdata on minimum incomes forwarded by the Autonomous Communities to the AEAT and the National Social Security Institute (INSS) through the digital social map). About 80% of households potentially receiving regional minimum incomes are beneficiaries of IMV.

Pursuant to the first survey, [it is recommended to] speed up the changeover to a new more automated model for the management of IMV, based on the incorporation of administrative information sources on income, property, taxes and all benefits (including minimum income) from all departments, based on a joint database which could be fleshed out by a universal income declaration, with a view to:

- moving towards a self-initiating IMV (or a tax rebate) thus helping to reduce non-take-up;

- making it possible for Autonomous Community minimum income beneficiaries to be transferred immediately to IMV;
- IMV being activated as soon as a new situation of poverty is identified (pooling information from the AEAT and from the Social Security Treasury (TGSS) on social contributions) or making IMV a benchmark for other social benefits or targeted direct transfers.

Make more comprehensive use of the monthly data available from the AEAT and the TGSS, with the dual aim of:

- adjusting the amounts of benefit to beneficiaries' incomes in real time, thus alleviating the need for and extent of reviews or
- determining the possibility, suitability and feasibility of simplifying the definition of incomes opening up access to IMV, thereby increasing the potential for this benefit to respond to the situations of poverty arising."

The combination of IMV and income benefits granted by the Autonomous Communities was also a cause of problems for many beneficiaries when reviews were made of the income data provided by the AEAT. The AEAT regards regional minimum incomes as income from work or grants to be taken into account when calculating income. Therefore, when the sum of the two amounts exceeded the upper limit set, regional benefits were not renewed. Yet, these regional benefits are compatible with payment of IMV and should not have been taken into account when calculating income, as is stipulated in the decree and the LIMV.

Document 17, ref. 202305003 provides evidence that such problems have occurred in the form of a decision which confirms that a benefit claim was rejected because the AEAT included the Valencia inclusion income in its income calculations.

Second. Lack of adequate income.

The regulations on the IMV benefit are set out in Article 13 of the LIMV as follows:

"1. The monthly amount of the minimum living income benefit to be paid to each individual beneficiary or household shall be determined by the difference between the amount of the guaranteed income, as established in the following paragraph, and the total amount of all the income and remunerations of the beneficiary or the members of the household in the previous financial year, under the conditions laid down in Articles 11, 16 and 19, provided that the resulting amount is no less than 10 euros per month.

2. For the purposes set out in the preceding article, guaranteed income shall be defined as follows:

a) For an individual beneficiary, the monthly amount of guaranteed income shall be equal to 100% of the annual amount of non-contributory pensions set once a year in the Law on the General State Budget, divided by twelve.

A complementary benefit equivalent to 22% shall be added to this amount in the event that the individual beneficiary has a recognised degree of disability equal to or greater than 65%.

b) For a household, the monthly amount provided for in sub-paragraph a) shall be increased by 30% for each additional member from the second member on, up to a maximum of 220%.

c) For a single-parent household, a complementary benefit equal to 22% of the amount provided for in sub-paragraph a) shall be added to the amount provided for in sub-paragraph b). When determining the amounts of benefit, single parent households shall be defined as those made up of a single adult living with one or minor descendants up to the second degree over whom they have sole custody or a person living with one or more minors in permanent

foster care or guardianship with a view to adoption where this person is the sole parent or guardian or where the other parent, guardian or foster carer is in prison or hospital for an uninterrupted period of one year or more.

In the event that the descendants or minors referred to in the previous paragraph live solely with their parents or, where this is the case, with their grandparents, guardians or foster carers, the same supplement shall be granted where one of them has a recognised degree of dependency, permanent total incapacity or severe disability. For the purposes of payment of the aforementioned amount, single-parent households shall also be defined as those formed solely by a woman who has suffered gender violence, in accordance with Organic Law 1/2004 of 28 December on comprehensive protection measures against gender violence, and one or minor descendants up to the second degree over which she has guardianship and custody or, if applicable, one or more minors placed in permanent family foster care or awaiting adoption.

d) Likewise, a supplement equivalent to 22% of the amount established in sub-paragraph a) shall be added to the monthly amount provided for in sub-paragraph b) where a household includes a person with a recognised degree of disability equal to or greater than 65%.

e) The amount of the supplementary child allowance provided for in Article 11, paragraph 6, shall be a monthly amount for each minor child in the household depending on the age reached on 1 January of the financial year concerned, in accordance with the following age brackets:

Children under three years of age: 100 euros.
Children over three and under six: 70 euros.
Children over six and under 18: 50 euros.

3. Any increase in the amounts set in the preceding paragraphs where rents for the beneficiary's main residence exceed 10% of the annual amount of the corresponding guaranteed income shall be determined by regulation, depending on the size and the make-up of the household.

4. Where the same children, minors or adults receiving decision-making assistance by court order form part of different households under shared custody court orders, they shall be regarded, when determining amounts of benefit, as forming part of the unit in which they are resident.

5. For the 2020 financial year, the annual amount of guaranteed income for an individual beneficiary shall be €5 538. To determine the applicable amount for each household, the scale set out in Appendix I shall be applied on the basis of the amount corresponding to an individual beneficiary.

6. In any case, regardless of the income in the preceding year of a person living alone or a household, where the claimant of the minimum living income or one or more members of the household, where applicable, was receiving one or more contributory or non-contributory social security benefits or unemployment benefit for persons over 52 years of age, granted on the date of the claim or before the decision, whose combined monthly amount including the proportionate share of thirteenth month bonuses was lower than the applicable monthly amount, and where all the requirements for the award of minimum living income have been met, the monthly amount of this benefit may not exceed the difference between the aforementioned monthly amount of the guaranteed income and the monthly amount of the benefits or the sum of the benefits including, where applicable, the proportionate share of monthly payments corresponding to thirteenth month bonuses.

Where the above-mentioned combined monthly amount of contributory or non-contributory social security benefits and any unemployment benefit for persons aged over 52

is equal to or greater than the monthly amount of guaranteed income applicable, the person concerned shall not be entitled to minimum living income.

Likewise, awarding a contributory or non-contributory social security benefit or unemployment benefit for persons over the age of 52 to the beneficiaries of minimum living income shall prompt the reduction or withdrawal of this benefit according to the same criteria set out in the above paragraphs, having regard to the sum of all the benefits awarded to the individual beneficiary or the members of the household, with effect from the first day of the month following that in which the pension was granted or from the date of its effect if it was before this.

On no account may the review of the amount of the minimum living income which takes effect on 1 January of each year, as specified in Article 16.3, give rise to the payment of a monthly amount exceeding the difference between the guaranteed income applicable pursuant to this article and the amount which, after calculation, was the amount of the benefit or the sum of benefits and any unemployment benefit claimed by the individual beneficiary or one of the members of the household on this date.”

According to Appendix I of the law, guaranteed income for a single person in 2023 was €6 784.44 per year or € 565.37 per month.

This amount is increased in line with a scale also set out in Appendix I, whereby it may be increased up to a ceiling of 2.2 times the guaranteed income, in keeping with the following table:

	Scale of increments
A single adult	€6 784.44 (guaranteed annual income for a single adult, updated for 2023)
One adult and on minor	1.52
One adult and two minors	1.82
One adult and three minors	2.12
One adult and four or more minors	2.2
Two adults	1.3
Two adults and a minor	1.6
Two adults and two minors	1.9
Two adults and three or more minors	2.2
Three adults	1.6
Three adults and a minor	1.9
Three adults and two or more minors	2.2
Four adults	1.9
Four adults and a minor	2.2

Table taken from the LIMV, Appendix I

Under ECSR case law, which will be examined below, the amount now set is clearly inadequate to meet the requirements of Article 13.1 of the Charter as it is substantially lower than 50% of median equivalised income.

In Spain, according to a survey on living conditions by the INE,²³ the median equivalised income in 2021 was €15 892 for households in 2020, which was a decrease of 0.9% in relation to the previous year. This put the monthly amount at €662.16, albeit with very large disparities between the Autonomous Communities. These differences are not taken into account in the law.

²³ INE, Survey on living conditions, 2023. Available at www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176807&menu=ultiDatos&idp=1254735976608

The inadequacy of the benefit is generally very clear, but it becomes much more obvious if we bear in mind that, on the whole, the cost of rented housing is extremely high in many regions of Spain. **Document 18** (reference **202305001**) provides a telling example, in which a household with a monthly rent of €491 received IMV benefit of €362 in 2022, despite the fact that the legislation provides for an increase in the amount awarded where the rental costs for a person's main dwelling are greater than 10% of the corresponding guaranteed income (Article 13.3).

The inadequacy of the amount of benefit is also illustrated by cases of households receiving alimony for children. In such cases, the delayed assessment of benefit results in ridiculous amounts such as 50 or 60 euros, as described in **Document 19** (ref. 202305002).

It is also clear that the amounts awarded are incompatible with Article 13 of the Charter where households are made up of six members or more. Under Spanish law, guaranteed income is no longer increased when a household exceeds five members despite the growth in needs in proportion to the increase in the number of household members.

As we shall see in point thirteen, this limitation also primarily affects the protection of minors joining the household, particularly in multi-member families where the increase in needs is not proportionate to the restrictions on the corresponding benefits .

Third. Legal residence

This complaint relates to two problems linked to the requirement to have a legal residence:

- a) **The minimum period of legal residence in Spain to be entitled to minimum living income and the establishment of "households".**

Article 4, paragraph 3, of the LIMV stipulates as follows:

"Beneficiaries must meet the conditions of access to benefit set out in Article 10 and the obligations for the preservation of entitlement set out in Article 36."

Article 10 provides as follows:

1. All beneficiaries, whether part of a household or not, shall meet the following conditions:
 - (a) be able to provide evidence **of legally and actually residing in Spain continuously and uninterruptedly for at least the year immediately preceding the date of the claim. This qualification period shall not apply to:**
 - 1. Minors becoming members of the household following a birth, an adoption, a family reunion, a guardianship pending an adoption or permanent placement in a foster family.**
 - 2. Victims of human trafficking and sexual exploitation.**
 - 3. Women victims of gender violence.**

For the purposes of preserving entitlement to this benefit, it shall be considered that a person is habitually resident in Spain even if they have spent time abroad, provided that this time does not exceed 90 days per calendar year or the absence from Spanish territory is due to a duly documented illness.

(b) be in a situation of economic vulnerability because of a lack of sufficient income, resources or assets, under the terms set out in Article 11.

2. Any beneficiaries referred to in Article 4.1.b) under the age of 30 at the date of the claim for minimum living income must prove that they have lived independently in Spain for at least two years immediately preceding the date of their claim. This requirement shall not apply to persons aged between 18 to 22 from residential centres for the protection of minors of the various Autonomous Communities.

A person shall be considered to have lived independently if they can prove that they have had a different home from their parents, guardians or foster family for the two years immediately preceding the claim and that during this period, they were affiliated for at least twelve months in total to one of the social security schemes, including the state passive class

scheme, or to a mutual insurance company other than the special social security scheme for self-employed workers.

Any beneficiaries referred to in Article 4.1.b) under the age of 30 at the date of the claim must prove that, over the year immediately preceding this date, their address in Spain differed to that of their parents, guardians or foster families.

The requirements set out in the preceding paragraphs shall not apply where termination of cohabitation with parents, guardians or foster parents is the result of the latter's death. Nor shall they apply to persons who are victims of gender violence who have left their habitual residence, homeless persons, persons who have begun separation or divorce proceedings, victims of human trafficking or sexual exploitation or persons in other cases laid down by regulation.

3. Where the beneficiaries are members of a household, it shall be required for this household to have been formed continuously under the circumstances provided for in Articles 6, 7 and 8 for at least six months prior to submission of the claim.

This requirement shall not apply in the event of birth, adoption, guardianship with a view to adoption, permanent placement of minors with a foster family or family reunion of minor children, or in cases of women victims of gender violence, human trafficking or sexual exploitation, or in any other justified cases which may be prescribed by the law.

4. The requirements listed in the preceding paragraphs shall be met when the claim or an application for review is submitted and must still be met when the decision on the claim is issued and for as long as the minimum living income is drawn."

Article 6 of the Law, entitled "**households**", stipulates as follows:

"1. Households shall be considered to be made up of persons residing in the same dwelling who are united by marriage or cohabitation or are related up to the second degree by blood, kinship or adoption, and all other persons with whom they live as the result of placement with a view to adoption or placement with a permanent foster family.

For the purposes of this article, **cohabiting couples** shall be considered to be formed where there has been an emotional relationship similar to that of a marital relationship for **at least two years** between persons who are not prevented from marrying, do not have a marital relationship with another person, and were living together stably and unarguably before claiming the benefit for an uninterrupted period of at least five years.

The death of one of the persons making up the household shall not entail its dissolution, even if this death gives rise to the loss, between survivors, of the ties described in the preceding paragraphs.

Where, pursuant to the relevant technical instructions to town halls on the management of the municipal register, persons are enrolled in collective facilities or, because they are homeless but usually reside in a municipality, are registered at a fictional address, the provisions of Article 8 shall apply.

2. Temporary separation for the purposes of studies, work, medical treatment, rehabilitation or other similar reasons shall not be considered to entail dissolution of a household.

A prerequisite to be considered a member of a household is **effective, legal and continuous residence in Spain.**

3. One and the same person may not under any circumstances be a member of two or more households."

This provision was repeatedly amended until it took its present form, incorporating more and more situations which had previously been excluded from benefit entitlement.

Under the provision, some vulnerable situations are excluded from IMV entitlement:

- For households, there is a waiting period of one year.

- Persons under 30 years of age are required to have been financially independent for two years and have been affiliated to a social security scheme for at least a year.
- The entire household is required to have been registered on the municipal census (*empadronamiento*) for at least six months.

These restrictions were criticised in AIREF's 2022 report (**Document 14**, pages 62 et seq.), in which it was pointed out that "failure to meet the requirements relating to households is the second most common cause for the rejection of IMV claims and has led to the dismissal of 210 000 claims. In 59% of cases, the reason for rejection is that the composition of the household does not match that contained in the census for the address. 15 % of cases dismissed for these reasons are rejected because the census deadline was not respected (one year over the period under consideration)."

Claims are rejected, for example, where the household suffering exclusion was formed less than six months before the claim (Article 10.3), and may not claim benefit before completing this qualifying period, or where not all the members of the household have been legally resident in Spain for an uninterrupted period of at least one year (Article 10.a) and are not part of one of the exempted groups (Article 10.a, paragraphs 1 to 3).

Here are some examples of rejections resulting from these restrictions:

- 1) Where one of the members of the household (a partner, spouse or attached relative) is in an irregular administrative situation (i.e. they are a foreign national who has not yet acquired or no longer holds a residence permit).
- 2) Where the household or one of its members has not been legally and independently resident for an interrupted period of at least one year.
- 3) Where the household has not been included in the municipal register for at least six months.
- 4) Where a new member joins the household and fails to meet the age, minimum residence or registration requirements during the preceding period and does not fall within one of the categories in Article 10.1 a) 1 to 3 for which an exception is made.
- 5) Where single persons between the ages of 26 and 30 have belonged to other households in the two years preceding the claim.
- 6) Where children have moved because of changes in custody arrangements between parents.
- 7) In the highly widespread case of Roma families who, in keeping with their unconventional lifestyles, do not place their emotional ties and common-law type marriages on a formal setting.
- 8) Non-married partners who have not lived together over the five years preceding the situation of need and have not been in a formal partnership for two years or more.

The practice of the INSS in this respect is telling, as reflected in the rejections based on this argument, appended hereto as **Documents 20** (ref. 202309001) and **21** (ref. 202304001), showing the widespread refusal to award IMV to persons or households in vulnerable situations but failing to meet the strict municipal census registration criteria.

Furthermore, with regard to unmarried partners, the requirements show blatant discrimination, unrelated to the actual situation of need and applying inflexible and unwarranted criteria. Furthermore, Article 6, which defines an "unmarried couple" (*pareja de hecho*) for the purposes of IMV, does not take account of the fact that the legal definition of this situation is not standardised across the Autonomous Communities. For example, Galicia and Catalonia have their own differing regulations.

In Galicia, the third additional protocol to Law 2/2006 of 14 June on Galician civil law²⁴ equates the rights of married couples with those of unmarried couples and defines the latter as “unions of two capable adult persons, living together with the intention or aim of maintaining an emotional relationship similar to that of marriage and entered as such in the Galician register of unmarried couples, thus expressing their desire to equate the effects thereof to those of marriage”. As can be seen, there is no requirement as to the length of the union, as required in Article 6 of the LIMV cited above.

In Catalonia, such couples are considered to be formed where: a) two persons have been living together for an uninterrupted period of more than two years, not five, as required by the LIMV; or b) if during a period of cohabitation of unspecified length they have a child together; or, c) regardless of the length of cohabitation, they have formalised their relationship through a public legal document. All of this is laid down in Article 234.1 of the Catalan Civil Code (Law 25/2010 of 29 July, in the second volume of the Civil Code on individuals and families).²⁵

b.- Non-eligibility for IMV or for emergency benefit for foreigners in irregular administrative situations. Problems for foreign nationals because of residence requirements.

Similarly, the LIMV does not provide basic social assistance for undocumented immigrants as it rules out persons who cannot prove that they are legally resident in Spain and households in which one of the members is in this situation.

Spain has ratified the Additional Protocol to the Charter, but these provisions are in breach of Articles 13, E and the related articles of the Charter.

For the award of benefit, Article 10.1 of the LIMV requires them to have been legally and effectively resident for an interrupted period of one year immediately preceding the claim. This requirement applies both to the individual applicant and to all members of the household in the case of a collective claim. To establish persons’ habitual residence, the law uses the residence criteria applied in respect of non-contributory pensions (Article 271.1 f) of the LGSS), meaning that no account is taken of periods abroad of less than 90 days (as indicated in the system of obligations and penalties prescribed by the law) or of absences exceeding 90 days which are the result of a documented illness.

Exceptions to the requirement of one year’s legal and effective residence (under Article 10.1 a) of the LIMV) do not apply to foreign nationals in situations of need but to those in what are referred to as “situations of very great vulnerability”, particularly victims of gender violence, trafficking in human beings or sexual exploitation.

Fourth. Age restrictions

The LIMV establishes a minimum age limit. In May 2020, the criteria considered included a maximum age limit of 65 but this disappeared when the LIMV was adopted. The amendment is a real improvement for people of this age who cannot yet retire as the official retirement age has been pushed back.

For IMV, following numerous reforms, it has now been established that beneficiaries must be over 23 years of age (Articles 4.1 b) and 5.2 of Royal Decree-Law 19/2021).

Article 4 of the law provides:

- “1. The following persons may be awarded the minimum living income:
 - a) Persons forming part of a household under the conditions provided for in this law.

24 Available at <https://www.boe.es/buscar/act.php?id=BOE-A-2006-1456>.

25 Available at <https://www.boe.es/buscar/act.php?id=BOE-A-2010-13312>.

b) **Persons of no less than twenty-three years of age who do not form part of a household under the terms of the present law**, provided that they are neither married nor cohabiting, with the exception of those who have begun separation or divorce proceedings or those in certain other circumstances prescribed by the law.

Neither the age requirement nor the requirement to have begun separation or divorce proceedings shall be called for in the case of women victims of gender violence or human trafficking and sexual exploitation.

Nor shall this requirement apply to persons aged between 18 and 22 living in the residential centres for the protection of minors of the various Autonomous Communities, who have been wards of the state for the protection of minors for the three years preceding adulthood or are double orphans, provided that they live alone and do not form part of a household.

2. Persons using a social, welfare or health-related residential centre may also be awarded minimum living income.

The residential service benefits provided for in the preceding paragraph may be permanent for women victims of gender violence or victims of human trafficking and sexual exploitation and in other exceptional circumstances which may be prescribed by the law.

3. Beneficiaries shall meet the benefit eligibility requirements set out in Article 10 and the obligations for maintenance of benefit set out in Article 36.”

Article 5 also provides as follows:

“1. This benefit shall be payable to persons with legal capacity to claim it and request and receive it either on their own behalf or on behalf of their household. In the latter case, the designated beneficiary shall represent the household.

The claim must be signed, where necessary, by all the adult members of the household who are not under legally established decision-making support measures. Persons covered by such measures shall act in accordance therewith.

2. Designated beneficiaries who are part of a household must be at least 23 years old, be adults or emancipated minors if they have children or minors in foster care for the purpose of adoption or permanent family foster care or be double orphans if they are the only members of a household in which nobody has reached the age of 23.

If the designated beneficiary is not a member of a household, the minimum age shall be 23 unless the person is a woman victim of gender violence, human trafficking or sexual exploitation, in which case the beneficiary must be an adult or emancipated minor, or a person who was a ward of state for the protection of minors for the three years preceding adulthood, in which case the beneficiary must be an adult.

3. In the event that several persons in a household could hold such status, the designated beneficiary shall be the person to whom the benefit claimed on behalf of the household has been awarded.

4. Under the terms established by regulation, the managing body may agree to payment of the benefit to members of the household other than the designated beneficiary.”

The law provides for the following exceptions to the minimum age requirement, which have been broadened in comparison to the Royal Decree-Law:

- a. emancipated persons between the age of 16 and 18 with children or minors in their care;
- b. persons over the age of 18 or emancipated minors, regardless of civil status (married or cohabiting), if they are women victims of gender violence or human trafficking and sexual exploitation;
- c. double orphans forming a household in which nobody has reached the age of 23;
- d. persons between the ages of 18 and 22 from residential centres for the protection of minors or who were wards of state for the three years immediately preceding adulthood, i.e. from the age of 15.

This article sets an age limit on eligibility for IMV, which is incompatible with the general principle of non-discrimination enshrined in Articles 13 and E of the Charter in the terms already asserted by the ECSR in Conclusions XXI-2 (2017) and XXII-2 (2021) on Spain.

In addition, **Article 10.2** of the LIMV introduces stricter temporary residence requirements for persons under the age of 30 claiming IMV as individuals (Article 4.1 b) of the LIMV), save for victims of gender violence who have left their usual residence, persons in separation or divorce proceedings, persons between the ages of 18 and 22 from residential centres for the protection of minors, homeless persons or persons who have stopped living with their parents, guardians or foster families because of the latter's death, with the possibility of incorporating other groups into this list by regulation, where appropriate (Article 10.2 of the LIMV).

"1. All beneficiaries, whether part of a household or not, shall meet the following conditions:

(a) Be able to provide evidence of legally and actually residing in Spain continuously and uninterruptedly for at least the year immediately preceding the date of the claim. This qualification period shall not apply to:

1. Minors joining the household following a birth, an adoption, a family reunion, a guardianship pending an adoption or permanent placement in a foster family.
2. Victims of human trafficking and sexual exploitation.
3. Women victims of gender violence.

For the purposes of preserving entitlement to this benefit, it shall be considered that a person is habitually resident in Spain even if they have spent time abroad, provided that this time does not exceed 90 days per calendar year or the absence from Spanish territory is due to a duly documented illness.

(b) be in a situation of economic vulnerability because of a lack of sufficient income, resources or assets, under the terms set out in Article 11.

2. Any beneficiaries referred to in Article 4.1.b) under the age of 30 at the date of the claim for minimum living income must prove that they have lived independently in Spain for at least two years immediately preceding the date of their claim. This requirement shall not apply to persons aged between 18 to 22 from residential centres for the protection of minors of the various Autonomous Communities.

