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## **EUROPEAN SOCIAL CHARTER**

Comments by Movimiento ATD Cuarto Mundo España  
on the 33<sup>rd</sup> National Report on the implementation of the  
European Social Charter

submitted by

**THE GOVERNMENT OF SPAIN**

Article 13  
of the European Social Charter

for the period 01/01/2016 – 31/12/2019

Report registered by the Secretariat  
on 29 June 2021

**CYCLE 2021**

**Arguments to the Report sent  
by the Spanish Government  
concerning the Review of  
Article 13 of the European  
Social Charter**

PERIOD 01/01/2016 - 31/12/2019

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## 1. SO FAR, THE NEW MINIMUM VITAL INCOME COMPENSATIONS HAVE NOT MODIFIED THE UNFULFILLMENTS OF THE SOCIAL CHARTER.

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### CONCLUSION OF NONCONFORMITY ARTICLE 13, PARAGRAPH 1

The Committee concluded that the situation in Spain did not match the Article 13, paragraph 1, of the 1961 Charter, because of the following reasons:

- The collection of a minimum income is subordinate to a period of residence in most regions.
- The collection of a minimum income is subordinate to age criteria (25 years old)
- The minimum income is not allocated for all the time that is necessary.
- The degree of social assistance devoted to a single person without financial resources is not sufficient.
- We will try to explain these unfulfillments one by one.

#### 1.1 THE COLLECTION OF A MINIMUM INCOME IS SUBORDINATE TO A PERIOD OF RESIDENCE IN MOST REGIONS.

The regulation defined by the Government as a radical change –by means of the entry into force of the Royal Decree-Law 20/2020 of May 29<sup>th</sup>, 2020, by which the minimum vital income is established— forgets to include the periods of residence among the legislated requirements.

Article 7. Access requirements.

1. All the beneficiaries, whether they are integrated or not in a coexistence unit, must fulfil the following requirements:

a) To have legal and effective residence in Spain, and to have had it continuously and uninterruptedly for at least the year immediately before the date when the application is presented.

Besides, in the case of young people, this is penalised even more, by adding independence from family and to have paid contributions to the seniority requirement.

2. The beneficiaries mentioned on Article 4.1.b), under 30 years old when applying for the minimum vital income, must prove to have lived in Spain independently for at least the three years immediately before the aforementioned date.

For the purposes of the previous paragraph, it will be understood that a person has lived independently as long as they prove that their home has been a different one from their parents, tutors or hosts for at least the three years immediately before the date when the application is presented, and that in the aforementioned period they have remained for at least twelve months, whether consecutive or not, registered with any of the Social Security systems, including the one regarding the State Passive Classes, or with any mutual benefit society other than the Social Security Special System for Self-Employed Persons or Autonomous Workers.

The requirement of a year of legal residence excludes every person in an irregular administrative situation that are indeed included in the minimum incomes of some Autonomous Regions such as Baleares, Navarra, Euskadi... and those which have not yet reached the first year of legal residence (it is a requirement that is not to be found in other compensations such as the compensation per dependent children: Art. 352 of the Restated Text of the General Law of the Social Security establishes as one of the requirements to apply for it the legal residence in Spain with no minimum residence period.)

On the other hand, by demanding that all the members of the coexistence unit fulfil every request during the entire time period, they are excluding some families from the MVI because one of their members is in an irregular situation, it may even happen that some homes formed by foreign people with legal residence in Spain, whose children are in an irregular situation, are left out, with the vulnerability this implies. Informal family reunifications exist, and the underage youth can remain up to two years without being legalised, with all that this implies.

#### **1.2 THE COLLECTION OF A MINIMUM INCOME IS SUBORDINATE TO AGE CRITERIA (25 YEARS OLD).**

The regulation of the Minimum Vital Income does not improve the above, either, since it denies the access for those people under 23 years old not living in a coexistence unit, except for some situations.

Thus, Article 4, on the beneficiaries, states that:

1. The Minimum Vital Income will benefit:

a) People living in a coexistence unit according to the terms established in this Royal Decree-Law.

b) People of 23 or more years of age who are not beneficiaries of a contributory retirement or permanent disability pension, or of a non-contributory disability or retirement pension, which are not living in a coexistence unit according to the terms established in this Royal Decree-Law, as long as they are not united to another person by marriage bond or as a common-law couple, except those who have initiated the separation or divorce formalities or those who are in other circumstances which can be determined according to regulations.

Neither the age requirement nor that of having initiated the separation or divorce formalities will be demanded in the assumptions of women victims of gender violence or human trafficking and sexual exploitation.

**1.3. THE MINIMUM INCOME IS NOT ALLOCATED THROUGHOUT THE NECESSARY TIMEFRAME.**

Several situations lead us to denounce that this criterium is not fulfilled, either:

**FIRST**

For those people living alone, without a coexistence unit, with other people without kinship ties due to financial necessities or lack of residence, the Minimum Vital Income rule establishes a certification by the Social Services, which mostly answer to the local or regional administration, or to collaborating entities, which in practice is creating many problems. Besides, the rule forces the annual renovation to be performed ex officio, which will not always be possible in a context of lack of sufficient means, so that in many cases the compensation will be suspended. Likewise for the people whose registration of residence does not match the real one, or people who have no home or are in host establishments.

On the other hand, those people who are forced to leave their home because they cannot afford its cost, if they are going to live with their family, will form only one coexistence unit, and the income of the family member they are living with will be considered because of their situation of necessity. This makes it impossible to obtain the MVI.

There are some expected exceptions (Art. 6 bis), such as the abandonment of residence due to eviction, but only for a period of three years. It is incomprehensible that the consideration of an independent coexistence unit is determined by an eviction. It is also incomprehensible that the deadline is predefined and does not last as long as the situation of necessity, as established by the CEDS.

In the current situation derived from the pandemic, where, for instance, 16% of families accompanied by Cáritas (77.000 families) have been forced to find a new residence <sup>1</sup>.

## SECOND

The delay in compensations is a fact acknowledged on the two occasions when the Government provided the management data. This has negative consequences for the people waiting for a resolution, since the law marks a period of negative silence of six months, which means that the administration has six months to answer, after which the applicants can understand that their application has been denied. This is leading to the judicialization of the procedures of negative silence, which sometimes only responds to the lack of staff within the Social Security to carry the process: in some provinces such as Guadalajara, people in that situation are attended by other Autonomous Regions, in this case, the Basque Country, due to the lack of Social Security offices.

Data October 2021

<https://revista.seg-social.es/2020/10/16/la-seguridad-social-ha-reconocido-el-ingreso-minimo-vital-a-136-000-hogares-en-los-que-viven-mas-de-400-000-personas/>

Data March 2021

<https://revista.seg-social.es/2021/03/19/el-ingreso-minimo-vital-llega-en-marzo-a-203-000-hogares-en-los-que-viven-mas-de-565-000-personas/>

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<sup>1</sup> <https://www.caritas.es/producto/un-ano-acumulando-crisis/>



Data May 2021

<https://revista.seg-social.es/2021/05/17/el-ingreso-minimo-vital-llega-en-mayo-a-260-000-hogares-en-los-que-viven-mas-de-680-000-personas/>

### THIRD

Added to the above, the denials and the documentation requests entail a bureaucratic procedure which is incomprehensible to many people that find it more difficult to collect other pre-existing compensations, such as the regional minimum incomes that are at risk due to the principle of subsidiarity, and that is explained in the following epigraph.

The Government presented a modification in the MVI increasing the time lapse up to 6 months, as it has been said, and including the inadmissibility for processing: because of this, many MVI applications are being rejected without analysing all the documents and without a reason (being a legal obligation) and, being an inadmissibility and not a denial, in some Autonomous Regions such as Castilla León it is not possible to apply for the regional income afterwards.

On the other hand, the process of previous complaints is complex, it determines the subsequent proceeding and it has not got free legal assistance, so those people are in a situation of defencelessness.

#### 1.4. THE DEGREE OF SOCIAL ASSISTANCE DEVOTED TO ONE PERSON WITHOUT FINANCIAL RESOURCES IS NOT SUFFICIENT.

Article 10 of the Minimum Vital Income regulation

<https://www.boe.es/buscar/act.php?id=BOE-A-2020-5493&p=20200930&tn=1#a1-2>

states that the amount will be determined by the difference between the amount of the guaranteed income, according to what it is established in the following section, and the combination of all the incomes of the beneficiary person or members that form that coexistence unit of the year before, according to the terms established in articles 8, 13 and 17.

The guaranteed income will be the difference in every case:

a) For a single beneficiary individual, the monthly amount of guaranteed income will add up to 100% of the year value of the non-contributory pensions fixed every year in the Law of State's General Budgets, divided by twelve.

b) For a coexistence unit, the monthly amount of a) will be increased a 30% for each additional member, starting from the second one, up to a maximum of 220%.

c) We must add to the monthly amount established in b) a supplement of single-parenthood, equivalent to 22% of the amount established in a) if the coexistence unit has only one parent.

This means that families with three or more minors have no increase at all, which implies a decrease of incomes in amounts that are established in the status of extreme poverty instead of the poverty line.

Thus, the monthly basis for an individual is 460 euros, while the poverty line is 740 euros. For 2020, the yearly amount of guaranteed income for a beneficiary is 5.538 euros. To fix the amount applicable to coexistence units, the scale established in annex I will be used on the basis of the amount pertinent to a beneficiary individual.