A person shall be considered to have lived independently if they can prove that they have had a different home from their parents, guardians or foster family for the two years immediately preceding the claim and that during this period, they were affiliated for at least twelve months in total to one of the social security schemes, including the state passive class scheme, or to a mutual insurance company other than the special social security scheme for self-employed workers.

Any beneficiaries referred to in Article 4.1.b) under the age of 30 at the date of the claim must prove that, over the year immediately preceding this date, their address in Spain differed to that of their parents, guardians or foster families.

The requirements set out in the preceding paragraphs shall not apply where termination of cohabitation with parents, guardians or foster parents is the result of the latter's death. Nor shall they apply to persons who are victims of gender violence who have left their habitual residence, homeless persons, persons who have begun separation or divorce proceedings, victims of human trafficking or sexual exploitation or persons in other cases prescribed by the law.

3. Where the beneficiaries are members of a household, it shall be required for this household to have been formed continuously under the circumstances provided for in Articles 6, 7 and 8 for at least six months prior to submission of the claim.

This requirement shall not apply in the event of birth, adoption, guardianship with a view to adoption, permanent placement of minors with a foster family or family reunion of minor children or in cases of women victims of gender violence, human trafficking or sexual exploitation, or in any other justified cases which may be laid down by regulation.

4. The requirements listed in the preceding paragraphs shall be met when the claim or an application for review is submitted and must still be met when the decision on the claim is issued and for as long as the minimum living income is drawn.”

For **persons under the age of 30**, a further requirement is to have lived independently for the two years preceding the claim and have been affiliated to a social security scheme for at least 12 months, whether continuously or not (this includes the state passive class scheme and mutual alternatives to the special social security scheme for self-employed workers).

In addition, persons under the age of 30 who file an individual claim for IMV must have resided legally and actually in Spain for two years.

There is no objective reason for this requirement, which further reduces access to a benefit awarded to eradicate poverty and combat vulnerability (Burriel, 2022²⁶, page 66), “despite the improvements made to the law in comparison to the initial regulations on IMV, the legislation is still not in conformity with Article 13.1 of the Charter”.

The Spanish Youth Council also denounces this clear difference in treatment in a report of 2021 (**Document 22**,²⁷ 2021) in which it refers to the Ombudsman’s reports and points out that this amounts to discrimination under Spanish law and is incompatible with Article E of the Charter.

The report states that the LIMV does represent some progress compared to previous provisions. However, as stated above, it adds further requirements for claimants under the age of 30 and especially for those between the ages of 18 and 22, who now have limited access to this benefit if they are not from residential centres for the protection of minors or are not double orphans (Articles 4.1 b) and 5.2 of the LIMV).

This report stresses that although young people were among those most seriously affected by the crisis brought on by the Covid-19 pandemic, they were not considered one of the priority groups for access to IMV. Instead, as indicated, they are subject to stricter requirements, which have no objective reason and directly exclude young people who do not fall within the exceptions established by the provision.

There is therefore a blatant breach of the Charter, as has already been emphasised by the ECSR in the case of the minimum incomes awarded by the Autonomous Communities. As stated previously, the ECSR has considered that Spain’s situation is not in conformity with Article 13.1 of the Charter read in conjunction with Article E, for two reasons, one being that entitlement to a minimum income is subject to age criteria (Spain, Conclusions XXIII, 2021). It should also be pointed out that a crisis can never be an excuse to make the rights enshrined in the Charter less effective and should in fact prompt greater efforts to support the most vulnerable groups (General Introduction to Conclusions XIX-2 [2009] and GENOP-DEI and ADEDY v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, paragraph 17).

Fifth: Discontinuity of benefits.

One of the main characteristics of IMV is its indefinite nature; it is not paid for life, only for as long as eligibility requirements continue to be met (Article 3 c) of the LIMV). Article 15

26 Burriel Rodríguez-Diosdado, P., 2022. “El desencuentro entre las rentas mínimas de las Comunidades Autónomas y el ingreso mínimo vital: decreciente protección y regulación confusa” [The gap between the Autonomous Communities’ living incomes and the minimum living income: decreased protection and unclear regulations] (in Spanish only). *Revista De Trabajo Y Seguridad Social*, CEF, (468), page 66, among others. <https://doi.org/10.51302/rtss.2022.4061>).

27 **Document 22**. Spanish Youth Council, “Ingreso mínimo vital: es justo con la juventud?” [Minimum living income: is it fair on young people], 2021, available at http://www.cmpa.es/datos/571/Ingreso_Minimo_Vital3.pdf, pages 12-16, and 29-30, among others.

strengthens this feature and sets the rules on the length of benefits while Article 16.3 provides that they should be reviewed annually on 1 January.

Beneficiaries have a series of obligations where it comes to notifying the authorities of changes in their situation, which is not unusual. For IMV the time limit is relatively short (30 calendar days under Article 15.2), but it might be expected that the legal provision on the length of IMV entitlement would be more favourable than that of most of the Autonomous Communities, thus rendering it more compatible with the ECSR's conclusions under Article 13.1 of the Charter (Conclusions XXI-2).

In practice, deadlines for the communication by beneficiaries of changes in their situation do not result in the immediate amendment of amounts, which would make it possible to avoid overpayments in some cases or to increase amounts paid immediately in others. The annual review allows for the suspension, for a whole year in standard cases or for six months in the case of a new claim, of payment to any beneficiary who, two years before, improved their situation compared to the previous year. In Madrid for example, where this criterion was in line with the Social Charter, suspension continued to apply for the period of excess income and benefit could be re-established if this period remained under one year. Changes in situations could be notified within a period of three months, corresponding to a period of adjustment, which has now been extended to a year.

Although Article 15 of the law guarantees in theory that benefit will continue for the duration of the need, there are several circumstances in which the law allows for the suspension, interruption or withdrawal of entitlement or a reduction in the amount paid, despite the continuation of the situation of poverty which prompted the claim and the award.

Articles 17 and 18 authorise the suspension, amendment or withdrawal of entitlement to IMV in the event of changes in the circumstances taken into account when it was granted.

Article 17 states as follows:

“1. Entitlement to minimum living income shall be suspended for the following reasons:

- a) temporary expiry of one of the conditions required for it to be awarded;
- b) temporary non-compliance by the beneficiary, the designated beneficiary or any of the members of the household with the obligations entered into when accessing the benefit;
- c) as a preventive measure, where there is evidence of non-compliance by the beneficiary, the designated beneficiary or any of the members of their household with the requirements laid down or the obligations entered into when accessing the benefit, and if the managing body so decides.

In any case, preventive suspension shall be applied in the event of travel abroad for a continuous or non-continuous period of more than ninety calendar days per year without prior notification of the managing body and due justification;

- d) as a preventive measure, in the event that no communication on the maintenance or amendment of the certificates referred to in Article 22 has been received within the stipulated time;

- e) non-compliance with the requirements linked to the compatibility of minimum living income with the income from work or self-employment referred to in Article 11.4, in accordance with the regulations;

- f) non-compliance with Article 36, paragraphs 1 f) and 2 c), in which case suspension will take effect where persons with taxpayer status have not met their obligation, for two successive tax years, to file a personal income tax declaration in accordance with the conditions and deadlines provided for by the applicable tax regulations;

- g) any other reason, to be determined by regulation.

2. Suspension of entitlement to minimum living income shall result in suspension of payment of benefit from the first day of the month following that in which the reasons for suspension occurred or that in which the relevant managing body became aware of them,

without affecting the obligation to reimburse overpayments. Suspension shall continue for as long as the circumstances which gave rise to it persist.

If suspension lasts for one year, entitlement to benefit shall expire.

3. Once the reasons which gave rise to suspension of entitlement have expired, entitlement shall resume ex officio or at the request of one of the parties, provided that the requirements which gave rise to the award still apply. Otherwise, entitlement shall be amended or withdrawn, as appropriate.”

And Article 18 states:

“1. Entitlement to minimum living income shall cease for the following reasons:

a) death of the designated beneficiary. However, in the case of households, any other member who meets the conditions set out in Article 6 may submit a new claim within three months from the day after the death, requesting, where appropriate, renewed entitlement to benefit on the basis of the new composition of the household. The payments to which the household may be entitled depending on its new circumstances shall take effect from the first day of the month following the date of death, provided that the claim is submitted within the aforementioned deadline;

b) the definitive expiry of one of the conditions for maintenance of the benefit;

c) a decision to withdraw entitlement taken in the course of sanction proceedings;

d) leaving the country without notifying the managing body or providing it with justification, for a continuous or non-continuous period of more than ninety calendar days per year;

e) waiver of the right;

f) one year’s suspension under Article 17.2;

g) repeated non-compliance with the requirements relating to the compatibility of minimum living income with the income from work or self-employment referred to in Article 11.4, in accordance with the regulations;

h) any other reason, to be determined by regulation.”

We consider it unreasonable to discontinue or reduce benefit when changes in a household (owing to the inclusion or exclusion of a member, the addition of income from work or other similar reasons) do not cause the situation of need to expire, or even make it worse. In such cases, the aberrant and inflexible effects of the law become apparent and have the effect of suspending benefit prematurely although there is a continuing need.

Similarly, suspension or termination is not justified in the following cases where a situation of need may persist:

1. a change in the composition of a household because of the addition or departure of a member (in the event of separation, divorce or changes in custody regimes);

2. death of the designated beneficiary;

3. an accidental change of circumstances with no effect on the household’s ongoing need.

As to suspension, the administrative procedure involves closing a file during the review procedure and opening another retroactively, which results in two files and not a single one from an accounting viewpoint.

Likewise the application of Article 28.3 of the LIMV suspends benefit despite a continued state of need:

“The National Social Security Institute shall take a decision and inform the claimant thereof within six months of the date on which the claim was entered in its register.

If no decision has been announced on expiry of this deadline, the claim shall be considered to have been rejected.”

Although decisions have a retroactive effect, these time spans are too long for those who depend on this income for their livelihood. Currently, according to some recent press articles, it can often take about a year for claims to be processed.

For annual reviews, the INSS bases itself on personal income tax data provided by the AEAT for the year in question. However, these data are provided to the INSS two years after the change in question, with the result that the INSS may amend the amounts paid or stop benefit two years after the change in the situation, thus triggering an “overpayments” procedure after these reviews.

With such a large time gap it is impossible to cater for any subsequent changes over these two years or for the objective needs of the household when the decision is taken.

Accordingly, in many cases, discontinuity of benefit owing to a halt in payments or reduction in their amount and the resultant recovery and confiscation procedures compound the problems of poverty faced by vulnerable persons.

An illustrative example of this widespread, intolerable situation is presented in **Documents 23** (ref. 202305002) and **24** (ref. 202309001), which describe the cases of beneficiaries whose benefits were reduced because of overpayments despite their continuing situation of vulnerability.

In addition, non-compliance with the statutory six-month period of silence is too frequent, and this forces persons to initiate legal proceedings, in breach of the principle of efficient proceedings in Spanish courts.

Sixth. Difference in the requirements for IMV and for other minimum income benefits

We consider that the ECSR has already expressed its views on the laws of the Autonomous Communities on several occasions, making it unnecessary to make further allegations, given that the reports describe their shortcomings in sufficient detail, although they have not yet been remedied.

However, the current co-existence of national legislation, namely the LIMV, and of regional legislation implies in practice that the regional benefits will progressively disappear.

Because of the disparity in the criteria for access to benefits from the state and the Autonomous Communities, there is a genuine shortfall in the protection afforded to the households concerned as the combination of the two incomes still fails to provide sufficient protection for persons in need, thus breaching the benefit continuity principle established in Complaint No. 48/2008 v. Bulgaria, decision on the merits of 18 February 2009, paragraph 39.

Firstly, because of the overlap of benefits.

To secure the harmonious co-existence of the two benefits in each Autonomous Community, the specific income guarantee benefit of the Autonomous Community in question must be adapted and adjusted so that the level of protection of the persons concerned is not reduced.

Since the implementation of IMV in June 2020, ten Autonomous Communities have changed the regulations governing their own minimum income benefits to varying degrees.

The following table presents the adjustments to the regulations and the nature of the income benefits concerned in each of the 17 Autonomous Communities.

Autonomous Community	Has legislation been adapted to IMV?	Subsidiarity and complementarity	Compatible with IMV?	Date on which adjustments take effect	Detailed information
Andalusia	YES	YES	NO (*)	Date of the claim	(*) Exception: Decree-Law 14/2022 came into force on 1 July 2023 and confirms the compatibility of the minimum social integration income, IMV and child support for persons in the material emergency or emergency welfare situations referred to in paragraphs 5 and 6 of Article 4.
Aragon	YES	YES	YES	Date of the claim	Regulations have been established for two types of Aragon complementary benefit, one being for persons who are not entitled to IMV and the other being awarded in addition to IMV payments.
Asturias	YES	YES	YES	Date of the final decision then payment of arrears	Article 49.4 declares labour market integration projects covering beneficiaries of the minimum social wage or IMV to be of special interest.
Balearic Islands	YES	YES	NO	Date of the final decision	Regional benefit covers persons who have claimed IMV but whose claim has been rejected because they have exceeded the income threshold.
Canary Islands	YES	YES	YES	Date of the final decision	Regional benefit complements IMV if the amount paid is less than the Canaries citizenship income (RCC). It is possible to claim RCC at the same time as IMV but there is an obligation to communicate the award decision.
Cantabria	YES	YES	YES	Date of the claim	It is necessary to have applied for IMV before claiming basic social income.
Castile and León	YES	YES	YES	Date of the final decision	Complementarity with IMV up to the amount corresponding to the number of people in the household on the guaranteed citizenship income scale.
Castilla-La Mancha	YES	YES	NO	Not specified	Governed by Law 38/2003. Claims procedure opened each year. In 2023, only persons who were already paid minimum solidarity income in 2022 could make a claim.
Catalonia	NO	YES	YES	Not specified	Subsidiarity: claims for guaranteed citizenship income must be preceded by a claim for IMV.
Valencian Community	YES	YES	YES	Date of the claim	A new law regulates Valencia inclusion income and its co-existence with IMV. Law 19/2017 has been amended and new articles added. If inclusion income amounts to 0, entitlement to vocational benefits, assistance with book purchases, grants, etc. are maintained.
Extremadura	NO	YES	YES	Date of the final decision	----
Galicia	NO	YES	YES	Date of the final decision	Subsidiarity: claims for social inclusion income must be preceded by a claim for IMV.
Madrid	NO	YES	YES	Date of the final decision	Subsidiarity: minimum insertion income may only be requested once an IMV claim has been rejected.
Region of Murcia	NO	YES	YES	Date of the final decision	
Foral Community of Navarre	NO	YES	YES	Date of the claim	
Basque Country	YES	YES	YES	Date of the claim	Refers to the European Social Charter. Introduces many changes to gear the autonomous guaranteed income benefit to IMV.
La Rioja	NO	YES	YES		

Table drawn up by ATD Fourth World on the basis of the regulations in force.

As the table shows, Andalusia, Aragon, Asturias, the Balearic Islands, the Canary Islands, Cantabria, Castile and León, Castilla-La-Mancha, Valencia and the Basque Country are the ten Autonomous Communities which have adjusted their regulations and aligned them with the provisions of the LIMV.

However, the adjustment process is very uneven in its scope, its extent and its development.

The last Autonomous Communities to have adopted regulations on their regional benefit to adjust it to IMV are the Canary Islands (December 2022) and the Basque Country (April 2023). In both cases, the legislation was fully overhauled; all of the articles were revised and aligned with IMV.

Regional benefits are subsidiary in relation to the IMV so claimants must apply for IMV before claiming Autonomous Community benefits.

In some regions, it is sufficient to file an IMV claim for processing of the regional benefit to proceed. In the Canary Islands for instance, claimants are required to notify the authorities of the decision on the IMV claim. By contrast, in Madrid, regional benefit claims can only be submitted once an IMV claim has been rejected. In such cases, the co-existence of the two procedures means that there can be periods when claimants have no cover and are denied all means of subsistence, in breach of Article 13 of the Charter.

Similarly, income benefits from the Autonomous Communities are complementary and limited by the amount of income corresponding to the number of people in the household. In other words for complementarity to operate, the amount of IMV must be lower than that of the Autonomous Community benefit.

In addition, complementary benefits make it possible to deal with several scenarios which are not covered by IMV, such as persons under the age of 23 or in the process of applying for international protection. However, protection is not effective in all Autonomous Communities.

The example of the benefit in Castilla-La-Mancha, which is governed by Law 38/2003 on grants, is particularly striking. The claim process for minimum solidarity income is opened annually, and the regional benefit is subsidiary and complementary in nature, and incompatible with IMV. In 2023, only persons or households who were already beneficiaries in 2022 could file a claim and no new claims for other benefits were accepted.

Excessive delays in the management of two benefits, the lack of co-ordination between various government bodies and the retroactive effects of the award of benefits, can result in some households receiving two benefits simultaneously for varying lengths of time, resulting in increased incomes, which are then classified as overpayments and must therefore be returned to the Autonomous Community concerned.

The complementary nature of the two benefits, which was intended to help combat household poverty, has actually had the entirely opposite effect in many households, namely even more poverty, because of overpayments, which were not announced in the award decision and which the beneficiaries were not warned about.

In other words, when households which were initially protected by the regional benefit become beneficiaries of the minimum living income and receive two benefits for several months, they are legally bound to reimburse the Autonomous Community with the amount of regional benefit paid to them for the months coinciding with IMV payments.

In the aforementioned report of 2022, the Ombudsman devotes a special section to this matter of reimbursement of overpayments, which are put down to a lack of co-ordination between administrative bodies concerning different periods and means of payment and pre-existing shortcomings, and states as follows (**Document 11**, pages 81-83):

“Reimbursement of overpayments.

The main problem raised in complaints to the Ombudsman is the inevitable overlap of regional benefits and the state minimum living income (IMV), resulting in overpayments of benefits. This is a matter which the various administrative bodies should be co-ordinating far more efficiently.

The following is a summary of the answers received to date on this issue from the Autonomous Communities:

- In Aragon, the amounts paid in respect of the Aragonese insertion income (IAI) for periods in which decisions to award IMV have retroactive effect are compatible.*
- In the Canary Islands, the aim was to mitigate insofar as possible the undesirable effects for beneficiaries of the Canaries income benefit who had been granted entitlement to IMV so as to neutralise the effects of overpayments. A new law on the Canaries citizenship income is being drawn up.*
- In Cantabria, so as to minimise reimbursements and modify the amounts of basic social income for beneficiaries of IMV, data are cross-checked every week with beneficiaries of the regional benefit. Amounts are altered automatically and where necessary a debt acknowledgment procedure is initiated. In cases where beneficiaries have received overpayments of basic social income, once the debt has been recognised and accepted, they have the choice between a one-off payment, payment in instalments or, in cases where they continue to receive this income, deductions in instalments from the benefit they are paid.*
- In Castilla-La Mancha, no reimbursement procedure has been introduced.*
- In Castile and León, weekly information is provided on the award of IMV, making it possible to initiate revision procedures automatically in cases liable to generate overpayments, resulting in the suspension of the payment of guaranteed citizenship income so as to limit the time period of overpayments giving rise to the related reimbursement. Reimbursement is facilitated and the possibility of requesting deferred or staggered payment of debt is provided for in the administrative decision.*
- In Catalonia, in cases where persons are required to reimburse amounts of guaranteed citizenship income or the related supplement, and the regional benefit is still awarded, overpayments are deducted from the supplement paid, within the same claim file, after amendment of the amount of IMV received. In the event that regional benefit was suspended because household income exceeded the threshold set for access to regional benefit or was withdrawn because of failure to comply with one of the requirements, a debt recovery procedure is initiated to reimburse overpayments. To facilitate reimbursement, payment of the debt may be spread over a period of up to 48 months.*
- In Navarre, the standard mechanisms already provided for in the regulations were applied to reimbursement. In general, overpayments are compensated for by the new amount of guaranteed income awarded and if entitlement to benefit has been withdrawn, a reimbursement procedure is set in motion with the possibility of paying by letter of payment or requesting payment by instalments. Arrears paid in the form of a single payment in January 2022 were regarded as “other” income. In cases where revision has given rise to a debt, retroactivity has not been applied, as this approach is not provided for in the regulations.*
- In the Community of Madrid, the regulations in force on the minimum insertion income provide for the possibility of deferred, interest-free reimbursement. Likewise, when the time limit for reimbursement is set, care is taken that under no circumstances will the amounts to be reimbursed exceed 30% of the predicted income of beneficiaries and their households. According to the authorities, in cases where it is noted that the revised amount is lower than that received over the financial year, the claim file is reviewed and payment is made when the person concerned so requests and has proved that they have reimbursed all the overpayments claimed by the INSS.*
- In Extremadura, if awarding or increasing IMV means that the corresponding amount of the Extremadura guaranteed income will be exceeded, it is suspended for as long as this situation persists. If the amount is not exceeded, an increase in the amount of IMV implies a reduction in the amount of the guaranteed income and vice-versa. Persons required to reimburse overpayments have one month to request payment in instalments. If the amount of IMV to be paid is reduced, guaranteed*

income is increased, and the corresponding arrears are paid in accordance with the law.

- In Galicia, compensation applies to past rights to insertion income, under the terms of the joint regularisation procedure, at the time and during the period indicated by the body responsible for the decision. Amendments to the amount of income during the period in which compensation is paid must on no account amount to a reduction of more than 50% in this income. This measure may be applied for as long as the persons concerned are still a beneficiary or it is highly probable that they will become a beneficiary again.*
- In La Rioja, for strictly legal reasons, it has been impossible to set up a compensation procedure with the INSS avoiding requests for reimbursement and ensuring that appropriate measures will be taken to minimise their impact. From the outset, requests for reimbursement of citizenship income overpayments were supposed to be made within fifteen days of the date on which IMV was awarded. As a result, in practice, payment of arrears and requests for reimbursement of overpayments coincide in time.*
- In the Basque Country, until the implementation of the procedures arising from the ninth additional provision to Law 19/2021, arrears awarded because of delays in the payment of IMV were paid as a lump sum and regarded as “other” income, making it possible to spread consideration of the amount awarded over the 60 months following the date of payment and thus preventing them from being considered overpayments. Since June 2022, the ninth additional provision has applied and, following authorisation by the beneficiaries, IMV arrears are not paid so as to be able to offset the debt corresponding to overpayments of guaranteed income.*

Minimum incomes for social inclusion.

A mention should be made of some defects in the functioning of the processing of minimum incomes besides the issue of their complementarity with IMV.

With regard to the minimum insertion income in Andalusia, there have been major delays in the processing of claims, some exceeding two years. The Ombudsman has reminded the regional ministry of its duty to process these claims as promptly and correctly as possible or to take every possible step to achieve this goal. Bearing in mind these delays, where benefits are finally granted and paid, the beneficiaries may not have requested their annual extension, as required.

As a result, a long period remains uncovered even where entitlement requirements have been met. The Ombudsman highlighted the need to remedy this problem. In reply, the Regional Government of Andalusia has stated that the delays are due to the large volume of applications received and a lack of resources, and said that it was trying to bring down processing times.

Likewise, in the Valencian Community, processing times for inclusion income claims are very long, as are those for appeals lodged by claimants whose applications are rejected. The authorities reported a large increase in the number of cases to be processed between 2016 and 2022. In some cases, it is clear that the delays are the result of the slow functioning of the local services which are supposed to pass on citizens’ claims.