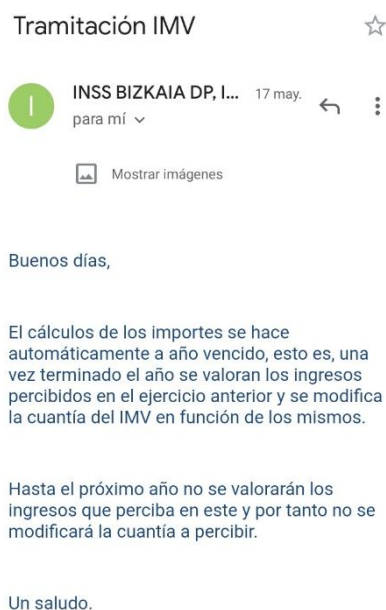
#### ANEXO I

##### Escala de incrementos para el cálculo de la renta garantizada según el tipo de unidad de convivencia para el ejercicio 2020

	Escala de incrementos
Un adulto solo.	5.538 € (renta garantizada para un adulto solo).
Un adulto y un menor.	1,52
Un adulto y dos menores.	1,82
Un adulto y tres o más menores.	2,12
Dos adultos.	1,3
Dos adultos y un menor.	1,6
Dos adultos y dos menores.	1,9
Dos adultos y tres o más menores.	2,2
Tres adultos.	1,6
Tres adultos y un menor.	1,9
Tres adultos y dos o más niños.	2,2
Cuatro adultos.	1,9
Cuatro adultos y un niño.	2,2
Otros.	2,2

Source: <https://www.boe.es/buscar/act.php?id=BOE-A-2020-5493&p=20200930&tn=1#a1-2>

To calculate the amount, the tax period of the year before to the application is taken as a reference, which means a relevant gap between the current situation of the individuals and the valuation of the amount. The claim to update the amounts, according to the current situation, received the following answer:



**Source:** Image sent by one of the people advised by Legal Bureau for Social Rights

The result of this proceeding is that individuals and families whose resources worsen during a tax year are denied their access, or get insufficient incomes, and that individuals and families who improve their status, in a situation of scarcity below the poverty line, have to give back improper payments, which means another financial problem for these people, since then their situation could get even worse, bordering on the impossible.

Moreover, regarding the meagre income, we must add that during the first year of enforcement, families that had perceived the child benefit during the tax year before must give back that compensation, since the child benefit has been replaced by the Minimum Vital Income but subtracting from the compensation the amount received during the year before.

Likewise, they are considered incomes those compensations assigned to individuals with special needs for their autonomy, as well as other government compensations assigned to large families or families hosting minors as a protection measure.

On the other hand, the fact that every member of a large family, up to the second degree, in the coexistence unit is taken into account –unlike what happened with some regional minimum incomes, where individuals with children were considered in these families as independent financial units— means for these families a decrease in the incomes they were receiving as independent regional minimum incomes, which, altogether meant a higher amount than the one allotted as Minimum Vital Income.

Finally, although the regulation talks about an increase for housing expenses, which in Spain and mainly in some big cities means that workers must spend more than 60% of their income resources on housing expenses, this increase has not been implemented in the regulation, postponing it to a later development, which means that this compensation cannot guarantee the housing for those individuals who must pay a rent due to the lack of their own home.

Data from 2018 (before the pandemic which has aggravated the situation), included in the VIII Foessa Report concerning people in a situation of extreme poverty, which are the supposed recipients of the MVI, state that: in 2018, 9'5% of the homes had incomes below the extreme poverty line, once the housing expenses had been covered, a percentage that doubled the one from 2007 (4'5%).<sup>2</sup>

A large segment of population in extreme poverty has been left out of this compensation due to several other aspects. Given the thoroughness of the explanation by one of the groups that collaborates with us in the Platform RMI TU DERECHO (RMI Your Right), we will copy the access to the statistical information for the 600.000 people in extreme poverty that, because of the regulation, are left out of the coverage.

<http://invisiblesdetetuan.org/imvinformeExclusion.pdf>

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<sup>2</sup> <https://caritas-web.s3.amazonaws.com/main-files/uploads/sites/16/2019/06/VIII-Informe-FOESSA-Resumen.pdf>

## 2. THE GOVERNMENT'S REPORT DOES NOT CONSIDER THE EXISTENCE OF THE REGIONAL MINIMUM INCOMES AND OF THE EFFECT THAT THE INCORPORATION OF THE MVI HAS HAD IN THE INFRINGEMENT OF THE RIGHT INCLUDED IN ARTICLE 13.

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When the Government states, regarding the nonconformity criteria proposed by the European Committee, that "Spain's respect for those criteria has radically changed since the creation of the Minimum Vital Income (MVI) through the coming into force of the Royal Decree-Law 20/2020, of May 29<sup>th</sup>, 2020, which establishes the minimum vital income. From the publishing of this standard, every family with children in a danger of poverty situation has the right to a compensation which completes its income within the limits indicated below, regardless of the fact that the autonomous regions may create complementary compensations. (As a reference, it has been used the average wage in 2018, 23.003,23 € per year)", the Government omits several issues:

The minimum incomes of the twenty one Autonomous Regions (CC.AA) and the two autonomous cities consider as a feature of the compensation the "subsidiarity criterium" regarding the State Administrations' compensations, both contributory and non-contributory.

With the endorsement and implementation of the Minimum Vital Income, the application of this criterium has affected and conditioned the regional minimum incomes. Every Autonomous Region, from the endorsement, on the 1<sup>st</sup> of June, of the Royal Decree-Law 20/2020, has requested that the individuals perceiving the compensations process the MVI application.

In most Autonomous Regions the admission of new applications has been totally paralyzed, requiring the prior processing of the MVI application as the National Institute of Social Security's response, accepting or rejecting the MVI, must be submitted along with the application for a regional compensation.

Regarding the applications for regional compensations being processed, they have been affected also by the request that they must apply for the MVI, the process being interrupted until the application for a state compensation (MVI) is approved, a process that, as we have already said, may last six months or more if the individual must present more documentation.

By January 2021, almost 4 out of 10 families accompanied by Cáritas (39%), which perceived the regional income, did not perceive it anymore.<sup>3</sup>

In the three aforementioned cases, the situation gets worse, on the one hand, due to the fact that most Autonomous Regions do not distinguish if the individuals fulfil all the requirements standardized in the MVI regulation and, on the other hand, if we consider the big gap among the regional minimum incomes in coverage, intensity, adequacy and requirements.

All of them do consider as features of their minimum incomes the criteria of subsidiarity as well as the criteria of complementarity, taking as a reference the maximum income established in each autonomous region: even if there are big gaps in these amounts, all of them are below the poverty line, so in most cases the granting of the MVI state compensation means the extinction of the regional income.

By regulating the Minimum Vital Income, the Government, following the criterium of complementarity could have contemplated fulfilling Article 13 of the ESC (European Social Charter) regarding the sufficiency of the amount by linking the regional incomes, so the sum of both would reach the poverty line.

As a result of the administrative actions implemented by most autonomous regions to fulfil the criterium of subsidiarity instead of responding to the lack of income –and the pressing needs this implies— there is a situation of vulnerability where individuals may stay several months with no income at all, which got even more aggravated by extending from three to six months the resolution period of the minimum vital income.

On the other hand, it is quite noteworthy that the Government report does not make any reference at all to the regional minimum incomes, given that they coexist with the MVI.

In order to broaden the information regarding the processing of the minimum vital income and its effect on the autonomous regions we recommend reading the statistical data included in the communique “Nine months of the Minimum Vital Income: a failure?”

<http://invisiblesdetetuan.org/notaimvabril2021.pdf>

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<sup>3</sup> <https://www.caritas.es/producto/un-ano-acumulando-crisis/>

Next we will present some data that reflect the situation of the Minimum Income in the Region of Madrid and that confirm what has been described above. Data that can be looked up in <https://www.comunidad.madrid/servicios/asuntos-sociales/renta-minima-insercion>.



Source: <https://www.comunidad.madrid/servicios/asuntos-sociales/renta-minima-insercion>

**DECREASE IN FINANCING:** In 2019, the implemented expense was 134 million, which in 2020 was 109, which means a 25 million decrease: for 2021, the budgeted expense is only 80 million, which means 54 million less than 2019 and 29 million less than 2020. By the 1<sup>st</sup> of May, 2021, only 21.027.362,75€ has been spent.

**REDUCTION OF PERCEIVING FAMILIES:** As a result of the implementation of MVI in June 2020, 13.416 families received the MII (Minimum Immersion Income) compensation in January 2021 –as opposed to 22.373 families in January 2020: that means 40% less—, a reduction that keeps going on and, as of April 2021, the number of perceiving families is 11.474 (2000 less than in January). These are some very worrying data regarding a compensation that already at the beginning of 2017, and due to the politics of Madrid’s Regional Government that introduced a change in the processing model which, without a change in the regulations, limited the access to this compensation and expels from the MII system many families that

had been included. Evolution of the number of perceiving families during the month of January from 2017: 30.598 PF/ 2018: 29.281 PF/ 2019: 24.990 PF/ 2021: 13.416.

**STAGNATION OF REQUESTS AND INCREASE OF ELIMINATIONS AND SUSPENSIONS:** from the implementation on the 1<sup>st</sup> of June, Madrid's Regional Government paralyzed the processing resolutions of MII initial requests, as well as the resolutions of record liftings of MII in a situation of suspension both precautionary and temporary, and even resolutions of extinction where MII is subsidiary of MVI. These concessions have been paralyzed until there is a resolution on MVI, so from January until April there have only been 110 requests approved. 3.878 records have been extinguished and 940 suspended.

**SUBSIDIARITY AND COMPLEMENTARITY OF MII:** The amount of the basic compensation is 400€, and of the complements is 116€ and 75€. These amounts have not been increased since 2016 –for the basic compensation— and 2010 –for the complements—: this results in very low compensations which prevent or hinder the implementation of complementarity with the perceived amounts of MVI and makes it impossible that between both compensations a better income coverage for the families is guaranteed, something which would get us closer to the fulfilment of the European Social Charter. As a result of the above, there are more families which do not perceive incomes or compensation at all.

By the end of June 2020, the groups that form the Platform MII Your Right took to the Madrid's Government Council the proposal "Minimum Immersion Income and Minimum Vital Income. A moderate proposal for a Madrid without poverty" where we proposed to establish the amount of the basic monthly compensation of MII in 740 euros, and the complement for every additional member of the coexistence unit in 220 euros. It is attached as an Annex to this report. This proposal was not considered, leaving many families in a situation of vulnerability.



### 3. FROM THE POINT OF VIEW OF LAWFULNESS

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There are four issues which, from the point of view of lawfulness and practical application of the law, may be stressed regarding the extent to which the Spanish state fails to fulfil art. 13 of the European Social Charter (“ESC”).

#### 3.1. THE REQUIREMENTS OF ART. 13 OF THE CHARTER AND THE DIFFERENT REPORTS OF THE COMMITTEE REFERRING TO SPAIN HAVE NOT BEEN FULLY IMPLEMENTED:

1.a. There is no provision in the national regulations that establishes the Charter’s requirement that every person is entitled to social benefits, when lacking own resources, that are sufficient to overcome the poverty threshold, established at 50% of the average income per capita, which is 730 euros.

1.b. The Spanish system is dual, and the autonomous communities have the competences to regulate social benefits, which they do through regional regulations on minimum income. These do not comply with the criteria of the ESC, nor have they been adapted, with rare exceptions, to the recommendations of the Committee and the state. Even the state, with the creation of the not-contributory benefit of the Minimum Vital Income, does not comply with the requirements and recommendations of the ESC, especially regarding:

1.b.i Sufficient amount

1.b.ii Guaranteed access for youth

1.b.iii Benefits for immigrants

1.b.iv Processes of concession under criteria of transparency, celerity, and clearance of bureaucratic hindrances

1.c. Regional regulations have been protected by the subsidiarity criterium, and not the complementarity one, according to which, since the state’s regulation of the Minimum Vital Income has existed since mid-2020, the decision was made to either extinguish the regional benefit or to maintain it only until it reaches the established amount, so that no benefit, nor the sum of them, reaches the amount required to place every person above the threshold of poverty.

### 3.2. THE JUDICIAL RESPONSE DOES NOT GRANT ENOUGH PROTECTION TO THE RIGHT ESTABLISHED IN ART. 13 OF THE ESC.

This is because:

- a. Spanish courts in general do not recognise the legal efficacy of the ESC, which only has “*interpretative*” or recommendation value so that the state regulates according to its will.
- b. Therefore, due to art. 13 not having been properly incorporated to our regulations, its claim before the courts has no efficacy whatsoever. Courts can only wait for a law to correct the deficits of its incorporation through a desirable application of the Commission’s criteria.

This can be seen from the different pronouncements of our courts:

#### 1. Constitutional Court (hereinafter, CC)

For the CC, art. 53.3 of the Spanish Constitution (hereinafter, SC) establishes for social rights established by the SC that they should feed “*the positive legislation, judicial practice and public powers’ performance. They can only be argued before ordinary jurisdiction, according to what the laws that develop them establish.*” Therefore, not only is their recognition subject to legislative development, but also their protection by courts.

Consequently, it is only “*mandatory to consider them in the interpretation of both the rest of the constitutional regulation and the laws*” (STC 19/82 of May 5).

On the other hand, the CC, in its judgements related to social rights, does not habitually use the European Social Charter as an interpretative element, only using quotes *ad abundantiam* of this international regulation.

In very few decisions does the CC refer to the ESC to interpret a social right, the extent of its reach, or its objective or subjective scope.

Furthermore, certain resolutions, despite referring to some provisions of the ESC, do not even mention it. The CC's lack of appreciation of the ESC goes so far as not to refer to it to interpret, for example, the concept of social assistance, without even mentioning the provision that regulates it in the ESC. In STC 36/2012, the High Court states that *"According to the guidelines of some international instruments such as the European Social Charter, social assistance, in an abstract sense, covers a protection technique located outside the social security system, with its own characteristics, which separate it from others related or close to it"* (STC 36/12 of March 15, 2012, FJ 4).

The CC has only departed from this merely interpretative value *"ad abundantiam"* to refer to rights linked to any of the articles of Chapter II of Title I of the SC, (arts. 14 to 29) such as the right to strike.

Therefore, it has only admitted one loophole to this rigid interpretation that condemns the ESC to irrelevance, to grant subsidiary protection to certain social rights: resorting to art. 14 SC, i.e. access to the right to equality and not to be discriminated against in accessing such rights.

In accordance with STC 39/2002 of February 14, 2002,

*"However, the virtuality of art. 14 SC is not exhausted in the general clause of equality with which its content begins, but rather the constitutional provision refers to the prohibition of a series of specific grounds or concrete reasons for discrimination. This express reference to such grounds or reasons for discrimination does not imply the establishment of a closed list of cases of discrimination (STC 75/1983, August 3, FJ 6), but it does represent an explicit interdiction of certain historically deep-rooted differences that have placed, both through the actions of the public authorities and through social practice, sectors of the population in positions that are not only disadvantageous, but contrary to the dignity of the person recognised by art. 10.1 SC (SSTC 128/1987, July 16, FJ 5; 166/1988, September 26, FJ 2; 145/1991, July 1, FJ 2)."*

It has never mentioned arts. 12 and 13 ESC in any of its rulings.

On the other hand, according to art. 10.2 of the SC, “The standards relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.” Royal Decree-Law 20/2020 (art. 2.2) recognises that the Minimum Vital Income forms part of the content of the right to social security as per art. 41 SC. Therefore, it may be argued that the ESC, and the doctrine of the European Committee of Social Rights that develops it, is an essential parameter of interpretation (i.e. of determination of social security benefits) of Spanish legislation. However, in its latest case law, the CC (wrongly, in our opinion) reduces the scope of art. 10.2 SC to the rights of Chapter II of Title I SC (arts. 14 to 38). Leaving out art. 41 SC, it also excludes the possibility of interpreting it in accordance with the ESC:

*“Insofar as art. 47 SC does not guarantee a fundamental right but sets out a guiding principle of social and economic policy, a constitutional guideline addressed to the public authorities, the regulation in question cannot in any case contravene the mandate of art. 10. 2 SC to interpret the rules relating to the fundamental rights and freedoms recognised by the Constitution (i.e. those contained in arts. 14 to 29, plus the conscientious objection of art. 30.2) in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on the same matters ratified by Spain (STC 32/2019, FJ 6).”*

For its part, according to art. 96.1 SC, “Validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order.” In other words, it would seem that the ESC is directly enforceable in Spain before the Spanish courts, even over and above Spanish laws (art. 31 Law 25/2014 and STC, which enshrines the control of conventionality, by virtue of which ordinary judges must disapply laws that they consider to be contrary to international treaties). Nevertheless, in its recent case law (again wrongly, in our opinion), the CC affirms that international human rights treaties are not authentic legal norms but mere guidelines for the legislator:

*“When art. 25.1 of the Universal Declaration of Human Rights and art. 11.1 of the International Covenant on Economic, Social and Cultural Rights, cited in the appeal, recognise the right of individuals to a sufficient standard of living that ensures them,*

*among other benefits, adequate housing, it is clear that these provisions do not recognise an enforceable subjective right, but rather constitute a mandate for state parties to adopt appropriate measures to promote public policies aimed at facilitating access for all citizens to decent housing (STC 32/2019, FJ 6)."*

Reference is made to mandates, but there is no mechanism for enforcing them, and neither are they legal: a real *coup de grâce*, which takes us back at least to the world before 1945, to international law, and to the very idea of human rights as a legal category. Paradoxically, the CC, bound by the constituent contract of 1978 to act as the last bastion of citizens' rights, becomes its worst enemy: given the binding force of the CC's case law, without an internal law adapting the ESC (the authentic material Constitution of the social rights of Spaniards) to Spanish law, the ESC becomes a dead letter.

## **2. Supreme Court**

The Supreme Court has also been reluctant to give effectiveness to the ESC, admitting only an interpretative value of the legislation. Consequently, the Supreme Court uses the ESC as an accessory hermeneutical criterion.

This can be seen, for example, in STS 4475/2003 of June 26, STS 7162/2006 of September 26, in which it states that,

*"...it cannot be affirmed that this article 10-4-c) has binding force in Spain. This provision is included in Part II of the European Social Charter, which begins by stating that 'the Contracting Parties undertake to consider themselves bound in the manner set forth in Part III by the obligations set forth in the following articles and paragraphs,' which are arts. 1 to 19, which make up said Part II. Part III begins with art. 20, number 1 of which provides that 'each of the Contracting Parties commits: (...) b) -To consider itself bound by at least five of the following seven articles of Part II of the Charter: arts. 1, 5, 6, 12, 13, 16 and 19. This binding force does not include art. 10, which we are dealing with, and therefore, in principle, it cannot be recognised as binding in Spain (...)*  
*The text of the European Social Charter published in the Official State Gazette does not include a list of the provisions of Part II of the same accepted as binding by Spain.*

*Therefore, it is not possible, in principle, to say that the appealed judgement incurs in legal infringement concerning that art. 10-4-c) of the Charter.”*

In its rulings, it has never granted effectiveness to either the requirements of the ESC or its articles.

With regard to art. 13, and in relation to the applicability of the minimum threshold as a benefit for people in a situation of vulnerability, several appeals have been filed, with mixed results:

1. In one of them, against a resolution of the High Court of Justice of Madrid, a decision is awaited from the Admission Chamber, regarding the admissibility of the appeal urged.
2. In another one, the appointment of a court-appointed lawyer for the filing of the appeal is pending.
3. In a third appeal, once a lawyer has been appointed, and in view of the unsustainability of the appeal on the grounds that art. 13 ESC cannot be invoked in Spain, it has been decided that the appeal is unsustainable, and therefore the Supreme Court has rejected the appeal for processing.

### **High Courts of Justice**

For the High Courts of Justice, which are entrusted with the unification of doctrine in the sphere of the autonomous communities in certain matters (specifically the Administrative Disputes Chamber for claims related to minimum income benefits managed by the autonomous communities, and the Social Chamber for those related to state benefits), the ESC and specifically its art. 13 are not invocable before the Spanish courts because they do not have regulatory efficacy nor do they grant subjective rights.