For the Madrid Community, the Ombudsman recommended that the minimum insertion income be granted to European citizens holding a Spanish residence permit provided that they meet the relevant access conditions, without assessing continued satisfaction of residence permit requirements or questioning the right to legal residence accredited by a valid permit. The Directorate General of Social Services and Social Innovation (now the Directorate General of Social Services) took account of the Ombudsman’s comments and judgments 218/2019 of 29 April 2019 and 376/2019 of 12 February 2021 of the Administrative Disputes Division of the Madrid High Court of Justice and asked the office of the Solicitor General of the Community to prepare a legal report on the recommendation. This report agreed with the Ombudsman’s views, so the aforementioned recommendation was adopted by the authorities.

It should be noted that according to the case law of the ECSR, in order for States Parties to comply with Article 13, and regardless of how they implement social assistance, they must guarantee reasonable treatment in every part of their territory. This does not mean that they are expected to provide exactly the same level of assistance across the country, but it does require a “reasonable uniformity of treatment” (Conclusions 2013, Italy). However, through the IMV the Spanish state has forced the Autonomous Communities to alter their minimum incomes, reducing the level of protection provided beforehand and making the approaches in the different Autonomous Communities less uniform.

In this respect, non-compliance with the Charter is also reflected in a backsliding of rights. The ECSR considers that where, on the basis of Article 13, a minimum income is established by one of the States Parties, the amount fixed must be higher than the poverty threshold, as we mentioned above, and it should not be withdrawn as this could result in legislative regression and undermine the principle of the progressive nature of rights (ERRC v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009).

The co-existence of two different legal systems, that of the Autonomous Communities and that of the state, and the lack of co-ordination and compatibility between them, has left many people in an uncertain situation in cases where the regional rules require applications for IMV or any other state benefit which a person may be able to claim to have been rejected for that person to be entitled or continue to be entitled to a regional benefit. This is particularly worrying in the light of the excessively large number of grounds for ineligibility to IMV (Article 25 of Royal Decree-Law 20/2020, which became Article 28 of the LIMV).

Under the law, processing of IMV claims may take up to six months, but in practice it frequently takes much longer than this, sometimes up to one year. As a result, people who do not receive IMV but could be entitled to regional benefit, cannot claim it because they are still waiting for their IMV application to be rejected.

Similarly, because of their subsidiary nature, regional income benefits are granted only when the claimant is no longer entitled to IMV or when the amount of IMV is lower than that of the regional benefit. Following annual reviews, some beneficiaries stop receiving IMV but are not notified of its suspension or withdrawal. This makes it extremely difficult for such persons to access regional benefit, because they cannot provide documentation for their new situation, which is one of the Autonomous Communities’ requirements.

Managing IMV poses many problems, as attested by the following examples:

Document 25 (ref. 202306001) describes the case of a woman who has received an income benefit from the Autonomous Community and, because of the subsidiary nature of the benefit, is obliged to claim IMV.

The authorities at state level informed the regional authority that it had refused to grant IMV, but the claimant did not receive any notification at home. Because she was required to provide some certification of the IMV’s rejection to the regional authorities to continue to be paid benefit by the Autonomous Community, her benefit was stopped.

With her social worker’s help, she lodged an appeal against the rejection decision and obtained certification at last. At this point she discovered that she had been refused IMV because she had failed to fill in an income tax declaration, although she is not in fact obliged to do so.

With the help of social services, she lodged a preliminary complaint and an officially assigned legal counsel defended her in court. As stated in the judgment appended hereto, she won her case and asked the social security services to grant her the right to the benefit which should have been paid to her between June 2020 and July 2022.

For six months therefore, she did not receive any income at all because of a lack of co-ordination between the institutions concerned. Worse still, it is possible that the regional authority will attempt to recover the regional benefit, and the related interest paid to her for the period over which IMV was granted to her after the event.

Document 26 (ref. 202304001) illustrates another of the effects of the regulations on overpayments. This is the case of a woman who claimed IMV in October 2021 when Decree-Law 20/2020 was in force, and whose claim was rejected four months later. Following this, she claimed insertion income from her Autonomous Community, Galicia, in February 2022, and this was awarded to her in May. Subsequently, an amendment in the legislation allowed single persons living with other persons but not forming part of their household to claim IMV. The woman therefore made a further claim for IMV, then the allowance for persons over the age of 52 because IMV and Galician insertion income were subsidiary to other benefits.

Once these benefits had been awarded, the Galician authority suspended her entitlement to regional benefit and initiated proceedings to recover the overpayments. Under the LIMV, the beneficiary was also required to reimburse the amounts received since the award of the over-52s allowance, with the debt being deducted from her current payments.

There is a need therefore to set an order of priority establishing which authority may claim reimbursement of overpayments for periods in which several benefits were paid simultaneously. Reimbursement of the overpayments from the Autonomous Community in the form of regional benefit, resulting also in the reimbursement of IMV overpayments, will therefore be deducted from the single benefit of €463 paid in respect of the over-52s allowance - an amount which is far below the poverty threshold. Furthermore, it is very unlikely that this person will be able to claim regional benefit again given that the allowance which she now receives can be paid up to 2037, in addition to any IMV to which she may be entitled, as this is a higher amount.

Document 27 (ref. 202307001) describes another case, in the Basque country this time. Because of the subsidiary nature of regional benefit, a person was awarded IMV, which the Basque authority had required them to claim. When the person's entitlement to IMV was reviewed, they were asked to reimburse over €4 000 in overpayments in addition to being refused the regional benefit to which they were actually entitled. The Basque Ombudsman has, moreover, acknowledged the error that was made in this case.

Seventh. Time frames and procedures

The constant amendments to the legislation on IMV leading up to its current formulation in the LIMV have resulted in changes to benefit payment. Furthermore, one of the practices of the INSS could be considered to be in breach of the Charter. It stems from Article 28 of the LIMV, which is incompatible with Article 13.1 of the Charter.

"Article 28. Processing.

1. Once a claim for benefit has been received, the relevant body, before accepting the request, shall check whether beneficiaries living alone or forming part of a household, on the basis of the information given in the claim, satisfy the **condition of vulnerability** provided for in Article 10.1.b).

In the event of a **decision of inadmissibility**, which must be given **within 30 days**, a preliminary administrative complaint regarding social security benefits may be submitted, in accordance with the provisions of Article 71 of Law 36/2011 of 10 October on social judicial proceedings, and shall focus solely on the grounds of inadmissibility.

Admission of the claim shall not prevent it from being rejected if, in the course of the investigation proceedings, the supervisory body carries out new checks and finds that the vulnerability requirement set out in Article 10.1.b) has not been met.

2. Once a claim has been admitted for processing, **an investigation** into the administrative procedure shall be initiated to ascertain that the requirements for the benefit to be granted have been met.
3. The National Social Security Institute shall take a decision and notify the claimant thereof within six months of the date on which the claim is entered on its register.

If no decision has been taken on expiry of this time limit, silence shall be taken to mean a refusal.

For persons of no fixed abode registered in accordance with the technical instructions of the corresponding municipalities on the management of municipal censuses, notification shall be submitted to the municipal social services or, where appropriate, the headquarters or the centre of the body where the persons concerned are registered.

4. In cases where, after submission of the claim, the person concerned has not supplied the documentation required in the statement of liabilities provided for in Article 27.2, before giving a decision, the management body shall demand it from them. In this event, **the procedure shall be suspended for a maximum period of three months**. If the documentation required has not been presented by the end of this period, the procedure shall become **null and void**."

We would like to highlight three points in this part of the LIMV which are non-compliant:

1) As the management body, the INSS, begins by examining the benefit claim's compliance with the vulnerability requirement. In other words, it checks whether there is a genuine need or not. Within a maximum limit of 30 days after the introduction of the IMV claim, two scenarios are possible:

- a) vulnerability is established and considered to be "proven" on the face of it, in which case the procedure is launched;
- b) the INSS considers that the criterion of economic vulnerability has not been fulfilled and therefore that the claim is "inadmissible".

This decision is made without studying the documentation provided and without giving reasons. Since it is not a rejection as such, claimants are left in a legal void, and this for several reasons: they are given no reasons or any indication as to how to ask for reasons; inadmissibility can prevent payment of minimum incomes by certain Autonomous Communities which require proof of rejection of an IMV claim as these are last-resort benefits.

2) In scenario (a) above, administrative procedures are launched to assess all the documents submitted and decide whether or not the claimant is entitled to IMV. The procedure can currently take up to six months, giving rise to the undesirable effect mentioned above.

3) During the procedure, documents may be demanded from claimants before a decision is taken on IMV. In such cases, the procedure is suspended for up to three months. After this, the procedure is dropped. A new claim may be submitted but, once more, since this is not a rejection *per se*, the vulnerable situation is only prolonged.

As they are worded, paragraphs 1, 3 and 4 of Article 28 of the LIMV are in breach of

Articles 13.1 and 30 of the Charter as they compound claimants' vulnerable situations. Situations of need persist throughout the processing of claims and nor can claimants apply for minimum incomes from the Autonomous Communities during these periods.

Many of the complaints lodged with the Ombudsman against the INSS have taken up this issue and an especially relevant case is Complaint No. 20029152 of 19 April 2021:²⁸

- "Recommendation: examine, with regard to income, resources and assets, the information provided by the person concerned with a view to refuting the reasons given for rejection of an application for minimum living income for failure to meet the requirement of being in a vulnerable situation."
- "Recommendation: identify, in a broken down and detailed form, within decisions declaring a claim inadmissible or refusing to grant benefits, the income, resources and assets taken into account to decide that the person concerned does not satisfy the condition of economic vulnerability."
- "Reminder of the legal obligation: give reasons, through a brief reference to the facts and the legal grounds, for measures restricting subjective rights or legitimate interests in decisions on the minimum living income."
- "Reminder of the legal obligation: assess, in accordance with the criteria established in Law 1/2000 of 7 January on civil proceedings, all the legally admissible evidence presented by the interested party with regard to the relevant facts in the course of the minimum living income procedure."

It is important to provide reasons for decisions because, under Spanish legislation and by virtue of the fundamental right to effective protection from judges and courts (Article 24 of the Spanish Constitution), it should be possible to dispute them. If claimants wish, they may lodge a preliminary administrative complaint against the decision of the relevant body within 30 days of notification or the end of the period of administrative silence amounting to a rejection (Article 71.2 of Law 36/2011 of 10 October on social judicial proceedings). Once this complaint has been lodged, the relevant authority (in this case, the INSS) must respond to it (Article 71.5 of Law 36/2011). This preliminary complaint is a prerequisite for the initiation of judicial proceedings (Article 71.1), in which no substantial variation is permitted compared to what was expressed in the preliminary administrative complaint (Article 72). Yet, the absence of reasons from the INSS in its rejection decisions or its declarations of inadmissibility prevents the submission of preliminary appeals against the non-award of IMV and any subsequent judicial proceedings which could be instigated.

The Ombudsman pointed out in his report of 2020²⁹ that the failure of INSS to provide reasons in its decisions to refuse to award IMV was an obstacle to the submission of a judicial complaint. He considers that this practice runs counter to the purpose that the law, the case law and the doctrine of the Constitutional Court assigns to the legal notion of preliminary appeal.

Eighth. System of review and recalculation

Article 16.3 provides for a system of review and recalculation:

"3. At any event, the amount of benefit shall be recalculated with effect from 1 January each

²⁸ Ombudsman, 2021. Complaint No. 20029152. Available at www.defensordelpueblo.es/resoluciones/solicitudes-de-ingreso-minimo-vital/

²⁹ Ombudsman, Annual Report of 2020, pages 59-60. Available at www.defensordelpueblo.es/wp-content/uploads/2021/08/Las-personas-con-discapacidad-en-el-IA-2020.pdf

year with reference to the preceding year's annual taxable income. Where the change in the preceding year's income results in the withdrawal of the benefit, this shall take effect from 1 January of the year following that to which this income corresponds."

The arrangements for this review give rise to chaotic situations and genuine losses for the beneficiaries of IMV. Where the benefit is reduced or stopped but the situation of poverty or vulnerability persists at the time of the review, beneficiaries can find themselves plunged once again into a situation of extreme poverty.

No provision is made for a flexible and immediate review system when circumstances change. Notification of any such changes to the authorities is taken into account only when the annual review is conducted, as set out in Article 16.3.

The annual review system also has another specific feature which means that there is no guarantee that benefits will continue throughout the situation of need: the review is based on the data available to the authority, which relate not to the current year but to one or two years previously, depending on the date on which the beneficiary made their income tax declaration.

The Ombudsman also highlighted this point in his report of 2022,³⁰ (pages 79 and 80):

"The Ombudsman has talked to the National Social Security Institute (INSS) of his concerns about the harmful effects of the system for the recalculation of minimum living income (IMV). Recalculation is provided for by Article 16.3 of the Law on the Minimum Living Income, which states that the amount of benefit must be recalculated on 1 January each year with reference to the preceding year's annual taxable income, based on data provided by the relevant tax authorities.

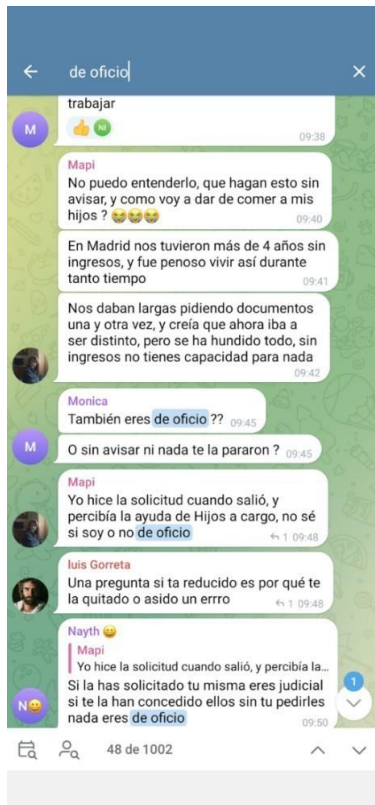
The comparison of data between the IMSS and the tax authorities regarding beneficiaries' financial situation takes several months, which is an excessive length of time meaning that beneficiaries receive an amount which does not truly reflect their financial situation for most of the year, resulting ultimately in reimbursement or the payment of arrears. The Ombudsman already highlighted this problem in his annual reports of 2021 and 2022, insisting on the fact that review decisions (leading to the withdrawal or amendment of benefit) generally do not occur before the end of November. Beneficiaries are not therefore aware of the debt they may have accrued. Even if they received a higher income the preceding year, they then find it very difficult to reimburse the benefit they received for practically the entire year as in many cases, their financial situation still places them at the level of the poverty threshold.

Even bearing in mind the complexity of managing minimum living income and the major workload this entails, which can lead to reasonable delays in the processing of all reviews and recalculations of the amount of benefit, the current recalculation method does not seem to match the aims of the benefit itself. According to information provided by the INSS, in 2021, following all recalculations, requests for reimbursement of overpayments were made in 99 690 cases."

In the light of this situation, many people cannot even be supported properly because of problems with access to social security offices.

The fact that groups are being created on social networks to try to find solutions to the various problems encountered is evidence of the lack of attention paid and explanations provided to beneficiaries.

³⁰ **Document 11.** Ombudsman's annual report, 2022, pages 79 and 80.



For example, there is a Telegram forum with about a thousand users, a hundred or so of whom are online at any one moment, where it is possible to read about the many cases of legal and personal uncertainty caused by unannounced changes concerning the award of benefit or delays in processing (see above and https://t.me/ingreso_minimo_vital).

In the search engine, there are currently 1 002 matches for the term “*de oficio*” (automatic). The term refers to a specific situation: at the end of 2022, in accordance with the first additional provision of the law, all the case files of beneficiaries of the transitional allowance awarded since 2020 were re-examined, resulting in a suspension of the allowance during the re-examination period which lasted over three months. In April 2023, some people were still awaiting a decision and receiving reduced amounts, other were receiving large sums and could not understand why (perhaps arrears) and others still were receiving nothing.

The chaos generated was reported in the media. In an article of April 2023, the digital newspaper *Infolibre*³¹ said that it had not obtained the information it had requested on overpayments for which requests for reimbursement had been issued and estimated that some 5 000 of the 74 119 claims granted automatically in 2021 had resulted in overpayments.

Article 11.5 of the LIMV is a particular case, describing the breach which we condemn:

“5. Where the requirement of economic vulnerability was not met in the previous year, it shall be possible to apply, from 1 April to 31 December of the current year, for entitlement to be granted in cases where the situation of economic vulnerability arose in the current year.

³¹ *Infolibre*, 6 April 2023, *Around 5 000 beneficiaries of IMV have had to reimburse benefit after it was automatically granted by social security services* Available (in Spanish only) at https://www.infolibre.es/economia/5-000-beneficiarios-imv-tuvieron-devolver-ayuda-concedida-oficio-seguridadsocial_1_1465524.html?utm_campaign=twitter&s=08?utm_campaign=twitter

To ascertain a situation of economic vulnerability during the current year, account shall be taken only of the income requirement deriving from the provisions of paragraph 2 of this article, having regard for this purpose to the proportionate share of income that the individual or, where this is the case, the household received during the time elapsed during the current year, according to the files and databases kept by the social security services making it possible to verify this situation or, otherwise, according to the data given in the statement of liabilities for the current year. In any case, when calculating the income for the current year, unemployment benefits or allowances, in all their forms, including active insertion income or retirement allowance received during this year shall not be taken into account, provided that when the claim for minimum living income is made, entitlement to these benefits or allowances has ended because they have lapsed or been waived or because any prescribed income threshold for continued entitlement has been exceeded and the right to the benefit or the allowance has not been maintained. This information shall be registered when the claim for minimum living income is made through an appropriate interoperable electronic system by means of which the state employment office or the body managing retirement allowance provides the National Social Security Institute with the necessary data for verification.

Likewise, it shall be required that during the financial year immediately preceding that of the claim, the individual beneficiary or, where this is the case, the household has not exceeded the income and assets limits set out in Article 20 and the first sub-paragraph of Article 21, paragraph 7, of this law, as established in Appendix IV, according to the information provided to the benefit management body by the national tax administration agency or the tax authorities of Navarre and the historic territories of the Basque Country”

According to a literal interpretation of the law, when the further obligatory review takes place two years later, the obligation to return amounts paid to the beneficiary for periods in which he/she was not entitled to them will apply regardless of this article. Therefore, in practice, such payments are tantamount to a loan without this being communicated properly in the decision and in particular without it being specified that benefits awarded and paid exceptionally must be reimbursed at a later date.

Document 28 (ref. 202305001) illustrates this situation: a claimant had to lodge a preliminary complaint after the rejection of his IMV claim in December 2021, invoking a situation of vulnerability arising in the course of the year, a scenario which the law itself provides for. In April 2022, he was awarded regional benefit, and he began receiving payments owed from the date on which the new situation arose. However, in December 2022 (i.e. one year after the date on which his right was acknowledged), the INSS withdrew this benefit, basing itself on the AEAT tax data for 2021 which were now available. A further complaint was dismissed, and the claimant now fears that the overpayments will be claimed back from him after the annual review, transforming his benefit into a loan to be reimbursed. It is possible that the debt will be deducted from his IMV, but he has now been waiting for a decision on this since December, i.e. for over six months, which exceeds the statutory time limit. Moreover, he should not have been refused regional benefit, given that the amount is higher than his income. If the authorities decide otherwise, this will have been a loan.

Document 27 (ref. 202307001) describes another case, in the Basque Country this time. Because of the subsidiary nature of the benefit, a person received the IMV which the Basque authorities required them to claim. When their entitlement to IMV was reviewed, this person was asked to reimburse over €4 000 in overpayments and the regional benefit to which they would have been entitled was withdrawn. The Basque

Ombudsman has acknowledged the error in this case and asked to have access to the relevant files.

Reviews carried out on the basis of data on situations obtaining two years earlier have resulted in numerous complaints and confiscations from households in vulnerable situations who have been accruing ever-increasing debts to the authorities. Where new benefits are awarded to them, they are used most often to reimburse these debts, rather than to alleviate their state of need.

This perfectly illustrates the paradox of a benefit which is intended to combat poverty and is based on the criteria of Article 13.1 of the Charter but instead has become a bureaucratic and legal obstacle, keeping the most vulnerable persons in chronic poverty.

Furthermore, Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 20 March 1952, ratified by Spain on 27 November 1990, establishes the right to protection of property in the following terms:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The Administrative Disputes Division of the High Court of Justice found, in judgment 1479/2021 of 15 December, that “all overpayments of benefit must be reimbursed (general rule) unless they are due to a factual or legal error by the authorities which the beneficiary could not reasonably have detected (exception), although in the latter case, reimbursement will still be required if the error relates to factual matters determining how benefit was calculated and it is requested by the authorities before the end of a one-year period after the overpayment was made (exception to the exception).”

On the subject of these cases of claims for debts for overpayments following an administrative error, the European Court of Human Rights states, in its judgment of 26 April 2018 (Section I) on *Čakarević v. Croatia*, that “while an administrative decision may be subject to revocation for the future (ex nunc), ... provided that the beneficiary has not contributed to such a decision having been wrongly made ..., an expectation that it should not be called into question retrospectively (ex tunc) should usually be recognised as being legitimate [and] capable of engaging the application of Article 1 of Protocol No. 1” (paragraphs 56 and 57).

In other words, according to the interpretation of this article by the European Court, reimbursement of overpayments may not be requested if they derive from an erroneous decision by the authorities to which the beneficiary did not contribute.

The European Court itself, in its decision on application no. 43783/98 of 13 January 2004 (*Orion-Břeclav, S.R.O. v. the Czech Republic*), confirms the pre-eminence of the guarantee enshrined in Article 1 of Protocol No. 1 on the financial obligations imposed on the authorities where moneys owed amount to an excessive burden on citizens or may undermine their economic situation.

In the same way, judgment 8392/2019 of 18 July of the Administrative Disputes Division of the High Court assesses the application of this article to the law of sanctions and holds that it is not permissible to impose administrative sanctions that are liable to place a person in a situation of economic difficulty, underlining the pre-eminence of the duty to protect citizens’ economic situations from decisions which are disproportionate

in relation to the legitimate aim pursued by the authorities.

Ninth. Compatibility of IMV with income from work

The provisions on the compatibility of IMV with income from work give rise to a form of discrimination in employment which may affect the right to earn one's living in an occupation freely entered upon.

Article 36 of the regulation provides as follows:

“g) If a person simultaneously receives minimum living income and income from work or from self-employment in accordance with the provisions of Article 11.4, they must meet the conditions for access to and maintenance of this compatibility.

h) Beneficiaries shall take part in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration and provided for in Article 31.1, under the stipulated conditions.”

Royal Decree 789/2022 of 27 September establishes the conditions for compatibility between IMV and income from work or from self-employment with a view to improving genuine possibilities of social and vocational integration for beneficiaries.

Appendix III of the decree specifies the conditions for the exemption of this income when assessing IMV:

“Brackets and percentages:

The brackets referred to in Article 4 to determine the amount of exempted income are as follows:

- Bracket 1: the amount of increases in income provided for in Article 3 up to an amount equal to 60% of the household's guaranteed income shall be fully excluded when calculating minimum living income.
- Bracket 2: the amount of increases in income provided for in Article 3 which exceed the maximum amount of bracket 1 and go up to the amount of this guaranteed income shall be subject to a percentage which shall depend on whether account was taken of the income from work or from self-employment during the tax year preceding the tax year preceding the year of review and the situation of the beneficiary in terms of whether they belong to a household or not and, if they do, the composition thereof.