The High Court of Justice of Catalonia of 27/09/2015 understands that the ESC

*“... cannot be invoked for the purposes of its direct application.”*

and

*“... does not establish rules of law that must be applied to individuals, but only obliges the states to legislate in a certain sense.”*

This same High Court of Justice of Catalonia, in judgement of 20/5/2019 art. 13 of the ESC, reaffirms the direct inapplicability because:

*“As regards the international norms invoked, with which the main petition is based, these provisions do not recognise individual rights for citizens and directly enforceable against the state. ...with the ESC, states commit to make every effort to improve the standard of living and promote the well-being of all categories of their populations, both rural and urban, by means of appropriate institutions and activities. Consequently, they do not permit the exercise of individual actions based exclusively on their provisions; and not even in Spain can the collective claims provided for in the 1995 Protocol be brought, collective claims which, moreover, should be addressed to the European Committee of Social Rights and not to the Administration of the Spanish state...”*

The High Court of Justice of Madrid, in judgement of the Administrative Disputes Chamber of 11/2/2019:

*“With regard to the first question, that is, what is called ‘self-executing’ or direct applicability of the rule contained in art. 13 of the ESC, ... It can well be deduced from such provision that the commitment made by the contracting state, in this case Spain, is a commitment to ensure that such benefits are regulated. The latter are not regulated per se in the Charter nor even less is the specific amount in which they must be regulated in each state established in the ESC. Thus, it is only through subsequent national regulation that the benefit and its specific amount can be specified. In other words, what the Charter establishes is a commitment on the part of the Spanish state to regulate such social benefits, but it does not establish a subjective right directly invocable by the individual to claim a specific and concrete amount before the ordinary national courts.”*

The same High Court of Justice in the Community of Madrid (section 4, judgement 759/2020 issued in appeal 283/2020, dated October 15, 2020), states again that art. 13 cannot be

invoked to guarantee a minimum income in accordance with art. 13 of the ESC when the amount of the social security benefit for unemployment benefit is insufficient for several reasons:

*a) First, what must be taken as a starting point is the specific action brought in the lawsuit, which is to claim a higher amount in the unemployment benefit that has been granted by the defendant Public State Employment Service. It is not, therefore, a request for social assistance - which is what the aforementioned art. 13 refers to according to its heading -, but rather for a social security benefit or subsidy, in the area of unemployment, the more specific regulation of which appears in art. 13 of the Social Charter.*

*b) Second, the principle of legality is the one that informs our legal system, especially the social security system, as established in the judgement of the Supreme Court, Chamber IV, dated 10-2-2017. The doctrine of the Constitutional Court itself configures the right to social security as a right of strict legal configuration that allows the intensity or quality of the protection provided to be adjusted and modulated at the discretion of the legislator to the economic circumstances, the availability of each historical moment, and the demands of the different protected groups” (STC 65/1987, 124/1987, 97/1990, 116/1991, 37/1994, 367/2003, 213/2005, 128/2009 and 205/2011).*

*c) Said provision is included in Title I, Chapter III on ‘Guiding principles of social and economic policy’, and as indicated by the Constitutional Court in its Plenary Judgement of 28-2-2019, No. 32/2019 (although referring to art. 47 SC), which deals with the right to housing also from the point of view of international treaties, with citation of standards referred to by the now appellant, that Chapter III does not recognise a fundamental right, but rather enunciates ‘a constitutional mandate or guideline that must inform the actions of all public authorities (art. 53.3 SC) in the exercise of their respective competences’ (STC 152/1988, of July 20, FJ 2); and in the same sense, SSTC 59/1995, of March 17, FJ 3, and 36/2012, of March 15, FJ 4).... Therefore, insofar as art. 47 SC does not guarantee a fundamental right but rather enunciates a guiding*



*principle of social and economic policy, a constitutional guideline addressed to the public authorities, the regulation at issue cannot in any case contravene the mandate of art. 10. 2 SC to interpret the norms relating to the fundamental rights and freedoms recognised by the Constitution (that is, those contained in arts. 14 to 29, plus the conscientious objection of art. 30.2) in accordance with the Universal Declaration of Human Rights and the international treaties and agreements on the same matters ratified by Spain.*

For its part, the High Court of Justice of the Valencian Community, Social Chamber, in its judgement dated November 16, 2004, maintains the interpretative nature of both the provisions of the ESC, arts. 5 and 6, and the case law emanating from the European Committee of Social Rights (ECSR) for its interpretation.

Another judgement of the same High Court, judgement 837/2006 of February 3, 2006, this time in its Administrative Disputes Chamber, addresses, in its 3rd ground of law, the validity of the European Social Charter and the case law of the ECSR, to affirm that,

*“Art. 3 of the 1961 European Social Charter (ratified by the Spanish state in 1980) enshrines the right of workers to safety and health at work, a provision which, according to the Charter's controlling case law, 'establishes a widely recognised principle, which derives directly from the right to the integrity of the human person, this being one of the fundamental principles of human rights' (Recueil de Jurisprudence relative à la Charte Sociale Européenne/Case Law on the European Social Charter, Strasbourg, 1982, p. 22).”*

However, there is no similar recognition about the binding nature of art. 13 SC, which, in the absence of legal incorporation, remains unprotected.

### **3. Courts of first instance**

The response of the courts has been disparate with respect to the application of the European Social Charter, depending on the type of right claimed.

For the Social Court 2 of Barcelona, in judgement 412/2013 of November 10, 2013, on the non-conforming application to said social charter of the Spanish legislation referring to probationary periods for entrepreneurs' contracts (ID CENDOJ 08019440022013100001), it was stated that:

*“The European Social Charter is an international norm that is part of domestic law (arts. 10.2 and 96 SC) and has the same binding value as the treaties of the European Union, so that in accordance with the principle of hierarchy of norms it is placed above national law.*

*It is the responsibility of the European Committee of Social Rights to ensure the correct application of the Charter, whereby its decisions are binding on national courts.”*

In the same sense, the judgements of the Social Court 19 of Madrid of 28/3/2014, of the Court 1 of Tarragona of 2/4/2014, of the Court 1 of Mataró of 29/4/2014, of the Social Court 3 of Barcelona of 5/11/2014, of the Social Court 19 Barcelona of 11/11/2014, of the Social Court 9 of Gran Canaria of 31/3/2015, of the Social Court 2 of Fuerteventura of 31/3/2015, of the Social Court 1 of Toledo of 9/5/2015, of the Social Court 1 of Las Palmas of 11/5 and 3/-/2015 or of the Social Court 5 of Valencia of 4/6/2015, all of them reaffirm the control of conventionality by the prevalence of the European Social Charter over domestic legislation. The latter fails to adequately transpose the former in the case of various labour rights.

However, with respect to art. 13 ESC, the response of the courts of instance has been unanimously negative:

The judgement of the Social Court 2 of Badajoz, dated December 23, 2019, states:

*“... without the need for further argumentation, it turns out that the direct application that regards art. 13 of the ESC is not possible and specific legislative actions will have to articulate the appropriate ways to ensure that the result is in line with the international commitments acquired. Therefore, in the present case, and having determined the amount of the pension in accordance with the legislation in force on the matter, no objection can be made to the administrative action taken.”*

Ruling 19/2020 of Social Court 2 of Madrid states:

*“From the reading of the European Social Charter, both art. 13 - that is alleged to have been infringed-, which refers to the ‘Right to social and medical assistance’, and art. 12, which refers to the ‘Right to social security’, are of a programmatic nature, as they contain a series of commitments assumed by the Parties, without being subject to direct application due to their nature. But what is more, as stated by the defendant, in Part III, art. 1, when referring to the ‘Implementation of the commitments undertaken’, states: ‘1. Without prejudice to the methods of implementation provided for in these articles, the relevant provisions of arts. 1 to 31 of Part II of the present Charter shall be implemented by:*

*a) Laws or regulations....*

*Therefore, the regulation on this matter shall refer to what is established in laws or regulations. Our legal system contains a regulation for this purpose and we must abide by the provisions of the national standard.”*

The judgement concludes by stating that, given that no regulation or standard establishes any measure for the recognition of a benefit above the minimum poverty threshold for people at risk, it is not applicable in Spain, and that the state or autonomous community benefits that allow a benefit below the threshold are in accordance with the law.

The judgement of the Administrative Disputes Court of Valladolid 2, dated 107/2018, of June 21, 2019, while recognising the applicability of the ESC, points out that no benefit above the poverty threshold can be accessed by means of the benefit set by the administration below said threshold. The administration complements it with other public benefits that, paradoxically, do not exist nor allow such complementarity.

The judgement reads as follows:

*“The problem is that Spain is a state party to the ESC (1961) and its protocol (1988) but not to the revised Charter of 1996. However, it has accepted the 19 provisions of the ESC and the four of the protocol in their entirety and is bound by them. On the other*

*hand, it is not bound by articles with such expressive wording as ‘the right to protection against dismissal’, ‘the right of workers to protection in the event of employer’s insolvency’, ‘the right of workers with family responsibilities to equal opportunities and treatment’ (...). Despite these undoubted limitations, the ESC is still a binding treaty for the government. However, in this case, it cannot be said that the plaintiff has been denied the necessary supplement to prevent him/her from falling below the poverty threshold, taking into account that the plaintiff has been told to apply for other existing benefits, other mechanisms provided to cover this supplement, but that it is not the guaranteed income of citizenship.*

*This is why the plaintiff has to apply for the benefits indicated in the Social Action Centres (CEAS). In the event that they are not fulfilled or not supplemented to rise above the poverty threshold, the plaintiff can go to court and demand the direct application of the ESC.”*

As indicated, once the administration was requested to indicate other supplementary benefits, it stated that there were none, and the judge dismissed the execution to demand supplementing the agreed benefit on the understanding that there is no regulatory rule that allows it.

### **3.3 ADMINISTRATIVE PRACTICE HAS NOT INCORPORATED THE CRITERIA OF ART. 13 OF THE EUROPEAN SOCIAL CHARTER.**

Nowadays, in order to respond to the requirements of art. 13 of the Spanish Constitution, there are apparently two available possibilities:

- Regional regulations, which have been the object of study by various reports of the Committee and which, in general terms, do not comply with all recommendations made, since they have not undergone sufficient modifications to comply with them.
- The recent law regulating the Minimum Vital Income.

Regarding administrative practice, no regulatory development has been made that adapts regional laws to conclusions and recommendations made by the Committee to comply with

the requirements of art. 13. It should be pointed out that this practice has not varied in comparison with the one that was already in place.

In addition to this, there are several other factors regarding administrative practice that specifically hinder the aims pursued by art. 13:

- The amount of time needed to process the files, which contradicts the urgency required to adopt the resolutions.
- The lack of sufficient explanation in the resolutions adopted to suspend, sanction, or reject applications.
- The legal insecurity that arises from the continuous suspension of benefits because of documentation requirements of the interested parties that the administration controls, or that it has the means and obligation to obtain.
- Since the approval of state law regulating the Minimum Vital Income, a general practice requires interested parties to prove that they have applied for the state Minimum Vital Income (even when the administration knows that due to their administrative situation and the documentation it possesses, they are not entitled to the Minimum Vital Income) as a condition to keep receiving the minimum income. In some cases, people who are not eligible for the Minimum Vital Income are forced to make an unfeasible application for it.

● ***Ombudsman recommendations***

This set of circumstances has given rise to various reports and recommendations from the Ombudsman, which are usually ignored by the competent administrative authorities. For further information on MVI and minimum income, please refer to the following links:

[https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe\\_anual\\_2020-1.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2021/05/Informe_anual_2020-1.pdf)

Pp. 513-526 and 628-635

[https://www.defensordelpueblo.es/wp-content/uploads/2020/05/Informe\\_gestion\\_2019.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2020/05/Informe_gestion_2019.pdf)

Pp. 569-583

[https://www.defensordelpueblo.es/wp-content/uploads/2019/06/Informe\\_gestion\\_2018.pdf](https://www.defensordelpueblo.es/wp-content/uploads/2019/06/Informe_gestion_2018.pdf)

Pp. 510-515

The Ombudsman has not published a monographic report on this problem, nor has he concluded his previous study on the regulations thereof. Therefore, its doctrine is to be drawn from the reading of its recommendations on the subject and their synthesis in successive annual reports. It is true that these recommendations are based on individual complaints and are logically conditioned by the heterogeneous regional regulations. Despite of this, the analysis of the underlying problem is quite clear. In 2016, the person in charge of this matter in the office of the Ombudsman summarised the activities carried out by the Institution between 2006 and 2015. He provides, in the first place, data regarding the increasing number of complaints relevant to the title “situations of need and social exclusion” (2,548 files analysed in this period). About half of them are based on minimum incomes. These have experienced a high increase in the recent years. The data shall be compared with the complaints on the protective action of social security (1,310) and on non-contributory pensions (170). Although the total percentage of files under the title “situations of need and social exclusion” does not seem relevant (1.56% of the total number of files processed by the institution), the Ombudsman has recognised that the data shall be considered with caution, bearing in mind that “the groups of people that have a right to these benefits may have difficulty (due to age, lack of knowledge, etc.) to approach the Ombudsman with their complaints. This is why the Ombudsman is committed to reinforce, through ex officio actions, the examination of general situations that are revealed when dealing with individual problems.” This seems to us to be a good methodological approach, consistent with the nature of the institution.

Specifically on minimum income, the Ombudsman actions focused between 2006 and 2015 on the following:

- a) Delays in the processing of applications to obtain benefits. Applications have increased as a result of the economic crisis, and this has led to processing times, which in some cases exceed one year. This causes a frustration of the meaning and function of the benefit itself. The Ombudsman issued numerous reminders of legal duties and recommendations, aimed at three objectives: simplifying procedures to improve their efficiency, increasing the number of staff dedicated to processing and, adapting the budget to the actual volume of applications.

b) The new user profiles, their growing number and the need to complete a set of reports and formalities, have further increased processing difficulties. In some cases, the Ombudsman detected that, for example, the need to issue reports on the “Family Insertion Plan”, entrusted to the municipal social services, often very overloaded with work, meant further delays in the procedures, which were already slow.

c) The regulatory development of these benefits was not uniform, particularly considering that it is a subjective right and therefore enforceable before the courts. Even in cases in which this consideration had already been incorporated into the corresponding legislation, it was sometimes necessary for the Ombudsman to make its consequences clear, given that the Administration continued to link the resolution of applications to the existence of budgetary credit. It seems that the Ombudsman thus intends to establish a necessary conceptual relationship (obvious in our opinion, but not for everyone) between the existence of a subjective right and its fulfilment regardless of budgetary availability.

d) The Ombudsman also questions the decisions that defer the granting of benefits to the date of the corresponding resolution, because the interested parties are left without coverage during the period of time (that may be very long) between the formulation of the application and its resolution.

e) Gradually, the conditions to obtain the benefits have insisted on labour market insertion as a complementary objective. This has been carried out by reinforcing relations with the corresponding employment services in various ways. However, in several cases the Ombudsman detected that administrative rigidity and lack of efficiency meant in practice a barrier for beneficiaries to have incentives to access the labour market, fundamentally when their only hope was just temporary incorporation to a job.

Since 2015, according to the Ombudsman, the situation has only worsened. The following recommendations, among many others, can be cited: July 13, 2015 (to Murcia, to resolve within a two-month period stipulated in the law and *“to provide a real budget appropriation commensurate with the volume of benefits, taking into account that the benefit refers to a*

*subjective right and, therefore, cannot be limited by the budget allocation*"); June 2, 2015 (to the Valencian region, similar to the previous one, but adding *"to promote the modification of provisions related to the processing of the [minimum income] in order to simplify the procedure"*); July 21, 2015 (to Madrid, in similar terms: duty to resolve within the three months established by law and duty to increase staff and budget allocation); December 18, 2015 (to Madrid, on the need to give retroactive effect to the appraisals on appeal); August 12, 2016 (to the Valencian region: increase resources so that applications are resolved *"in the shortest possible period of time"*); December 23, 2016 (to Asturias, in the same terms as the previous one); November 21, 2016 (to Castilla-La Mancha, duty to provide individualised and specific reasons for minimum income refusals); February 15, 2021 (to Madrid, on the obligation to grant minimum income to EU citizens with residence permit).

In its 2017 Annual Report, the Ombudsman includes important details, as a general consideration, and with a broader scope than the aforementioned recommendations:

*"This institution recommends that a benefit is established, guaranteeing citizens a well-designed minimum income, as it constitutes a closing mechanism for any social policy system. This makes it feasible to cover the possible shortcomings of other instruments, both because of their configuration, which could leave groups unprotected, and because of the shortage of benefits due to exceptional circumstances not contemplated. Moreover, in cases of need, it makes it possible to combine the compulsory public response and at the same time respect citizens' preferences, which is not always the case with objective benefits."*

Taking into account that such benefit already exists (in the autonomous communities), perhaps what the Ombudsman means is that it should be articulated in a basic state law (to be developed by the autonomous communities). This would be both possible and convenient in terms of competence and fundamental rights. This is a proposal with which practically all doctrine and comparative law concur, as well as the resolution of the European Parliament of 24 October 2017 (e.g., recital O). The so-called dependency law, arising from an agreement between the state and regional authorities, is a good precedent.



The 2018, 2019, and 2020 Reports highlight the persistence, or even increase, for at least fifteen years now, of the same problems. In general terms, the institution noted in 2018 the following:

*The objective of preventing minimum income fraud should not prevent access for those who are entitled to it, nor distort the nature and purpose of this type of welfare benefits. It would be advisable, therefore, to reflect on the regulation and procedure so that this does not happen. It would also be advisable to make an effort regarding the amounts of the benefits granted.*

In its last Annual Report (2020), the Ombudsman repeats the aforementioned non-compliances: for example, it is stated that delays in the processing of files increased in 2020.

The last Annual Report states that, a new problem arising from the creation of the aforementioned Minimum Vital Income is paradoxically going to reduce the chances of complying with the regional minimum incomes. According to the Ombudsman:

*The approval of the Minimum Vital Income [...] has also had an impact on the process for granting minimum incomes, which has been further delayed due to the fact that they are subsidiary and complementary to any other economic benefits not expressly declared incompatible, provided for in the rest of the social protection systems, both state and regional, or any other minimum income benefit of state nature, to which the applicants may be entitled.*

The Ombudsman notes that the competent regional ministries require applicants to prove that they have applied for the Minimum Vital Income and, if appropriate, to provide the appropriate resolution: this is the case, for example, in Andalusia, the Valencian Community, Castilla-La Mancha and Catalonia, among others.

We do not know if recommendations of the Ombudsman have been heeded (there is no public tracking system), although we are pretty sure they have not, given the repetition of proposals year after year. From the data provided by the Ombudsman, it is clear that the regional administration is reluctant to treat the issue as a matter of human and fundamental rights. Given the continuous and generalised non-compliance, it is now time to propose regulatory changes. This point of view is clearly shown in the response of the Ombudsman to

the complaints filed by CUARTO MUNDO and other non-governmental organisations, as initiators of these procedures, which we will briefly explain,

The Ombudsman responds to our letter of May 17, 2018, almost nine months later (on February 12, 2019). The Institution has agreed with CUARTO MUNDO's assessment of the facts, revealing the false claims made by the Community of Madrid. The Ombudsman states, first of all, that “as a result of the complaints filed, it has been possible to verify that in most resolutions issued in that regional community, it is difficult for citizens to be certain about why they do not meet the requirements to access the minimum insertion income. They use a model to notify the resolution in which, in general terms, the suspension of the benefit is communicated. Suspension resolutions usually indicate, in most cases, that there have been changes in the circumstances that allowed to grant the benefit, without really clarifying which ones, leaving the beneficiaries in a situation of defencelessness.” Consequently, it formulates the following recommendation to the Department:

*To sufficiently explain the resolutions of denial, suspension, or termination of minimum insertion income benefits, referring not only to legislation on which they are based, but also to the specific reasons why such regulations lead to the notified resolution.*

On the other hand, the Ombudsman does not know in which cases the Administration has carried out the hearing procedure when temporarily suspending a minimum insertion income and states: “it seems that this procedure is ignored, even when the file does not contain all necessary documentation to confirm if the suspension is appropriate. Information thereof has been requested and the Department has been reminded that, if this procedure were properly complied with, the people affected would have knowledge, prior to the suspension, of the facts and legal grounds on which the decision is based and could give the arguments necessary to support their defence.”