Where the tax year preceding the year of review does not contain any income from work or from self-employment for any of the members of the household, the following percentages shall be applied:

1. For individual beneficiaries or households made up exclusively of adults, the exempted percentage shall be 30% save in cases where invalidity supplement is applied to minimum living income.
2. For households made up of one adult and one or more dependent minors, the exempted percentage shall be 35% save in the case of households for which invalidity supplement is applied to minimum living income.
3. For households made up of a single adult and one or more dependent minors or households for which invalidity supplement is applied to minimum living income, the exempted percentage shall be 40%.

Where in the tax year preceding the tax year preceding the year of review, one of the members of the household received income from work or from self-employment, the following percentages shall be applied:

1. The exempted percentage shall be 20% for individual beneficiaries or households made up exclusively of adults.

2. For households made up of more than one adult and one or more dependent minors, the exempted percentage shall be 25%.
3. For households made up of a single adult and one or more dependent minors, the exempted percentage shall be 30%.

The result of the application of the corresponding percentage to the amount referred to in bracket 2 shall be excluded from the income taken into account when calculating minimum living income.

- Bracket 3: the amount of increases in income provided for in Article 3 exceeding the amount of the household's guaranteed income shall not be excluded when calculating minimum living income."

We consider that these provisions force IMV beneficiaries to take up the most vulnerable temporary or low-income jobs without any guarantee of future income. The impact is most significant in those sections of the population who cannot risk losing the income this benefit represents unless they find a stable and worthwhile job with sufficient income, guaranteeing them material security in future years (in which income received will be taken into account).

The lack of regulation on what refusing work entails only reinforces this insecurity. The problem is compounded by the possibility that the percentages used to determine the amount of exempted income may change, as is provided for in the third final provision of the LIMV:

"The Ministry of Inclusion, Social Security and Migration may amend, by ministerial decree, the percentages set in Appendix III to determine the amount of exonerated income where this proves necessary in the light of the results of the biennial assessment referred to in Article 6."

Tenth. The transitional IMV

The first transitional provision established transitional IMV benefits from June 2020 to 31 December 2022 for households previously in receipt of allowance for a dependent child without a disability or with a disability of less than 33%, governed by Royal Decree 1335/2005 of 11 November, and supplementary legislation, on the pretext that the same criteria applied to both benefits:

"1. The National Social Security Institute shall, within three months from the date of entry into force of the present law, automatically award supplementary child allowance in the case of households currently receiving the allowance for a dependent child or minor without a disability or with a disability of less than 33%, in accordance with the provisions of the following paragraphs.

2. The conditions to be met on the date of entry into force of the present law shall be as follows:

- a) The household must consist exclusively of the person claiming an allowance for a dependent child or minor without a disability or with a disability of less than 33%, the other parent, if they live in the same household, and the dependent children or minors in respect of whom the said dependent child allowance is payable.

For this purpose, the persons mentioned must be the only ones registered at the same address.

- b) The income and assets of this household, for the previous financial year, under the terms established in Article 20, must be less than 300% of the thresholds specified in Appendix I and the net assets must not exceed 150% of the limits set in Appendix II, according to the criteria set in Appendix III.

- c) The other eligibility criteria for supplementary child allowance must be met.

d) The supplementary child allowance to which the claimant is entitled must be equal to or greater than the amount of dependent child allowance which the claimant was receiving previously.

3. Any person who, on the date of entry into force of the present law, was receiving the allowance for a dependent child or minor without a disability or with a disability of less than 33% shall be entitled to supplementary child allowance.

4. For the sole purpose of verifying compliance with the provisions of paragraph 2 a), for the recognition, maintenance and monitoring of entitlement, the National Social Security Institute shall have access to the co-ordinating database of the municipal registers of the National Statistics Institute, without it being necessary to obtain the consent of the persons registered at the address, as provided for in Article 21.4 of the present law.

5. For the sole purpose of verifying compliance with the provisions of paragraph 2 b), for the recognition, maintenance and monitoring of entitlement, the National Social Security Institute shall request the National Tax Administration Agency to provide it with such strictly necessary information relating to the income and assets of the households referred to in paragraph 2 a), as makes it possible to determine who is entitled to supplementary child allowance under the terms laid down in the present additional provision. Such information shall be used solely for the purposes indicated and the procedure for the exchange of information between the National Tax Administration Agency and the National Social Security Institute shall be implemented without it being necessary to obtain the consent of the interested parties.

6. In cases where the households described in paragraph 2 a) are domiciled in the Autonomous Community of Navarre or the Autonomous Community of the Basque Country, the reference to the State Tax Administration Agency in the foregoing paragraph shall be understood as a reference to the provincial tax authorities of Navarre and the historic territories of the Basque Country, respectively. In such cases, the award of supplementary child allowance shall be subject to the relevant provincial tax authorities providing the necessary information for this purpose.

7. Supplementary child allowance shall be incompatible with the allowance for a dependent child or minor without a disability or with a disability of less than 33%. Consequently, where one of the two benefits has been chosen as provided in paragraph 9, the other benefit shall be withdrawn.

8. The National Social Security Institute shall notify claimants who meet the conditions referred to in paragraph 2 of the present additional provision of the decision to award them supplementary child allowance and of their right to choose between receiving this supplement and receiving the allowance for a dependent child or minor of which they have hitherto been in receipt.

9. Within thirty calendar days following notification of the decision to award child allowance, claimants may exercise their right to elect to continue receiving the allowance for a dependent child or minor. Such choice shall be effective from the date on which supplementary child allowance takes effect and, where applicable, the appropriate financial adjustment shall be made.

If the right to choose is not exercised within the prescribed period, it shall be understood that the person concerned has elected to receive supplementary child allowance.

10. The financial effects of supplementary child allowance shall commence on the first day of the month following the entry into force of the present additional provision.

11. Beneficiaries of the allowance for a dependent child or minor paid under the social security scheme who have not received notification of the decision to award supplementary child allowance and who meet the conditions laid down in the present additional provision may ask the National Social Security Institute to award them this benefit. In that case, the financial effects of supplementary child allowance shall commence on the first day of the month following the month in which the present additional provision enters into force, provided that the claim is submitted within six months following its entry into force. Otherwise, the financial effects shall run from the first day of the month following submission of the claim.

12. The only type of oversight exercised over recognition of entitlement and obligations in relation to supplementary child allowance claims shall be ongoing financial monitoring, as provided for in Article 147.1 of Law 47/2003 of 26 November, the General Budget Law.

In any case, acts of authorisation and physical payment shall be verified as provided for in Section 5, Chapter IV, Title II, of Royal Decree 706/1997 of 16 May, which implements the system of internal oversight exercised by the general controller of the state authorities.

13. The National Social Security Institute shall refrain from automatically awarding supplementary child allowance if, in accordance with the provisions of paragraph 4, it finds that the persons referred to in paragraph 2 a) are not the only ones registered at the address and that it is therefore unable to verify that the eligibility criteria for the said allowance have been met. In that event, it may provide persons drawing the allowance for a dependent or minor with information about the possibility for the household to claim minimum living income if it meets the relevant criteria. If supplementary child allowance is awarded, its effects shall be those provided for in paragraph 10, provided that the claim is submitted within six months following the entry into force of the present additional provision.

The information referred to in the foregoing paragraph shall be sent to the electronic device, to the electronic address and to the address registered for notification purposes, in accordance with the information in the Social Security database which the person drawing dependent child allowance has provided.”

This provision has given rise to two different situations which have prompted our complaint.

First. According to paragraph 2 a) above, certain types of families and, consequently, any minors in those families, who, because of financial insecurity or simply the composition of the family, live with extended family or with other unrelated persons, are ineligible for benefit.

This is a particularly major problem among the most vulnerable sections of society and, as financial insecurity increases, it is increasingly difficult for these people to afford housing in areas where the pressures are especially acute. This means that it is very common for extended families or persons who are not related to one another to share rented accommodation.

Second. Paragraph 2 b) excludes any households where there are individuals who are not lawfully resident and who, under Article 10.1, examined above, are not eligible for the benefit. Although they retained the child allowance previously awarded, barring their access to the same level of income provided by the transitional allowance and, later, by supplementary child allowance was a form of discrimination.

The scale and seriousness of these exclusions are especially worrying at a time when, according to the report by Spain’s Economic and Social Council already referred to above (**Document 9**, page 173), “(...) vulnerability is a particular issue among unemployed people with a low level of education, the foreign population and households headed by women with children.”

Eleventh. Transitional benefits and the serious issue of overpayments

The transitional IMV benefit was automatically awarded to family units receiving the dependent child allowance, irrespective of the fact that the eligibility criteria for the two benefits were not the same. The situation was compounded by the fact that, prior to the pandemic, the dependent child allowance records were not up to date.

In practice, this situation is causing serious problems during the statutory review, in which it has been found that many households that were previously receiving this family benefit do not actually meet the eligibility criteria. As a result, benefit payments have been stopped and, worse, procedures initiated to recover overpayments.

Furthermore, income from the dependent child allowance was taken into account when calculating the amount of the transitional benefit.

Document 29 (reference 202305004) provides an example of this kind of situation. In this case the Ombudsman issued a communication on the subject of a complaint, which provides a clear picture of the problem that has been created by the legislation and chaotic administrative practices. He states that the Social Security Institute said it had delayed issuing the repayment demand until May 2022, i.e. almost two years later, so as not to include income from the dependent child allowance. However, the law was not changed in the end, and this income was actually included. The administration's action in this case resulted in a request for reimbursement of €2 617, in respect of a benefit that was awarded automatically. The debt was to be repaid in 60 instalments of €43.62, which are currently being deducted from the claimant's benefits.

During the procedures relating to these claims, most of which were made in June and October 2020, the families in question could not contact staff in the administration who could have explained to them the characteristics of this benefit, the conditions attached and their obligations. Nor are they easily able to access this information today, as the Ombudsman's Report³² points out in section 9 *"The impact of the digital divide on services to citizens"*:

"The reality confirmed by the Ombudsman, based on numerous complaints, is that those trying to navigate the social security system continue to encounter major difficulties in obtaining appointments in most provinces, either because they are not available or because of significant delays in scheduling them. The individuals concerned therefore have to make repeated attempts at different times and on different days, or find a less overstretched province outside their local area, or else use private agencies, who charge for their services.

Furthermore, when members of the public turn up at an office without an appointment, they find their way barred by private security guards who merely hand out telephone numbers, including sometimes premium-rate numbers, or only allow persons in if they insist on seeing an official. Faced with this situation, the Ombudsman has made recommendations to the Office of the State Secretary for Social Security and Pensions calling for the introduction of a system under which members of the public would be guaranteed in-person appointments. The aim is to comply with the principle of serving the public interest, which must govern the actions of public authorities, as set out in Article 103 of the Constitution, and also the principles of effective service, simplicity, clarity and efficiency in the allocation and use of public resources, as set out in the Law on Common Administrative Procedures and Public Administration.

The staffing measures adopted to date are not meeting people's need for direct contact in their dealings with Social Security. At the same time, operating virtual systems via telephone or video calls diverts resources away from in-person appointments.

The State Secretary's Office agrees with the Ombudsman that primary-level support must be provided by staff in government agencies whose main task is to receive the public. For this purpose, officials must have the necessary training, knowledge and skills. The task of providing this assistance, however, is hampered by staff shortages in the local network of services and Social Security Assistance and Information Centres (CAISS) and by the difficulty of increasing staff numbers in offices in some areas. Be that as it may, in emergencies and in order to prevent people who do not have an appointment from losing their entitlements, the individuals concerned are attended to. To remedy the vulnerability faced by people affected by the digital divide, for reasons of age, personal or financial circumstances, or lack of sufficient IT tools and knowledge, the State Secretary's Office believes that face-to-face appointments should be used to provide digital training to the individuals concerned whenever they come into contact with Social Security staff.

To this end, the Social Security General Treasury has put in place "self-service" points equipped with computers for people who cannot access digital services remotely. Despite this, the shortage of officials available to provide this service means that implementation remains patchy."

32 **Document 11.** Ombudsman's annual report, 2022, pages 86-87.

For all these reasons, when people receive demands for the reimbursement of debts for which they are not responsible and which they frequently cannot afford to repay, they do not know how to appeal against them.

In his report,³³ the Ombudsman criticises the IMV review system, and the numerous demands for reimbursement to which it has given rise, and adds that:

“According to information provided by the INSS, in 2021, after recalculations, demands for reimbursement of overpayments were issued in 99 690 cases.”

We do not know how many of these cases relate to wrongly awarded automatic benefits, but based on the number of cases reported to the NGOs that help people in this situation, we believe the figure is very high.

a) Discrimination against large families that go against children’s rights.

Discriminatory treatment of children from large families is also particularly flagrant.

Firstly, according to the scales for calculating the amount of IMV, benefit payments do not increase once there are three or more minors in a household including two adults, as is clear from the table in Appendix I to the law:

APPENDIX I

Scale of increments for calculating the guaranteed income according to type of household for the year 2020

	Scale of increments
A single adult	€5 538 (guaranteed income for a single adult)
One adult and one minor	1.3
One adult and two minors	1.6
One adult and three minors	1.9
One adult and four or more minors	2.2
Two adults	1.3
Two adults and one minor	1.6
Two adults and two minors	1.9
Two adults and three or more minors	2.2
Three adults	1.6
Three adults and one minor	1.9
Three adults and two or more minors	2.2
Four adults	1.9
Four adults and one minor	2.2

Table compiled in accordance with the corrigendum published in BOE No. 101 of 28 April 2022 (ref. BOE-A-2022-6830)

According to these scales, large families with two adults and more than three minors will not receive a higher income, as the amount is limited to 2.2 times the guaranteed income for a single adult. This ceiling disregards the fact that a higher number of members in a household, particularly where they include older people or single mothers, requires a higher level of income to support them.

33 **Document 11.** Ombudsman’s annual report, 2022, page 80.

As stated in the Ombudsman's report:³⁴

"The types of income that are excluded when assessing the claimant's economic vulnerability are those listed in Article 20.1 of Law 19/2021, which also refers to Article 7 of the Law on Personal Income Tax relating to exempt income. Welfare benefits such as the minimum living income (IMV) or regional social integration income are excluded, up to a combined ceiling of 1.5 times the Public Income Indicator for Multiple Effects (IPREM). As the Ombudsman has observed, it may be that, in some cases, the sum of a person's welfare benefits in a given year exceeds this limit."

Because the IPREM for 2023 was set at €7 200, the amount above which these benefits could be included in the means test was €10 800. Therefore, in all the scenarios covered by the above table where the increment is greater than 1.9, there is a risk that after each annual review, beneficiaries' incomes will be reduced in comparison to the amount granted the previous year. Paradoxically therefore, the amount to which they are entitled will actually correspond to that awarded when there is a lower number of minors in the household.

Twelfth. Mismanagement of the benefit

The various reports already mentioned (Ombudsman, AIREF, Economic and Social Council, media or legal writers) all highlight the inability of the IMV management system to meet expectations. These major shortcomings have greatly discredited a benefit that was intended to be a legal and social cornerstone of Spain's social security system.

a) Chaotic functioning of the IT platform and impossibility of doing things in person

The INSS has created an online platform to administer the IMV and provide supporting documents, <https://imv.seg-social.es/>.

It is claimed that the platform is simple to use, but would-be beneficiaries generally do not have the IT skills that would allow them to complete the various sections, and may not even have the right type of computer or telephone.

There are also other difficulties, such as the need for a pin code to validate the claim, and the requirement to attach scanned documents. If someone else is making the claim on behalf of the claimant, this person has to have a device capable of taking their photo and scanning their ID.

Article 12 of Law 40/2015 of 1 October requires the authorities to help citizens interact with the various services involved electronically:

"1. Public services shall guarantee that interested parties can interact with the authorities electronically, by making available the necessary access channels, as well as the systems and applications required in each case.

2. Public services shall provide assistance in the use of electronic means to any persons not referred to in paragraphs 2 and 3 of Article 14 who so request, in particular as regards electronic identification and signature, the submission of requests via general electronic registration and the obtaining of certified copies.

Likewise, if a person does not have the necessary electronic means, any identification or electronic signature requested of them during the administrative procedure may be carried out by a public official using the electronic signature system with which they are equipped for this purpose. In that case, interested parties who do not have the necessary electronic means shall identify themselves to the official and give their express consent for this action to be carried out, which shall be recorded in case of a discrepancy or dispute.

34 Document 11. Ombudsman's annual report, 2022, page 77.

3. The general state authorities, the Autonomous Communities and the local authorities shall maintain a register, or other equivalent system, in which the officials authorised to carry out the identification or signature processes provided for herein shall be entered. Such registers or systems shall be fully compatible and interconnected with those of other public authorities, for the purposes of checking the validity of the aforementioned authorisations.

This register or an equivalent system shall include at least details of the officials who work in the registration support offices.”

This laudable provision is being systematically violated during IMV procedures because the system of face-to-face appointments with the authorities that administer the benefit is completely paralysed and an online appointment system has been set up. However, as we will see below, this system does not work, making it impossible in practice for people to make appointments and hence for them to obtain assistance.

In these circumstances, some welfare organisations and local authorities have been forced to compensate for the authorities’ inefficiency. In the rare cases where such services exist at all, their quality varies according to the location, since they rely on each body’s goodwill.

b) Impossibility to make appointments

The appointment systems introduced to speed up and sort claimants’ requests for information, facilitate the submission of documents, and ease administrative management are overwhelmed, partly because the units tasked with administering IMV do not have enough staff and/or other resources.

In March 2023, the organisation CIVIO³⁵ used a robot to map³⁶ access to social security, by trying to get an appointment three times a day over a period of two weeks. Experience has shown that in 43 of the 414 offices open, there were no appointments available for pension-related formalities. The figure rises to 73 out of 394 for IMV-related procedures. When appointments were available, half were for a date at least two weeks later.

The Taxpayer Defence Council³⁷ states, in its 2023 report³⁸ on the “Appointment System of the National Tax Administration Agency”, that the shortcomings of the current appointment system call for substantial changes to its operation and also for it to be extended, and makes a wide range of proposals as to how this might be done.

c) Lack of staff and resources

The lack of resources and staff assigned to the administration of IMV in provincial social security departments leads to procedural delays, and has been repeatedly criticised by the Ombudsman, social workers and third-sector organisations. One consequence of staff shortages has been the closure of several offices in some provincial departments, including the one in Madrid.

35 Non-profit organisation specialising in monitoring the transparency of public authorities.

36 CIVIO, March 2023, *Las colas invisibles de la Seguridad Social: ni un robot consigue encontrar cita previa* [Social Security’s invisible queues: not even a robot can get an appointment] Available (in Spanish only) at <https://civio.es/2023/03/31/cita-previa/>

37 A collegiate body of the state authorities, attached to the Office of the State Secretary for Finance and governed by Article 2 of Royal Decree 1676/2009 of 13 November.

38 Report by the Taxpayer Defence Council, 2023, available at www.hacienda.gob.es/Documentacion/Publico/GabSEHacienda/CDC/Propuestas%20e%20informes/Informe-cita-previa.pdf

d) Processing delays

Political messaging to citizens promising immediate processing of IMV claims has not been followed through, triggering numerous complaints. These repeated delays have led to a change in the processing timeframe introduced by final provision 11.3 of Royal Decree-Law 28/2020, which extends the period from three to six months (Article 25.3 LIMV).

e) Incomprehensible decisions, not supported by reasons and not communicated to the persons concerned

There has been criticism from all quarters about decisions being drafted in incomprehensible language or not being supported by reasons. In addition, many beneficiaries do not receive any notification providing proof of decisions, which makes it impossible for the most vulnerable individuals to defend themselves.

f) Subjective scope of the benefit

Members of the public have raised questions about provisions which they consider to place restrictions on the range of potential claimants, for example:

1. The question of whether it is justified to exclude economically vulnerable households consisting of one adult aged between 18 and 23 years who have no minor or dependent children from the scope of IMV.
2. The possibility of having two households registered at the same address.
3. The problem of rough sleepers.
4. The creation of new households when children become part of the household of a parent who formerly did not have custody, because the other parent has died or is no longer available to provide care.
5. Exclusions applicable to company directors.

Some of these restrictions have been dealt with, in whole or in part, through successive reforms to Royal Decree-Law 20/2020 (e.g. the introduction of Article 6 bis.1.c) through Royal Decree-Law 3/2021, the amendment of Article 4.1 through Royal Decree-Law 30/2020, the removal of the restrictions on access to IMV imposed by Article 11 on directors of commercial companies if the company has not ceased trading, etc.).

g) Failure to give reasons for denial of benefits

The Ombudsman³⁹ has been highly critical of the peremptory nature of the INSS's replies to IMV claims, such as "does not meet the requisite conditions", "is part of another household" or "has income or assets and is not economically vulnerable", without giving a detailed breakdown of the income attributed or indicating its origin, the assets taken into account, the value assigned, etc.

Documents 30 (ref. 202304002) **and 31** (ref. 202305001) illustrate this situation. **Document 30** describes the case of a family awarded IMV in December 2020 in the amount of €359.29. In December 2021, their claim was reviewed using AEAT data for 2020 and it was decided to continue paying IMV in the amount of €350.42. In December 2022, a review based on data for 2021 resulted in their benefit being stopped on the ground of excessive assets, although no details of the AEAT data were given in the decision. The claimant then filed a complaint, in response to which the INSS reiterated its argument but still failed to specify the alleged origin of

39 Ombudsman's annual report, 2021, page 293. Available at www.defensordelpueblo.es/wp-content/uploads/2022/03/Informe_anual_2021.pdf

the assets or the value thereof or any breakdown making it possible to verify the validity of the decision to stop the benefit, despite having been expressly asked to do so.

h) Assessment of income

The nub of the problem is that income assessments are always conducted after a time lag as the AEAT use the previous tax year's data when assessing income and it only updates these figures in November of the year of the tax return. This means that decisions on claims for IMV are based on data relating to the situation at least one or two years before the claim.

Many complaints from members of the public also question the practice of including assets that are not available to the claimant (such as housing vacated after marital breakdowns, housing inherited under joint ownership arrangements, inheritances of which claimants are unaware, rural land, etc.).

Overpayments

Overpayments are one of the most alarming problems caused by the implementation of the LIMV. We will deal with this matter more comprehensively in the following section (no. 13 below). Here we will deal only with overpayments claimed back by the AEAT following calculations including income which, under the current legislation, should be considered fully exempt. These shortcomings are the result of information gaps and management failures.

Under Article 7 of Law 35/2006 on Personal Income Tax, some income should be considered exempt and therefore not included when calculating IMV. However, in some cases this type of income has been included in the calculation.

Thirteenth. The serious problem of overpayments

As stated in sections 10 and 11 above, the application of the transitional IMV and the system for reviewing IMV amounts can lead the authorities to demand that claimants pay back overpayments.

Article 16.3 of the LIMV provides for an annual review of the amounts of IMV benefit with effect from 1 January each year.

In its initial version, Article 19 stated that overpayments were to be repaid as follows:

“Repayment of overpaid benefits

1. The National Social Security Institute may review ex officio, to the detriment of beneficiaries, acts relating to the minimum living income benefit, provided that such review is carried out within a maximum period of four years as from the date of the administrative decision which has not been contested. In such an event, it may also, ex officio, declare benefits to have been overpaid and demand that they be repaid.

The management body may at any time rectify material or factual errors and arithmetical errors, and carry out reviews due to the discovery of omissions or inaccuracies in the beneficiary's statements, and reclaim any amounts that may have been overpaid for that reason.

In cases other than those referred to in the foregoing paragraphs, any review to the detriment of beneficiaries shall be carried out in accordance with Article 146 of Law 36/2011 of 10 October, governing social jurisdiction.

2. Where it is decided to cancel or amend the amount of the benefit because of a change in the circumstances on the basis of which it was calculated and there is no entitlement to the benefit or the amount receivable is less than the amount received, the beneficiaries of the benefit shall be bound to repay the amounts overpaid, in accordance with the procedure laid down in Royal Decree 148/1996 of 5 February, which governs the special procedure for the reimbursement of social

security benefit overpayments, and in the General Regulation on the Recovery of Social Security Benefits, approved by Royal Decree 1415/2004 of 11 June.

Beneficiaries and any other persons who, by virtue of acts, omissions, commercial or legal acts, participate in the fraudulent obtaining of a benefit, shall be jointly and severally liable for the reimbursement of any benefits overpaid.

All jointly and severally liable persons shall be liable for the principal, surcharges and interest claimable from beneficiaries and for all costs incurred in recovering the debt.

3. Notwithstanding the provisions of the foregoing paragraphs, in any given financial year, amounts not exceeding 65% of the monthly amount of non-contributory pensions shall not be claimable where the household includes at least one beneficiary who is a minor.

Only if the amount overpaid to the household exceeds 65% of the above-mentioned indicator shall the National Social Security Institute initiate the procedure for reimbursement of benefit overpayments in order to demand the return of the difference between the amount that is not claimable and the amount overpaid.

The date taken into account to determine whether there are minors in the household shall be that on which the change in the amount or the cessation of the benefit takes financial effect.

4. In the cases provided for in the preceding paragraphs, once the time limit for voluntary payment has elapsed without the debt having been settled, the appropriate surcharges shall be applied and default interest shall begin to accrue, without prejudice to the fact that the latter shall be due only for the period of enforced recovery. Where the legislation so provides, the management body may agree to offset the debt against the monthly payments of the minimum living income up to a certain maximum percentage of each monthly payment.”

Accordingly, where it is decided to stop or amend the amount of the benefit because of a change in the circumstances on the basis of which it was calculated, recipients of the benefit will be required to pay back any overpayments. Repayment is to be carried out in accordance with the procedure provided for in Royal Decree 148/1996 of 5 February, which governs the special procedure for the reimbursement of social security benefit overpayments, and which is expanded upon in the General Regulation on the Recovery of Social Security Benefits, approved by Royal Decree 1415/2005 of 11 June.

Under Article 19 of the LIMV, beneficiaries and any other persons who, through acts, omissions, professional or legal acts, participate in the fraudulent obtaining of a benefit are jointly and severally liable for the reimbursement of benefit overpayments.

Any person who is jointly and severally liable is liable for the principal, as well as any surcharges and interest claimable from the beneficiaries, and for all costs incurred in recovering the debt.

According to the new wording of Article 19.3, amounts up to 65% of the monthly amount of non-contributory pensions will not be claimable in any given financial year when there is at least one minor in the household.

The new rule sought to partially fill the gaps in the original one and take account of any minors in the household. However, under the ninth transitional provision of the Royal Decree-Law amending the above-mentioned article, the law does not apply to events that occurred prior to its entry into force.

Furthermore, the third additional provision of Royal Decree 789/22 of 27 September (BOE No. 233 of 28 September 2022) contains the following rules in relation to overpayments:

“Where, for the purpose of granting entitlement to the minimum living income or for the annual recalculation of its amount, the tax information relating to annual income for the previous year to which the National Social Security Institute has access, as provided for in Article 21.7 of Law 19/2021 of 20 December establishing the minimum living income, is provisional, the said management body may approve or amend the amount of the benefit on a provisional basis, taking this information into account.

If this information is subsequently amended and it transpires that, on the basis of the new data, the amount of the entitlement provisionally approved or reassessed should be different, the corresponding final decision shall be made.

If the provisional tax information is not amended, the provisional decision shall become final on 31 December of the year in which entitlement was recognised or the amount was recalculated.

Where the recalculation of entitlements based on the updated tax information indicates that the amounts paid are higher than those to which the beneficiaries were actually entitled, the difference between the two may be reimbursed directly by deducting it from the amount of any minimum living income which is to be paid pursuant to the final decision, it being guaranteed nonetheless that the beneficiaries will be entitled to payment of 30% of this amount per month. Such offsetting shall apply only where the total amount overpaid can be deducted over a maximum period of twelve monthly payments while taking account of the aforementioned guarantee. Otherwise, the general or special procedure for the recovery of social security benefit overpayments shall be applied, as appropriate.

Where, following the application of the offset referred to above, and before the overpaid amount has been deducted in full, a new variation in the amount of the minimum living income benefit occurs for the reasons stated in this additional provision, that variation may give rise to a recalculation of the amount subject to offsetting together with the applicable monthly deduction, on the basis of a new twelve-month period and the 30% guarantee applied to the new benefit amount.

The amounts overpaid, the monthly deduction and the period for which offsetting is to apply shall be communicated to the person concerned together with the final decision issued in accordance with the second paragraph of this additional provision."

This provision introduces an exception to the ordinary direct offsetting procedure for amounts to be repaid to social security. In the general system for dealing with debts relating to other social security benefits (such as unemployment benefit and pensions), no more than 20% of monthly benefit payments may be deducted, whereas for IMV, the figure is 70%. In our opinion, this difference in treatment is clear evidence of a desire to discriminate against the poorest population groups.

The general system of social security compensation is governed by Royal Decree 148/1996 of 5 February 1996 establishing the special procedure for the recovery of social security benefit overpayments, the practical arrangements for which are set out in the ministerial decree of 18 July 1997. This text implements the exception to the prohibition on applying offsets or deductions to the benefits provided for in Article 40.1 b) of the LGSS.

The rules for determining offsets or deductions to be applied to subsequent monthly benefit payments are based on gross amounts, depending on the benefit received and according to quantitative limits.

Deductions are subject to restrictions and percentage limits, which do not relate to the interprofessional minimum wage, but to percentage limits on the allowance received (SSTS 22 October 1998, 20 December 1999). These limits are as follows (Article 4 of Royal Decree 148/1996):

- Between 21% and 30% if the amount of the benefit is equal to or greater than half the maximum pension established at the time.
- Between 15% and 20% if the amount is less than the amount indicated in the previous item but is equal to or greater than the amount set for the maximum benefit.
- Between 10% and 14% if the amount of the benefit is less than that indicated in the previous item.

The system for dealing with overpayments has created serious problems on two fronts:

- 1) A generic problem arising from changes in what is taken into account when assessing eligibility for IMV.
- 2) The specific case of households to which IMV was awarded automatically through the transitional IMV scheme set out in the first transitional provision of the law.

1) Generic case:

Overpayments of a generic nature may arise in three cases:

- a) Beneficiaries of regional income benefits, who applied for the IMV, either on their own initiative or at the request of the regional administration, and who, once awarded IMV, are required to return the amounts of regional income received during the period for which the IMV was backdated.
- b) Beneficiaries of IMV who continue receiving regional income benefits because of delays in processing their withdrawal.
- c) Beneficiaries of IMV whose income changes.

In any case, the fact that recalculations are carried out up to two tax years in arrears, and any changes of circumstances reported by beneficiaries do not result in benefit payments being reviewed and amended straightaway, leads to substantial overpayments, which the authorities will then claim back, along with surcharges, interest and costs.

The consequences of this system of recovering overpayments are enormous for disadvantaged families because it obliges them to reimburse sums relating to events that occurred one or two years earlier and when they receive such demands, they do not have the necessary income to meet their own needs.

The law requires that any changes that may affect entitlement to the benefit be reported within one month. Despite this, the authorities, instead of acting immediately on the information, wait for the annual recalculation provided for in Article 16 of the LIMV. This lack of diligence on the part of the authorities has the effect of prolonging the time needed to deal with overpayments, which is something that has been criticised by the Ombudsman.⁴⁰

These debts therefore are, to a large extent, the result of administrative malfunction rather than any deliberate intent on the part of the beneficiaries.

Because of the way the system is designed, in practice, changes that should result in the IMV benefit being modified or stopped are not taken into account until two tax years after the event, even in cases where the beneficiaries reported the change in their circumstances straightaway.

This mismanagement has led to the opening of cases for overpayments, plus interest and costs, for sums of thousands of euros in total paid over periods of a year and a half or two years. Families are jointly and severally liable and carry the burden of debt until it is repaid in full.

Paragraphs 3 and 4 of Article 19 of the LIMV provide for an exemption of up to 65% for families with at least one child, which eases the burden for many families. However the decision not to extend this exemption to families with elderly members, persons with disabilities or other particularly vulnerable individuals specifically protected by the Charter is hard to understand.

In our opinion, and although the existence of a system for recovering overpayments to avoid fraud is not in itself an obstacle, the way in which this system is regulated in the context of IMV and regional income benefits and implemented in practice does not meet the requirements arising from Article 13 of the Charter because:

40 Document 11. Ombudsman's annual report, 2022, pages 79 and 80.

- it is a contributing factor in putting highly vulnerable households at risk of exclusion;
- it fails to take into account the impact on individuals and families who are vulnerable and living in poverty of having a percentage of their benefits deducted, leaving them with an income below the poverty line;
- it discriminates against IMV beneficiaries by requiring them to offset up to 70% of the number of benefits they receive against the debt, whereas with other social security benefits, the general rule is that any such offset should not exceed 20%;
- it leads to delays in amending benefit amounts, leaving the families concerned with debts that it is impossible for them to repay, plus surcharges, costs and interest for the period during which the authorities themselves failed to act diligently;
- it creates a situation where all members of the household, including minors, people with disabilities, elderly people, vulnerable people and other groups entitled to special protection are held jointly and severally liable for debts for which there is no statute of limitations;
- it treats households unequally and discriminates against them where the event that triggered overpayments occurred before 1 January 2023, depriving them of the benefit of the exemption from debt of up to 65% provided for in Article 19.2 of the LIMV because of the non-retroactivity rule introduced by Article 81 of Royal Decree-Law 20/2022 of 27 December;
- it discriminates against households with members who belong to other vulnerable or specially protected groups, such as persons with disabilities, the elderly, those suffering from incurable diseases, etc. by depriving them of the exemption from debt of up to 65%.

2) Specific cases resulting from the transitional scheme

Although we do not have reliable data on the number of families receiving other benefits who automatically became beneficiaries of IMV under the transitional scheme, we believe that more than 300 000 people may have been affected by this automatic measure.

As explained above, because the data taken into account for the purpose of automatically awarding the transitional IMV were completely out of date, a high percentage of these awards were made to economically vulnerable families who:

a) did not meet any of the criteria set out in the new law because their circumstances had changed;

b) qualified for the initial benefit but did not meet one of the conditions for the new benefit because the eligibility criteria were not exactly the same (inclusion in the census, time limits, or irregular administrative status of a household member, etc.).

The scope of the problem is such that 40 000 affected individuals have signed a petition calling for overpayment debts to be cancelled because of the poverty and exclusion they engender, in particular for families with minor children and people with disabilities, as described in an article published by Europapress.⁴¹

⁴¹ Europapress, 11 July 2023, *Afectados por el IMV denuncian que se les reclaman cobros indebidos de hasta miles de euros* [People affected by the IMV complain they are receiving demands for overpayments running into thousands of euros]. Available (in Spanish only) at

To compound the impression that beneficiaries are being harassed by the authorities, José Luis Escrivá, who is the head of the ministry which oversees IMV, has introduced a financial bonus to encourage officials to pursue overpayments, as reported in the press.⁴²

Even more serious, there has clearly been discrimination in relation to other IMV beneficiaries who received overpayments, because, the exemption from debt of up to 65% of the monthly amount of benefits provided for in paragraphs 3 and 4 of Article 19 of the LIMV is not retroactive, in accordance with Article 81 of Royal Decree-Law 20/2022 of 27 December, which introduced this amendment. Accordingly, in procedures for the reimbursement of benefit overpayments declared and demanded before this Royal Decree-Law entered into force, the legislation in force on the date of the reimbursement demand will apply.

Consequently, these transitional-phase overpayments, generated before the 2022 reform, continue to affect all members of the household, whether they include minors or not, jointly and severally until the debt is settled in full.

No less distressing is the case of persons who had previously been receiving a benefit which they then lost “automatically” when they were awarded IMV. In many cases their IMV entitlement was subsequently withdrawn because they did not meet the conditions, and they are now subject to an overpayments recovery procedure. However, this does not necessarily mean that they are now paid their initial benefit again, although this is a right they enjoyed and was granted to them by the same authorities who manage IMV. They thus find themselves having to repay a substantial debt for a benefit to which they were not entitled.

Accordingly, in the case of the transitional IMV, the requirements of Article 13 of the Charter have not been met either, neither in the generic case nor for persons to whom IMV was awarded automatically. The latter moreover are doubly affected, having lost their entitlement to dependent child allowance and now being ineligible for the exemption of up to 65% for households with children governed by the current Article 19 of the LIMV, in accordance with the exclusion provided for in Article 81 of Royal Decree-Law 20/2022 mentioned above.

Fourteenth. Impact on people in situations of severe vulnerability

The situations described above are even more serious when they affect people or households with exceptional profiles, who are especially vulnerable or need special protection, namely minors and young persons, non-nationals, ethnic minorities, people with disabilities, elderly people, large families and immigrant families.

Such groups are entitled to enhanced protection under the Charter, in accordance with Articles 15, 16, 17, 27, 30, 31 and E.

We will deal with these particular situations when examining the violations of each of these articles.

<https://www.europapress.es/epsocial/igualdad/noticia-afectados-imv-denuncian-les-reclaman-cobros-indebidos-miles-euros-20230711184109.html>

42 El Independiente, 7 June 2023, *Escrivá crea una prima para los funcionarios que recuperen cobros indebidos del ingreso mínimo vital* [Escrivá introduces a bonus for civil servants who recover IMV overpayments]. Available (in Spanish only) at

<https://www.elindependiente.com/economia/2023/06/07/escriva-crea-una-prima-para-los-funcionarios-que-recuperen-cobros-indebidos-del-ingreso-minimo-vital/>

IV. VIOLATIONS OF THE CHARTER

To substantiate the allegations of violations complained of here, we will now examine the relevant case law and legal literature. To this end, we will carry out a detailed, ordered analysis of each of the articles which, in the opinion of the complainant organisation, are not complied with in Spanish law or practice in the concrete circumstances presented in the preceding section.

First. Violations of Article 13

The LIMV infringes Article 13 in several respects:

a) Lack of adequate income:

Article 13.1 provides that the income required to secure an adequate level of social assistance must meet the standard of adequacy set by the case law of the ECSR at 50% of the median equivalised income.

As indicated in section III.2, in Spain the guaranteed level for a single person is €565.37 per month and increases progressively depending on the number of household members, subject to a cap of €1 244.69, which applies even if the household is made up of more than five members.

In addition, as the criterion of adequacy is linked, *mutatis mutandis*, to social security levels, it must be raised progressively to a higher level, as indicated in Article 12.3 of the Charter. IMV is an integral part of the Social Security system and a response to the requirements of Article 41 of the Spanish Constitution.

This level of adequacy may only be revised downwards in exceptional critical cases and according to certain criteria established by the ECSR. In such cases it is necessary to examine the possibility of employing less onerous measures and consult the groups concerned in order to combat excessive and disproportionate hardship among vulnerable persons. The ECSR asks instead that states redouble their efforts to promote the implementation of social rights as the needs of persons in vulnerable situations are exacerbated in times of crisis, as the ECSR stated in its decisions of 23 May 2012 on the merits of Collective Complaints Nos. 65 and 66/2011, GENOP-DEI and ADEDY v. Greece, and the decisions of 7 December 2012 on Complaints Nos. 76 to 80/2012, IKA-ETAM and Others v. Greece.

In paragraph 63 of the decision of 9 September 2014 on the merits of Complaint No. 88/2012, Finnish Society of Social Rights v. Finland, the ECSR reiterates that basic social assistance, if financial in nature, cannot be set at levels below 50% of the median income of each country and that Finland is not in conformity. Paragraph 113 of this decision, which refers to Conclusions 2014 on Lithuania or, more recently, to Conclusions XXII-2 (2021) on Denmark, takes the same line. In the latter conclusions, the amounts of allowances paid to persons under the age of 30 and the living wage for single persons were found to be inadequate.

The ECSR referred, in Conclusions XXI-2 (2017) and Conclusions XXII-2 (2021) on Spain, to the non-conformity with Articles 12 and 13 of the Charter of the minimum income, equivalent to the current IMV, and of non-contributory benefits in general, as they were less than 50% of the median equivalised income.

In Conclusions 2021, the ECSR stated as follows:

“[According to Eurostat], the poverty threshold, set at 50% of the adjusted median income ..., was ... €626 [per month].

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.”

This is a flagrant violation of Article 13.1 of the Charter as the amount of IMV awarded is around 15% lower than the median equivalised income in the case of a single adult and this percentage increases as the number of people in the household grows.

Furthermore, the increment in the amount depending on the number of household members, is limited to 2.2 times the amount paid to a single adult. This means that although their expenses are higher, the benefit paid to families living in poverty with over five members cannot exceed this limit.

b) Legal residence

The restrictions on legal residence described in section III.3 are also in breach of the Charter, pursuant to the ECSR's case law on equal treatment, or rather the requirement for "reasonable uniformity of treatment" (Conclusions 2013, Italy).

Such practices are incompatible with the requirements of Article 13 of the Charter, which provides that benefit must not be limited in time or made subject to the satisfaction of temporary residence requirements, but simply granted in immediate situations of vulnerability or risk. Therefore, benefit must be awarded as soon as persons find themselves in a situation giving rise to entitlement to a minimum subsistence income.

Article 13.4 of the Charter clearly asserts that states must grant this right universally without limitations or criteria based on the nationality of individuals or on their migration status. Nor does the Spanish legislation comply with Article E of the Charter, which is closely linked to Article 13 and establishes the right to non-discrimination. Article 13.4 also establishes reciprocity on the basis of the 1953 European Convention on Social and Medical Assistance. Social assistance must be granted exclusively on the basis of need (ERRC v. Bulgaria, Complaint No. 48/2008, decision on the merits of 18 February 2009, paragraph 38), and other restrictions not provided for in the Charter must not be imposed.

In accordance with the requirements arising from this article, social assistance must be provided for as long as the need persists, without conditions or time limits, and having regard solely to the criteria of necessity and the availability of resources to the authorities.

This is recognised both in the reports on Spain (Conclusions XXI-2 (2017), Conclusions XVI-I (2003) and Conclusions X-2 (1990)) and in the Digest itself. The system of assistance provided for must be universal in the sense that benefits must be paid to "any person" on the sole ground that the person concerned is in need (Conclusions XIII-4 (1996), Statement of Interpretation on Articles 12 and 13).

Individual need is the main criterion for the award of benefits, which are payable on the sole ground that the person is in need (Finnish Society for Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, paragraph 110). Establishing a length of residence requirement throughout the country or part of its territory, or excluding from social assistance people who have lost their jobs, is incompatible with Article 13.1 (Conclusions XVIII-I (2006) on the Czech Republic and Conclusions 2013 on Bosnia and Herzegovina).

Failure to award the minimum living income benefit or emergency benefits to foreigners in an irregular administrative situation. Difficulties for foreign nationals due to the residence requirement.

Although the additional protocol was ratified on 17 May 2021 by the instrument of 11 June of the same year, it was published in the BOE on 28 June 2021 along with a statement that its application would only be "provisional". As leading legal commentators have pointed out

(Salcedo Beltrán, C., 2022),⁴³ provisional approval of this international treaty is not possible. On 2 November 2022, a new ratification was published in the BOE. Legal writers (Burriel Rodríguez-Diosdado, P., 2022)⁴⁴ have been highly critical of this strange and unnecessary ratification process, believing that it could be used as justification for the fact that the LIMV fails to afford equal protection to foreigners in an irregular administrative situation, as guaranteed by Article 13 of the Charter.

The new ratification includes a reservation to the treaty that is not lawful, in that it excludes foreigners in an irregular situation from its scope whereas, under Article 19 of the 1969 Vienna Convention and Article 21 of Law 25/2014, a reservation or interpretative declaration may not be entered if it is incompatible with the object and purpose of the treaty. It may be entered in the event of an incompatibility with domestic law but that is not the case here. This therefore is clear evidence of Spain's refusal to comply with Articles 13, 19 and E.

It is clear therefore that Article 10.1 of Law 19/2021 is incompatible with Articles 13.1 and 2 and 19 and E of the Charter, as was already stated by the ECSR in its Conclusions of 2019 on Spain with regard to minimum incomes, in which it was pointed out that a 12-month residence requirement is not in keeping with Article 13.1 of the Charter. These conclusions also insist on the fact that social assistance must be provided as long as the need for assistance persists, without conditions or time limits, and having regard solely to the criteria of necessity and the availability of resources to the authorities (i.e. in this case, the Autonomous Communities). Secondly, according to Conclusions XXI-2 (2017) under Article 13.2 of the Charter, it was necessary to eradicate all discrimination against people receiving social assistance. Conclusions XXII-2 (2022) under Article 13.1 make the same point with regard to regional minimum income benefits and state that the minimum length of residence to be eligible for benefit is not in conformity with the Charter.

Although the complaint concerned health services and basic medical care for irregular migrants, we believe that the decision of 11 September 2012 on the merits of Complaint No. 67/2011, *Médecins du Monde - International v. France*, also applies here by analogy. In this decision, it was found that French legislation was in breach of Articles 13.1 and 13.4 and hence Article 30 of the Charter.

Furthermore, Conclusions XVIII-1 (2006) on Belgium states that assistance services must not be reserved by law to nationals or to certain categories of foreigner. Nor may any conditions be imposed that are harder for foreigners to meet than for nationals (*Médecins du Monde - International v. France*, Complaint No. 67/2011, decision on the merits of 11 September 2011, paragraph 176). Consequently, the length of residence requirement imposed by Article 10.2 cannot be justified (Conclusions XVII-1 (2005) Denmark).

Similarly, no condition may be imposed as to length of stay for the award of emergency assistance (Conclusions XIV-1 (1998), United Kingdom, and European Federation of National Associations Working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, paragraph 171), and nor should it be necessary to be

43 Salcedo Beltrán C., 2022. "La efectividad de la Carta Social Europea en la Cañada Real Galiana: análisis jurídico de las pioneras medidas inmediatas instadas al gobierno español por el Comité" [The effectiveness of the European Social Charter in Cañada Real Galiana: legal analysis of the pioneering immediate measures requested by the Committee from the Spanish government], *Lex Social : Revista De Derechos Sociales*, 13(1), p. 4. Available (in Spanish only) at <https://doi.org/10.46661/lexsocial.7566>

44 Burriel Rodríguez Diosdado P., 2022. La Carta Social Europea: la importancia de los derechos sociales y su efectividad sobre la mesa [The European Social Charter: the importance of social rights and their effectiveness on the table], *Revista Catalana de Dret Public Blog*. Available (in Spanish only) at <https://eapc-rcdp.blog.gencat.cat/2022/12/14/la-carta-social-europea-la-importancia-de-los-derechos-sociales-y-su-efectividad-sobre-la-mesa-pepa-burriel-rodriguez-diosdado/>, s/p

resident (Conclusions XIV-1 (1998), Statement of Interpretation on Article 13.4, and Conclusions VII (1981), Statement of Interpretation on Article 13.4).