In relation to the payments that have not been made, even though the Ombudsman does not question the administrative decisions, it is certain that the problem lies in the fact that the granting of the benefit is suspended for months, until it is confirmed that the beneficiary is entitled to it. During this period of time, the beneficiary ceases to receive the minimum insertion income and, then, if his or her right to receive the benefit is confirmed because it

met the requirements, there is no reimbursement of the amounts not being received, and the interested party must appeal and justify why the suspension was inappropriate. Furthermore, interested parties are not aware that an appeal may be lodged against the decision when the evidence that gave rise to the suspension contradicts the documentation in the file, nor is this explained in clear and comprehensible terms in the decisions issued. Usually, the situation is the opposite, since a decision notifying the lifting of the suspension and stating that an appeal may be lodged is misleading.

The Ombudsman considers that this procedure has a negative impact on beneficiaries who are in a situation of economic precariousness and therefore at risk of social exclusion. A minimum income is a welfare benefit, based on the dignity of people (this is the only reference that the Ombudsman does to fundamental rights), to meet basic living needs. Its precautionary suspension without subsequent payment of unpaid benefits worsens the condition of affected people, and this undermines the specific reason for which it was granted in the first place. Consequently, it formulates a second recommendation to the Department:

*Modify art. 37.4 of Regulation 126/2014 in a way that, if the benefit is precautionary suspended, and later it is verified that the holder meets the requirements to receive it, all payments of arrears should be made from the date of effect of the precautionary suspension, ex officio.*

For similar reasons, the Ombudsman also considers it necessary to amend art. 40 regarding the suspension which stipulates that if the right to the benefit is maintained, the benefit will have to be paid from the first day of the following month in which the corresponding administrative resolution was adopted. Therefore, it is recommended to:

*Modify art. 40.5 of Regulation 126/2014, so that if the right to the minimum insertion income benefit is granted due to lifting the suspension, the same shall count from the moment in which requirements are met and this is properly justified; and if the temporary suspension inappropriateness is accredited, from the date of effect thereof, with the payment of the corresponding arrears.*

Regarding the subsidiarity of the benefit, the Ombudsman has informed the Council of cases in which, despite interested parties accredited having applied for benefits from the SEPE, and

the benefits having been denied, the suspension was still maintained for not complying with the subsidiarity requirement. The Ombudsman points out the need to adopt measures to avoid this type of situation.

These recommendations only respond to part of the demands, which appear more detailed and legally argued in the complaints filed on May 17 and December 26, 2018 by several entities, among which the organisations that authored this report (e.g., the Ombudsman says nothing about the allegations on the principles of publicity and accountability). In any case, they have not been, to date, complied with by the Community of Madrid (“rejected” or “no response” according to the website of the Ombudsman itself).

A new report dated March 13, 2019, more complete and detailed, remains unanswered by the corresponding Department, still awaiting the relevant Recommendation.

The following links may be referred to:

[https://drive.google.com/file/d/1DZ\\_xY7NRZSeznYezTzuzlakBrFDpEZMj/view](https://drive.google.com/file/d/1DZ_xY7NRZSeznYezTzuzlakBrFDpEZMj/view)

[https://drive.google.com/file/d/1bed5SOKhALVSyVwV7wVAdemcp\\_r60vwe/view](https://drive.google.com/file/d/1bed5SOKhALVSyVwV7wVAdemcp_r60vwe/view)

[https://drive.google.com/file/d/1GdUPWyLOz5bW8gSKdjvjILDnXfxAsf\\_S/view](https://drive.google.com/file/d/1GdUPWyLOz5bW8gSKdjvjILDnXfxAsf_S/view)

#### ● *Insufficient benefits*

Regarding the insufficiency of benefits, individuals have requested Regional Communities to provide the corresponding regional benefits in order to comply with the requirements of art. 13 of the European Social Charter. The response has been, in all cases, negative, on the grounds that it is impossible to apply art. 13 directly and that the only benefits that can legally be obtained are the ones stipulated in each regional regulation.

Thus, we can rely on the constant resolution of the Directorate General of Social Services, dependent on the Department of Social Policies of the Community of Madrid, when we demand the application of the European Social Charter regarding the minimum insertion of the Community of Madrid provided for by Law 15/2001 of December 27 and related regulations, in relation to insufficient benefits. This resolution states that it is not possible to obtain the quantity of income claimed, since it is not stipulated in regional regulations.

Similar resolutions have been adopted by the central administration regarding other subsidies. Thus, for example, the Resolution of the Provincial Directorate of Social Security of Madrid, dated March 20, 2019 (File 28OE2733/NG084) rejects the applicability of the European Social Charter because it is not stipulated in state regulations in the following terms:

*“Having examined your previous request dated 20/2/2019, claiming against the decision approving unemployment benefits dated 12/2/2019, and specifically against the amount of subsidy of 14'34 euros per day, equivalent to 80% of the IPREM in force, we have concluded that you do not allege new facts or legal grounds, nor provide evidence that undermines those of the appealed resolution, therefore the claim shall be DISMISSED.”*

- ***Denial of benefits for not previously requesting the Minimum Vital Income, when regional administrations are aware that the petitioner does not meet the requirements to obtain such Minimum Vital Income.***

Regarding the denial of minimum income when interested parties have not previously requested the Minimum Vital Income, the resolution of the General Technical Secretariat of the Department of Social Policies of the CAM (File 7/2021 M-ags) dated February 18, 2021, resolving the appeal, states that:

*“In this regard, as stated in the report issued by the Directorate General of Social Services and Innovation, it is necessary to consider art. 4 of Law 15/2001, of December 27, 2001, on Minimum Insertion Income in the Community of Madrid. It establishes that “the minimum insertion income shall be subsidiary to other pensions that correspond to the benefit holder, or to the members of his or her cohabitation unit, according to social security system or any other public welfare protection system. This applies also to other benefits that, due to their purpose and amount, may be determined by applicable regulations.*

*The subsidiary nature will entail, for the purposes of this law, that those who meet the requirements to be entitled to any of the public benefits mentioned in the previous paragraph, shall be obliged to apply to the corresponding body, prior to applying for*

*the minimum income for integration, for recognition of the right to such benefits.. Only when they are denied may the minimum insertion income benefit be granted.”*

This resolution motivated the request for MVI. It was denied, as it could not be otherwise, because the legal requirements to be entitled to such benefit were not met.

● **Lack of explanation**

There is a lack of explanation, in most cases, in the resolutions issued by the central administration with respect to the Minimum Vital Income, and by the regional administration with respect to the minimum income. Resolutions usually respond that the law has not been complied with, or that there are no sufficient reasons to change the decision. They do not provide an explanation or offer further reasoning of the specific reasons that have led to such resolutions.

According to the doctrine of the Constitutional Court and the case law of the Supreme Court, administrative acts require sufficient explanation of the reasons to adopt a specific decision, showing the concrete and precise, although not exhaustive, grounds underlying the administrative decision.

The Constitutional Court case of July 17, 1981, used by subsequent case law, states that explanation cannot be a mere formal requirement. It should express in detail the reasons, because only by doing so can interested parties know the grounds that justify such administrative act. They are necessary for the administrative jurisdiction to be able to control the activity of the Administration, and because only by expressing them can the interested parties claim against the act, proving the necessary evidence, according to such explanation which, if omitted, can generate a state of defencelessness prohibited by art. 24.1 of the Spanish Constitution.

In this sense, the absence of explanation is verified in resolutions such as the one we extract, which also shows that we are dealing with purely procedural resolutions (file 1/28(2020/000089048)):

*“the provincial director of the National Institute of Social Security has decided to*

*deny your request for the Minimum Vital Income benefit as indicated at the bottom of this letter.*

...

*CAUSES: exceeds income limit."*

In this case, taking into account the petitioner's actual income, it is not clear what income is attributed to him, with no mention of any factual element or reference to any document, when the crude reality is the absence of sufficient income.

In the same sense, other resolutions, identical in terms of explanation, point to family composition as the cause, without mentioning the elements referring to it.

- ***Abuse of telematic communication requirements for vulnerable people in a serious situation of computer illiteracy and/or lack of resources to access the internet.***

A significant part of the administration's communication with citizens is carried out by means of computer applications. These require two conditions that are not usually met by certain profiles of people in vulnerable situations: a) having a reliable internet connection from mobile phones, computers, etc.; b) having adequate skills to perform the required communications.

As a result, MVI petitioners are disadvantaged in the exercise of their rights.

a) It is common that they do not receive written notification of the resolution of their files or that only brief reference to "in process", "denied" or "approved" is made in the decisions produced by the administration. This prevents petitioners from knowing the reasons founding the decisions, or their content, or from exercising their right to access the resources to which they are entitled.

b) An eloquent example thereof is the following notification received via WhatsApp:

INSS SSCC SSEE, I... 21/12/2020  
para mí

Buenos días,

En relación al expediente de referencia, para poder resolver su solicitud de prestación económica del **Ingreso Mínimo Vital**, necesitamos que nos haga llegar, para su subsanación, la documentación que le relacionamos en la carta adjunta.

Para ello, se le concede el plazo de 10 días contados a partir del siguiente a la recepción del presente requerimiento. Transcurrido dicho plazo sin que se haya atendido este requerimiento, se procederá al archivo de las actuaciones por desistimiento del expediente.

Un saludo.

Good morning,

In relation to the referred file, in order to proceed with your application for the Minimum Vital Income financial benefit, we require you to send us the documentation listed in the attached letter for it to be rectified.

To do so, you are granted a period of 10 days from the day following receipt of this request. Should this period elapse without this requirement having been complied with, the proceedings will be closed as a result of abandonment.

Source: Screenshot sent by one of the people advised by Legal Bureau for Social Rights

A letter in which the user does not have access to the document that, apparently, he/she is required to attach for rectification, which causes him/her to be defenceless.

c) This is compounded by the difficulty, due to the pandemic, of obtaining face-to-face appointments to resolve doubts, obtain information or process formalities.

d) A particularly problematic case is that of petitioners applying for the MVI in the Provincial Directorate of Gualadajara, which, due to a lack of personnel for the management and processing of this benefit, has delegated the management of its files to the Provincial Directorate of Bizcaya. Petitioners are requested to send various documents by e-mail to the address [imv.inss.nizcaia.dp@seg-social.es](mailto:imv.inss.nizcaia.dp@seg-social.es) (petitioners who, as mentioned above, often lack the necessary skills to adequately handle e-mail), by appointment (Biszaya is more than 400 km from Guadalajara), by ordinary mail to the INSS PD address in Bilbao, or through the computer application, which is also unpractical for people lacking computer literacy.