Foreign persons, if lawfully resident or working regularly within the territory of the State Party, must have an individual right to adequate assistance on an equal footing with nationals (Conclusions XIII-4 (1996), Statement of Interpretation on Article 13), irrespective of any reciprocity (Conclusions VII (1981), Statement of Interpretation on Article 13).

c) Age restrictions

The age restrictions examined in section III.4 are also in breach of the Charter pursuant to the ECSR's case law on equal treatment, or rather to the requirement for "reasonable uniformity of treatment" (Conclusions 2013, Italy).

d) Discontinuity of benefits

The restrictions on continuity of benefits highlighted in section III.5 are incompatible with Article 13 of the Charter because they open the door, through Articles 17 and 18 of the LIMV, to discontinuity of benefits.

In the ECSR's opinion, the assistance to be granted under Article 13.1 of the Charter must be universal and provided as soon as a person is without adequate resources (2013, Bulgaria); it must also continue for as long as the situation of need persists and cannot be subject to time limits (Conclusions XXI-2 (2017) and Conclusions XXII-2 (2021)). Necessity must be the sole criterion for refusing, suspending or reducing assistance (Conclusions XVIII-1 (2006) Spain and Conclusions 2017, Slovak Republic).

Furthermore, reducing or suspending social assistance benefits can only be compatible with the Charter if it does not deprive the person concerned of their means of subsistence. At a minimum, people should be able to access emergency assistance (Conclusions XIV-1 (1998), Statement of Interpretation on the article, and Conclusions 2006 and 2009, Estonia).

In Spain, suspending payment of benefit to households without other resources and the excessive time taken by the authorities to resolve problems (which has been criticised by the Ombudsman, the Economic and Social Council, the AIREF, civil institutions and NGOs) has led to people being deprived of all means of subsistence, with thousands of families being condemned to severe poverty, resulting in a perverse combination of institutional mistreatment and convoluted regulation.

Equally problematic are the limits on enjoyment of the right to IMV, such as suspension or cessation of entitlement (Articles 17 and 18 of the LIMV), and obligations on beneficiaries (Article 36), non-compliance with which is an offence and carries penalties (Articles 38 and 39).

Any renunciation of the rights provided for in Article 18 of the LIMV, as a reason for termination, must be accompanied by appropriate safeguards: if enjoyment of IMV is an expression of the indivisibility of all the rights referred to in Article 13.2 of the Charter, which states that "with a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake: [...] 2. To ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights", it must be rigorously ensured that the principle of the inalienability of fundamental rights is not violated. As is reiterated in European case law, political and economic freedom are fundamental rights and hence inalienable, and the one is impossible without the other (COHRE v. France, Complaint No. 63/2010, decision on the merits).

Consequently, Articles 17 and 18 and related articles of the LIMV are incompatible with Article 13 of the Charter insofar as they do not prohibit any suspensions, modifications or terminations that may lead to the person being deprived of their means of subsistence.

Article 28 of the LIMV is also incompatible, for reasons outlined above.

e) Difference in the requirements for IMV and for other minimum income benefits

The legislation of the Autonomous Communities on minimum income, which was addressed in the various reports on Spain referred to above (Conclusions X-2 (1990), XVI-I (2003), XXI-2 (2017), XXII-2 (2021)), has not changed, so the shortcomings identified in that legislation are still present.

Since these Conclusions have already examined these shortcomings, we will not go into any further details.

The disparity in criteria and regulations described in section III.6 is at odds with the criterion of continuity of benefits recognised in the decision of 18 February 2009 on the merits of Complaint No. 48/2008, *ECCR v. Bulgaria*, paragraph 39.

The case law of the ECSR likewise establishes that in matters of social assistance, the objective criteria for awarding benefits must be prescribed by law (Conclusions XIII-4 (1996), Statement of Interpretation on Article 13): everything must be established from the outset, and the authorities should not be given the discretion to assess the state of need of the person or persons applying for assistance.

f) Time frames and procedures

The practices described in section III.7 are contrary to the spirit of the Charter.

The failure to give adequate reasons for denying IMV claims or to make a decision within the prescribed time are practices which are incompatible with Article 13.1 of the Charter and the principle of effective judicial protection. The right enshrined in Article 13.1 of the Charter imposes an obligation on states which they may be called on in court to honour (Conclusions I (1969), Statement of Interpretation on Article 13). This implies that there must be a right to appeal before an ordinary court or an administrative court along with a number of guarantees for the protection of this right to social assistance (*Conference of European Churches v. the Netherlands*, Complaint No. 90/2013, decision on the merits of 1 July 2014, paragraph 106, and *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, paragraph 187).

g) Procedures for the recovery of overpayments under Article 19 of the LIMV

Article 19 of the LIMV, which provides for the recovery of overpayments, is at odds with the obligation of states to ensure that any person who is without adequate resources and unable to secure such resources either by their own efforts or from other sources is able to obtain adequate assistance for as long as the need persists (*ERRC v. Bulgaria*, Complaint No. 48/2008, decision on the merits of 18 February 2009, paragraph 39).

It should be noted that, according to the case law of the ECSR, individual need is the only permissible condition for entitlement and therefore the only ground for refusing, suspending or reducing the amount of benefits is that not enough resources are available (Conclusions XVIII-1 (2006), Spain).

The system for recovering overpayments is incompatible with Article 13 of the Charter, as applied to households which continue to be in a state of need. In such cases, the incomes of these households may be reduced, either through enforcement measures if they have income of their own through or offsetting if they are still receiving IMV or another state benefit. As a result they find themselves below the poverty threshold.

These situations are made even more serious by the fact that, under the Spanish legislation examined above, decisions to modify or stop IMV may be taken even when there is an ongoing

need and a lack of adequate resources. They can in fact be taken in response to changes in the household's circumstances that are unrelated to lack of resources, such as a member of the household losing their residence permit or earnings from work performed for a few months in the previous two years before returning to the same situation of hardship.

Similarly, the full exercise of Article 13.1 of the Charter is hampered by the fact that all members of the household are considered jointly and severally liable for the debt (for which, incidentally, there is no statute of limitations) until it is cleared.

Even more critical is the fact that there is no mention in the legislation on the recovery of these overpayments of the social criteria through which it is possible to assess the effects of these procedures on households or the particular circumstances of certain groups, such as large families, victims of trafficking or gender violence, people with disabilities, the elderly, etc.

This lack of regulatory fine-tuning is doubly illustrated by paragraphs 3 and 4 of the Article 19 introduced by Royal Decree-Law 20/2022. Firstly because, under this legislation, the exemption of up to 65% of the debt applies only to families with minors (while discriminating against other groups entitled to special protection, which should be covered by the same measure). Secondly, because Article 81.2 rules out the consideration of facts prior to 1 January, and this amounts to a breach of Articles 30 and E of the Charter. Most overpayments are the responsibility of the authorities, which automatically awarded benefits to persons who did not meet the relevant criteria or spent too long processing claims, giving rise to overlapping periods in which regional benefits were paid at the same time as IMV was awarded retroactively.

Second. Violation of Article 1

Article 36 of the LIMV, taken in conjunction with the final provision of Royal Decree 789/22 of 27 September and Appendices II and III thereto, as analysed in factual terms in section III.9, may be in breach of Article 1 of the Charter, which guarantee's everyone's right to earn their living in an occupation freely entered upon.

Article 1.2 covers the following points:

- 1) the prohibition of all forms of discrimination in employment
- 2) the prohibition of forced or compulsory labour
- 3) the prohibition of any other practice that might interfere with workers' right to earn their living in an occupation.

Article 1.2 of the Charter as a whole prohibits any other practice which may affect the right to earn one's living in an occupation freely entered upon (Conclusions II (1971) and XVI-1 (2002), plus two Statements of Interpretation on Article 1.2).

Third. Violation of Articles 7.10 and 17

Two provisions of the LIMV are liable to be in breach of Articles 7.10 and 17 of the Charter in terms of the protection to be afforded to minors and young persons.

1.- The tenth additional provision (see section III.10)

According to Article 7 of the Charter, children and young persons have the right to special protection against the physical and moral hazards to which they are exposed.

Therefore states must ensure that their national legislation provides for the rights and the full protection of children and young persons.

Article 7.10 focuses on the effective exercise of the right of children and young persons to protection and requires Parties to ensure special protection against the physical and moral dangers to which they are exposed.

At the same time, the fact that Article 17 guarantees the right of children and young persons to social, legal and economic protection does not rule out the examination of certain relevant issues relating to the protection of children under Article 7.10. States Parties that have accepted both of these provisions must show due regard for issues relating to the protection of children against moral dangers at work and outside work arising under Article 7.10.

According to the Digest, the obligation incumbent on States Parties under Article 7.10 applies to all minors present on the State's territory, whether they are foreigners or not and whatever their administrative situation, because of the link between this protection and the right to life and to physical integrity (Defence for Children International (DCI) v Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, paragraphs 85 and 86).

States Parties must also take preventive measures and help minors cope with the risks of vulnerability and poverty (Conclusions XV-2 (2001), Statement of Interpretation on Article 7.10, and Conclusions 2004, Romania).

In all cases, States Parties must ensure not only that they have the necessary legislation to protect children and young persons, but also that this legislation is effective in practice (Conclusions 2006, Bulgaria).

Article 17, for its part, guarantees the right of children, including children in an irregular situation, to full care and assistance, covering all aspects of their development, including medical assistance, appropriate accommodation and adequate resources (International Federation of Human Rights Leagues (FIDH) v. France, Complaint No 14/2003, decision on the merits of September 2004, paragraph 36; Defence for Children International (DCI) v. Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, paragraphs 70 and 71, European Federation of National Organisations working with the Homeless (FEANTSA) v, Netherlands, Complaint No.86/2012, decision on the merits of 2 July 2014, paragraph 50).

2.- The final provision of the LIMV

This provision established a transitional scheme under which the authorities automatically awarded IMV to households that appeared in the authorities' (non-updated) database of recipients of the dependent child allowance, governed by Royal Decree 1335/2005 of 11 November, thus ending this allowance.

Two years after they were awarded, the authorities reviewed these benefits using updated data supplied by the INSS and the Treasury. As a result of these reviews, these benefits were stopped or modified and procedures were launched to recover overpayments from families automatically receiving IMV for the period during which they had been paid.

Under these circumstances, minors in households that received these benefits could easily find themselves in extreme poverty following the withdrawal or reduction of IMV to offset overpayments.

The problem is compounded by the fact that under Article 19.2 of the LIMV, "... beneficiaries shall be jointly and severally liable for the reimbursement of any benefits overpaid' and may be required to repay the "principal, surcharges and interest claimable from beneficiaries and ... all costs incurred in recovering the debt".

Fourth. Violation of Article 15.3

The situations described below, which may constitute an infringement of Article 15 of the Charter, fall into several categories in which the full participation and effective inclusion in society of people with disabilities forming part of a household living in poverty or at risk, and who are in receipt of the minimum living income, may be affected:

1. Situations in which benefits are modified, suspended or stopped with no regard to the fact that there may be people with disabilities in the household:
 - a) Lack of continuity of benefits in the event of a change in the household's circumstances or as a result of the annual recalculation by the INSS.
 - b) Lack of continuity of benefits in the cases examined in section III, because of overlap between IMV and regional income benefits.
2. Lack of an official response to urgent IMV claims due to procedural errors:
 - a) Inadmissibility decisions unsupported by reasons.
 - b) Long delays in processing and abuse of administrative silence.
3. Interruptions of benefit because of the system of income recalculation and updating, even though the persons concerned are still in need.
4. Benefits being denied, interrupted or stopped when there is still a need for them because of mismanagement.
5. Multiple discrimination against households including people with disabilities in the system for the reimbursement of overpayments.
 - a) Discrimination against households in particular circumstances by failing to afford them the same treatment as families with dependent minors, in accordance with Article 19, paragraphs 3 and 4. The 65% debt exemption that applies to households with dependent minors does not apply to such households as it is not retroactive.
 - b) Discrimination due to unjustified inequality of treatment in the system of offsetting introduced for overpayments relating to IMV, as compared with the more favourable treatment of other benefits provided for in Royal Decree 148/1996 and Royal Decree 1415/2004.
 - c) More specifically, in cases of reimbursement of benefits as a result of the transitional IMV benefit being awarded automatically, this system makes it possible to interrupt benefit.

The basic principle of Article 15 is one of equal citizenship for persons with disabilities and that their fundamental rights are those of "independence, social integration and participation in the life of the community" (*Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, paragraph 48).

Article 15 of the Charter is closely linked to Articles 28 and 87 of the Convention on the Rights of Persons with Disabilities (hereinafter CRPD), which impose an obligation to ensure an adequate standard of living and social protection for persons with disabilities, call on states to be proactive in removing barriers that make this difficult, and require non-discriminatory treatment and full equality.

This protection, as mentioned in the Digest, is based on a social rather than a medical conception of disability (Conclusions 2020, Statements of Interpretation on Article 15, paragraph 1) and is based on the principle that the interaction of various barriers can hinder the full and effective participation of people with disabilities in society.

Article 15.3, interpreted in the light of Article 28 CRPD, imposes a "proactive" obligation on states to ensure by all means the right of persons with disabilities to independence, social integration and participation in the life of the community, to take effective and measurable measures to uphold this right and to remove barriers, in particular to eradicate poverty (Conclusions 2020 - Andorra).

Article 15 applies to all people with disabilities regardless of the nature and origin of their disability and irrespective of their age (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, paragraph 48).

The full protection of people with disabilities is therefore based on two main principles:

- a. The principle of promoting, and eliminating all obstacles to full integration, particularly with a view to combating poverty (which, in accordance with Article 13.1 of the Charter, warrants special protection in the event of bureaucratic difficulties in the recognition of entitlement to IMV, interruption of benefits due to administrative procedures or clashes with regional rules and overpayment recovery processes under circumstances which may hamper the integration of people with disabilities).
- b. The fundamental principle of non-discrimination, which plays an essential role in the context of disability (Conclusions 2003, Statement of Interpretation on Article 15), by imposing positive discrimination where necessary and by ensuring that different situations are not treated in the same way. It is akin to the principle of equality applicable to the treatment of households with people with disabilities under Article 15, which in turn is linked to Articles 30 and E of the Charter, which we will examine in another section.

Equal treatment between people with disabilities must exist not only in law but also in practice, regardless of whether they are foreign nationals of other States Parties in a regular administrative situation or nationals of the state concerned (Conclusions XIV-2 (1998), Statement of Interpretation on Article 15.1).

In the cases described here, a lack of protection for persons with disabilities at a disadvantage compared to other groups constitutes generic discrimination.

The cases of benefits being interrupted amount to a singular lack of protection for the people with disabilities who might be affected.

Fifth. Violation of Article 16

The way in which IMV is regulated does not provide a sufficient system of protection for families, particularly in the case of large or single-parent families, in violation of Article 16 of the Charter.

The capping of benefit scales provided for in Appendix I to the legislation according to the composition of households leaves large families with more than five members unprotected, because beyond five members, the amounts payable to households are not topped up.

Moreover, the particular situation of single-parent families is not taken into account when there are two adults in the household, regardless of whether they are both parents, and even if a parent who does not have custody is fulfilling their obligation to provide for the child.

The modification, suspension or stopping of benefits are particularly serious consequences in households of this kind in the event that their state of need persists.

The notion of sufficient resources for the full development of the family provided for in Article 16 of the Charter must be measured in relation to the median equivalised income (Eurostat) and by using the modified OECD equivalence scale, which assigns an amount to each person in the household (Conclusions 2006, Statement of Interpretation on Article 16).

In this way, the income cap introduced by the scale in Appendix I of the LIMV constitutes a violation of Article 16 of the Charter because it does not take into account the actual size of households with more than five members. As a result, the benefit received by these households does not match their financial needs.

Such capping is not sufficiently justified and constitutes discriminatory treatment to the detriment of large families.

As stated in section III, Spanish legislation also fails to take account of the particular residential needs of large families, and the problems they face in terms of high rents.

The protection afforded by states must not be limited to typical families; it must be equally adapted to single-parent families (Appendix to the Charter) and to any other family configuration (Conclusions 2011, Azerbaijan, Conclusions XVII-1 (2005), Turkey; European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, paragraph 26).

One of the ECSR's tasks is to examine the system of protection provided for in national legislation with regard to different types of families, with particular attention being paid to the protection of vulnerable families (Conclusions XVI-1 (2002), Statement of Interpretation on Article 16).

Of particular concern to the ECSR has been the special protection which must be afforded to Roma (Gypsy) families.

Lack of protection for the family as a unit of society constitutes a violation of the Charter when the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities places many families in precarious circumstances, undermining their cohesion (International Federation for Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, paragraph 187).

Some family configurations require special protection, with particular consideration being given to their needs and different lifestyles. This protection must be provided both by the relevant regulatory framework and when taking decisions in particular cases, so as to safeguard the interests of the minorities themselves and to preserve cultural diversity, which is of benefit to the whole community (Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, paragraphs 39-40).

It follows from this that there is a proactive obligation to provide specific solutions, adapted and appropriate to the particular features of vulnerable families in order to avoid undermining their cohesion. Failing to take account of their composition, size, living arrangements in the same home or in separate homes, etc. fails to meet this obligation. By failing to cater for each family's characteristics save in the case of single-parent families, the legislation on IMV does not provide complete protection for these households.

Article 4 of the LIMV is especially harsh for the most disadvantaged families, where changes in the composition of the family are often linked to lack of security in the home. It also penalises foster carers in such cases, as a foster family risks losing entitlement to benefits because of changes in the composition of the household given that the requirement for the household to have been in existence continuously for at least six months prior to the claim is no longer observed.

The decisions to deny IMV described in section III in the case of families taking in a foreigner in an irregular administrative situation are also at variance with the protection required by Article 16 of the Charter and yet the Economic and Social Council has identified families of this type as being among the most vulnerable.

Lastly, all the shortcomings identified in section III of this document, which broadly affect all potential IMV claimants, are even more serious when viewed from the standpoint of family protection, particularly in the case of family configurations that have special characteristics, such as families with dependent minors or people with disabilities, non-standard families in the broad sense, large families, families from non-majority ethnic backgrounds or with members in an

irregular administrative situation etc., because the law does not include any specific provisions to protect and ensure their distinctive character and cohesion.

Sixth. Violation of Article 17

Article 17 is to be interpreted in the light of the UN Convention on the Rights of the Child (Conclusions XV-2 (2001), Statement of Interpretation on Article 17; World Organisation against Torture (OMCT) v. Ireland, Complaint No. 18/2003, decision on the merits of 7 December 2004, paragraph 55).

In accordance with these requirements, states have a positive obligation to adopt the necessary measures to ensure that children can truly exercise their right to grow up in an environment favourable to the development of their personality (European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic, Complaint No. 157/2017, decision on the merits of 17 June 2020, paragraph 134; European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, paragraph 97).

Pursuant to this right enjoyed by minors, states are obliged to provide services when they are in situations of exclusion or poverty. This entails taking all appropriate and necessary measures to ensure that children and young people receive all the assistance necessary to eradicate any child poverty and social exclusion affecting them (Conclusions 2019, Andorra).

As a result of this obligation, as for other categories of persons specially protected by the Charter, states are required to make proactive provision for minors, to combat inequality and discrimination and to provide assistance and protection in situations of risk, vulnerability and exclusion.

Therefore, where households with children and young persons face the situations described in section III, the consequences are doubly tragic: they entail not only a generic breach of the Charter, they also result in a specific infringement of the rights of minors, exposing them to a risk that is incompatible with Article 17 of the Charter.

Seventh. Violation of Article 27

Article 36.1 i) of the LIMV sets out one of the obligations inherent in being a designated IMV beneficiary:

“to participate in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration, provided for in Article 31.1, in the manner prescribed.”

Article 36.2 d) provides that the other members of the household receiving IMV will likewise be required:

“to meet the obligations which the foregoing paragraph imposes on the designated beneficiary and which, for whatsoever reason, he/she fails to fulfil.”

Article 38.3. d) of the legislation introduces a severe penalty:

“for failure to comply with the obligation to participate in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration, in a manner to be determined.”

Article 38.4 establishes a very serious offence, which results in benefits being stopped:

“ f) for repeated failure to comply with the obligation to participate in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration, in the manner prescribed.”

To date, no implementing regulation has been introduced to accompany this law, despite the time that has elapsed since its publication.

This lack of regulation is worrying given the laxism and the insufficient safeguards surrounding the introduction of this obligation, as no provision has been made to protect against possible conflicts between these activities and family responsibilities, nor against any discrimination that these activities might lead to, as stipulated in Article 27 of the Charter.

The preamble to the LIMV itself states that such activities are to be organised by the Ministry of Inclusion, Social Security and Migration, through the General Secretariat for Inclusion and Social Welfare Objectives and Policies, working with all the other authorities involved.

It also provides for co-operation and collaboration between these bodies and other administrative entities, the Autonomous Communities and local authorities, the most representative employers' organisations and trade unions, partner companies, including businesses that have been awarded the "Social Inclusion Seal", and third-sector entities active in the social field. These partnerships will be set up through the signature of co-operation agreements, which will govern co-operation on administrative procedures, the development of inclusion strategies or any other activities relating to the IMV.

The preamble to the IMV law provides as follows:

"The minimum living income, which shall be compatible with income from work and shall be accompanied by a mechanism to promote employment and a requirement for beneficiaries to participate in the inclusion strategies promoted by the Ministry of Inclusion, Social Security and Migration and register as job seekers if they are not working, shall provide an opportunity for people and groups who have traditionally worked outside the formal economy to join the latter. Integration into formal work and the enjoyment of the social and economic benefits that this entails will in many cases help to prevent such persons from returning to the informal economy, with the individual and collective benefits that this represents for society as a whole."

Point 5 of the preamble further stipulates:

"The General Secretariat for Inclusion and Social Welfare Objectives and Policies may pass on – by electronic means and without the prior consent of the owner of the personal data – the contact details of beneficiaries of the minimum living income who are eligible to participate in the scheme to the public authorities, third-sector entities with social aims and social partners with which it has negotiated agreements for the implementation of measures within the framework of the strategies for the inclusion of beneficiaries, this being a data processing operation of the type referred to in Article 6. 1 e) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC.

Likewise, the public authorities, third-sector entities with social aims and social partners with which the General Secretariat for Inclusion and Social Welfare Objectives and Policies has negotiated agreements for the development and evaluation of inclusion strategies, may provide the necessary data concerning participants in the inclusion strategies for the purpose of designing, monitoring and evaluating the relevant measures, without requiring the prior consent of the data subject, as this is also a data processing operation of the type referred to in Articles 6. 1.e) and 9.2.h) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC. On the other hand, the express and informed consent of the beneficiary shall be required for the collection and transfer of specially protected data referred to in Article 9.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC."

Agreements have been signed through the intermediary of the Autonomous Communities and Cities, local entities and third-sector partners, to develop pilot projects throughout the country and reach one in four of beneficiaries currently receiving IMV benefits.

Under Royal Decree 378/2022 of 17 May, which deals with the direct award of grants by the Ministry of Inclusion, Social Security and Migration in the field of social inclusion, 16 agreements will be signed with Autonomous Communities, local councils and third-sector entities.

These agreements are to be financed to the tune of €109 million through the recovery plan, which will enable inclusion policies to be rolled out within the framework of IMV.

Of the 34 agreements planned, 16 will be signed with Autonomous Communities (Galicia, Asturias, Basque Country, Navarre [two agreements], Aragon, Castilla-La Mancha, Extremadura, Valencia [two agreements], Catalonia, Andalusia, La Rioja, Murcia, Madrid and Ceuta), with a combined value of €121 million. Four projects worth €26.5 billion in total will be carried out in partnership with the municipalities of Madrid, Seville, Santander and Barcelona. The other fourteen are being signed with the following third-sector entities: Fundación Secretariado Gitano, Hogar Sí, Save the Children, Plena Inclusión, Cáritas, F. Jaume Bofill, F. Bancaria Caixa d'Estalvis i Pensions de Barcelona "La Caixa", F. Cepaim, Acción Integral con Migrantes, the Spanish Red Cross, the Spanish Office of the European Anti-Poverty Network (EAPN), F. Catalana de l'Esplai, F. Ayuda en Acción, and EAPN in the Canary Islands, for a total amount of €66.5 billion.

The General Secretariat for Inclusion Objectives and Policies will work to promote pilot projects with authorities and social bodies, using an evolving methodology based on data and evaluation. This will help to disseminate the most successful practices, i.e. those that have been the most effective in the inclusion field.

Activities which are part of the social inclusion pathways will be eligible for funding under the scheme: These pathways will be developed in relation to one or more areas relevant to the social inclusion of people in a situation of social exclusion or at risk thereof, including:

1. Improving access to the IMV
2. Education
3. Social services
4. Healthcare
5. Lawfully resident foreign population
6. Digital literacy
7. Energy supply
8. Employment
9. Any other sphere of activity that has an impact on the social inclusion of people who are already socially excluded or at risk of social exclusion.

There is no mention in this list of the need for the obligation to participate in pathways to integration, both for designated beneficiaries and for other household members, to be compatible with family commitments and responsibilities and the demands of paid employment.

Article 27.1.b) aims to take account of the needs of workers with family responsibilities, in terms of conditions of employment and social protection. Our fear however is that IMV payments may be stopped if claimants turn down opportunities to move into work. The lack of detailed regulation on what this covers may cause the authorities to make arbitrary decisions when making their assessments.

Eighth. Violations of Articles 30 and 31

Article 30 of the revised Charter of 1996 provides for the right to protection against poverty and social exclusion as follows:

“Everyone has the right to protection against poverty and social exclusion. (...)

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b) to review these measures with a view to their adaptation if necessary.”

To ensure that they fulfil their obligation in relation to the right to protection against poverty and social exclusion, the Charter requires signatory states to take effective measures, including in the areas of housing and social assistance. IMV is a form of social assistance. This right has a bearing on other rights and is therefore linked to all the articles of the Charter, as its wording aims to ensure comprehensive protection for people who are in, or at risk of being in, a situation of vulnerability, poverty or social exclusion. Such interdependence has been addressed in the body of relevant literature (recently, Dalli, M. (2021)).⁴⁵

Although there are other international instruments designed to address the issue of poverty, the broad scope of Article 30 and its deep connection to human dignity make it a fundamental provision and a primary obligation for states in the 21st century – an essential commitment to human rights. Social welfare policies must take into account the role played by the United Nations principles on extreme poverty and human rights, dignity, universality, equality, participation, transparency and accountability (United Nations, Guiding Principles on Extreme Poverty and Human Rights, A/HRC/21/39, 2012). It is in this light that the ECSR has interpreted the twofold dimension of Article 30 of the Charter: as relating both to protection against poverty (understood as involving situations of social precarity) and to protection against social exclusion (understood as involving obstacles to integration and civic participation), either alone or in combination with other related provisions of the Charter. The ECSR considers that failure to fulfil the obligation to provide a minimum income to persons in need may, inter alia, lead to their being pushed into poverty, defined for this purpose as a state of destitution due to a lack of resources.

In this regard, the Sustainable Development Goals call on states to implement universal social protection systems (1.3), which provide social assistance through economic benefits such as minimum income schemes. There are also other international instruments that reinforce the obligation of states to combat poverty and social exclusion by introducing a minimum income scheme – for example, Article 25 of the Universal Declaration of Human Rights and Article 26 of the Convention on the Rights of the Child (its equivalent in terms of child protection), as well as Article 11 of the International Covenant on Economic, Social and Cultural Rights.

⁴⁵ Dalli, M, 2021. *The IMV and the right to social assistance under the European Social Charter*. Lex Social: Revista De Derechos Sociales, 11(1), pages 208-242. Available (in Spanish only) at <https://doi.org/10.46661/lexsocial.5506>.

However, where it comes to realising the social rights enshrined in the Charter, Article 13 of the Charter, read in conjunction with Article 30, are the main keys.

The systematic correlation between Article 30 and the rest of the Charter has been clearly established (as Jimena Quesada, L. 2022, points out, citing the leading aspects of ECSR case law):⁴⁶ the right to social assistance in the form of economic income is a fundamental tool in the fight against poverty and social exclusion, provided that the amount is adequate. To calculate this, the ECSR uses 50% of the median equivalised income, taking into account the specific economic context of each country.

This link was clearly highlighted in the decision on the merits of Complaint No. 86/2012, in which Dutch legislation and its application were found to be in violation of Articles 13.1 and 4, 19.4 c), 30 and 31.2.

According to the interpretation of Article 30 in Conclusions 2003 on France, the measures taken to comply with this article, in particular in the field of social assistance, should not be limited to improving access to social rights. They should also allow for monitoring and follow-up of their implementation by improving procedures and the management of benefits and services. In addition, better information on social rights and related benefits and services helps to remove psychological and socio-cultural barriers to accessing rights and, where necessary, to better target the most vulnerable populations and regions.

More recently, for example, the ECSR itself has emphasised that the monitoring of compliance with Article 30 of the Charter must include analysis of social security (Article 12) and social assistance measures (Article 13), given the need for an overall and co-ordinated approach to combating poverty (Conclusions 2021, Estonia, Article 30). In the case of Estonia, it concluded that despite the improvement in poverty rates, the situation was not in conformity with Article 30 owing to a lack of co-ordination. Among other things, it was found that the minimum income or social benefits provided were not adequate to meet the needs of people living alone.

In its interpretation of Article 30, the ECSR stresses that by including this article in the revised Charter, the Council of Europe member states recognise that living in a situation of poverty and social exclusion violates human dignity (Conclusions 2003, France).

In relation to this provision, the ECSR has emphasised the importance of the effectiveness of the policies, measures and actions undertaken by States Parties (Conclusions 2005, Norway). It has stressed the crucial importance of providing adequate resources and information in this respect (Conclusions 2005, Slovenia). Lastly, it has stated that each State must adapt the quality and quantity of the relevant measures to the nature and severity of poverty and social exclusion in their country

⁴⁶ Jimena Quesada, L., 2020. *The right to protection against poverty and social exclusion as a paradigm of respect for human dignity. The inclusion of IMV in the context of the evolution of international standards* (in Spanish only), Lex Social, 10(2), pages 372-373.

and commit to a systematic review of the definitions and methodology for measuring these indicators at national level (Conclusions 2003, France).

Article 30 of the Charter calls for effective protection against poverty and requires States Parties to adopt an overall and co-ordinated approach to anticipate and remove obstacles to access to social rights, particularly in the areas of housing, education, culture and social assistance. This is clear from Conclusions 2003 on Article 30, which refer to the national report on France, and from the Statement of interpretation on Article 30, Conclusions 2013.

As we shall see, this overall and co-ordinated approach referred to by the ECSR can be achieved through legislation or other means and must be based on an analytical framework, a set of priorities and corresponding measures to anticipate and remove obstacles to access to social rights, in particular employment, housing, training, education, culture, and social and medical assistance (Statement of Interpretation on Article 30, Conclusions 2003, France).

At present, IMV provides coverage for some of these aspects for its beneficiaries. However, delays in the payment of benefits, the suspension of reviews and the withdrawal of benefits, even in cases of continuing need, may render ineffective medical protection or certain advantages in terms of university fees, as well as those relating to compensatory measures with regard to housing or employment.

Governments must therefore take all the necessary steps to ensure that these rights are effectively guaranteed at the time or in the sectors where beneficiaries are most in need of protection (General Introduction to Conclusions XIX-2 (2009)).

The ECSR takes into account a number of indicators in order to accurately assess the effectiveness of policies, measures and actions undertaken as part of this overall and co-ordinated approach. One of the key indicators in this area is the level of resources (including increases in this level) allocated to the achievement of the objectives of the strategy (Statement of Interpretation on Article 30, Conclusions 2005). The allocation of adequate resources is an essential element in enabling people to become self-sufficient (Statement of Interpretation on Article 30, Conclusions 2003, see Conclusions France).

Furthermore, in accordance with the ECSR's interpretation of Article 30 of the Charter, it is vital to establish dialogue with representatives of civil society and people affected by poverty and exclusion (ERRC v France, Complaint No. 51/2008, decision on the merits of 19 October 2009, paragraph 93).

In relation to this article, Article 31 of the revised Social Charter sets out the obligation of governments to promote access to housing of an adequate standard in the following terms:

“With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources.”*

The interpretation of Article 30 of the Charter in relation to IMV would seem to require the adoption of measures to guarantee the exercise of this right.

As stated above, the main reason for the introduction of IMV in Spain was to tackle the problem of poverty and social exclusion, although the explanatory memorandum to Law 19/2021 also mentions the problems of technological unemployment and insecure professional careers. In this sense, the IMV is fully in line with the obligation imposed on States Parties by Article 30 of the Charter, as it is a measure directly aimed at improving the distribution of income at source, as stated in paragraph I of the explanatory memorandum, of which the following relevant excerpt is provided:

“Spain is one of the countries in the European Union where the distribution of income between households is the most unequal. Although the recent economic recession has particularly affected the incomes of the poorest households, high levels of inequality in Spain predate the recession years and the recovery since 2013 has substantially reduced them. In 2018, the latest year for which comparative data are available from Eurostat, the Gini coefficient in Spain is almost three points higher than the EU average, and the income of the poorest 20% of households is only one sixth of the income of the richest 20%, compared to one fifth in the European Union.

The high levels of inequality in Spain hits those with the lowest incomes the hardest, resulting in particularly high rates of extreme poverty, even when taking into account the overall level of inequality in the country. According to the INE and Eurostat definition of people at risk of poverty – those living in households where disposable income per consumption unit is less than 60% of the national median income – 9.9 million people in 4 million are affected in Spanish households (i.e. 21% of the population). There is an important intergenerational dimension to this high level of poverty, which also persists over time. According to the latest data from the INE’s survey on living conditions, more than 26% of children under the age of 16 live in households with an income below the poverty line, and the situation is even worse for single-parent households, which are particularly vulnerable to income fluctuations.

A recurring factor among the multiple causes of high inequality and poverty is the insufficient redistributive effect of state intervention in Spain compared to most of its neighbours. This is partly due to the low level of development and resources allocated to policies that would clearly have a redistributive impact (in particular the absence of a public policy framework guaranteeing a minimum income, as is the case in most European countries), and partly to the way in which public policies have been designed.

It has fallen to the Autonomous Communities and Cities to respond to this situation by implementing a variety of minimum income schemes. These mechanisms have played a very important role in providing support for people in vulnerable situations, both in times of economic crisis and in times of growth. However, the schemes differ significantly in their design, particularly in terms of the extent of their coverage and the level of protection they offer. As a result, people in vulnerable situations have widely varying access to social services and many are still inadequately served by our welfare state.

Looking at the evidence presented, one might think that IMV was adopted as part of an overall co-ordinated approach towards tackling poverty and social exclusion, but nothing could be further from the truth.

On the one hand, the government presents IMV as a tool for rationalising welfare benefits,⁴⁷ with the intention of consolidating all other forms of financial support into a single benefit, designed as a safety net to replace existing benefits.

The lack of co-ordination between the State and the Autonomous Communities has contributed to a lower level of protection and a reduction in the financial resources available in many Autonomous Communities, with the relevant budget line being used for other issues rather than to step up the fight against poverty and social exclusion.

The Autonomous Communities were not involved in the development and implementation of IMV. There was no social dialogue or co-ordination between the central government and the Autonomous Communities. There have been changes to the regional income benefits, including a reduction in the level of protection against poverty and social exclusion in some regions. No commitment was ever made to correct the previous deficiencies of the Autonomous Communities regarding minimum income programmes.

Social partners highlighted the lack of social dialogue from the outset.⁴⁸

On the other hand, the lack of co-ordination or a harmonised approach to combating poverty in Spain is evident from the way in which the IMV regulations and the regulations on regional income benefits interact.

Article 13 of the first transitional provision of repealed Royal Decree-Law 20/2020 of 29 May – the wording of which is retained in the first transitional provision of Law 19/2021 of 20 December on IMV – provided that until 31 December 2020, the INSS could grant IMV entitlement to people who were receiving certain other benefits or minimum income payments from the Autonomous Communities. This created administrative problems for public bodies and a lack of transparency for citizens. In addition, those who were not entitled to the benefit were not given the opportunity to refuse IMV, even though it had been awarded to them without them meeting the eligibility criteria. They are now being asked to repay the sums wrongly paid to them, thereby compounding the situation of poverty or social exclusion in which they find themselves.

⁴⁷ Government of Spain, 2021. Action plan for the care economy and the strengthening of inclusion policies, section 22. Inter alia, reforms C22.R2 and C22.R5. Available (in Spanish only) at www.lamondcloa.gob.es/temas/fondos-recuperacion/Documents/05052021-Componente22.pdf

⁴⁸ 20 minutos, 29 May 2020, video, Garamendi on the IMV: Social dialogue should have been pursued. Available at <https://www.20minutos.es/videos/economia/4274554-garamendi-sobre-el-imv-debiera-haber-ido-al-dialogo-social/>

Some Autonomous Communities have requested direct administrative responsibility for the IMV benefit, including Castilla y León, where the autonomous government and the social partners asked for this.⁴⁹

Since its inception, the administration of the payment and the monitoring of IMV has been the responsibility of the INSS, in accordance with Article 25 of Law 19/2021. By contrast, the Autonomous Communities are directly responsible for regional income benefits. Direct administrative responsibility has only been devolved in the Basque Country and Navarre (fifth additional provision of the LIMV).

Article 32 of the LIMV provided for mechanisms for co-operation between the different Autonomous Communities to improve administration, and the fourth additional provision of the LIMV provided for the signing of agreements with the Autonomous Communities. To the best of our knowledge, these measures have never been implemented.

Andalusia is another striking example of the lack of co-ordination. In March 2021, over 136 000 Andalusian households had no income at all, as they did not qualify for IMV. With no prior agreement or co-operation between the State and the Autonomous Community, these problems only became known once the crisis had taken hold. This situation highlights the lack of co-ordination shown by the State in failing to anticipate these difficulties and in failing to respect the Charter itself. In response, the social partners in Andalusia were forced to reach an agreement on 22 March 2021⁵⁰ to remedy the situation through social dialogue, while the Spanish central government remained silent on the matter.

The Social and Economic Pact for the Promotion of Andalusia,⁵¹ which was signed on 13 March 2023 by the social partners (namely the Government of the Autonomous Community of Andalusia, the trade unions Comisiones Obreras, the General Union of Workers and the Employers' Confederation of Andalusia), is another recent example of such inconsistency. As outlined in Section 2.2.1 of the pact (on Measures to protect and support vulnerable families and individuals), the signatory organisations agreed to propose to the central government that the powers and services relating to the administration of IMV be transferred to their region. They also agreed to study potential synergies between the Andalusian regional income benefit scheme and IMV, which would extend the protection coverage of beneficiaries. This consensus was reached on the basis of an observation with which we can only agree: the level of protection has been reduced and the measures implemented for those who do not receive either benefit are inadequate.

The failure to comply with the provisions of the Charter can also be illustrated by the following example. In October 2021, the Regional Councillor for Family and Equal

⁴⁹ UGT Castilla y León, 2020. Online article, *Social Dialogue Council: action needed to stabilise the community*. Available (in Spanish only) at <https://ugtcyl.es/web/consejo-dialogo-social-actuar-estabilizar-la-comunidad>

⁵⁰ Andalucía Sindical CCOO, *Trade union gazette of the CCOO trade union confederation of Andalusia*, No. 5, March 2021

⁵¹ Social and Economic Pact for the Promotion of Andalusia, 2023, page 11.

Opportunities of the Autonomous Community of Castile y León reported that some 6 937 people had come off regional income benefit in order to receive IMV.⁵² The shift from one scheme to another had a twofold impact:

- On the one hand, because IMV is awarded without any obligation to enrol in integration programmes, around 95% of those 6 937 beneficiaries left the training course or contractual position which they had been offered.
- On the other hand, the school attendance of children in households where IMV had replaced the regional income benefit declined, as the IMV regulations do not provide for penalties or loss of entitlement in the case of poor school attendance.

Although school attendance and compulsory training courses are not a crucial factor in eradicating poverty, the Regional Minister nevertheless acknowledged that there had been a lack of co-ordination between the various levels of administration.

On the review of the measures:

The IMV benefit was initially approved on 29 May by Royal Decree-Law 20/2020. Then, in line with the Spanish legislative process, it was incorporated into Law 19/2021 of 20 December, which is still currently in force. Since its adoption on 29 May, the IMV benefit has been amended more than a dozen times, with no indication as to whether these changes were prompted by the criticisms by legal writers, the various Ombudsman reports and complaints described here, the FOESSA report or the voices of the thousands of IMV beneficiaries who have been adversely affected.

Despite more than a dozen amendments to the benefit, only a few improvements have been made to bring it into line with the Charter. This has still not yet been achieved: for instance, age continues to be used as an eligibility criterion and the amount paid remains inadequate. Moreover, the perverse effects of the benefit, which had already been condemned by all the institutions and groups that had criticised IMV, were not taken into account in the “review” of the measures.

As a result, the review of measures to reduce poverty and social exclusion did not seek to strengthen their effectiveness in terms of the right to protection against poverty and social exclusion. According to Eurostat, in October 2022, 13 million people were in a vulnerable situation, 380 000 more than pre-pandemic levels. Spain remains the country with the fourth highest number of people at risk of poverty, a ranking it has held since 2020.

⁵² *León noticias*, 26 October 2021. Regional government and social dialogue group are negotiating a new citizenship income linked to integration and schooling to complement the IMV. Available (in Spanish only) at www.leonoticias.com/castillayleon/junta-dialogo-social-20211026134348-nt.html

The online petition, *Afectados por el Ingreso Mínimo Vital*,⁵³ launched by a group of people affected by the IMV, is important. It has gone viral, with more than 40 000 signatures from those impacted, and also highlights the problem of housing.

Their demands read as follows:

“We are the unemployed, fathers and mothers of minors or sharing our homes with persons with disabilities, sick persons or elderly dependent relatives. We may also be divorced, widowed or living alone, but we all have one thing in common: insufficient resources to meet our basic needs and those of our families. We don’t want to live on government handouts; we want to live in dignity. That’s why the minimum living income was adopted.

Since December 2022, or even before then, we have been affected by the following issues:

- 1. We have trouble reaching Social Security and when we do get through, they don’t answer our questions. Most of the time, the telephone numbers we have been given are run by robots.*
- 2. The deadlines for providing the requested documentation are too tight.*
- 3. IMV benefit payments are suspended without any explanation.*
- 4. After all the required documents have been provided to the INSS, no assessment appears to be carried out. A few months later, many beneficiaries are asked to re-submit documents that they have already provided, or the administration just terminates the benefit without giving any reasons.*
- 5. When a complaint is lodged, there is no response from the administration.*
- 6. In addition to the lack of co-ordination between the various administrative bodies, some beneficiaries receive the wrong amount because the data are not cross-checked properly with the AEAT.*
- 7. Benefits which should not count towards the calculation are taken into account.*
- 8. Only the previous year’s income is assessed, not the current year’s – even though someone might have worked part-time the previous year, but be out of work again this year.*
- 9. Payment of IMV is blocked while supporting documents are assessed, a process that sometimes takes months. Meanwhile, those who rely on the benefit are slipping further into poverty.*
- 10. We get letters asking us to pay back overpayments and we don’t even know what amounts they are referring to, leading to a feeling of chaos and confusion and sparking panic among the most vulnerable. This benefit, which was originally intended to address the risk of poverty and social exclusion for people without financial resources, has instead become a real source of anguish for families with minor children and those caring for people with disabilities or elderly dependents. And even for people living alone.*
- 11. We are expected to know about administrative procedures and management tools that are beyond the reach of most of us.*
- 12. In most cases, the amounts credited to our account in the digital social card do not correspond to what we should have received. The status of benefits that have been terminated is shown as active, while those that should still be shown as active are marked as terminated.*
- 13. Administrative errors are all too common. The administrative system is not working properly. Claims are not being processed, assessed and validated. The bureaucratic procedures involved seem something like an obstacle course to those who need to complete them.*

⁵³ Online campaign launched on 24 January 2023 at Change.org. *Stop mismanagement and bad practices in relation to the minimum living income*. Available at <https://www.change.org/p/paremos-la-mala-gesti%C3%B3n-y-la-mala-praxis-sobre-el-ingreso-m%C3%A1ximo-vital?>

14. *Work integration programmes are rarely on offer, and when they are, only on temporary contracts. In such circumstances, beneficiaries are no closer to escaping financial insecurity, as they will immediately fall back below the poverty line and have to apply for IMV again.*
15. *IMV reviews have a retroactive effect, meaning that beneficiaries may receive the wrong amount for an entire year. This results in arrears which may take months to be disbursed, and the amount received can affect entitlement to other benefits. Let's imagine you have been receiving €60 a month, for example, and one day you learn that you [ought to] have received almost €300, but you won't actually receive these arrears until a year later. To top it all off, you are then denied food allowances on the pretext that you have already received them!*
16. *Another telling example is that in 2020 the benefit was awarded based on data for 2019. In 2021, the review required by law with effect from 1 January was carried out in December; as a result, if a beneficiary's income in 2020 had taken them above the threshold, they were not entitled to the payments they had received. And in 2022, they received demands to pay back overpaid benefits, which in some cases could run into thousands of euros!*

WE THEREFORE DEMAND:

- *An immediate end to mismanagement and bad practice in relation to IMV;*
- *The payment of an appropriate and reasonable amount of support;*
- *That benefit be calculated on the basis of our financial position in the current year, not the previous one;*
- *Not to be forced to repay IMV overpayments when we have not failed in any of our obligations and do not even have any money in the bank;*
- *Help in getting us back into work, with decent, sustainable jobs, so that we don't fall back below the poverty line or continue to claim IMV;*
- *To receive support through vocational training and the acquisition of all the necessary tools for effective reintegration."*

On Article 31 and housing in the context of IMV

According to Article 13 of Law 19/2021, the calculation of the amount of the benefit must be adjusted upwards to take account of housing-related costs for poor families.

This is provided for in paragraph 3 of the article:

"Any increase in the amounts referred to in the preceding paragraphs shall be determined by regulation if the rental costs for a main place of residence exceed 10 % of the relevant guaranteed income, on an annual basis, depending on the size and configuration of the household."