#### • *Standard responses*



The resolutions issued by the Provincial Directorates of the INSS are frequently not sufficiently explained and the Administration resorts to standard and form responses to deny requests and appeals.

For example, the Madrid Provincial Directorate of the INSS issues the following standard resolution to deny prior claims against the Minimum Vital Income's assigned amount (taken from file 20214289890032590):

*"The claims alleged in your request are not sufficient to modify the adopted agreement.*

*Legal grounds:*

*Regulation 20/2020 of May 29 establishing the minimum vital income (BOE of June 1)."*

This is a clear example of insufficient explanation, being just a formal response, which reveals the lack of objectivity in the fulfilment of general interests (art. 103 of the Spanish Constitution) and the absence of security in the process of adopting agreements and resolutions. Especially, when the law itself allows the administration to take up to 45 days to adopt a resolution to the claims and, after such denial, the citizen has another 30 days to claim before a very slow social jurisdiction. All of this means that on average, correcting resolutions similar to the one referred to and obtaining recognition of this right which should resolve situations of vulnerability, sufficiently and urgently, can cost an average of more than eight months from the time the resolution is appealed before the judge.

- ***Lack of individualized analysis and sufficient explanation***

The express resolutions denying prior claims before acts of denial, also purely procedural, are clear examples of the absence of individualized analysis of the cases and reasons for the claim, and of massive denials by means of forms without prior analysis.

Many resolutions state the following:

*"In relation to the claim filed by you on April 21, 2021, against the resolution adopted by this entity and considering the background information contained in your file, this Provincial Authority has resolved to dismiss it based on the following:*

*Facts:*

*Not complying with the amount approved for the Minimum Vital Income benefit. The monthly amount of the Minimum Vital Income benefit that corresponds to the individual beneficiary or to the cohabitation unit will be determined by the difference between the amount of the guaranteed income and the total incomes and revenues of the beneficiaries or of the members that make up said cohabitation unit, provided that the resulting amount is greater than or equal to €10 per month.*

*The allegations made in your complaint do not modify the adopted agreement.*

● **Resolutions causing material and formal defencelessness**

Several administrative practices cause material defencelessness of citizens, thereby exposing them to the arbitrariness of the administration.

○ **Silence**

The most distressing is the lengthening of deadlines for resolving petitions and the abuse of the prerogative of silence. That is to say, the failure to resolve the files, forcing the administered party to wait for the exhaustion of the deadlines established by law in order to be able to react against this silence.

In the case of the Minimum Vital Income, the INSS can resolve the application for minimum living income in a maximum of six months, which can be extended by suspending time periods if complementary documentation is requested by the administrator.

Once the reply has been made (or the maximum period for a resolution has elapsed), the person concerned has another a period of one month to react, by means of a claim prior to the lawsuit before the social jurisdiction (an appeal for which legal assistance is not guaranteed for the person concerned, who is left defenceless to make the corresponding claim). The administration again has a period of 45 working days to resolve the matter. The citizen has a maximum of 30 working days to react by bringing an action before the social court against the silence caused by administrative inactivity. This period may be interrupted if a public lawyer is requested and will

resume when the latter is appointed (which usually takes an average of two more months).

Due to the backlog in the social jurisdiction, the lawsuit will not be heard before six to eight months after it is filed, taking on average another two months before a court ruling is issued.

All this is part of a very slow process, excessively hampered by formal requirements and little legal security for the citizen, as it may last up to a year or more until a definitive decision of the court is issued. This practice unfair and causes defencelessness to citizens.

- ***Lack of procedural celerity***

In addition, even when the right to legal assistance when filing a lawsuit against the administration's refusal is guaranteed, whether it is the social court in the case of the minimum income, or the administrative court, the average period for appointing a lawyer can last another two months. Meanwhile, the period of time for filing the claim is suspended. The lawyer is only guaranteed once the resolution rejecting the prior claim has been issued. This challenges the viability of the appeal itself.

- ***Denials that are not notified and only appear in the computer application***

Similarly, there are situations in which the administration rejects an appeal, but this is not notified to the interested party and only appears in the computer application, thus delaying the right of access to the corresponding appeal.

- ***Vague requests for documentation***

There are frequent notifications requesting the provision of documentation accrediting the different requirements. But usually, neither the requirement to be accredited nor the documentation requested are correctly identified. The lack of accreditation of the requirements is a common argument used by the administration.

- ***Resolutions recognising the right, but relegating the concrete indication of the amount to a later date***

An example of this is file 28IU3699, reference number RPIMV-1282020800005484190100/ID 1375, in which, on 6/4/2021 (almost nine months after the application) after the requested benefit was denied, it was agreed to uphold the prior claim filed against the denial but,

*“The provincial director of the National Institute of Social Security has decided to uphold the prior claim filed in relation to your application for the Minimum Vital Income benefit.*

*A new analysis of your application dated 11-7-2020 will be carried out.”*

That is to say that, as of the date of this report, one year after the application, no amount has been fixed despite the time elapsed, nor, consequently, does a vulnerable family enjoy an effective minimum income.

#### **3.4.- THE EXISTING BUREAUCRATIZATION AND ADMINISTRATIVE AND JURISDICTIONAL MESS MAKE IT DIFFICULT FOR VULNERABLE PEOPLE TO OBTAIN A MINIMUM INCOME WITHIN REASONABLE TIME FRAMES AND UNDER CONDITIONS OF TRANSPARENCY AND OBJECTIVITY.**

The administrative practice of state agencies with respect to the Minimum Vital Income usually hinders the provision of benefits, in addition to the aforementioned non-compliance with Royal decree Law 20/2020 of May 29 regarding the sufficiency of the amounts, age criteria, residence criteria, etc. This happens because:

- a) The protection objectives are not achieved due to the excessive slowness of processing;
  - o Ordinary processing of files usually takes up to six months from the application date.
  - o There is an excessive number of applications that are not answered within six months.
  - o Regulations have established a distressful system in the event of “administrative silence” and that generates a serious defencelessness for the user.

- A minimum of six months must pass in order to request “due to silence” and by means of the Preliminary Claim to Jurisdiction, the review of the file and the express resolution.
  - The term to reply to said appeal is another 45 days.
  - In the event of administrative silence on this appeal, the interested party has 30 days to file a lawsuit before the social court. Normally the trial for this process takes around six months to be scheduled. Even worse, if the interested party chooses to request a public lawyer to file the lawsuit, the average term for the lawyer to be assigned usually exceeds two months, after which the 30-day period to file the lawsuit begins. In conclusion, it can take almost a year until the ruling is issued.
  - If the court’s ruling denies the benefit, the judicial appeal before the Superior Court of Justice of the competent region will take another six to eight months to issue a final decision.
  - During this entire period, the petitioner will not receive any benefit at all.
- b) The issued resolutions usually cause defencelessness for not including sufficient and comprehensible explanation.

This violates the provisions of the Law on Common Administrative Procedure for Public Administrations.

- c) The process is not transparent:
- There is no explanation of the amount, or the “discounts” made to reach a specific amount,
  - There is no explanation on how the data or the documents that are kept by the administration are used
  - There is no access to the contents of the file and administration only informs about the current stage of the file.

- It is common to see a rejection of the petition in the computer application, despite the fact that the interested party has not been notified and, consequently, is not aware of the reasons of such rejection and cannot appeal against it due to a lack of reliable notification.
- The prior claim made without legal assistance hinders the subsequent process before the social jurisdiction. The interested party is not able to claim any additional argument other than the ones indicated at the beginning. Therefore, the lack of legal support in this initial procedure generates defencelessness.

The digital divide and the difficulties that people have to access the benefit must be considered. As a result, in January 2021, according to the information gathered from the people living in poverty that Caritas Spain accompanies, 67% of them had not requested the Minimum Vital Income because they did not have the necessary information, and 33,000 requests of accompanied households in severe poverty were denied (12.4%). The Minimum Vital Income was only granted to 3.6% of the accompanied households in severe poverty.<sup>4</sup>

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<sup>4</sup> <https://www.caritas.es/producto/un-ano-acumulando-crisis/>

## ANEXO (pagina 17)

### **Renta Mínima de Inserción e Ingreso Mínimo Vital Una propuesta *moderada* para un Madrid sin pobreza**

Los colectivos sociales integrantes de la plataforma RMI TU DERECHO nos dirigimos al Consejo de Gobierno de la Comunidad de Madrid, a los grupos parlamentarios de la Asamblea de Madrid y a toda la población de nuestra región, para presentar una modesta proposición, que sería un gran avance social sin requerir recursos sustancialmente superiores a los ahora invertidos en la Renta Mínima de Inserción.

Solicitamos un aumento de la cuanta inicial (pre-descuentos) de la RMI establecida en los Presupuestos de la Comunidad de Madrid (artículo 62), que la acerque al umbral de pobreza, sin incremento significativo de la inversión dado que de ella se descontará el importe del IMV para las familias que lo obtengan.

La nueva redacción propuesta<sup>5</sup> sería la siguiente:

*Artículo 62.- Importe de la RMI (a partir de la fecha que se acuerde)*

*Con efectos xx de xxxxxx de 2020, el importe de la RMI se fija en las siguientes cuantías:*

*a) Importe de la prestación mensual básica: 740 euros.*

*b) Complemento por cada miembro adicional de la unidad de convivencia: 220 euros.*

*El tope máximo será el Salario Mínimo Interprofesional*

### **ARGUMENTACIÓN**

La única modalidad de salario social disponible en la Comunidad de Madrid es la RMI, cobrada por 22.240 familias, con cuantía media 472 euros. Desde el 15 de junio se puede solicitar el IMV.