An adjustment of this type could meet the requirements of Article 31 of the Charter by providing for the benefit to be increased to an adequate level to cover costs related to housing.

However, as noted above, the LIMV has not been accompanied by any regulation and there has been no increase in benefit payments in line with housing costs. The resulting situation does not comply with either Article 13 or with Article 30 of the Charter, since the right to protection against poverty and social exclusion is only effective if the measures adopted by the States Parties guarantee the right to housing. This can be ensured, inter alia, by protecting the most vulnerable members of society,

as they should be able to afford housing as long as they receive IMV. However, until the benefit is increased, they will have to choose between having a roof over their heads and putting food on the table.

It should be noted that housing is one of the most serious problems in Spain, with a tight rental market saturated by the demand for tourist accommodation and rents that are financially unaffordable for large sections of society, and a property market in which home ownership is affected by problems of over-indebtedness due to the increase in applicable mortgage rates, a high rate of litigation for non-payment of mortgages and a high number of court-ordered evictions.

Housing accounts for the largest share of the cost of living in Spain.⁵⁴ Rental costs stood at €12/m² in August 2023, having increased by 9.5% compared to August 2022 (with large variations between regions).

The housing problem is not new, and we must not forget that the United Nations has found Spain to be in violation of the right to adequate housing enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights on at least seven occasions, including in the Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 37/2018 of 30 October 2019.

The violations have also been noted by international and national bodies in various reports and regulations.

The issue is so severe that the Council of Europe's Commissioner for Human Rights, in her recently published report following her visit to Spain from 21 to 25 November 2022 (**Document 32**), described it as a long-standing and structural crisis of grave proportions. She pointed out that there had been more than half a million evictions across the country since 2013, including 32 267 in 2022, split between 27 533 for non-payment of rent, 8 509 for non-payment of mortgages and 2 225 for other reasons. In its conclusions, the report states that:

“ (...) the lack of adequate measures to address the unavailability of affordable housing in Spain has led to a large number of indebted families and a sharp increase in evictions and homelessness.”

It goes on as follows:

“In particular, the Commissioner notes that the lack of affordable housing has been compounded by successive governments' decisions to allow private equity firms to buy and raise rents, leading to a spike in the property market that by far outpaces the average increase in purchasing power.”

⁵⁴ Idealista, website. *Evolution of rented housing prices in Spain*. Available (in Spanish only) at <https://www.idealista.com/sala-de-prensa/informes-precio-vivienda/alquiler/>

To illustrate the difficulties of access to housing in Spain, the preamble to the recently published Law on the right to housing (Law 12/2023 of 24 May) highlights the scale of the housing crisis in the country, where housing remains more of a commodity than a right. For example, it points out that:

“ (...) the stock of social rented housing is totally inadequate to meet the needs of people and households who have difficulty accessing the market because of their limited financial resources”.

And notes that:

“From a territorial point of view, it must be recognised that inequalities in access to housing exist not only in urban areas and large cities, but also in rural areas, where the supply of decent housing is often insufficient and where measures must be taken to restore, renovate or adapt the existing housing stock, which requires specific support from public authorities.”

The highly regarded report on the “Evolution of Social Cohesion and Consequences of Covid-19 in Spain” (in Spanish only), prepared by the FOESA Foundation for Caritas in 2022, also stresses that this housing crisis particularly affects the poorest sectors of society (**Document 33**; page 503), which are, of course, largely made up of IMV beneficiaries:

“The high number of people without access to housing raises the question of which categories of the population are most affected (2). By comparing the socio-economic profile of households with the proportion of people without access to housing, we can see that in 2021, this problem most affected households where the main breadwinner was under 45 years of age, had not completed upper secondary education, was a foreigner or a woman, was looking for work, lived with other jobseekers and/or a person under the age of 25, whose family consisted of five or more members or several families living together, in deprived neighbourhoods or marginalised communities. Large households are one of the most vulnerable categories in terms of housing, as they are the most likely to suffer from overcrowding, have expenses which outstrip their income and live in damp and insecure conditions. The risk of homelessness is highest among the unemployed. They mainly face problems related to the deterioration of the environment around them, unsanitary conditions and excessive housing costs in relation to their income.”

Due to their particular situation, evictions are common among families receiving IMV benefits. Without stable homes, their eligibility for the benefit is jeopardised, as certain conditions set out in the LIMV are no longer met. These include, in particular:

- Being registered on the municipal register (paragraphs 3, 4 and 5 of Article 21);
- Household members having to live together for more than six months. This condition is no longer met, for example, when families split up to live in separate accommodation or stay with relatives to avoid sleeping rough (Articles 6, 7 and 8);

- The law provides for the accommodation of family members in the context of a judicially ordered eviction in exceptional circumstances but does not take into account the efforts made by families to reunite prior to such an eviction or in the event of a dispute before the courts.

Ninth. Violation of Article E

It is our view that the LIMV and its application are discriminatory because they establish a difference in treatment without sufficient justification, as demonstrated by the facts set out in Section III of this document. Our arguments are grouped into five points:

First. Given that there is no provision for topping up benefit for households with minors, members with disabilities or vulnerable elderly members, or for large families, and hence meeting the adequacy criterion of Article 13 of the Charter, this amounts to treating all households in the same way, regardless of whether they fall into these categories or not.

Second. In the case of members of households belonging to groups requiring enhanced protection, such as large families, people with disabilities, vulnerable elderly people or migrant workers and their families, the legislation provides for specific guarantees in accordance with Articles 15, 16, 17, 19 and 23 of the Charter. However, these groups are not treated in the same way as households with dependent minors who are entitled to the exemption of up to 65% of debt from overpayments provided in Article 19.3 of the LIMV. Such differential treatment is unjustified and violates the principle of non-discrimination enshrined in Article E of the Charter.

Third. Compared to other public benefits provided by the State, the system for recovering overpayments from IMV beneficiaries deviates from the general rule for offsetting debts. According to Article 4 of Royal Decree 148/1996 of 5 February (BOE No. 44 of 20 February), the recovery of overpayments is normally based on proportional offsetting. However, in the case of IMV, a different rule applies: the monthly debt to be offset may reach up to 70% of the allowance received each month. This provision is less favourable than that applied to other public benefits.

Fourth. Recipients of the IMV and transitional IMV who are subject to a procedure for the recovery of overpayments for events prior to 2023 are disadvantaged compared to those who were awarded benefits after that date. This difference in treatment is the result of the ninth additional provision of Royal Decree-Law 20/2022, under which the benefits provided for in Article 19.3 of the LIMV will only be granted to beneficiaries who were awarded IMV after 2023.

Fifth. The LIMV establishes discriminatory, aporophobic treatment of the most disadvantaged members of society.

According to the ECSR, the role of Article E is comparable to Article 14 of the European Convention on Human Rights (hereinafter, the Convention) and it should therefore be applied in conjunction with a substantive provision of the Charter (*Syndicat des agrégés de l'enseignement supérieur (SAGES) v. France*, Complaint No. 26/2004, decision on the merits of 15 June 2005, paragraph 34).

Discrimination can take a variety of forms:

- 1 When States Parties treat persons in different situations in the same way, this is called direct discrimination (judgment of the Court in *Thlimmenos v. Greece*, 2000; *International Association Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, paragraph 52; *Mental Disability Rights Advocacy Centre (MDAC) v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008).

2008, paragraphs 50-51). In this case, all IMV beneficiaries receive the same allowance, and no offsets are available for certain categories of beneficiaries who are in a more vulnerable situation, such as households including people with disabilities, vulnerable elderly members or large families, etc.

- 2 Indirect discrimination refers to inappropriate treatment of certain situations or unequal access to various collective benefits for people in these situations compared to other citizens.
- 3 Unequal treatment of comparable situations without adequate justification is another form of discrimination (Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, decision on the merits of 9 September 2009, paragraphs 39 and 41). This is the case for IMV and transitional IMV beneficiaries who are subject to a recovery procedure for overpayments made before 2023, as opposed to those whose benefits were granted after that date. The same applies to large families living under one roof and households whose members include people with disabilities, elderly people or those belonging to other particularly vulnerable categories, as compared to households with at least one minor child.

The above differences in treatment must be considered discriminatory if they are not based on any objective and reasonable justification, in other words, if they do not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim pursued (Confédération française démocratique du travail (CFDT) v. France, Complaint No. 50/2008, decision on the merits of 9 September 2009, paragraphs 37-39 and 41 and 25; European Roma Rights Centre (ERRC) v. France, Complaint No. 51/2008, decision on the merits of 19 October 2009, paragraphs 19, 21 and 82).

IV. CONCLUSIONS

1. Spanish legislation on the IMV does not meet the highest standards set by the Charter; the ECSR has on several occasions pointed out that the legislation does not comply with Article 13.1 of the Charter, in particular in relation to regional income benefits.
2. In addition to reproducing the same shortcomings already identified by the ECSR as non-compliant with Article 13, the Spanish IMV regulations give rise to new violations of other articles of the Charter.
3. There are other problems arising from the mismanagement of IMV benefits which also result in violations of the principles and articles of the Charter.
4. It is important to point out that the Autonomous Communities and the State have not co-ordinated or harmonised their legislation on minimum income benefits.
5. This complaint denounces the general situation of non-compliance in the following cases.

Facts	Situations covered	Non-compliant articles in the legislation	Charter articles violated
Inadequate amounts	<ol style="list-style-type: none"> 1. Amounts below the poverty threshold 2. Limitation on increases in the amount of benefit based on the number of 	Article 13 and Appendix I	Articles 13.1, 30 and E

	household members once that number exceeds five.		
Legal resident status	<ol style="list-style-type: none"> 1. Required minimum period of legal residence. 2. Registration of all members of the household in the municipal registers. 3. Withholding of benefit when household includes foreigners in an irregular administrative situation. 	Articles 4.3, 6 and 10.1	Articles 13.1, 30 and E
Age restrictions	<p>Benefit not granted to persons under the age of 23, except in exceptional cases.</p> <p>Limited to persons under the age of 30 who have not lived independently from their parents for two years and have not worked before.</p> <p>Limited to persons over 30 years of age who live alone and have not lived with their parents for the past two years.</p>	Articles 4.1b and 5.2	Articles 13.1, 30 and E
Interruption of benefits	<ol style="list-style-type: none"> 1 While the regulations provide for the continuous payment of benefits, Articles 17 and 18 allow for their suspension or termination in the event of a change in the household situation (change in the number of members, change of address, sporadic income, etc.), even where there is a continuing need. 2 These interruptions particularly affect households in precarious housing situations. 3 In practice, the possibility of automatic review provided for in Article 16 is equivalent to a review based on AEAT data two years after the event under review. 4 In addition, the inability of the authorities to respond quickly to changes in household circumstances leads to the withdrawal of benefits despite continuing need. 	Articles 16.3, 17, 18	Articles 13.1, 15, 16, 17, 23, 30 and E.
Co-existence of regional and national legislation with different requirements	<ol style="list-style-type: none"> 1. Accumulation of overpaid benefits with a future obligation to repay them. 		Articles 13.1, 15, 16, 17, 23, 30 and E.
Bad practice by the INSS in terms of time frame and procedures	<ol style="list-style-type: none"> 1 Rejection of applications without giving reasons or analysing the documents submitted. 2 Systematic extension of the deadline for the authorities to decide whether to award benefit, in excess of one year. 3 Lack of rules on the compatibility of IMV with income from work. 	Articles 28.1, 3 and 4.	Articles 13.1, 15, 16, 17, 23, 30 and E.
Income review and update system	<ol style="list-style-type: none"> 1 The lack of an effective system for reviewing and updating entitlements leads to chaotic situations where vulnerable people are left without protection. 2 In addition, it leads to cases where benefits are interrupted although there is a continuing need. 3 The annual review system is a source of harm and impoverishment for vulnerable households. 	Article 16.3	Articles 13.1, 15, 16, 17, 23, 30 and E.

Compatibility of IMV with income from work	<p>1 The compulsory work integration scheme encourages IMV beneficiaries to turn towards the most precarious jobs, be they temporary or low paid. This situation particularly affects the most vulnerable groups, who cannot afford to lose their benefits in the absence of sufficient and decent work. Any earned income is taken into account when calculating benefits for subsequent years, although there is no guarantee of future resources.</p> <p>2 The lack of regulations on what constitutes a job refusal only increases the insecurity of the people in question.</p>	Article 36 in relation to Royal Decree 789/2022 of 27 September and the third final provision of this text.	Articles 13.1, 20, 30 and E.
Transitional IMV	<p>1 Exclusion of children living with extended family or with non-relatives.</p> <p>2 Erroneous automatic inclusion of households that do not meet the necessary conditions.</p> <p>3 Exclusion of all households with members who are not legally resident from benefits, be it supplementary child allowance or automatically awarded benefit.</p>	Tenth additional provision, points 2.a) and 2.b)	Articles 13.1, 15, 16, 17, 23, 30 and E.
Administrative shortcomings	<p>1 Erratic functioning of IT platform.</p> <p>2 Impossible to obtain prior or face-to-face appointments.</p> <p>3 Lack of staff and resources</p> <p>4 Delays in processing claims and decisions to grant or refuse benefits.</p> <p>5 Incomprehensible and unsupported decisions taken without informing those concerned.</p> <p>6 Lack of administrative support and protection for persons lodging complaints due to the complexity of the procedure.</p> <p>7 Unclear rules in general and non-standardised interpretation criteria among the authorities.</p> <p>8 Subjective definition of the scope of the benefit.</p> <p>9 No reasons given for decisions to refuse, stop or suspend benefits.</p> <p>10 Lack of clarity in income assessment carried out by the authorities.</p> <p>11 Delays and discriminatory procedures within the system for reviewing benefit entitlement and overpayments.</p>		Articles 13.1, 15, 16, 17, 23, 30 and E.
System for recovering overpaid benefits	<p>1 Positive discrimination for households with dependent minors provided for in Articles 19.3 and 19.4 is manifestly inadequate.</p> <p>2 Absence of positive discrimination in favour of other categories of persons without dependent minors, who should be protected under the Charter, in accordance with subparagraph 1 of the same article, such as persons with disabilities and vulnerable older persons, among others.</p>	Articles 19, 19.3 and 19.4 under the third additional provision of Royal Decrees 789/22 of 27 September and 148/1996 of 5 February	Articles 13.1, 15, 16, 17, 23, 30 and E.

	<p>3 Discrimination due to the unjustified difference in treatment between the offsetting scheme established by the third additional provision of Royal Decree 789/22 for overpayments of IMV and the more favourable offsetting scheme for other benefits established by Royal Decree 148/1996 and the Ministerial Decree of 18 July 1997.</p> <p>4 In particular, for reimbursement of benefits awarded automatically under the transitional IMV:</p> <ul style="list-style-type: none"> a) Articles 19.3 and 19.4 do not apply to such cases as the 65% debt exemption for households with dependent minors does not apply retroactively to events before January 2023; b) the benefit may be interrupted; c) failure to take account of certain specific situations requiring protection within households, such as dependent minor children, large families, people with disabilities or vulnerable elderly people. <p>5 The authorities' power of review allows them to review benefits awarded during the previous five financial years.</p> <p>6 The current lack of protection for certain persons, due to ongoing procedures for the repayment of overpayments under the temporary IMV or to changes in conditions following the annual review provided for in Article 16 of the Law, exposes the households concerned to serious risks. This situation particularly affects vulnerable groups in need of increased protection. It is therefore essential to take immediate measures to suspend these review and/or repayment procedures while the ECSR examines this complaint in order to prevent irreversible damage.</p>	<p>and the Ministerial Decree of 18 July 1997.</p>	
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V. REQUEST FOR IMMEDIATE MEASURES ON PROCEDURES FOR OVERPAYMENT OF TRANSITIONAL BENEFITS AND FOR AUTOMATIC REVISIONS.

We request the immediate adoption of the following measures under Rule 36 of the ECSR Rules.

1. Decide to temporarily suspend all proceedings that have been or may be initiated for the repayment of overpayments made in respect of IMV benefits or supplementary income benefits awarded by the Autonomous Communities. This suspension must apply to all cases arising prior to 1 January 2023, the date of the amendment of Article 19 of the LIMV, whether resulting from the INSS's decision to award the transitional IMV automatically to households previously

receiving family benefits or from the award of IMV to beneficiaries of supplementary regional income benefits, pending the resolution of the present complaint.

2. Decide to temporarily suspend any proceedings that may be brought to recover overpayments of IMV benefits or supplementary regional income benefits, in cases where the people concerned find themselves in an unexpected situation of poverty and cannot rely on any other type of benefit or income apart from IMV.

3. Decide to temporarily suspend any proceedings that could be initiated to recover overpaid IMV benefits or supplementary regional income benefits if, after deduction or recovery of such overpayments, the persons concerned are likely to be forced below the poverty line.

We request the adoption of these measures for the reasons set out below.

First, failure to adopt these measures may have irreparable consequences which would render ineffective any protection that might be granted in the context of the present complaint.

Second, the implementation of the system for recovering overpayments of IMV and regional income benefits, as outlined in paragraphs 10, 11 and 13 of section III of this document (which will not be repeated here for the sake of brevity), does not, in the opinion of this organisation, comply with the requirements of Articles 13 and 30 of the Charter. This poses a grave threat to the lives of thousands of families affected by the situation, which has been caused by the following factors:

1. Thousands of proceedings have been initiated against households that were granted IMV automatically but did not meet the necessary conditions. This has resulted in debts equivalent to more than two years of overpayments due to administrative negligence, both in the initial granting of the benefit and in delays in reviewing it.
2. Because of the overlap of retroactive IMV payments with regional income benefits, those concerned are now being asked to pay back overpayments. This overlap was caused by the IMV regulations imposing a six-month time limit for decisions on benefit applications and by the lack of harmonisation with income benefits awarded by the Autonomous Communities, whose benefit databases were held by the social security system. Over time, changes have also been made to the regional income benefits and, subsequently, to IMV – always with retroactive effect. These changes wreaked havoc in the calculation of overpayments carried out by the two sets of authorities, which take account of the same situations both in real time and with a time lag. It is important to note that the initial decision on IMV claims was delayed by more than a year, causing the legal time limit to be exceeded twice over in many cases and resulting in chaos.
3. It should be pointed out that while the overlapping of benefits is due to administrative confusion and delays, sometimes of up to a year, in the decision to award IMV, it is households that must endure a procedure to offset the benefits. This can result in a reduction of up to 70% per month in their IMV, which is their only source of income, leaving them in a situation of extreme poverty and dependency.
4. Moreover, the perverse workings of the system which resulted in overpayments in such cases were criticised in the Ombudsman's 2021 and 2022 reports. The majority of NGOs and trade union organisations working with disadvantaged

groups have also denounced this problem. Lastly, legal commentators have expressed views on the issue, and it has attracted major public attention because of the substantial social harm it inflicts and an increasingly determined campaign by those affected to demand a fair solution, as evidenced by the documents submitted in support of this complaint.

Third, the chronic poverty that the most vulnerable families are being kept in. Persons who cannot find a job because of their social circumstances and are reliant on such forms of assistance to survive can find themselves in an even more precarious position if they are expected to reimburse overpayments.

It is deeply paradoxically that, as a result of the authorities' actions, legislation which was supposed to tackle poverty has now resulted in some of the most vulnerable households becoming indebted and trapped in poverty.

Fourth, hundreds of thousands of households are at serious risk of poverty, and the measures adopted could have an impact on all these families.

Fifth, we cannot ignore the discriminatory treatment of households with dependent minors who are subject to recovery proceedings for overpayments in cases after 1 January 2023.

Article 81.1 of Law 20/2022 of 27 December relaxed the requirements of the former Article 19 of the LIMV by introducing a debt exemption of up to 65% for households with dependent minors. However, the ninth transitional provision prohibits the retroactive application of this measure to situations prior to its entry into force. This restriction gives rise to unwarranted discriminatory treatment, in breach of the general principle of equality set out in Article E of the revised Charter.

Sixth, the discriminatory treatment in relation to other cases of overpayments is clear, as the third additional provision of Royal Decree 789/22 of 27 September (BOE No. 233 of 28 September) stipulates that in the event of offsetting of debts arising from IMV overpayments, beneficiaries are guaranteed only 30% of their benefits, meaning that debts can be offset against the remaining 70%.

In the specific case of IMV, this provision constitutes an exception to the general rules, which, under Article 4 of Royal Decree 148/1996 of 5 February, generally only provide for offsetting of overpayments under the following conditions:

- between 21% and 30% if the amount of the benefit is equal to or greater than half the maximum pension at the time;
- between 15% and 20% if the amount is less than the amount indicated in the previous item but is equal to or greater than the amount set for the maximum benefit;
- between 10% and 14% if the amount of the benefit is less than that indicated above.

The justification for such discriminatory treatment in relation to those who receive other types of social security benefits (pensions, allowances or unemployment benefits) is not readily apparent. In any event, it prevents those lacking the capacity to satisfy their basic needs through their own efforts from being assured an adequate income, a right explicitly acknowledged in Article 13.1 of the Charter, as we have discussed at length. Why are people living in material poverty being treated with such contempt?

Seventh, no account has been taken of the particular vulnerability of the most vulnerable households or of those whose members belong to particularly exposed groups, such as people with disabilities, victims of gender-based violence, large families, to name but a few.

Eighth, there is no justification for the discrimination against other particularly vulnerable groups – whose rights and equal access to benefits are enshrined in the Charter, in particular in Articles E and 30, read in conjunction with Articles 13.1, 15, 16 and 17 and the non-discrimination clause in Article E.

Protection against both poverty and vulnerability has been undermined by the system of recovery of overpayments which has been demonstrated to have aberrant effects, as it creates debts that cannot be written off, either because of the automatic award of IMV or because of excessive delays in the verification of benefits. This debt, which is compounded by surcharges, interest and fees, places a financial burden on both IMV beneficiaries and all the members of their household. The system fails to account for the poverty, exclusion, and vulnerability experienced by these individuals and pitches all the members of households into a state of chronic poverty or exclusion.

Even more pernicious is the fact that the heirs of these debtors also inherit their debts and obligations, including those to public authorities, pursuant to Articles 659, 661, 1083 and the corresponding articles of the Spanish Civil Code.

Without immediate measures, the following consequences are inevitable:

Those forced to repay overpayments will suffer irreversible damage, thereby undermining the effectiveness of the final decision to be adopted by the ECSR concerning this complaint.

The exercise of the authorities' enforcement powers, whether through the seizure of assets or the deduction of up to 70% of monthly benefits, would place the persons concerned in a situation of extreme vulnerability.

It should be pointed out that the procedure for recovering benefits is initiated against all members of the household, who are jointly and severally liable, and that there is no statute of limitations. This course of action effectively condemns the individuals concerned to a state of "civil death" until the overpayments, plus penalties, interest and costs, are repaid in full.

As to those who, through a change in their financial situation or professional activity, might become able to earn their own income and prove themselves to be solvent (a key objective of the legislation), they risk having 30% of their salary withheld at source as soon as it exceeds the minimum wage threshold. Thus, instead of escaping the shackles of poverty and insecurity, they remain trapped in a vicious cycle of poverty under the weight of this debt.

Furthermore, this situation can result in joint liability for all members of the household, irrespective of their personal circumstances (including minors or adolescents, people with disabilities, vulnerable elderly people, etc.). This obligation persists throughout the duration of the debt, until it is fully discharged and, in the event of the death of the primary debtor, it can be transferred to any heirs.

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