Como la renta garantizada por el IMV es superior a la RMI, si nada cambia el futuro de ésta sería convertirse en una prestación residual para quienes no cumplen las condiciones del IMV pero sí las de la RMI. Ambas prestaciones quedan lejos del umbral de la pobreza y por separado ninguna garantizaría el acceso a las necesidades básicas de la vida en una región tan cara como Madrid.

Sin renunciar a una mejora de la Ley 15/2001 que regula la RMI, creemos urgente y necesario compatibilizar ya ambas prestaciones. Para ello proponemos un aumento en la cuanta inicial de la RMI, hecho de manera que, sin implicar una inversión mayor que la actual, se garantice a la población madrileña ingresos mínimos mucho más cercanos al umbral de la pobreza.

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<sup>5</sup> Esta propuesta se inspira en los umbrales de pobreza evaluados por EUROSTAT. Para España son 740 euros por la primera persona, el 50% por cada persona adicional mayor de 14 años y un 30% por cada menor de 14 años. No obstante, para facilitar su aprobación, para homologar los criterios de cómputo con los del IMV y porque entendemos esta propuesta como un paso parcial dentro de una hoja de ruta más ambiciosa asociada a la reforma de la Ley 15/2001, hemos optado por mantener 740 euros por la primera persona pero unificando el cómputo del resto de la unidad familiar en un 30% por persona, unos 220 euros.

Es una propuesta justa, social, eficaz, realista y sostenible, un avance, pionero en España, hacia la suficiencia económica del sistema de rentas mínimas, básicas o garantizadas.

Ahora bien, ¿es realista y sostenible elevar la cuanta inicial de la RMI para un persona sola desde 400 a 740 euros, o la de una familia de cuatro personas desde 662,89 euros hasta 1400?

Sí, es realista, en primer lugar, porque está a la altura de una realidad social cada vez más desoladora e injusta. Pero también es realista "presupuestariamente", ya que parte importante de su coste sería absorbido por el IMV. La combinación de ambas prestaciones permite que la modificación propuesta no se traduzca automáticamente en un aumento de la cuantas efectivas pagadas por la Comunidad de Madrid; lo habitual sería su disminución.

Unos ejemplos pueden ilustrar este efecto. En ellos suponemos que las familias citadas son receptoras de RMI y de IMV, lo que sería muy habitual de aplicarse la modificación propuesta, y que no tienen ningún otro ingreso computable.

Una persona sola que actualmente perciba *400 euros* de RMI alcanzaría ingresos totales de 740 euros con una cuanta efectiva de RMI de *278,50 euros*.

Una familia no monoparental de cuatro personas que actualmente perciba *662,89 euros* de RMI alcanzaría ingresos totales de 1400 euros con una cuanta efectiva de RMI de sólo *523,15 euros*.

Una familia monomarental formada por la madre y dos menores que actualmente perciba *587,78 euros* de RMI alcanzaría ingresos totales de 1180 euros con una cuanta efectiva de RMI de sólo *340,07 euros*.

Una familia de diez personas que actualmente perciba *950 euros* de RMI alcanzaría ingresos totales de 1945,30 euros con una cuanta efectiva de RMI de *950 euros*.

El Anexo 1 muestra un panorama completo, para todos los tipos familiares. En él puede comprobarse que la cuanta efectiva de la RMI, sin ingresos adicionales, sólo aumentaría, ligeramente, para familias de seis o siete miembros, que en 2018 sólo fueron el 8,4% del total de familias receptoras. También puede verse en ese anexo que para algunos tipos de familia la reducción de la RMI efectiva pagada por la Comunidad de Madrid roza el 50%, lo que es compatible con un fuerte aumento de los ingresos totales familiares dada la aportación del IMV.

Es cierto que se darán algunas situaciones en las que la RMI efectiva aumente. Así ocurrirá con aquellas familias receptoras de RMI a las que se les niegue el IMV, lo que puede ocurrir porque hay algunas diferencias entre los requisitos para ambas. También puede ocurrir para familias receptoras de RMI y que obtengan el IMV, si tienen ingresos adicionales que absorban una proporción importante<sup>6</sup> de la actual cuanta inicial de la RMI<sup>7</sup>.

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<sup>6</sup> Por ejemplo, para que la cuantía de la RMI a pagar, en nuestro modelo, a una familia monomarental que también perciba el IMV y esté formada por una adulta y dos menores, sea igual o superior a la que se paga ahora los ingresos adicionales deberían superar el 42% de la cuantía inicial de la RMI actual. En 2018 la RMI efectiva



En todo caso, aunque no disponemos de los datos necesarios para hacer una evaluación presupuestaria, parece claro que la aprobación de la propuesta formulada, que no requiere tocar ley ni reglamento, no dispararía la inversión en la prestación económica de la RMI pero sí el bienestar de las familias beneficiarias. Por otra parte, no podemos dejar de recordar que, a la vista de lo ocurrido entre enero y mayo de 2020, la inversión total en la prestación económica de la RMI a lo largo de 2020 podría estimarse, con las cuantías actuales, en unos 125 millones de euros, unos 43 millones de euros menos que en 2017, lo que da un importante margen de maniobra para afrontar una situación social mucho más deteriorada a causa de la crisis sobrevenida.

En definitiva lo que proponemos es que no se tome el IMV como una oportunidad para arrinconar la RMI como prestación marginal para un puñado de familias, cada vez con menor inversión en ella, sino como oportunidad para subir el listón, para completar el IMV y dar una respuesta acorde a las características de nuestra región, rica, desigual y muy cara<sup>8</sup>. Actuando así Madrid podría convertirse en un referente social en España e incluso en el horizonte europeo, dando un paso decidido hacia los objetivos marcados por la Carta Social Europea. Para ello, no hará falta mucho más dinero, sino voluntad e inquietud social.

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media vino a ser el 80% de la que habría correspondido si ninguna familia tuviese ingresos adicionales

<sup>7</sup> En caso de que una familia obtuviese ingresos computables para una de las prestaciones pero no para la otra eso podría introducir alguna variación en uno u otro sentido

<sup>8</sup> Según la Encuesta de Presupuestos familiares, del INE, el gasto medio por persona en Madrid es el más elevado de España, después del País Vasco, lo que se debe a un coste medio más elevado de bienes de primera necesidad como la alimentación, el transporte y, sobre todo, la vivienda.

Arguments to the Report sent by the Spanish Government concerning the Review of Article 13

**ANEXO I. Familias receptoras de RMI e IMV, sin otros ingresos adicionales**

<i>Tipo familiar</i>	A <i>IMV</i>	B <i>RMI actual</i>	C <i>Baremo RMI propuesto</i>	D = C - A <i>Nueva cuantía RMI</i>	E = A + D <i>Ingresos totales</i>	F = % D/B <i>Proporción (%) cuantías RMI</i>
<b>Persona sola</b>						
Una persona	461,50	400,00	740	278,50	740,00	69,6
<b>Familia monoparental</b>						
1 adulta, 1 menor	701,48	512,67	960	258,52	960,00	50,4
1 adulta, 2 menores	839,93	587,78	1180	340,07	1180,00	57,9
1 adulta, 3 menores	978,38	662,89	1400	421,62	1400,00	63,6
1 adulta, 4 menores	978,38	738,00	1620	641,62	1620,00	86,9
1 adulta, 5 menores	978,38	813,11	1840	861,62	1840,00	106,0
1 adulta, 6 menores	978,38	888,22	2060	950,00	1928,38	107,0
1 adulta, 7 menores o más	978,38	950,00	2280 o más	950,00	1928,38	100,0
<b>Otras familias</b>						
2 personas	599,95	512,67	960	360,05	960,00	70,2
3 personas	738,40	587,78	1180	441,60	1180,00	75,1
4 personas	876,85	662,89	1400	523,15	1400,00	78,9
5 personas	1015,30	738,00	1620	604,70	1620,00	81,9
6 personas	1015,30	813,11	1840	950,00	1965,30	116,8
7 personas	1015,30	882,22	2060	950,00	1965,30	107,7
8 personas o más	1015,30	950,00	2280 o más	950,00	1965,30	100,0

El concepto de "familia monoparental" es el utilizado en el IMV, en la RMI esa situación no tiene consideración específica

La columna A es la renta garantizada por el IMV a cada tipo familiar.

La columna B es la cuantía máxima actual de la RMI.

La columna C es el nuevo baremo de límite de ingresos que proponemos: 740 euros por la primera persona, 220 por cada persona adicional.

La columna D es la cuantía efectiva que la Comunidad de Madrid pagaría de RMI si se aplicase el baremo propuesto.

La columna E recoge los ingresos totales que obtendría cada tipo familiar (renta garantizada IMV+ RMI)

La columna F recoge la proporción (en %) entre la cuantía de RMI con nuestra propuesta y la cuantía actual de la RMI

En las condiciones recogidas en el título del Anexo I los ingresos totales crecerían entre un 85% y un 142% según el tipo familiar.

<https://rmituderecho.org/>

**THESE ARGUMENTS HAVE BEEN WRITTEN BY THE LEGAL BUREAU OF SOCIAL RIGHTS, WHICH COLLABORATES WITH THE FOLLOWING ENTITIES:**

Movimiento ATD Cuarto  
Mundo España



ForoServSocial Madrid



Invisibles Tetuán



Observatorio de la Exclusión Social y  
los Procesos de Inclusión en la  
Comunidad de Madrid



Plataforma de trabajadores en Paro  
San Blas Canillejas



Universidad de Alcalá. Programa  
Regional de apoyo a las Defensorías  
del Pueblo de Iberoamérica



Asociación Apoyo Moratalaz



Centro Pastoral San Carlos  
Borromeo, Madrid



RSP Red de Solidaridad Popular Latina  
Carabanchel



Marea Básica de Madrid

**With the special collaboration of:**

People affected by the regulations, which have contributed their testimonies and evidence.

Some students at the University of Comillas, Evelyn de Mevius and Javier Lago, in the translated version.

**SE ADHIEREN AL DOCUMENTO LAS SIGUIENTES ORGANIZACIONES Y PERSONAS**

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Campamento Dignidad



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